



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

FIRST SECTION

CASE OF BEKSULTANOVA v. RUSSIA

(Application no. 31564/07)

JUDGMENT

STRASBOURG

27 September 2011

FINAL

08/03/2012

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

In the case of Beksultanova v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyev,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 31564/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Aminat Beksultanova, on 16 July 2007.

2. The applicant was represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 20 May 2009 the Court decided to apply Rule 41 of the Rules of Court, to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of the 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 1959 and resides in the village of Achkhoy-Martan in the Chechen Republic. She is the mother of Mr Timur Beksultanov, born in 1980.

A. Disappearance of Timur Beksultanov

1. The applicant's account

(a) The background to the events of 2 October 2004

6. In the applicant's submission her family members, including Timur Beksultanov, were victims of continuing persecution on the part of the domestic authorities. In July 2003 Timur Beksultanov even had to quit his job as a coach in the Achkhoy-Martan local sports centre. Furthermore, on several occasions (the applicant did not furnish the exact dates) servicemen of the federal forces allegedly burst into the applicant's house, searched it and intimidated the applicant and members of her family.

7. On 7 July 2003 the prosecutor's office of the Achkhoy-Martan District ("the district prosecutor's office") opened a criminal case against Timur Beksultanov under Articles 205 § 2 (terrorism), 208 § 2 (participation in an illegal armed group), 222 § 2 (aggravated possession of weapons) and 317 (assault on a law-enforcement officer) of the Criminal Code ("CC"). The case file was assigned the number 44050. It appears that Timur Beksultanov was put on a list of wanted persons in connection with those proceedings.

8. According to the applicant, Timur Beksultanov denied the charges against him and intended to appear at the district prosecutor's office.

(b) Disappearance of Timur Beksultanov

9. On 2 October 2004 Mr I.M., an officer of the police special-purpose squad ("OMON"), came to the applicant's house and asked Timur Beksultanov to follow him to an unidentified destination "to explain that [Timur Beksultanov] was not implicated in any terrorist activities". The two men got into I.M.'s vehicle, a VAZ-2107, and drove off. The applicant memorised only a sequence of three figures from the car number plate, namely "940".

10. The following account of the events is based on the information allegedly obtained by the applicant from two persons, one of them being

identified by her as “a shepherd” and another as “a villager of Achkhoy-Martan”. The applicant did not indicate the names of those witnesses or furnish copies of their statements. In her submission, the witnesses did not wish to give their names because they feared reprisals.

11. According to the applicant, one of the witnesses told her that at about 11 a.m. on 2 October 2004 he had seen a convoy of several armoured personnel carriers (“APCs”) and UAZ vehicles stationed at a crossroads between three villages, where one of the roads led to Shaami-Yurt. There had been numerous servicemen near the vehicles. A VAZ-2107 vehicle had approached the convoy. Timur Beksultanov and I.M. had got out of the vehicle and the servicemen had requested their identity papers. Having checked them, the servicemen had twisted Timur Beksultanov’s arms and had started beating him up. When he had fallen on the ground, the witness had heard several shots and had seen that Timur Beksultanov was wounded in his thigh. Immediately thereafter an officer had approached Timur Beksultanov and had shot him in the shoulder. After that the servicemen had put Timur Beksultanov in an APC and had driven off to an unknown destination. The servicemen had not done anything to I.M., who had got back inside his vehicle and had driven away. According to the applicant, the witness had not been able to hear everything which had occurred at the crossroads but had clearly seen what had been going on there.

12. On 2 October 2004, several hours after her son’s abduction, the vehicle in which he had been placed by his abductors, was stationed at the Achkhoy-Martan Department of the Interior (“the ROVD”).

13. The applicant learnt about the apprehension of Timur Beksultanov from the relatives of I.M. on 3 October 2004.

14. According to written statements by Zh.E., M.G., Z.M. and R.B., dated 20 December 2004 and furnished by the applicant, those persons submitted that on 2 October 2004 they had seen Timur Beksultanov get inside a vehicle together with a man who introduced himself as I.M., an OMON officer. I.M. had picked up Timur Beksultanov at the applicant’s house to accompany him to the law-enforcement authorities because the former wished to surrender in connection with the criminal charges against him. Zh.E., M.G., Z.M. and R.B. stated that on the following days they had learnt that I.M. had taken the applicant’s son into an ambush to deliver him to the authorities.

