



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

FIRST SECTION

CASE OF MALIKA ALIKHADZHIYEVA v. RUSSIA

(Application no. 37193/08)

JUDGMENT

STRASBOURG

24 May 2011

FINAL

28/11/2011

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

In the case of Malika Alikhadzhiyeva v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 37193/08) 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 Ms Malika Alikhadzhiyeva (“the applicant”), on 1 August 2008.

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

3. On 31 August 2009 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of it to the Government. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968. She resides in the town of Shali, in the Chechen Republic. The applicant is the wife of Ruslanbek Alikhadzhiyev, born in 1963.

A. The background to the case

6. At the material time, the applicant and Ruslanbek Alikhadzhiyev resided at 97, Suvorova Street in Shali. Ruslanbek Alikhadzhiyev's brother, Mr Ruslan Alikhadzhiyev, and his family resided at the same address.

7. Ruslanbek Alikhadzhiyev had not participated in illegal armed groups since the authorities launched the counter-terrorist operation in the Chechen Republic in 1999.

8. In May 2000 Ruslan Alikhadzhiyev, who had been the speaker of the Chechen Parliament ("the Parliament of the Chechen Republic of Ichkeria") in 1997-99, was abducted from his house and disappeared (see *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007).

9. According to the applicant, Ruslan Alikhadzhiyev's previous involvement in political activities and his ensuing disappearance provoked a heightened interest in their whole family on the part of the domestic authorities. In particular, members of the military commander's office of the Shalinskiy District often came to their house, searched it and checked the family members' identity papers.

10. Ruslanbek Alikhadzhiyev had a silver-grey Volga with licence plate no. A 577 BB 95. He had acquired it in 1995 from his relative, Kh.A., in exchange for another car.

11. Ruslanbek Alikhadzhiyev was about 170 cm tall.

B. Disappearance of Ruslanbek Alikhadzhiyev and the applicant's search for him

1. The applicant's account

12. On 20 April 2005 Ruslanbek Alikhadzhiyev drove his Volga to Gudermes to take a TV set to a repair shop. He gave a lift to Kh.A., who also needed to go to Gudermes. Ruslanbek Alikhadzhiyev was wearing black velvet trousers and a black shirt with white stripes.

13. It appears that at a certain moment Ruslanbek Alikhadzhiyev and Kh. A. parted and the former drove alone back to Shali.

14. At about noon on 20 April 2005 Ruslanbek Alikhadzhiyev's car was stopped at the checkpoint of the Russian federal forces located at the intersection of the Kavkaz motorway and the Argun-Shali road, in the vicinity of the village of Mesker-Yurt. The checkpoint was located in the middle of a roundabout. The servicemen at the checkpoint always requested that the vehicles slowed down while passing through. Moreover, there were many holes in the road which also made the drivers slow down while they were passing the area.

15. At about noon on 20 April 2005 the minibus in which M.E. was going to Shali approached the above-mentioned checkpoint. From the minibus M.E. saw that a young man had stopped his silver-grey Volga at the checkpoint and was heading towards the hatch at which the servicemen usually registered the passing drivers. The man was wearing dark trousers and a dark shirt and was about 170 cm tall. A white Gazel vehicle was stationed at the checkpoint nearby. At the moment when the man approached the hatch to present his identity papers for registration, three servicemen rushed towards him. Two servicemen twisted his arms behind his back and the third serviceman handcuffed him. They then took the man inside the checkpoint which was surrounded by blocks and slabs made of concrete.

16. M.E. immediately wrote down the numbers on the Volga's licence plate which he was able to see: 577 BB 95. He also asked the minibus driver to stop but the latter refused, saying that if he did so the servicemen could fire on them. According to M.E., his daughter and other passengers of the minibus witnessed the abduction of the man from the Volga.

17. At about noon the same day S.T., A.B. and S.M., who were driving from Grozny to Shali, approached the above-mentioned checkpoint. The three men were residents of Shali and personally knew Ruslanbek Alikhadzhiyev. They also knew that he had a silver-grey Volga and had seen Ruslanbek Alikhadzhiyev drive it on numerous occasions. When the car with the three men approached the checkpoint, they saw the silver-grey Volga, which S.M. immediately recognised as the vehicle belonging to Ruslanbek Alikhadzhiyev because he remembered its licence plate numbers. Immediately after that the three men saw two servicemen get inside Ruslanbek Alikhadzhiyev's car. A red-haired serviceman who was about 165 cm tall took the driver's seat. The second serviceman, who was taller and had a beer can in his hand, took the passenger seat. The three men also noticed an APC which was parked at the checkpoint. Having discussed what they had seen, the three men decided that, although the Volga looked like Ruslanbek Alikhadzhiyev's car and S.M. claimed that it had the same licence plates, they must have been mistaken. They did not stop and drove on. Later in the evening they learnt that Ruslanbek Alikhadzhiyev had not returned home because he had been abducted at the checkpoint.

