



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

FIRST SECTION

CASE OF EDILOVA v. RUSSIA

(Application no. 14662/07)

JUDGMENT

STRASBOURG

28 February 2012

FINAL

24/09/2012

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

In the case of Edilova 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 Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 14662/07) 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 Ms Nura Edilova, on 13 February 2007.

2. The applicant was represented by Mr D. Itslyayev, a lawyer practising in Grozny. 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 27 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 the application 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 1954. She resides in the village of Goyty, the Chechen Republic. The applicant is the mother of Mr Abdula Edilov, born in 1976.

A. Disappearance of Abdula Edilov and the applicant's search for him

1. The applicant's account

6. At the time of the events described below Abdula Edilov resided with the applicant at 2, Nekrasova Street in the village of Goyty. According to the applicant, her son had participated in illegal armed groups during the first round of hostilities in the Chechen Republic, but was then amnestied and did not take part in the second round of hostilities which started in 1999.

7. The following account of the events is based on a written statement by the applicant dated 16 January 2007; a written statement by R.Z. dated 10 July 2006; a written statement by Z.D. dated 5 September 2006 and a written statement by L.D. dated 7 September 2006.

8. On 26 August 2001 the applicant agreed with Abdula Edilov that she would go to the local market and that he would join her there later. The applicant left for the market while Abdula Edilov stayed at home.

9. Between 5 and 6 p.m. on the same day a light coloured UAZ vehicle (“таблетка”) arrived at the applicant's house. About ten armed men in camouflage uniforms and masks emerged from the vehicle. The applicant's neighbours R.Z., Z.D. and L.D., who witnessed the arrival of the vehicle, inferred that those men were servicemen. Two servicemen stayed by the UAZ vehicle and the others rushed inside the applicant's house. Shortly thereafter the servicemen came outside, leading Abdula Edilov with them. He was wearing a T-shirt, black trousers and house slippers and was holding his hands behind his back. The servicemen threw the applicant's son inside the UAZ vehicle and drove in the direction of the checkpoint manned by Russian federal forces located on the bridge over the Argun River, on the eastern outskirts of Goyty. At the checkpoint the vehicle stopped for a while and then took the motorway in the direction of Grozny. According to Z.D., the windows in the UAZ vehicle were not blacked out and when it drove away from the checkpoint there were only three to four servicemen in it. Z.D. inferred from that that several servicemen must have stayed at the

checkpoint. Z.D., R.Z. and L.D. could clearly see the route taken by the UAZ vehicle because the motorway leading to Grozny was separated from Nekrasova Street only by the Argunskiy canal.

10. The applicant learnt about the abduction shortly after it had occurred. She immediately returned home and realised that her house had been searched because everything had been turned upside down.

11. The applicant then went to the checkpoint of the federal forces located at the bridge over the Argun River. According to her, the checkpoint was guarded by servicemen from the Special Forces unit of the Ministry of the Interior (“the OMON”). She told them that her son had been apprehended and that his abductors had passed through the checkpoint. The servicemen replied that their commander was absent and that her son would come back “three days later if he was innocent” or “three months later if he was guilty”.

12. On 26 August 2001 the applicant complained in person about the abduction of her son to the local police. A police officer named “Yusup” advised her to complain about the apprehension of Abdula Edilov to various authorities and promised her that he would search for her son and find out who had arrested him and for what reason.

13. On 27 August 2001 the applicant stayed at home in case the authorities came to question her about the circumstances of the abduction of her son, whilst her sister Z.Ts. went to Grozny to complain about his abduction to various State authorities.

14. According to a written statement by Z.Ts. dated 1 February 2010, on 29 or 30 August 2001 Z.Ts. and her husband heard over the radio that “Abdula Muslanovich Edilov” had been arrested on suspicion of having committed a terrorist attack in the Urus-Martanovskiy District of Chechnya and two days later she saw the same information on the federal news, accompanied by video footage of a man being led by two servicemen. The video being very short, Z.Ts. was unable to discern whether the man was Abdula Edilov, but she clearly heard his name being pronounced by the newsreader.

15. On an unspecified date in autumn 2001 the applicant learnt from a certain Mr R. that her son was allegedly being held at the military base in Khankala and in the winter of 2002 a certain Ms T. told the applicant’s daughter-in-law that Abdula Edilov was being held at the Operational and Search Bureau no. 2 (“the ORB-2”) in Grozny. The applicant went to Grozny to meet the head of the ORB-2, but the latter denied having detained her son.

16. In 2005 an officer of a prison located in Khasavyurt, in the Dagestan Republic, allegedly recognised Abdula Edilov in a picture shown to him by the applicant and told her that her son had been detained in that prison two to three years before and that he had then been taken away by officers of the Federal Security Service (“the FSB”).

2. Information submitted by the Government

17. The Government stated that at about 5 p.m. on 26 August 2001 a group of armed men in camouflage uniforms and masks, driving a UAZ vehicle, had abducted Abdula Edilov from his home in Goyty, the Chechen Republic, and had taken him to an unknown destination.