15. The applicant has had no news of Timur Beksultanov since 2 October 2004.

2. Information submitted by the Government

16. The Government submitted that the domestic proceedings had obtained no evidence that Timur Beksultanov had been abducted by State agents.

B. The search for Timur Beksultanov and the related proceedings

1. The applicant's account

17. On 8 October 2004 the applicant complained in writing about the abduction of Timur Beksultanov to various State bodies, including the President of the Commission for Prisoners and Missing Persons with the President of the Russian Federation, the military prosecutor's office of the North Caucasus Military Circuit, the military prosecutor's office of the United Group Alignment (UGA), the Prosecutor of the Chechen Republic and the district prosecutor's office. In those complaints she submitted that, at about noon on 2 October 2004, armed men who had been wearing camouflage uniforms and had arrived in several APCs, military UAZ vehicles and a private vehicle, had stopped I.M.'s vehicle with plate no. "940" and had taken away Timur Beksultanov. The abduction had occurred at the crossroads between three villages, where one of the roads led to Shaami-Yurt. In her complaints the applicant also claimed that, according to I.M., as of 6 October 2004 her son was still alive and was held in Khankala.

18. On 25 October 2004 the prosecutor's office of the Chechen Republic ("the republican prosecutor's office") forwarded the applicant's complaint about the abduction of Timur Beksultanov for examination to the district prosecutor's office.

19. On 5 November 2004 the Office of the Ombudsman of the Russian Federation forwarded the applicant's complaint about "the abduction of T. Beksultanov by officers of the special-purpose Department of the Sunzhenskiy Department of the Interior" to the Prosecutor General's Office.

20. On 9 November 2004 the applicant re-submitted her complaint of 8 October 2004 to the same State authorities.

21. On 1 December 2004 the republican prosecutor's office replied to the applicant that her complaint about the abduction of Timur Beksultanov had been appended to case file no. 44050 opened against him in July 2003. She was also notified that Timur Beksultanov had been put on a federal list of wanted persons and that measures aimed at establishing his whereabouts were under way.

22. On 3 December 2004 the military prosecutor's office of the North Caucasus Circuit forwarded the applicant's complaint about the abduction of her son to the UGA military prosecutor's office and advised the applicant that she was to address all her queries to that body.

23. On 21 December 2004 the Ministry of the Interior of the Chechen Republic notified the applicant that they had forwarded her complaint about the abduction of her son to the district prosecutor's office.

24. On 10 February 2005 the prosecutor's office of military unit 20102 informed the applicant that they were verifying the information contained in

her complaint about the abduction of her son and that they would notify her about their decision in due course.

25. On 12 February 2005 the Chechen Department of the Federal Security Service (“the Chechen Department of the FSB”) informed the applicant that they had forwarded her complaint about the abduction of Timur Beksultanov to the district prosecutor’s office for examination.

26. On 16 February 2005 the Chechen Department of the FSB replied to the applicant’s repeated complaint that on 2 October 2004 they had not carried out any special operations in the Achkhoy-Martanovskiy District. The letter also stated that the department officials had not arrested Timur Beksultanov.

27. By a letter of 4 March 2005 the prosecutor’s office of military unit no. 20102 notified the applicant that their inquiry had not established the implication of servicemen of the federal forces in the abduction of Timur Beksultanov. The letter also pointed out that the applicant’s complaint about the apprehension of Timur Beksultanov had been appended to case file no. 44050 opened against him on 7 July 2003 and in connection with which he had been put on the list of wanted persons. On 19 February 2005 the preliminary investigation in case no. 44050 had been adjourned owing to the fact that the whereabouts of Timur Beksultanov remained unknown. The district prosecutor’s office was taking investigative steps to establish his whereabouts with a view to prosecuting him for the crimes of which he was suspected.

28. On 17 May 2005 the applicant’s representatives wrote to the prosecutor of the Achkhoy-Martan District, enquiring, among other things, whether the district prosecutor’s office had launched an investigation into the abduction of Timur Beksultanov and what steps it had taken to establish his whereabouts. They also requested that the applicant be provided access to the relevant documents.

29. On 29 December 2005 the applicant’s representatives complained to the republican prosecutor’s office that they had not received a reply to their letter of 17 May 2005. It appears that their repeated query was also left without reply.