18. According to M.E., on the same day, having arrived in Shali, he went to the town centre where taxi drivers usually gathered. He asked them whether they knew to whom the car with the licence plate he had written down might belong. One of the drivers told him that it could have been owned by a certain resident of Mesker-Yurt. M.E. went to that village but did not find the car owner. He returned to Shali and continued enquiring about the owner of the Volga. According to Mr E., a boy told him that he knew the owners of the car. The boy immediately called somebody over the phone but was unable to obtain the necessary information. M.E. then gave him his address in Shali, so that the relatives of the abducted man could contact him. On the same evening the Alikhadzhiyevs came to visit M.E. and he told them about the incident he had witnessed at the checkpoint. From the conversation with the Alikhadzhiyevs, M.E. inferred that the abducted person was Ruslanbek Alikhadzhiyev.

19. According to the applicant, in the afternoon on 20 April 2005 she called her husband on his mobile phone but he did not answer. She waited for him until the evening and then sent her son to Kh.A. to ask for news of her husband. However, Kh.A. was absent and the applicant's son returned home without any information.

20. Later the same evening the applicant learnt that Kh.A. had received a message from an acquaintance that servicemen at the Mesker-Yurt checkpoint had apprehended a person driving Kh.A.'s Volga. That person apparently did not know that Kh.A. and Ruslanbek Alikhadzhiyev had exchanged cars and that the Volga had been owned by the applicant's husband since that time. Kh.A. went to see that man who subsequently turned out to be M.E. The latter described to Kh.A. in detail the circumstances of the Ruslanbek Alikhadzhiyev's abduction. On an unspecified date the applicant met M.E. Having talked to him in person and heard his description of the abducted man, she concluded that the person abducted at the Mesker-Yurt checkpoint on 20 April 2005 had been her husband.

21. The applicant has had no news of Ruslanbek Alikhadzhiyev since 20 April 2005.

22. The above account of the events is based on the information contained in the applicant's application form; the applicant's written statement of 28 September 2007; a written statement by M.E. made on 19 June 2007; written statements by S.T. and A.B. made on 28 September 2007 and a written statement by S.M. made on 24 February 2010.

2. Information submitted by the Government

23. The Government did not challenge the facts, as presented by the applicant. They claimed that the domestic investigation into the disappearance of Ruslanbek Alikhadzhiyev had obtained no evidence that he had been abducted during a security operation.

C. The investigation into the disappearance of Ruslanbek Alikhadzhiyev

1. The applicant's account

24. On the night of 20 April 2005 the applicant contacted unspecified local authorities by phone and complained to them about the abduction of her husband.

25. On 21 April 2005 the applicant filed written complaints about the abduction of her husband with the prosecutor's office and the local police. She submitted that she had not kept copies of those complaints.

26. Over the following days the applicant complained about Ruslanbek Alikhadzhiyev's apprehension to various State authorities, seeking assistance in establishing his whereabouts, but did not receive any meaningful information in that respect.

27. On 24 August 2005 the Office of the President of the Chechen Republic replied to the applicant that they had examined her request for assistance in the search for Ruslanbek Alikhadzhiyev and had forwarded it to the prosecutor of the Chechen Republic.

28. By a letter of 29 August 2005 the prosecutor's office of the Chechen Republic forwarded the applicant's complaint about the abduction of her husband to the prosecutor's office of the Shalinskiy District ("the district prosecutor's office").

29. On 12 October 2005 the district prosecutor's office instituted a criminal investigation into the abduction of Ruslanbek Alikhadzhiyev under Article 126 of the Criminal Code (abduction). The case file was assigned the number 46130.

30. On 31 October 2005 the district prosecutor's office granted the applicant victim status in the proceedings in case no. 46130. The applicant was notified of the decision on the same day. The decision stated, among other things, that on 20 April 2005 Ruslanbek Alikhadzhiyev had driven to Gudermes in his Volga GAZ-31105, licence plate no. A 577 BB 95, in order to take a TV set to a repair shop. When he was returning back to Shali, unidentified armed persons in camouflage uniforms driving a beige Gazel had stopped his car on a roundabout in the vicinity of Mesker-Yurt. They had abducted Ruslanbek Alikhadzhiyev and taken him to an unknown destination.

31. It appears that on an unspecified date the investigation in case no. 46130 was suspended. There is no indication that the applicant was informed of that decision.

32. By a letter of 7 February 2006 the district prosecutor's office informed the applicant that on an unspecified date it had resumed the investigation in case no. 46130 and that operational and search measures

aimed at establishing Ruslanbek Alikhadzhiyev's whereabouts and identifying the perpetrators were under way.