B. The investigation into the disappearance of Abdula Edilov

1. The applicant's account

18. By a letter of 16 September 2001 the prosecutor's office of the Chechen Republic ("the republican prosecutor's office") forwarded the complaint about the abduction of Abdula Edilov to the prosecutor's office of the Urus-Martanovskiy District ("the district prosecutor's office") and instructed the latter authority to verify her submissions and to take the necessary measures.

19. On 27 September 2001 the acting prosecutor of the Urus-Martanovskiy District forwarded the complaint about the abduction of Abdula Edilov to the head of the Temporary Department of the Ministry of the Interior of the Urus-Martanovskiy District ("the VOVD") and instructed the latter body to institute a criminal investigation and to take initial investigative steps, should there be grounds to do so.

20. On 4 December 2001 the VOVD launched a criminal investigation into the abduction of Abdula Edilov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was assigned the number 25482.

21. On 15 December 2001 the applicant was granted victim status in the proceedings in case no. 25482.

22. On 10 July 2002 the republican prosecutor's office replied to the applicant that it had examined her application for assistance in the search for her son and had studied case file no.25482. On 14 January 2002 the investigation of the case had been entrusted to the district prosecutor's office which, on an unspecified date, had decided to suspend it owing to the failure to identify the perpetrators. However, that decision had been set aside as premature and unfounded and the district prosecutor's office had been instructed to take unspecified additional investigative steps aimed at identifying those responsible and locating the applicant's son.

23. By a letter of 22 July 2002 the republican prosecutor's office replied to the applicant's repeated requests for information, specifying that the investigation in case no.25482 had been suspended on 4 February 2002 because of the failure to identify those responsible for the abduction. The applicant was further informed that on 10 July 2002 the investigation had

been resumed and that the district prosecutor's office would inform her about any further developments.

24. On 23 July 2003 the military prosecutor's office of the United Group Alignment ("the UGA military prosecutor's office") forwarded the applicant's complaint about the abduction of Abdula Edilov to the military prosecutor of military base no. 20102 and instructed the latter body to examine it and to inform the applicant of any decisions taken. By a letter of 5 September 2003 the military prosecutor's office of military base no. 20102 transmitted the applicant's complaint to the military commander of the Urus-Martanovskiy District for examination.

25. On 16 January 2004 the applicant wrote to the district prosecutor's office. She described in detail the apprehension of her son and submitted that she had immediately alerted all the relevant State bodies to his abduction. She stressed that the abductors had passed through the checkpoint of the federal forces unhindered and had freely moved around in broad daylight. She pointed out that the district prosecutor's office had not apprised her of any developments in the investigation and requested to be updated in writing.

26. On 19 January 2004 the district prosecutor's office replied to the applicant that criminal case no. 25482 had been opened on 4 December 2001 and that on 3 April 2003 the investigation had been suspended owing to the failure to identify the culprits.

27. On 8 April 2004 the applicant wrote to the military commander of the Urus-Martanovskiy District. She described the circumstances of her son's abduction by armed men in camouflage uniforms, who had arrived in a light-coloured UAZ vehicle without licence plates, and sought assistance in establishing his whereabouts. On 26 April 2004 she wrote a letter along the same lines to the district prosecutor's office.

28. On 27 April 2004 the district prosecutor's office replied to the applicant that on 3 April 2003 the investigation had been suspended but that at the same time the VOVD had been instructed to activate the search for those responsible for the abduction of Abdula Edilov.

29. By a letter of 18 June 2004 the district prosecutor's office informed the applicant that on 18 June 2004 it had resumed the investigation in case no. 25482.

30. On 2 April 2005 the applicant wrote to the military prosecutor and the prosecutor of the Chechen Republic, describing in detail the circumstances of the abduction of her son and stressing that his abductors had passed through the checkpoint of the federal forces unhindered and that her relatives had heard on the Chechen State radio and television that Russian servicemen had arrested Abdula Edilov on suspicion of having committed terrorist attacks and had seen footage of him in a TV reportage. She also stated that the description of Abdula Edilov's clothes by the relative who had seen him on TV fully corresponded to the clothes he had

been wearing at the time of his abduction. Lastly, the applicant stressed that she had passed on that information in all her applications to State bodies but they had disregarded it.

31. On 13 May 2005 the district prosecutor's office replied to the applicant's query and informed her that on 10 July 2004 the investigation in case no. 25482 had been suspended owing to the failure to identify those responsible for the abduction of her son. At the same time operational and search measures aimed at establishing Abdula Edilov's whereabouts and identifying his abductors were under way.

32. On 1 June 2005 the district prosecutor's office wrote to the applicant that on the same date the investigation in case no. 25482 had been resumed.