30. On 23 January 2007 the applicant’s representatives wrote to the prosecutor of the Achkhoy-Martan District and the republican prosecutor’s office, reiterating the questions raised in their letters dated 17 May and 29 December 2005.

31. On 7 February 2007 the republican prosecutor’s office replied to the applicant’s representatives that Timur Beksultanov had been put on the federal list of wanted persons in connection with criminal case no. 44050. The investigators of that criminal case had verified the applicant’s version that her son had been abducted by unidentified persons on 2 October 2004. However, apart from the applicant’s own statement, no objective evidence had been obtained to the effect that her son had, indeed, been abducted. At

the same time, the investigators had sufficient reasons to believe that the applicant was deliberately complaining about the abduction of Timur Beksultanov in order to shield him from the criminal responsibility for the crimes he had committed.

32. On 25 May 2009 the applicant wrote to the head of the investigating department of the investigating committee with the Prosecutor's Office in the Chechen Republic. She reiterated the circumstances of her son's disappearance and requested to be informed whether the authorities had opened an investigation into his disappearance and what steps they had taken to elucidate it.

33. On 24 September 2009 the Chief Military Prosecutor's Office replied to the applicant that they had forwarded her complaint about the abduction of her son to the military prosecutor's office of the United Group Alignment ("the UGS prosecutor's office").

34. By a letter of 6 October 2009 the district prosecutor's office informed the applicant's husband that they had received the complaint about the abduction of his son. The letter stated that Timur Beksultanov was being searched for on suspicion of having committed a number of serious crimes, in connection with which criminal proceedings had been instituted against him. The authorities were carrying out unspecified measures to examine the submissions concerning Timur Beksultanov's allegedly unlawful arrest.

2. Information submitted by the Government

35. The Government submitted that the domestic authorities had not opened a separate investigation into the disappearance of Timur Beksultanov because he had been placed on a wanted list in connection with the criminal proceedings in case no. 44050 instituted against him. All the applicant's submissions concerning his alleged abduction had been examined within the framework of the criminal proceedings in case no. 44050. The Government refused to provide the Court with a full copy of criminal case file no. 44050, without providing an explanation. The information provided by the Government and contained in the documents submitted by them may be summarised as follows.

(a) Information concerning criminal case no. 44050

36. On 6 July 2003 the district prosecutor's office instituted criminal proceedings against a number of persons, including Timur Beksultanov, on suspicion of participation in illegal armed groups, assault on officers of law-enforcement authorities and possession of arms (Articles 317, 208 § 2 and 222 § 2 of the CC). The decision stated, in particular, that on 5 July 2003 officers of the Achkhoy-Martan police department had carried out an operation aimed at arresting members of illegal armed groups. In the course of the operation they had stopped a vehicle with Timur Beksultanov, R.K. and U.S. inside. R.K. had opened fire on the police officers, had wounded

one of them and had been killed in the ensuing skirmish. The police officers had arrested U.S., whilst Timur Beksultanov had managed to escape. The case file was assigned the number 44050.

37. On 8 July 2003 a further criminal case was opened against Timur Beksultanov and R.K. under Article 317 of the CC on suspicion of an armed assault on a police officer, who had been severely wounded. The case file was given the number 44052.

38. On 21 July 2003 investigators of the district prosecutor's office searched the applicant's home in connection with the proceedings in case no. 44050. The related decision stated that there was information that Timur Beksultanov was hiding from investigators at his mother's home at 23 Budennogo Street in Achkhoy-Martan. According to the search record of the same date, 400 grams of trotyl were discovered at the applicant's home.

39. Between 21 July and 20 August 2003 a number of local police departments and other law-enforcement authorities were instructed to search for Timur Beksultanov in connection with the criminal proceedings against him. It transpires that in the same time span a number of expert examinations concerning the weapons seized from the crime scenes and the trotyl found at Timur Beksultanov's home were conducted. Further expert examinations with a view to establishing the severity of the injuries inflicted on the victims were carried out; the victims and some witnesses to the assaults were interviewed in the same period of time.