33. On 2 July 2007 the applicant complained to the district prosecutor's office that the investigation into the abduction of her husband had yielded no results. She requested that the investigation be resumed if it had been suspended and sought access to the case file and permission to make copies from it in order to have sufficient information for challenging before the courts the decision to suspend the investigation.

34. On 17 July 2007 the district prosecutor's office replied to the applicant saying that it had taken all investigative steps which could have been taken in the absence of there being anyone to be charged with the abduction of Ruslanbek Alikhadzhiyev and that it thus found no grounds to resume the investigation. As regards the applicant's request for access to the case file, she would be provided access to the documents drawn up with her participation.

2. The Government's account

(a) The Government's refusal to provide a copy of the entire criminal case file no. 46130

35. Despite the Court's specific requests, the Government failed to produce most of the documents from criminal case file no. 46130, furnishing only copies of the decisions to open, some of the decisions to suspend and resume the investigation, several witness statements and the investigating authority's requests for information to various State bodies on the missing man's whereabouts or his possible arrest or detention and some of their replies to them. The Government did not provide any explanation for their failure to comply with the Court's request. Some of the documents submitted by the Government were legible only in part. The information contained in those documents may be summarised as follows.

(b) Opening of the investigation

36. When giving notice of the present application to the respondent Government, the Court specifically requested them to provide copies of the applicant's complaints about the abduction of her husband, which had prompted the opening of the investigation. In their observations the Government stated that the district prosecutor's office had received the applicant's complaint about the abduction of her husband on 21 September 2005, without providing any further information. The bulk of the documents submitted by them contained several documents which appear to be relevant to the matter and can be summarised as follows.

37. From the documents disclosed by the Government it can be seen that on 1 August 2005 the applicant complained about the abduction of her husband to the Ombudsman of the Russian Federation and that on an

unspecified date in August 2005 her further complaint about his abduction was received by the President of the Chechen Republic. In both applications the applicant submitted that she had previously complained about the kidnapping of Ruslanbek Alikhadzhiyev to a number of State authorities, including the Shalinskiy District Department of the Interior (ROVD) and the Khankala Department of the Interior, but those authorities had disregarded her submissions.

38. By a decision of 8 September 2005 a prosecutor of the district prosecutor's office extended for ten days the time-limit for the preliminary examination of the applicant's complaint about the abduction of her husband. The decision stated that the prosecutor had received the applicant's complaint about the abduction of her husband on 8 September 2005.

39. The Government also provided a copy of the applicant's complaint to the Shalinskiy ROVD about the abduction of Ruslanbek Alikhadzhiyev, dated 20 September 2005.

40. On 12 October 2005 the district prosecutor's office instituted an investigation into the abduction of Ruslanbek Alikhadzhiyev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The decision stated, among other things, that on 20 April 2005 Ruslanbek Alikhadzhiyev had gone in his Volga, licence plate no. A 577 BB 95, to Gudermes to take his TV to a repair centre. On the same day, while Ruslanbek Alikhadzhiyev was driving from Gudermes to the town of Shali, unidentified armed persons in camouflage uniforms, who had been driving a beige Gazel, had stopped his car at the roundabout near Mesker-Yurt, had arrested him and taken him to an unknown destination.

(c) Interviewing of witnesses

41. On 28 August 2005 the investigators interviewed A.S. as a witness. He stated that on 20 April 2005 he had learnt that on the same day Ruslanbek Alikhadzhiyev had been abducted by members of the security forces at the checkpoint near Mesker-Yurt. In particular, armed men who had introduced themselves as officers of the Federal Security Service ("the FSB") had stopped his car at the checkpoint, put him into their white armoured Gazel and taken him in the direction of Grozny. They had also taken Ruslanbek Alikhadzhiyev's car with them. The arrest had been carried out in the presence of servicemen of the checkpoint.

42. L.Z., who was interviewed on 28 August 2005, submitted that she had learnt of the abduction of Ruslanbek Alikhadzhiyev at the checkpoint near Mesker-Yurt from A.S. and confirmed his account of the events.

43. On 2 September 2005 the investigators interviewed A.O. as a witness. He stated that in April 2005 he had been stationed in the Chechen Republic and that on 20 April 2005 he had been on duty at checkpoint no. 112 at the intersection of the roads between Shali and Mesker-Yurt. At

about 9 a.m. a beige Gazel had arrived at the checkpoint; A.O. did not remember the figures on its licence plate. Five armed persons in camouflage uniforms had emerged from the vehicle. They had been Russians; one of them had had an Asian appearance. They had introduced themselves as officials of the FSB and asked for assistance in arresting a man driving a Volga. At about 1 p.m. O.A. had stopped the vehicle which interested the men, checked the driver's papers and sent the driver to the registration point at the checkpoint. A.O. could not remember the man's name but would have been able to identify him. While the man had been heading to the registration point, the FSB officers had approached him and asked him to follow them to the Gazel. The man had got into their car and they had got inside it after him. One of the FSB officers had got into the man's Volga and both vehicles had driven off in the direction of Grozny. The convoy had been followed by a white VAZ-21093 vehicle, also driven by an FSB officer. A.O. had not asked the FSB officers why they were arresting the man in the Volga.