33. On 7 February 2006 the applicant complained to the district prosecutor's office about the procrastination of the investigation into the abduction of her son and the lack of any information on its progress. She reiterated all the circumstances of the abduction of Abdula Edilov and sought permission to have access to the case file and to make copies from it. She also requested that the investigation be resumed if it had previously been suspended.

34. On 11 February and 2 April 2006 the district prosecutor's office replied to the applicant that the investigators had taken all steps which could have been taken in the absence of persons to be charged with the abduction of her son and that they had found no grounds to resume the investigation. The letter further stated that the applicant would be entitled to have access to the case file once the investigation had been completed.

35. On 25 March 2006 the district prosecutor's office replied to the applicant's query that operational and search measures aimed at establishing the whereabouts of her son were under way.

2. Information submitted by the Government

36. The Government submitted that they had provided a copy of the entire criminal file no. 25482. Some of the documents furnished by them were partly illegible; most of the documents bore double numbering. The information contained in the documents submitted can be summarised as follows:

(a) Opening of the investigation

37. On 8 September 2001 the Grozny town prosecutor's office received a complaint by Z.T. about the abduction of Abdula Edilov. The complaint bore a handwritten note dated 13 September 2001 and reading "to be transferred to the prosecutor's office of the Urus-Martanovskiy District".

38. On 13 September 2001 the republican prosecutor's office received a further complaint about Abdula Edilov's abduction, dated 12 September 2001.

39. By a letter of 28 November 2001 the Urus-Martanovskiy Department of the Interior (“the ROVD”) returned to the VOVD the materials concerning the abduction of Abdula Edilov, submitting that on 18 and 27 September 2001 the district prosecutor’s office had instructed the latter authority to examine those materials and to decide on whether a criminal investigation should be launched. However, on 1 October 2001 the VOVD had simply sent those materials to the ROVD, without taking a formal decision on the matter.

40. On 4 December 2001 the VOVD opened a criminal investigation into the abduction of Abdula Edilov under Article 126 § 2 (aggravated kidnapping). The case file was given the number 25482.

41. On 21 December 2001 the VOVD transferred criminal file no. 25482 to the district prosecutor’s office for investigation and on 14 January 2002 the latter authority took charge of the investigation.

(b) Investigative steps taken by the authorities

(i) Interviewing of witnesses

42. In their written explanations (“объяснение”) to the ROVD of 29 September 2001, Z.S. and L.D. stated that between 5 and 6 p.m. on 26 August 2001, in broad daylight, a group of ten to twelve armed persons wearing camouflage uniforms and masks had arrived at the applicant’s house in a light-coloured UAZ vehicle (“таблетка”). Two of the armed men had stayed in the car while others had gone inside the house. They had taken Abdula Edilov, who was handcuffed, outside, loaded him into their vehicle and left through the checkpoint, guarded by OMON officers from St.Petersburg, in the direction of Grozny.

43. In her written explanation of 29 September 2001 the applicant submitted that she had learnt about the abduction of her son by armed masked men wearing camouflage uniforms and driving a UAZ vehicle from the neighbours on 26 August 2001.

44. On 15 December 2001 the VOVD granted the first applicant victim status and interviewed her. She submitted that on 26 August 2001 she had gone to the market, where Abdula Edilov had been supposed to join her. However, after 5 p.m. a neighbour had come and told her that her son had been abducted by armed men in camouflage uniforms driving a UAZ vehicle. After she had returned home she had found everything turned upside down. She also stated that Abdula Edilov had owed a certain sum of money to a certain T., with whom he had been involved in a traffic accident, and that her son had had no enemies.

45. When re-interviewed as a witness on 15 December 2001, Z.S. confirmed her previous account of the events. M.D., a resident of Goyty interviewed on the same date, recounted the same circumstances concerning the abduction of Abdula Edilov.

46. Re-interviewed on 21 June 2004, the applicant confirmed her earlier accounts of the events concerning the abduction of Abdula Edilov and Z.D., questioned on 22 June 2004, gave a similar version of the events.

47. On 22 June 2004 the investigators questioned Z.T. as a witness. She stated that between 5 and 6 p.m. on 26 August 2001 she had learnt from the applicant about the abduction of Abdula Edilov. Together they had gone to the applicant's house, where everything had been turned upside down. The eyewitnesses had told them that armed persons wearing masks and camouflage uniforms and driving a UAZ vehicle without licence plates had searched the house, loaded Abdula Edilov into their car and had left in the direction of Grozny after having passed through the checkpoint located at the exit from Goyty. After a while there had been rumours that the applicant's son was detained in the 6th department of the Main Intelligence Service but Z.T. herself was not aware of the source of those rumours.

48. On 15 July 2004 the investigators interviewed A.T. as a witness. He submitted that in September 2000 in the village of Goyty he had been involved in a car accident with a man he had not met before. The other man had recognised that he had been at fault and had offered to repair A.T.'s vehicle, but had failed to do so, and A.T. had had to repair it himself. Four to five months after the accident A.T. had heard that the other man had been abducted and had disappeared.