40. On 6 October 2003 criminal cases nos. 44050 and 44052 were joined; the new case file was assigned the number 44050.

41. On 29 November 2003 Timur Beksultanov's name was put on a wanted list as a person suspected of a number of crimes; the law-enforcement authorities of the Achkhoy-Martan district were instructed to search for him.

42. Between 29 November and 3 December 2003 the investigators interviewed a number of witnesses about the circumstances of the crimes imputed to the applicant's son.

43. On 5 December 2003 the criminal case against U.S. was severed from the proceedings in case no. 44050.

44. On 6 December 2003 the investigation in case no. 44050 was suspended.

45. It appears that between December 2003 and September 2004 the investigators instructed a number of law-enforcement authorities to search for Timur Beksultanov but their requests yielded no results.

46. On 10 September 2004 the district prosecutor's office received yet another criminal case file no. 38567 opened against Timur Beksultanov on 19 April 2004 on suspicion of unlawfully selling a pistol to a third person. On 10 September 2004 case file no. 38567 was joined to case file no. 44050; the new case file was assigned the number 44050.

47. On 15 September 2004 the investigation in case no. 44050 was suspended owing to its failure to locate Timur Beksultanov.

(b) Investigative steps relating to the applicant's complaint about the abduction of her son

48. On 19 January 2005 the investigation in case no. 44050 was resumed. The decision stated, in particular, that on 17 October 2004 the district prosecutor's office had received the applicant's complaint that on 2 October 2004 persons in camouflage uniforms had arrested Timur Beksultanov at the "Kavkaz" highway near the Shaami-Yurt woodland and had taken him to an unknown destination. It further stated that the applicant's submissions were to be examined and that operational and search measures aimed at locating Timur Beksultanov were to be activated.

49. On 26 January 2005 the district prosecutor's office instructed its counterparts and departments of the interior in the Chechen Republic and other regions of Russia to inform it whether they had arrested the applicant's son, held him in detention or otherwise had any information on his whereabouts. They were also requested to ensure that the search for Timur Beksultanov be activated. It appears to follow from the replies of the relevant authorities, dated between February and May 2005, that those measures yielded no results and that no relevant information was obtained following the investigators' request.

50. On an unspecified date in January 2005 the investigators interviewed the applicant. Her interview record, in so far as relevant, reads as follows:

"... [Timur Beksultanov] had worked as a coach at the local school before 2003. In 2003 I learnt that he had a pistol. He explained to me that he needed it for self-defence ... Some time later our close relative M.B. attempted to kill his sister A.B., who was allegedly leading an immoral life ... Subsequently we heard rumours that my son had given the pistol to M.B.

Several days later police officers stopped a car with my son and two other persons inside to arrest them. My son managed to escape but they had seized his passport and pistol. One of the persons in the car had opened fire on the policemen and was shot dead. After that the authorities had started persecuting our family. On several occasions persons in camouflage uniforms and masks burst into our house, looking for [Timur Beksultanov], whose name had by that time been placed on a wanted list.

On several occasions I tried to persuade him to surrender but he was afraid of getting a long prison term or disappearing ...

Until autumn 2004 [Timur Beksultanov] had succeeded in hiding from authorities. However, at some point I talked him into surrendering and he promised to do so by 7 October 2004.

At about 11 a.m. on 2 October 2004 [Timur Beksultanov] left home together with I.M., an OMON officer. They went to Grozny in I.M.'s silvery VAZ-2109 vehicle

with licence plate containing figures “904” [*sic*]. [Timur Beksultanov] promised me that he would return ... that evening, but he did not return.

On 3 October 2004 an unknown man came to my house and told me that Timur had been arrested. He explained that on 2 October 2004 he had taken his cattle to a river not far from Shaami-Yurt, close to the road between Katyr-Yurt and Shaami-Yurt. There he had seen a number of military vehicles, including several APCs, military UAZ vehicles and a UAZ-469 vehicle. One of the APCs had the licence plate number “E-422”. The vehicles had been stationed at a crossroads. The man had then seen a silvery VAZ-2109 vehicle move in the direction of Shaami-Yurt. When the VAZ-2109 had approached the military vehicles, they encircled it and shots had been fired. One of the men from the VAZ-2109 vehicle, who had been beaten up, had been placed in a UAZ vehicle and the other had been taken by his hands and feet and thrown in an APC, following which the military vehicles had driven off in the direction of Achkhoy-Martan through the village of Katyr-Yurt. The man had heard that the call sign of the servicemen had been “Falcon”. During the events described by him, the man had hidden in the bushes by the road. ... He refused to give his name or to testify before any law-enforcement authorities. According to the man, one of the APCs had white colouring, from beneath which green colour could be seen. When the servicemen had taken off, they had left the VAZ-2109 vehicle behind.