44. On 14 September 2005 the investigators interviewed S.B. as a witness. He stated that he had been stationed in the Chechen Republic since March 2005 and that in April 2005 he had been on duty, together with other servicemen from his unit, at the intersection of the roads between Shali, Mesker-Yurt and Grozny. At about 9 a.m. on 20 April 2005 a beige Gazel had arrived at the checkpoint and two men had emerged from it. They had introduced themselves as FSB officers and had produced the relevant certificates indicating that they had been serving in Khankala. They had also said that they were there to arrest a certain person but that they did not know when exactly he would appear and that that information was to be communicated to them over the phone. Having spent a day at the checkpoint they had left in the direction of Khankala.

45. On 20 September 2005 the investigators interviewed the applicant as a witness. She stated that on the evening of 20 April 2005 a woman had told her that armed men in camouflage uniforms had abducted her husband at the checkpoint near Mesker-Yurt. On that day he had gone to Gudermes to take a TV set to a repair shop. While returning to Shali, he had been stopped at the checkpoint near Mesker-Yurt. There, while on his way to the registration point, FSB officers from Khankala had arrested him, put him into their white Gazel and driven off in the direction of Grozny. Servicemen at the checkpoint had witnessed the arrest. After the abduction the applicant had applied to the Department of the Interior in Khankala but had received no reply from that authority.

46. On 31 October 2005 the applicant was granted victim status in the proceedings in case no. 46130. While being interviewed on the same date, she confirmed her account of the events given on 20 September 2005.

47. On 7 November 2005 the investigators interviewed M.E. as a witness. He submitted that on 20 April 2005 he had been going in a minibus

to Shali. At the checkpoint in Mesker-Yurt he had noticed a man who was standing near a Volga with licence plate no. A 577 BB 95. The man had been approached by three persons in camouflage uniforms. They had twisted his arms and had led him to a light-coloured armoured Gazel, parked nearby and put him inside it. M.E. had not seen what had occurred afterwards because the driver of the minibus had told him that he could not stop at the checkpoint. However, M.E. had written down the licence plate number of the Volga in order to tell the man's relatives of his arrest, should he find them. Once he had arrived in Shali, M.E. had approached taxi drivers and asked them if they knew who the owner of the vehicle was. They had promised him to ask further and had taken his telephone number and his home address. On the same evening the Alikhadzhiyevs had come to his house and he had told them about what he had seen at the checkpoint. One of the women had told M.E. that she was the arrested person's wife.

48. L.Z., interviewed as a witness on 7 November 2005, stated that she had learnt of the abduction of Ruslanbek Alikhadzhiyev from his relatives on the evening of 20 April 2005.

49. On 8 February 2006 the investigators interviewed A.U. as a witness. He stated that he occupied the post of the deputy head of the Shalinskiy Department of the Interior ("the Shalinskiy ROVD") and that on 20 September 2005 he had examined the ROVD materials concerning the abduction of Ruslanbek Alikhadzhiyev at the checkpoint in Mesker-Yurt. It followed from those materials and, in particular, the statements of the servicemen who had been on duty at the checkpoint, that the men who had arrested Ruslanbek Alikhadzhiyev had introduced themselves as FSB officers from Khankala. A.U. had subsequently sent all the materials to the district prosecutor's office.

50. I.M. and S.M., interviewed as witnesses on 15 and 16 February 2006, stated that they had learnt of the abduction of Ruslanbek Alikhadzhiyev from his relatives.

51. On 22 April 2006 the investigators interviewed Zh.Kh. as a witness. He stated that on 20 April 2005 he had been in command of the unit of the Shalinskiy ROVD who had been on duty at the checkpoint near Mesker-Yurt and that his unit also included servicemen A. and V. The duties of the servicemen from his unit included checking the persons, vehicles and cargo passing through the checkpoint and securing public order in the area. A unit of servicemen of the Special Police Force from Primorsk ("the OMON unit") was also in charge of the checkpoint together with Zh.Kh.'s unit. At about 9 a.m. on 20 April 2005 a white Gazel had arrived at the checkpoint. Zh.Kh. had not memorised its licence plate numbers. Three heavily built armed men in camouflage uniforms had emerged from the vehicle. They had been aged 35 to 40; one of them had had a beard. One of them had entered the registration point. At about noon Zh.Kh. had left for lunch. When he had returned, the OMON officers had told him that the

armed men had produced identification to show that they were FSB officers and had arrested at the checkpoint a driver of a Volga whom they had put into their Gazel. One of the FSB officers had got inside the Volga and the two vehicles had left.