49. L.D., re-interviewed as a witness on 22 July 2004, confirmed her earlier account of the events and R.Z., questioned on 23 July 2004, gave a similar account of the circumstances of the abduction of the applicant's son.

50. On 23 June 2005 the investigators re-interviewed the applicant. She stated, among other things, that her relative Z. had seen a news report showing footage of Abdula Edilov. In the applicant's submission, in 2005 she had gone to a prison in Khasavyurt and a prison guard to whom she had shown her son's picture had allegedly recognised him and told her that he had seen Abdula Edilov in prison two to three years before.

51. On 27 and 28 April 2006 the investigators interviewed the applicant's neighbours R.I. and Z.P.T. as witnesses. They stated that they had learnt about the abduction of the applicant's son from the neighbours and that they had never told the applicant that Abdula Edilov had been detained by the Department for the Fight against Organised Crime ("the RUBOP").

(ii) Further investigative steps

52. On 17 January 2002 the district prosecutor's office requested the VOVD and the ROVD to inform it as to whether Abdula Edilov was or had been held in those authorities' detention facilities.

53. Between 3 and 20 March 2003 the district prosecutor's office requested a number of State authorities, including the Department of the Federal Security Service in the Chechen Republic ("the Chechen

Department of the FSB”), to inform it whether they had information on the whereabouts of Abdula Edilov and whether he had participated in illegal armed groups and had been criminally prosecuted or detained by those State bodies. In reply, the State authorities informed the district prosecutor’s office that they had not arrested Abdula Edilov and had no information on his whereabouts.

54. By a letter of 9 March 2003 the Chechen Department of the FSB informed the district prosecutor’s office that they had not arrested Abdula Edilov and that, should they obtain information on his whereabouts, they would inform the latter authority accordingly.

55. On 5 May 2005 the deputy prosecutor of the district prosecutor’s office instructed the investigators in case no. 25482 to carry out a crime scene inspection, identify and question the servicemen who had been on duty at the checkpoint on the day of the applicant’s son’s abduction, verify information to the effect that Chechen TV and radio channels had disseminated information on Abdula Edilov’s arrest, identify and interview further witnesses to his abduction and take further investigative steps.

56. On 15 June 2005 the investigators requested the Chechen State TV and Radio Company to inform them whether they had disseminated information on Abdula Edilov’s arrest by security forces on suspicion of terrorist activities. On the same date they instructed ROVD officers to take the investigative steps mentioned in the letter of 5 May 2005.

57. According to the ROVD report of 15 July 2005, VOVD officers orally interviewed unspecified residents of Goyty and were unable to identify further witnesses to the abduction.

58. By their report of 17 July 2005 the ROVD informed the district prosecutor’s office that it was unable to identify the servicemen of the checkpoint on duty on the day of Abdula Edilov’s abduction “because the servicemen worked in half-hour shifts”.

59. On 29 and 30 March 2006 the district prosecutor’s office requested a number of law-enforcement authorities, including the Grozny Department of the Federal Security Service, to inform it as to whether they had information on the whereabouts of Abdula Edilov, whether they had arrested him or had any “compromising material” (“*компрометирующий материал*”) concerning him.

60. On 25 and 26 April 2006 the district prosecutor’s office requested a number of hospitals in the Chechen Republic to inform it as to whether Abdula Edilov had applied to them for medical assistance. It follows from the relevant replies that he had not done so.

61. On 26 April 2006 the Grozny Department of the Federal Security Service informed the district prosecutor’s office that operational and search measures carried out by the Chechen Department of the FSB had not enabled the abductors of Abdula Edilov to be identified.

62. On 10 May 2006 the State TV and Radio Company “Vaynakh” informed the district prosecutor’s office that they had not disseminated any information concerning the abduction of Abdula Edilov in 2002 by unidentified persons.

63. Between 25 July and 10 August 2006 the district prosecutor’s office reiterated its requests to a number of law-enforcement authorities and medical institutions for information on Abdula Edilov’s whereabouts. In reply, those authorities submitted that they had no relevant information concerning the applicant’s son.

(c) Information concerning the decisions to suspend and resume the investigation

64. On 4 February 2002 the district prosecutor’s office suspended the investigation into the abduction of Abdula Edilov owing to the failure to identify the perpetrators. It transpires that on 10 July 2002 that decision was set aside by higher-ranking prosecutors; the Government failed to furnish a copy of the related decisions.

65. Subsequently, the district prosecutor’s office suspended the investigation in case no. 25482 for failure to identify those responsible for the abduction on the following dates: 3 April 2003, 18 July 2004, 1 July 2005, 28 April 2006 and 14 August 2006.

66. The documents submitted by the Government show that higher-ranking prosecutors set aside the decisions to suspend the investigation on the following dates: 18 June 2004, 1 June 2005, 28 March 2006 and 14 July 2006.