Following that we contacted the authorities and started searching for our son on our own on the outskirts of the village of Shaami-Yurt; ... the villagers told us that they had seen military vehicles and had heard the shooting but when we asked them to give their names, they refused and stated that they would not testify before any law-enforcement authorities. On the second day of our search I learnt that the vehicle in which my son had gone to Grozny together with I.M. had been brought to the local ROVD by police officer D. on the order of the head of the [Achkhoy-Martan] ROVD. Some time later I learnt that that vehicle had been transferred to the Sunzhenskiy ROVD. I also learnt that after a while I.M. was released and that he started working [in the police] again. I also learnt that during his arrest my son had been wounded in the right side of the chest and in the right thigh. I don’t know if he is alive or not. There were many rumours about my son’s placement in various power structures of the FSB in Khankala; I mentioned all that information in my complaints to the authorities.”

51. On 1 February 2005 the investigator in charge of case no. 44050 instructed the Achkhoy-Martan police to examine the applicant’s submissions concerning the abduction of her son by, in particular, identifying and interviewing any witnesses to his apprehension (particular attention was to be paid to persons residing in the vicinity of the crossroads between Shaami-Yurt and the “Kavkaz” motorway).

52. It appears that following the investigator’s instructions the police interviewed five residents of Shaami-Yurt; they all stated that they did not know anything about the abduction of the applicant’s son.

53. On 27 June and 9 July 2005 a number of law-enforcement authorities forwarded to the district prosecutor’s office the applicant’s further complaints about the abduction of her son by camouflaged armed men and instructed the latter body to examine her submissions and to inform her of any decisions taken by 20 July 2005.

54. On an unspecified date in 2005 the head of the criminal police of the ROVD Mr V.K. issued a certificate (*справка*), which, in so far as relevant, reads as follows:

“The ROVD has operational information [*оперативная информация*] to the effect that on 3 October 2004 unidentified officers of security forces stopped on the ‘Rostov-Baku’ motorway a civilian vehicle in which, according to the available sources, Timur Beksultanov, born in 1980, residing at 25 Budennogo Street, Achkhoy-Martan, was found. The ROVD received no complaints from the relatives of [Timur Beksultanov] about his arrest or abduction. The Achkhoy-Martan ROVD has no information on ‘Akhmed’, who had been arrested together with [Timur Beksultanov]. There is information that military armoured vehicles were used during [Timur Beksultanov’s] arrest. There is no information on Beksultanov’s ensuing whereabouts or the persons who had arrested him.”

55. On 19 February 2005 the district prosecutor’s office suspended the investigation in case no. 44050, owing to its failure to find Timur Beksultanov. By the same decision the district prosecutor’s office instructed the ROVD to continue carrying out operational and search measures aimed at locating Timur Beksultanov.

56. The investigation in case no. 44050 is still pending.

II. RELEVANT DOMESTIC LAW

57. 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 ON GROUNDS OF NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties’ submissions

58. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the case against Timur Beksultanov had not yet been completed. They further stated that the applicant had not complained about any acts or omissions in the investigation instituted against Timur Beksultanov. In particular, it had been open to her to challenge any acts or omissions of the investigators in courts but there was no evidence that she had done so. In the Government’s submission, the applicant had also failed to seek damages in civil proceedings.

59. The applicant submitted that she had exhausted domestic remedies. In particular, although she had promptly complained about the abduction of her son to the domestic authorities, they had refused to open a criminal investigation into his disappearance and had only made a number of requests to some law-enforcement authorities within the framework of the criminal proceedings in case no. 44050 instituted against him. In any event, the impugned measures had been insufficient. Lastly, she argued, with reference to the Court's practice, that she had not been obliged to pursue civil remedies.

B. The Court's assessment

60. 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).

61. 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.

62. 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.