52. U.V., interviewed on 24 April 2006 gave an account of the events identical to that of Zh.Kh.

53. While being interviewed on 29 April 2006, the applicant confirmed her account of the events concerning the abduction of her husband and stated that at the end of the year 2005 a certain M.Z. had told the mother of Ruslanbek Alikhadzhiyev that the latter was in Khankala “in a very bad state”. The applicant had not met M.Z., had not known where he lived and he had contacted only her husband’s mother, who had died in February 2006.

54. On 5 May 2006 the investigators interviewed Z.A. as a witness. She stated that she had learnt of the circumstances of the abduction of Ruslanbek Alikhadzhiyev from residents of Shali who had passed by the checkpoint near Mesker-Yurt.

(d) Further investigative steps

55. Between 12 September and 27 November 2005 the investigators requested a number of State authorities, including the FSB, the Ministry of the Interior, the United Group Alignment (“the UGA”) and prosecutor’s offices of various districts in the Chechen Republic to provide information on Ruslanbek Alikhadzhiyev’s whereabouts, his possible arrest by those State authorities or any special operations conducted with a view to arresting him. It appears that no relevant information was obtained in reply.

56. On 27 November 2005 the UGA informed the district prosecutor’s office that from the information received by them from the Special Forces Department of the Temporary Operational Group of the Ministry of the Interior in the Northern Caucasus it followed that at about 1 p.m. on 20 April 2005 FSB officers had arrested Ruslanbek Alikhadzhiyev at checkpoint no. 112 near Mesker-Yurt with a view to verifying his possible involvement in illegal armed groups and had taken him away in his Gaz-3105 vehicle, licence plate no. A 577 BB 95 Rus. The letter also stated that Ruslanbek Alikhadzhiyev was the brother of a rebel warlord Ruslan Alikhadzhiyev.

57. On 16 November 2005 the Chechen Department of the FSB informed the investigators that the FSB Operational Bureau located in Khankala had been closed down on an unspecified date and that the former authority could not provide them with the information requested.

(e) Information relating to the decisions to suspend and resume the investigation

58. On 12 December 2005 the investigation in case no. 46130 was suspended owing to the failure to identify the perpetrators.

59. On 24 January 2006 the deputy prosecutor of the Chechen Republic set aside the decision of 12 December 2005 as unfounded and premature. The decision stated, among other things, that the investigators had failed to interview the head of the Shalniskiy ROVD A.U., who had stated in his letter of 12 September 2005 that Ruslanbek Alikhadzhiyev had been arrested on 20 April 2005 at the checkpoint in Mesker-Yurt by FSB officers from Khankala. Moreover, the investigators had not interviewed a certain Z.Kh., from whose explanations it followed that Ruslanbek Alikhadzhiyev had been arrested by FSB officers. They had likewise failed to interview all relatives and neighbours of Ruslanbek Alikhadzhiyev, with whom he could have been staying.

60. On 7 March 2006 the investigation was suspended owing to the failure to identify those responsible for the abduction.

61. On 27 March 2006 the prosecutor of the Shalinskiy District set aside the decision of 7 March 2006 as premature and unfounded and ordered that the investigation be resumed.

62. On 27 April 2006 the investigation in case no. 46130 was suspended owing to the failure to identify the persons implicated in the abduction of the applicant's husband.

63. On 13 October 2009 the investigation in case no. 46130 was resumed and unspecified instructions were given to the investigators with a view to identifying the perpetrators.

64. According to the Government, the investigation in case no. 46130 is still pending.

D. Court proceedings to have Ruslanbek Alikhadzhiyev declared a missing person

65. On 27 June 2006 the Shali Town Court of the Chechen Republic granted the applicant's claim and declared Ruslanbek Alikhadzhiyev a missing person. The judgment became final on 7 July 2006.

II. RELEVANT DOMESTIC LAW

66. For a summary of the relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007).

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

67. The Government contended that the applicant's complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Ruslanbek Alikhadzhiyev had not yet been completed. They further argued that the applicant, who had been granted victim status, could actively participate in the investigation and that it was open to her to complain of any omissions to prosecutors or courts. It was furthermore open to her to apply to civil courts for compensation under Articles 151 and 1070 of the Civil Code.

68. The applicant contested that objection. She stated that the criminal investigation had proved to be ineffective. With reference to the Court's practice, she argued that she was not obliged to apply to civil courts in order to exhaust domestic remedies.

B. The Court's assessment

69. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73-74, 12 October 2006).

70. 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.

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

72. As regards criminal law remedies the Court observes that the applicant complained to the law enforcement authorities about the kidnapping of Ruslanbek Alikhadzhiyev and that an investigation has been

pending since 12 October 2005. The applicant and the Government dispute the effectiveness of the investigation into the kidnapping.

73. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant's complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

II. THE ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

74. The applicant complained under Article 2 of the Convention that her husband had been deprived of his life by State agents and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Submissions by the parties

75. The Government argued that the domestic investigation had obtained no evidence that any special operations had been conducted on 20 April 2005 with a view to arresting Ruslanbek Alikhadzhiyev, that State agents had been involved in his abduction or that he was dead. On the basis of the materials obtained by the domestic investigation it could only be stated that the applicant's husband had been abducted by unidentified persons from checkpoint “KPGE-112”, located in the vicinity of Mesker-Yurt. The fact that the abductors had freely passed through the checkpoint or had worn uniforms did not prove that they were State agents. Members of illegal armed groups often passed themselves for officers of law-enforcement authorities during the counter-terrorist operation in the Chechen Republic.

76. In the Government's submission, the investigation into the abduction of Ruslanbek Alikhadzhiyev satisfied the Convention requirements because

the authorities had taken all relevant steps to identify the persons involved in the crime. The fact that they produced no results was not in itself an indication of inadequacy of the investigation. The Government also pointed out that the applicant had complained to the authorities about the abduction of her husband only half a year after it had occurred.

77. The applicant submitted that there was evidence “beyond reasonable doubt” that her husband had been abducted by State agents and that he was to be presumed dead. In particular, she claimed that he had been abducted from a checkpoint, which represented an area under the full control of the authorities and that a number of witness statements, including interview records submitted by the Government, indicated that the abductors had been officers of the FSB. She further submitted that the authorities had had a reason for abducting her husband because of his brother’s activities as a speaker of the Parliament of the Chechen Republic in 1999. Moreover, the Government had failed to provide a convincing alternative explanation for his kidnapping.

78. As regards the investigation conducted by the domestic authorities, the applicant claimed that it was neither prompt nor effective. It was instituted with a considerable delay, although the applicant had immediately notified the authorities about the kidnapping. The investigators had failed to interview the OMON officers of checkpoint no. 112 about the abductors’ particular features, despite the fact that they had stated that the abductors had stayed at the checkpoint for about four hours. Moreover, in spite of numerous contradictions in the statements by the OMON officers, the investigators had failed to arrange for their confrontations. No photofit images of the abductors had been compiled. No attempts had been made to identify the abductors’ vehicle.

B. The Court’s assessment

1. Admissibility

79. The Court considers, in the light of the parties’ submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government’s objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 73 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Ruslanbek Alikhadzhiyev

(i) General principles

80. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

(ii) Establishment of the facts

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

82. The applicant alleged that her husband, Ruslanbek Alikhadzhiyev, had been abducted on 20 April 2005 by State agents from checkpoint no. 112 in the vicinity of Mesker-Yurt and had then disappeared. Although the applicant herself had not witnessed the kidnapping, she enclosed a number of witness statements in support of her allegations.

83. The Government did not dispute most of the facts, as presented by the applicant, and conceded that her husband had been abducted in the circumstances described by her but stated that the domestic investigation had not obtained evidence of State agents being involved in the kidnapping.

84. The Court notes that despite its requests for a copy of the investigation file into the abduction of Ruslanbek Alikhadzhiyev, the Government refused to produce most of the documents from the case file

and that they did not refer to any reasons which would justify their refusal to do so.

85. Against this background and in view of the principles referred to above, the Court considers that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicant's allegations.

86. Having regard to the applicant's submissions and the witness statements enclosed by her, the Court finds that, although she had not been an eyewitness to the events described above, she presented an overall coherent and convincing picture of Ruslanbek Alikhadzhiyev's abduction on 20 April 2005, in broad daylight, at checkpoint no. 112 near Mesker-Yurt, controlled by the federal forces, by a group of armed and camouflaged men whom the witnesses of the scene considered to be State agents.

87. It observes that the applicant's account remained consistent both throughout the domestic investigation and before this Court (see paragraphs 12-22, 45, 46 and 53 above). It also cannot but note that even the sparse materials from case file no. 46130 that the Government agreed to disclose to the Court appear to confirm not only the applicant's account of the events surrounding her husband's abduction but also, more specifically, her allegation that the abductors had been State agents (see paragraphs 43, 44, 51, 52 and 56 above).

88. In the Court's view, the fact that a group of armed and camouflaged men, who produced identification to confirm that they belonged to law-enforcement authorities, was allowed by checkpoint servicemen to stay for several hours in an ambush there and then proceed to arrest the applicant's husband in broad daylight and in the presence of a number of servicemen and other witnesses rather supports the applicant's allegation that those were State agents and that they were conducting a special operation aimed at arresting Ruslan Alikhadzhiyev (compare *Mutsolgova and Others v. Russia*, no. 2952/06, § 100, 1 April 2010).