67. In setting aside the decisions to suspend the investigation, the higher-ranking prosecutors indicated that their examination of the case file had revealed that the district prosecutor’s office had conducted the investigation in a superficial manner and in breach of the relevant legislation, referring, among other things, to the fact that the investigators had failed to identify and interview the servicemen who had been on duty at the checkpoint through which the abductors had passed with Abdula Edilov; to identify all eyewitnesses to the abduction; to identify and question the persons with whom Abdula Edilov had been in contact and who could have information on the reasons for his abduction; to check the unidentified victims database and to verify the applicant’s and Z.T.’s submissions that Abdula Edilov may have been detained at the RUBOP and that Chechen TV and radio channels had disseminated information concerning his arrest. In that connection, on 18 June 2004, 5 May 2005 and 4 July 2006 higher-ranking prosecutors specifically issued “written instructions” (*“письменные указания”*), requesting that the district prosecutor’s office take the investigative steps in question.

68. On an unspecified date the investigation in case no. 25482 was entrusted to the investigating department of the Investigating Committee

with the Prosecutor's Office of the Russian Federation in the Chechen Republic ("the investigating department").

69. On 2 November 2009 the deputy head of the investigating department issued "written instructions" concerning case no. 25482. The document stated, in particular, that the investigating department was to resume the investigation into the abduction of Abdula Edilov without delay and to carry out, among others, the following investigative steps:

- identify and interview the servicemen on duty at the checkpoint on 26 August 2001;
- add to the case file information from registration logbooks concerning vehicles which passed through the checkpoint on 26 August 2001;
- identify the detachments of security forces stationed at the material time in the Urus-Martanovskiy District and in the vicinity of the village of Goyty and obtain information on the special operations carried out by them;
- carry out a crime-scene inspection and compile a detailed sketch showing the location of the applicant's house and the checkpoint of the federal forces;
- re-interview witnesses to the abduction in detail on the events of 26 August 2001, and;
- interview the applicant on the source of her information concerning her son's alleged detention in the SIZO in Khasavyurt.

70. In the Government's submission, the investigation of the disappearance of Abdula Edilov is ongoing.

C. Court proceedings against the investigators

71. On 1 May 2006 the applicant complained to the Urus-Martanovskiy District Court ("the District Court") about the ineffectiveness of the investigation into the abduction of her son and the investigator's refusal to grant her access to the case file and to allow her to make copies from it. In particular, she submitted that the circumstances of Abdula Edilov's abduction left no doubt that he had been apprehended by servicemen of the Russian military forces. However, the investigating authorities had not only delayed the investigation but also refused to provide her access to the case file. The applicant averred that the lack of information about the investigation prevented her from effectively challenging the decisions to suspend the investigation.

72. On 6 July 2006 the District Court found partly for the applicant. It found that the investigator's refusal to provide her with access to the case file was unlawful. The court noted at the same time that the applicant would only be entitled to make copies from the case file after the completion of the investigation. As regards the request for the investigation to be resumed, the court found that the investigators had questioned several witnesses and obtained information on Abdula Edilov's eventual arrest and detention from

a number of law-enforcement authorities, including the FSB department in the Urus-Martanovskiy District. The investigation had not established who was responsible for the abduction of Abdula Edilov and it had been suspended on numerous occasions on that ground, the latest such decision being dated 28 April 2006. The court stressed, however, that the investigation had not taken all possible steps to establish Abdula Edilov's whereabouts and identify his abductors. In particular, the investigators had failed to identify and question the officers of the federal forces who had been on duty at the checkpoint over the Argunskiy canal on the eastern outskirts of Goyty in August 2001. The court thus granted the applicant's request and ordered that the investigation be resumed.

73. By a letter of 14 July 2006 the district prosecutor's office informed the applicant that it had resumed the investigation in case no. 25482.

74. On 14 August 2006 the district prosecutor's office suspended the investigation.

75. On 16 August 2006 the Supreme Court of the Chechen Republic rejected the applicant's appeal against the decision of 6 July 2006.

II. RELEVANT DOMESTIC LAW AND OTHER RELEVANT DOCUMENTS

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

77. On 1 September 2001 the FSB of Russia published on its official site www.fsb.ru, in the section covering data obtained from its regional departments, the following information¹:

“During the last 15 days more than 70 insurgents have been liquidated and wounded, dozens captured in Chechnya

01.09.2001

Moscow. 1 September. INTERFAX

In the course of the special operations of the federal military and security forces in Chechnya [conducted] during the last two weeks insurgents have lost more than 70 men [who have been] killed and wounded, dozens [of them] have been arrested with a view to establishing their involvement in illegal armed groups and in carrying out terrorist acts. In particular, according to the information of the Department of the Federal Security Service in the Chechen Republic, between 15 and 30 August the majority of the special operations were conducted in the settlements of the Vedenskiy and Kurchaloyevskiy Districts (Alleroy, Tsotsin-Yurt, Kurchaloy, Vedenoy, Ersenoy, Pervomayskoye) and also in Argun, Shatoy and other villages.