63. As regards criminal law remedies, the Court observes that the applicant complained about the alleged kidnapping of Timur Beksultanov shortly after it had occurred. It transpires that by the time the applicant lodged her complaint, criminal proceedings against her son had been pending for over a year and that he was already being searched for in connection with a number of criminal charges against him. It also follows from the parties' submissions and the information available to the Court that the domestic authorities chose not to open a separate criminal case concerning the abduction of Timur Beksultanov but decided to verify the applicant's allegations within the framework of the criminal proceedings against him. Without dwelling at this stage upon the question whether this constituted an adequate response by the authorities to the applicant's allegations of disappearance of her son, the Court will proceed with its examination of the exhaustion issue on the premise that the applicant duly notified the authorities of Timur Beksultanov's disappearance and that her allegations in that respect were investigated within the framework of the

criminal proceedings against him. The applicant and the Government dispute the effectiveness of the related investigative measures.

64. 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. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

65. The applicant complained under Article 2 of the Convention that her son had been deprived of his life by the servicemen and that the domestic authorities had failed to carry out an effective investigation into 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

66. The Government submitted that case file no. 44050 contained no information to confirm that Timur Beksultanov had been summoned to the district prosecutor's office or any other State authority to be interviewed on 7 October 2004. The investigating authorities had not yet verified whether OMON officer I.M. had accompanied the applicant's son for an interview on 2 October 2004 but they had been instructed to do so after notice of the application had been given to the Government. There was no information that any special operations aimed at arresting Timur Beksultanov had been carried out on 2 October 2004 or that he had been otherwise arrested or detained by the authorities. Furthermore, neither the applicant nor other witnesses had any reliable information about the persons who had abducted and allegedly killed the applicant's son. On the contrary, the materials of case file no. 44050 indicated that he had fled justice and that his name had been put on a wanted list in connection with serious crimes committed by

him. His body had not been discovered and there was no evidence that he was dead or that he had been killed by State agents. Moreover, the State authorities themselves were looking for him to bring him to justice.

67. In the Government's submission, given that Timur Beksultanov was being searched for on suspicion of having committed a number of serious crimes, the authorities had not opened a separate criminal case concerning his disappearance and had verified the applicant's submissions in that respect within the framework of criminal case no. 44050. The fact that the related investigative steps had produced no results did not mean that the authorities had failed to comply with their obligation to investigate his disappearance.

68. The applicant maintained that her son had been kidnapped and killed by State agents. She argued that she had furnished several witness statements confirming the fact that Timur Beksultanov had last been seen with OMON officer I.M., who had taken him to the State authorities. Moreover, from the certificate of V.K. it followed that the ROVD had information to the effect that her son had been arrested by members of the security forces. Although the report referred to 3 and not 2 October 2004 as the date of the abduction, it explicitly mentioned Timur Beksultanov's name and, moreover, coincided with the description of his kidnapping by one of the persons who had contacted her after it had occurred. She also stressed that the Government had failed to produce the entire case file no. 44050 and had furnished only a selection of documents from it.

69. The applicant further submitted that she had lodged a number of complaints about the abduction of her son shortly after she had learnt about it. However, the investigative steps taken by the authorities were clearly insufficient and cursory. In particular, although, while being interviewed on the circumstances of the disappearance of her son in 2004, she had told the investigators about I.M., they had made no attempts to locate or interview him. Moreover, she had never had access to the case file and thus could not have effectively challenged any acts or omissions of the investigation, even if she wished to do so. In any event, the authorities' failure to properly react to her complaint in due time made it impossible to take a number of investigative steps.

B. The Court's assessment

1. Admissibility

70. 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 64 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 Timur Beksultanov

(i) General principles

71. 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

72. 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).

73. The applicant alleged that her son had been abducted by State agents on 2 October 2004 and had then disappeared. She did not witness the abduction but referred in support of her submissions to statements of a number of persons who had witnessed his departure from her home on that date and his ensuing arrest. The applicant furnished statements of some of those persons to the Court.

74. The Government denied that Timur Beksultanov had been abducted by State agents, submitting that the investigative steps taken at the domestic level had not confirmed that fact.

75. The Court notes that despite its requests for copies of documents related to the investigative steps taken in connection with the disappearance of Timur Beksultanov, the Government produced only some of the documents from criminal case file no. 44050, without providing any further explanations. In particular, they failed to specify the nature of the documents and the grounds on which they could not be disclosed (see *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006, and *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)). Accordingly, the Court considers that it can draw inferences from the Government's conduct (see *Mikheyev*, cited above, § 105).