89. The Court notes that in her applications to the authorities the applicant consistently maintained that her husband had been detained by State agents and requested that the investigating authorities look into that possibility. It further notes that after more than five years the investigation has produced no tangible results.

90. The Court observes that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95,

§ 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts)).

91. Taking into account the above elements, the Court is satisfied that the applicant has made a prima facie case that her husband was abducted by State agents. The Government's statement that the investigation had not found any evidence to support their involvement in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents, which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Ruslanbek Alikhadzhiyev was arrested on 20 April 2005 by State agents during an unacknowledged security operation.

92. There has been no reliable news of Ruslanbek Alikhadzhiyev since the date of the kidnapping. His name has not been found in any official detention facility records. Lastly, the Government have not submitted any explanation as to what happened to him after his arrest.

93. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among many others, *Bazorkina*, cited above; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-XIII (extracts); *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-VIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Chechen Republic, when a person is detained by unidentified State agents without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Ruslanbek Alikhadzhiyev or of any news of him for more than five years supports this assumption.

94. Accordingly, the Court finds that the evidence available permits it to establish that Ruslanbek Alikhadzhiyev must be presumed dead following his unacknowledged detention by State agents.

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

95. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

96. The Court has already found it established that the applicant's relative must be presumed dead following unacknowledged detention by

State agents. Noting that the authorities do not rely on any ground of justification in respect of any use of lethal force by their agents, it follows that liability for his presumed death is attributable to the respondent Government.

97. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Ruslanbek Alikhadzhiyev.

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

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

99. The Court notes at the outset that the Government refused to produce most of the documents from case file no. 46132 and furnished only copies of the documents summarised above. It therefore has to assess the effectiveness of the investigation on the basis of the very sparse information submitted by the Government and the few documents available to the applicants that they provided to the Court.

100. Turning to the facts of the present case, the Court observes that the applicant's husband was kidnapped on 20 April 2005 and that the investigation into his disappearance was opened on 12 October 2005, that is, more than five months after it had occurred.

101. The parties disputed the exact date on which the applicant complained to the authorities about the abduction of her husband. Whilst the applicant claimed to have notified them shortly after the abduction, submitting, however, that she had not kept copies of those complaints, the Government alleged that the district prosecutor's office had first received the applicant's complaint on 21 September 2005.

102. The Court points out that, when giving notice of the application to the respondent Government, it had specifically requested them to furnish copies of the applicant's complaints about the abduction of her husband, which had prompted the opening of the investigation. In reply, they provided copies of her complaints to the ombudsman and the President of the Chechen Republic dated 1 August 2005 and a copy of her complaint to the Shalinskiy ROVD dated 20 September 2005, without providing any further explanations (see paragraphs 37 and 39 above). They also furnished a copy of a prosecutor's decision from which it appears that the district prosecutor's office received the applicant's complaint about the abduction on 8 September 2005, and not on 21 September 2005, as alleged by the Government (see paragraph 38 above). At the same time it emerges from the documents provided by them that the first investigative steps in connection with Ruslanbek Alikhadzhiyev's kidnapping were taken on 28 August 2005 (see paragraph 41 above). Lastly, the Court notes that in her complaints to the ombudsman and the President of Chechnya dated August 2005 the applicant explicitly stated that she had previously raised the matter before a number of law-enforcement authorities, including the Shalinskiy ROVD, and that her complaints had been left without reply. Nonetheless, she made no mention of any specific dates.

103. Against this background the Court is unable to attribute the responsibility for the delay in the opening of the investigation in the time span between the abduction of Ruslanbek Alikhadzhiyev and 28 August 2005 to any of the parties in the present case. However, regard being had to the information summarised above, it finds that the law-enforcement authorities must have been aware of the kidnapping of the applicant's husband by 28 August 2005 at the latest and were thus under an obligation to investigate it in accordance with the requirements of Article 2 of the Convention. Nonetheless, it can be seen that the investigation into the abduction of Ruslanbek Alikhadzhiyev was opened only a month and a half later. Given the time which had already lapsed following the applicant's husband's disappearance, the Court cannot but deplore this procrastination on the part of the domestic authorities.

104. It further appears that, although the investigators interviewed several witnesses and sent out requests for information to State authorities, a number of crucial investigative steps were never taken.

105. In particular, there is no indication that the investigators had at any point attempted to establish the itinerary of the abductors' vehicle or to obtain further information on the licence plate of the Gazel. No attempts have been made to establish the whereabouts of Ruslanbek Alikhadzhiyev's Volga.

106. It does not appear that the investigators interviewed all the OMON servicemen and all the servicemen from the ROVD unit who had been on duty at the checkpoint at the time of the abduction of the applicant's

husband. Moreover, given certain contradictions in the statements of the OMON officers, it remains unclear why the investigators had not arranged for their confrontations. The Court is further struck by the fact that although a number of witnesses interviewed by the investigators gave descriptions of the abductors of the applicant's husband, no attempts have been made to compile their photofit images.