...

1. <http://www.fsb.ru/fsb/comment/ufsb/single.htm?id%3D10311425@fsbComment.html>

During the same period of time a number of persons suspected of having committed terrorist acts in the Chechen Republic were arrested ... Abdul Edilov, suspected of having carried out subversive acts against the federal forces in the Urus-Martanovskiy District, was arrested in the village of Goyty ...”

THE LAW

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

A. The parties’ submissions

78. The Government contended that the applicant’s complaint should be declared inadmissible for non-exhaustion of domestic remedies because the investigation into the disappearance of Abdula Edilov had not yet been completed. They further argued that the applicant, who had been granted victim status, was able to actively participate in the investigation and that it was open to her to complain to the courts about any acts or omissions on the part of the investigators.

79. The applicant contested that objection, alleging that the criminal investigation had proved to be ineffective and that her complaints to that effect, including her application to the district court, had been futile.

B. The Court’s assessment

80. 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).

81. It notes that the applicant complained to the authorities about the disappearance of her son and that an investigation into his abduction has been ongoing since 4 December 2001. The applicant and the Government dispute the effectiveness of the investigation of the kidnapping.

82. 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

83. The applicant complained under Article 2 of the Convention that her son 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

84. The Government argued that the applicant had failed to make a *prima facie* case and to adduce evidence “beyond reasonable doubt” that Abdula Edilov had been kidnapped by State agents. The domestic investigation had obtained no evidence that the applicant’s son had been arrested in the course of any special operations in the area or that such operations had been conducted at all. The fact that the abductors had been wearing camouflage uniforms, had been armed, had driven a UAZ vehicle and had spoken Russian did not prove that they were servicemen. None of the witnesses had referred to insignia on the perpetrators’ uniforms or other details which could have allowed them to be associated with particular federal forces, and Abdula Edilov’s body had never been discovered. Relying on the Court’s judgments in *Zubayrayev v. Russia* (no. 67797/01, 10 January 2008) and *Shaipova and Others v. Russia* (no. 10796/04, 6 November 2008), the Government stressed that the case file contained no evidence suggesting that the abductors had used military vehicles, such as armoured personnel carriers, which further refuted her allegation that State agents had been involved in the kidnapping. Moreover, the investigation had obtained no evidence that the media had disseminated information on Abdula Edilov’s arrest.

85. In the Government’s submission, the investigation into the disappearance of Abdula Edilov satisfied the Convention requirements. It

had been opened several months after the abduction owing to the fact that at the material time the authorities had been conducting a counterterrorist operation and had needed time to verify the applicant's allegations before launching the proceedings. The investigating authorities had taken an important number of investigative steps, including interviewing numerous witnesses, sending requests for information and carrying out certain operational and search measures. The fact that the proceedings had been suspended was not an indication of the ineffectiveness of the investigation, which, according to the Court's case-law, did not imply an obligation of results, but of means. The applicant had been duly informed of the developments in the investigation.

86. The applicant submitted that she had furnished evidence proving "beyond reasonable doubt" that her son had been abducted by State agents and that he was to be presumed dead. She stated that the Government did not dispute that Abdula Edilov had been kidnapped by armed and camouflaged men driving a UAZ vehicle with enhanced cross-country capacity, of the type habitually used by the Russian federal forces. She further emphasised that the abductors had not only made no attempt to hide from the servicemen stationed at the checkpoint but had openly brought her son to that checkpoint, through which they had left in the direction of Grozny, several witnesses stating that some of the armed men had stayed at the checkpoint.

87. As regards the investigation, the applicant argued that it had been opened with a considerable delay, which was exclusively attributable to the authorities. The investigators had not inspected the crime scene and had failed to interview the servicemen from the checkpoint. They had taken no steps to identify the abductors' vehicle and had failed to provide the applicant with meaningful information concerning the investigation.

B. The Court's assessment

1. Admissibility

88. 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. Furthermore, 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 82 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 Abdula Edilov

(i) General principles

89. 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

90. 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 and 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). It reiterates that when faced with allegations under Article 2 of the Convention, it must apply particularly thorough scrutiny (see *Matyar v. Turkey*, no. 23423/94, § 109, 21 February 2002) and will do so on the basis of all material submitted by the parties and, if necessary, material obtained *propriu motu* (see *Yaşa v. Turkey*, 2 September 1998, § 94, *Reports of Judgments and Decisions* 1998-VI, and *Ülkü Ekinci v. Turkey*, no. 27602/95, § 136, 16 July 2002).

91. The applicant alleged that her son, Abdula Edilov, had been abducted from her house on 26 August 2001 by State agents and had then disappeared. Although the applicant herself did not witness the kidnapping, she enclosed a number of witness statements in support of her allegations.

92. The Government did not dispute most of the facts as presented by the applicant and conceded that her son 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.