76. The Court further notes that although the applicant was not an eyewitness to what happened to Timur Beksultanov after he had left home, her statement to the effect that her son was last seen in the company of a State official intending to lead him to the authorities was confirmed by several witness statements she submitted to the Court (see paragraph 14 above) and was not disputed by the Government.

77. More importantly, the fact of Timur Beksultanov's arrest by members of the security forces was explicitly confirmed by the certificate of the head of the ROVD – an official document issued by a law-enforcement authority and appended to criminal case file no. 44050. While the Court is mindful of the difference in the date of the arrest of Timur Beksultanov, as referred to in the impugned document and as given by the applicant, it cannot but observe that the circumstances of the abduction of the applicant's son described in the certificate appear to coincide on all important points with its description by the applicant, such as the place of the arrest, the presence of military vehicles, and the fact that the applicant's son was driving in a civilian vehicle together with another man (see paragraphs 9-15, 50 and 54 above).

78. It is also significant for the Court that the Government themselves furnished the impugned document to the Court and that they disputed neither its authenticity nor the accuracy of the information contained therein (see, *a contrario*, *Enzile Özdemir v. Turkey*, no. 54169/00, § 46, 8 January 2008).

79. The Court notes that in her applications to the authorities the applicant consistently maintained that her son had been detained by unknown servicemen and requested the investigating authorities to look into that possibility. It further notes that after more than six years the investigative steps taken by the authorities have produced no tangible results.

80. The Court observes that where the applicant makes out a *prima facie* case and it 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)).

81. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that her son was abducted by State agents. The Government's statement that the investigation had not found any evidence to support the involvement of servicemen 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 there are sufficient concrete elements, on the basis of which it may be concluded beyond reasonable doubt that Timur Beksultanov was apprehended by State agents and disappeared thereafter (compare *Enzile Özdemir*, cited above, § 48).

82. There has been no reliable news of Timur Beksultanov 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.

83. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among many others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-VIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007; and *Dubayev and Bersnukayeva v. Russia*, nos. 30613/05 and 30615/05, 11 February 2010), 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 Timur Beksultanov or of any news of him for more than six years supports this assumption.

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

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

85. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but

also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147 Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

86. The Court has already found it established that the applicant's son must be presumed dead following his 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.

87. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Timur Beksultanov.

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

88. 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, §§ 105 109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

89. The Court would note at the outset that the Government furnished only some of the documents from case file no. 44050. 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 applicant that she provided to the Court.

90. Turning to the circumstances of the case, it observes that the applicant complained to the authorities about the abduction of Timur Beksultanov several days after it had occurred. As has been observed above, following receipt of her complaint the domestic authorities decided not to open a separate investigation into her son's disappearance but to examine her submissions within the framework of the criminal case opened against

Timur Beksultanov on suspicion of participation in illegal armed groups and a number of other charges (see paragraph 67 above).

91. Whilst that decision does not appear entirely unreasonable on its face, given that by the time the applicant lodged her complaint the authorities had already been searching for Timur Beksultanov and had put his name on a wanted list in connection with the charges against him, the Court has certain doubts whether the examination of her submissions within the framework of the already opened criminal case against her son could constitute an adequate response to the matter from the standpoint of the requirements of Article 2. Nonetheless, it will not dwell upon this issue and, in examining the applicant's complaint under the procedural limb of that provision, will concentrate its analysis on specific investigative measures taken by the authorities in response to her complaint within the framework of criminal case no. 44050.

92. Having said that, the Court notes that the investigating authorities received the applicant's complaint about the abduction of her son on 17 October 2004. However, the first decision stating that the applicant's allegations merited an examination was dated 19 January 2005 (see paragraph 48 above), that is more than three months after the disappearance had presumably occurred. This delay in reacting to the applicant's complaint was liable *per se* to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. In the Court's view, it demonstrates a particularly regrettable failure on the part of the authorities to comply with their obligation of promptness implicit in the obligation to conduct an effective investigation under Article 2 of the Convention.