107. It also remains unexplained why, despite the statements of witnesses who submitted that the abductors had introduced themselves as FSB officers from Khankala and had produced the relevant identification, the investigators did not genuinely pursue this or try to obtain information in that respect.

108. It is obvious that, if they were to produce any meaningful results, these investigative measures should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. The delays and omissions, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

109. The Court further notes that although the applicant was eventually granted victim status in the proceedings in case no. 46132, it is not persuaded that she was informed of any developments in the investigation (see paragraph 33 above). Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

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

111. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays and omissions, has been pending for many years with no tangible results.

112. Furthermore, the applicant, who had no access to the case file and was not properly informed of the progress in the investigation, particularly at its initial and most critical stage, could not have effectively challenged any acts or omissions of the investigating authorities before a court. Moreover, owing to the time which had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer be usefully conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospect of success.

113. In the Court's opinion, the Government also failed to demonstrate how the applicant having victim status had any bearing on the above-described situation (see also paragraphs 33 and 34 above).

114. In sum, the Court finds that the remedies relied on by the Government were ineffective in the circumstances and dismisses their preliminary objection.

115. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Ruslanbek Alikhadzhiyev, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

116. The applicant relied on Article 3 of the Convention, submitting that as a result of her husband's disappearance and the State's failure to investigate it properly, she had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

117. The Government submitted that the investigation had not established that the applicant had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

118. The applicant reiterated her complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

120. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the

situation when it is brought to their attention (see *Orhan*, cited above, § 358, and *Imakayeva*, cited above, § 164).

121. In the present case the Court notes that the disappeared person is the applicant's husband. Although the applicant did not witness his abduction, for more than five years she has not had any news of him. During this period the applicant has made enquiries of various official bodies, both in writing and in person, about him. Despite her attempts, the applicant has never received any plausible explanation or information about what became of her husband following his detention. The responses she received mostly denied State responsibility for her husband's abduction or simply informed her that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

122. 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

123. The applicant further stated that Ruslanbek Alikhadzhiyev had been detained in violation of the guarantees contained in Article 5 of the Convention, which reads, in so far as relevant:

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

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. The parties’ submissions

124. The Government asserted that no evidence had been obtained by the investigators to confirm that Ruslanbek Alikhadzhiyev had been deprived of his liberty. He was not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

125. The applicant reiterated the complaint.

B. The Court’s assessment

1. Admissibility

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

2. Merits

127. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev*, cited above, § 122).

128. The Court has found that Ruslanbek Alikhadzhiyev was abducted by State servicemen on 20 April 2005 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

129. 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 relative had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

130. In view of the foregoing, the Court finds that Ruslanbek 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

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

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

A. The parties' submissions

132. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The applicant had had an opportunity to challenge the acts or omissions of the investigating authorities in court. They added that participants in criminal proceedings could also claim damages in civil proceedings, and referred to cases where victims in criminal proceedings had been awarded damages from state bodies. In sum, the Government submitted that there had been no violation of Article 13.

133. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

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

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

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

138. 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

139. The applicant did not submit any claims for compensation in respect of pecuniary damage. She claimed compensation for non-pecuniary damage for the suffering she had endured as a result of the loss of her husband, the indifference shown by the authorities towards her and the failure to provide any information about the fate of her close relative, leaving the determination of its amount to the Court.

140. The Government submitted that, should the Court find a violation of the applicants' Convention rights, a finding of a violation would constitute sufficient just satisfaction.

141. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicant's husband. The applicant herself has been found to have been victim of a violation of Article 3 of the Convention. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant 60,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

B. Costs and expenses

142. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to 1,779.25 pounds sterling (GBP), to be paid into the representatives' account in the United Kingdom. The amount claimed was broken down as follows:

- (a) GBP 800 for seven hours of legal drafting of documents submitted to the Court at a rate of GBP 100 and 150 per hour;
- (b) GBP 849 for translation costs, and
- (c) GBP 130 for administrative and postal costs.

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

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

145. As to whether the costs and expenses incurred for legal representation were necessary, the Court accepts that this case was rather complex and required a certain amount of research and preparation.

146. Having regard to the details of the claims submitted by the applicant, the Court awards her EUR 1,997 together with any value-added tax that may be chargeable to them, the net award to be paid into the representatives' bank account in the United Kingdom, as identified by the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;

3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Ruslanbek Alikhadzhiyev;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Ruslanbek Alikhadzhiyev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ruslanbek Alikhadzhiyev;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (ii) EUR 1,997 (one thousand nine hundred and ninety-seven 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 United Kingdom;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President