93. Having regard to what has been noted in paragraph 36 above and in the absence of an explanation by the Government as to the double numbering of the documents submitted by them, the Court is not convinced that they have furnished an entire copy of the case file concerning the abduction of Abdula Edilov.

94. 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.

95. Having regard to the applicant's submissions and the witness statements enclosed by her, the Court finds that, although she was not an eyewitness to the events described above, she has presented an overall coherent and convincing picture of Abdula Edilov's abduction on 26 August 2001, in broad daylight, by a group of armed and camouflaged men whom the witnesses of the scene considered to be State agents.

96. It observes that the applicant's account remained consistent both throughout the domestic investigation and before this Court (see paragraphs 7-11, 43, 44 and 46 above). It also notes that a significant number of witnesses stated that the abductors had taken Abdula Edilov from his home in broad daylight in the presence of several persons and then passed unimpeded through the checkpoint of the federal forces in their vehicle, some of the witnesses asserting that several abductors got out of the vehicle at the checkpoint and stayed there (see paragraphs 7, 9, 42, 45 and 49 above).

97. The Court further finds it peculiar that whilst the Chechen Department of the FSB denied having information on the applicant's son's arrest on 26 August 2001 in the village of Goyty (see paragraphs 54 and 61 above), information published on the official site of the FSB, with reference to the former authority, states that a certain Abdul Edilov was arrested in the same village in the course of one of the special operations conducted by the military and security forces in the Chechen Republic between 15 and 30 August 2001 (see paragraph 77 above).

98. In any event, even leaving aside the above-mentioned information, the Court considers that the fact that a large group of armed men in camouflage uniforms, speaking unaccented Russian, was able to pass freely through the checkpoint of the federal forces after having apprehended Abdula Edilov in broad daylight and in the presence of several witnesses strongly corroborates the applicant's allegation that those men were State agents (compare *Guluyeva and Others v. Russia*, no. 1675/07, § 66, 11 February 2010).

99. The Court notes that in her applications to the authorities the applicant consistently maintained that her son had been detained by State

agents and requested that the investigating authorities look into that possibility. It further notes that after more than nine years the investigation has produced no tangible results.

100. The Court observes that where an 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)).

101. Taking into account the above elements, the Court is satisfied that, contrary to the Government's assertion, 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 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 all documents from criminal case file, which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Abdula Edilov was arrested on 26 August 2001 by State agents during an unacknowledged security operation.

102. There has been no reliable news of Abdula Edilov 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.

103. 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; *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007; and *Taymuskhanov v. Russia*, no. 11528/07, 16 December 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 Abdula Edilov or of any news of him for more than ten years supports this assumption.

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

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

105. 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)).

106. The Court has already found it established that the applicant's son 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.

107. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Abdula Edilov.

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

108. 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).

109. The Court points out at the outset that it has found that the Government had not provided an entire copy of case file no. 25482 (see paragraph 93 above). It therefore has to assess the effectiveness of the investigation on the basis of the incomplete information submitted by them

and the few documents available to the applicant that she provided to the Court.

110. Turning to the facts of the present case, the Court observes that the applicant's son was taken away on 26 August 2001 and that on 8 September 2001 the authorities received the applicant's complaint about his abduction (see paragraph 37 above). However, the investigation into his disappearance was opened on 4 December 2001, that is, more than three months after the event. It transpires that the delay resulted, at the very least, from a lack of cooperation between various law-enforcement authorities (see paragraph 39 above) and the Court cannot but deplore this serious shortcoming, which was likely to adversely affect the proceedings.

111. It is further noted that a number of investigative steps were significantly delayed. In particular, the investigators waited for more than two years before interviewing Z.T., Z.D. and R.Z., residents of Goyty and neighbours of the applicant, who had witnessed the abduction of Abdula Edilov (see paragraphs 46, 47 and 49 above). The Government have advanced no explanation for those delays.

112. More importantly, it transpires that a number of crucial investigative steps were never taken. For instance, there is no indication that the investigators made any attempt to identify and interview the servicemen of the checkpoint the abductors had passed through with Abdula Edilov or to verify the checkpoint logbooks with a view to obtaining information on the vehicle used by them. It also does not appear that they took any steps to identify the detachments of the military and security forces stationed in the vicinity of the village of Goyty in order to check whether they had conducted any special operations on the day of abduction of Abdula Edilov. In the Court's opinion, carrying out those investigative steps was critical for establishing the circumstances in which the abduction had occurred and bringing those responsible for it to justice.

113. Higher-ranking prosecutors and domestic courts drew the investigating authorities' attention to those flaws and omissions on several occasions and requested that they be rectified (see paragraphs 67, 69 and 72 above). However, there is nothing to suggest that their instructions were complied with.

114. It is obvious that, if they were to produce any meaningful results, those 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).