93. It further observes that the first investigative steps in connection with the disappearance complaint were ordered to be carried out only on 26 January 2005 (see paragraph 49 above), that is more than three months after the investigators had received the applicant's complaint. Moreover, they interviewed the applicant with the same three-month delay, for which the Government offered no explanation. In the Court's view, these unexplained delays cannot be considered compatible with the authorities' obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

94. Furthermore, it transpires that a number of crucial investigative steps were not taken at all. In particular, there is no indication that the investigators made any attempts to interview I.M., an OMON officer, although the applicant explicitly mentioned that person while being interviewed by the investigators (see paragraph 50 above). It also does not appear that the investigating authorities took any steps to identify and interview the man who had told the applicant about her son's alleged arrest (see *ibid*). It is equally striking that they did not attempt to identify or

interview possible eyewitnesses to the abduction residing in the vicinity of the crossroads between Shaami-Yurt and the Kavkaz motorway, although the need to interview those witnesses was acknowledged by the decision of 1 February 2005 (see paragraph 51 above). Lastly, and most importantly, the Court is struck by the fact that the investigators took no steps to verify the information contained in the certificate issued by the head of the ROVD.

95. 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.

96. The Court further notes that it emerges from the applicant's repeated requests for information (see paragraphs 28 - 30 and 32 above) that she was not informed of the developments in the investigation of her complaint about the disappearance of her son. In this respect it does not lose sight of the fact that she could not be granted victim status because of the authorities' choice not to open a separate criminal case concerning her son's disappearance but to examine her related complaints within the framework of the criminal proceedings against him. Accordingly, it was for the authorities to safeguard, to the required level, her interests in the proceedings as the next of kin of the disappeared person. However, for the reasons stated above the Court cannot but conclude that they failed to do so.

97. 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 proceedings are 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.

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

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

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

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

101. The applicant relied on Article 3 of the Convention, submitting that as a result of her son'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. Submissions by the parties

102. The Government submitted that the authorities' conduct in carrying out the investigation had not amounted to a breach of the applicant's right under Article 3.

103. The applicant maintained her complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

105. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, cited above, § 358, and *Imakayeva*, cited above, § 164).

106. In the present case the Court notes that the applicant is the mother of the disappeared person. Although she did not witness his abduction, for more than six years she has not had any news of her son. During this period the applicant has made enquiries of various official bodies, both in writing and in person, about her son. Despite her attempts, the applicant has never received any plausible explanation or information about what became of him following his detention. The responses she received mostly denied State responsibility for her son's arrest 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.

107. 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

108. The applicant further stated that Timur Beksultanov 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. Submissions by the parties

109. The Government asserted that no evidence had been obtained by the investigators to confirm that Timur Beksultanov 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.

110. The applicant maintained the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

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

113. The Court has found that Timur Beksultanov was abducted by State servicemen on 2 October 2004 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there is no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

114. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation into 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 him against the risk of disappearance.

115. In view of the foregoing, the Court finds that Timur Beksultanov was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

116. The 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. Submissions by the parties

117. 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.

118. The applicant reiterated the complaint.

B. The Court’s assessment

1. Admissibility

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

2. Merits

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

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

122. As regards the 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

123. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

124. The applicant did not submit any claim for pecuniary damage. She claimed 100,000 euros (EUR) in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her son, the indifference shown by the authorities towards him and the failure to provide any information about his fate.

125. The Government submitted that the amount claimed by the applicant was excessive.

126. 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 son. 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) plus any tax that may be chargeable to her.

B. Costs and expenses

127. The applicant was represented by lawyers from the SRJI. She submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff, as well as administrative expenses, translation costs and courier delivery fees. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,463.74, to be paid into the representatives' bank account in the Netherlands.

128. 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).

129. 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*, cited above, § 220).

130. 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.

131. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time that, owing to the application of former Article 29 § 3 in the present case, the applicant's representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives. The Court also notes that the applicant did not submit any documents in support of her claim for administrative costs.

132. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount of EUR 3,000, together with any value-added tax that may be chargeable to the applicant, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicant.

C. Default interest

133. 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 Timur Beksultanov;
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 Timur Beksultanov disappeared;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant on account of her mental and emotional suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Timur Beksultanov;
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 amount:
 - (i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, to the applicant in respect of non-pecuniary damage, to be converted into Russian roubles at the date of settlement;
 - (ii) EUR 3,000 (three thousand 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 Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President