115. The Court further points out that although the applicant was eventually granted victim status in the proceedings in case no. 25482, it is

not persuaded that she was provided with meaningful information concerning the developments in the investigation (see paragraphs 25 and 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 (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

116. 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.

117. 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.

118. In so far as the Government submitted that it was open to the applicant to challenge any acts or omissions on the part of the investigating authorities before the courts, the Court points out that she did, in fact, make use of that remedy, which eventually led to the resumption of the investigation. Nevertheless, the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures. Moreover, the district court's instructions to the district prosecutor's office to investigate the crime effectively did not bring any tangible results for the applicant. The investigation was repeatedly suspended and resumed, but it appears that no significant investigative measures were taken to identify those responsible for the disappearance. In such circumstances, the Court considers that the applicant could not be required to challenge in court every single decision of the district prosecutor's office.

119. In the Court's opinion, the Government also failed to demonstrate how the fact of the applicant's having victim status could have improved the above-described situation (see also paragraphs 33 and 34 above).

120. In sum, the Court finds that the remedies referred to by the Government were ineffective in the circumstances and dismisses their preliminary objection.

121. 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 Abdula Edilov, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

122. 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. The parties' submissions

123. The Government submitted that the applicant had not been subjected to inhuman or degrading treatment and that the domestic authorities had duly examined her complaints and queries concerning the abduction of her son.

124. The applicant maintained her complaint.

B. The Court's assessment

1. Admissibility

125. 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

126. 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).

127. In the present case the Court notes that the disappeared person is the applicant's son. Although the applicant did not witness his abduction, for more than ten 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 son following his detention. The responses she received mostly denied State responsibility for her son'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.

128. 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

129. The applicant further stated that Abdula Edilov 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

130. The Government asserted that no evidence had been obtained by the investigators to confirm that Abdula Edilov 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.

131. The applicant maintained her complaint.

B. The Court's assessment

1. Admissibility

132. 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

133. 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).

134. The Court has found that Abdula Edilov was apprehended by State servicemen on 26 August 2001 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).

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

136. In view of the foregoing, the Court finds that Abdula Edilov 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

137. 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

138. 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. In sum, the Government submitted that there had been no violation of Article 13.

139. The applicant maintained the complaint.

B. The Court’s assessment

1. Admissibility

140. 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

141. The Court reiterates that in circumstances where a criminal investigation into a disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including the civil remedies suggested by the Government in this case, has consequently been undermined, the State will be found to have failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

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

143. 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 *Aziyev v. Russia*, no. 77626/01, § 118, 20 March 2008).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

144. 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

145. The applicant claimed that she had sustained damage in respect of the loss of Abdula Edilov’s earnings following his abduction and disappearance. She submitted that at the material time her son had been unemployed, but that as a construction worker, he could have earned about 20,000 roubles (RUB) per month (the average monthly salary of a construction worker in the Chechen Republic) corresponding to RUB 240,000 a year. The average life expectancy for women in Russia being 70 years and the applicant being entitled to 30% of Abdula Edilov’s yearly earnings, she claimed a total of 39,330 euros (EUR) in respect of pecuniary damage.

146. The Government submitted that the applicant had failed to prove that Abdula Edilov had ever provided her with financial support and to substantiate her claims with any documentary evidence.

147. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its conclusions above, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicant’s son and the loss to her of the financial support which he could have provided.

148. Having regard to the applicant’s submissions and the fact that there is no indication that Abdula Edilov was employed at the time of his abduction, the Court awards the applicant EUR 3,000 in respect of pecuniary damage plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

149. The applicant claimed compensation for non-pecuniary damage on account of the suffering she had endured as a result of the loss of her son, the indifference shown by the authorities towards her and their failure to provide any information about her son’s fate, leaving the determination of its amount to the Court.

150. The Government submitted that, should the Court find a violation of the applicant's Convention rights, the amount of the award was to be determined on an equitable basis.

151. 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 the 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 EUR 60,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

C. Costs and expenses

152. The applicant was represented by Mr D. Itsleyev. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 7,806. She submitted the following breakdown of costs:

- (a) EUR 7,125 for 47.5 hours of research and drafting of legal documents submitted to the Court at a rate of EUR 150 per hour;
- (b) EUR 536 for translation costs, as certified by invoices, and
- (c) EUR 145 for administrative and postal costs.

153. 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).

154. The Court has to establish firstly whether the costs and expenses indicated by the applicants were actually incurred and, secondly, whether they were necessary (see *McCann and Others*, cited above, § 220).

155. 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 representative.

156. 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 due to the application of former Article 29 § 3 in the present case, the applicant's representative submitted the observations on the admissibility and merits in one set of documents. The Court thus doubts that research was necessary to the extent claimed by him.

157. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount of EUR 4,500, together with any value-added tax that may be chargeable to her.

D. Default interest

158. 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 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 Abdula Edilov;
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 Abdula Edilov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Abdula Edilov;
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:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the applicant;
 - (ii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;

(iii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 28 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President