



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

FIRST SECTION

CASE OF KAPLANOVA v. RUSSIA

(Application no. 7653/02)

JUDGMENT

STRASBOURG

29 April 2008

FINAL

01/12/2008

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

In the case of Kaplanova v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 1 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 7653/02) 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 Khadizhat Daudovna Kaplanova (“the applicant”), on 22 January 2002.

2. The applicant was represented by lawyers of the Memorial Human Rights Centre (Moscow) and the European Human Rights Advocacy Centre (London). The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that her son and son-in-law had been abducted and killed by State agents.

4. By a decision of 24 October 2006, the Court declared the application admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1930 and lives in the city of Grozny in the Chechen Republic.

1. Detention of the applicant's relatives

(a) The applicant's account

7. At the material time the applicant and her family lived in Grozny, in a private household comprising two houses at 76 Voronezhskaya Street.

8. On 12 May 2001 the applicant's son Isa Kaplanov, born in 1965, his wife, Melina Mezhidova, the applicant's son-in-law, Ruslan Sadulayev, born in 1962, her daughter Lidia Kaplanova and their neighbour Movsar Musitov (also spelled Musaitov), who had come to visit them, were at home. The applicant was away and therefore her account of the events of that date was based on eyewitness statements of her family members.

9. At about 10.00 a.m. a group of approximately 20 federal servicemen arrived at the applicant's household in six armoured personnel carriers (APCs). The identification number of one of the vehicles was 40-42, whilst the other carriers had no such numbers on them. The servicemen in camouflage uniforms were armed with AK-47 machine guns, SVD carabines and pistols. They had masks on, except for two officers in command. Those two officers had portable radio transmitters. All the servicemen spoke Russian without any accent. Ten of them entered the courtyard of the applicant's household whilst ten others stayed near the APCs.

10. The servicemen broke down the door of one of the houses, in which there were the applicant's son, her son-in-law and Movsar Musitov, and searched the house, without presenting any documents to authorise their actions. According to the applicant, during the search the soldiers asked if the three men had drugs, arms or US dollars. They also allegedly demanded gold and money.

11. The applicant's daughter and Isa Kaplanov's wife, who were in the other house at that moment, heard the noise, ran out to the courtyard and saw five or six servicemen there and several other soldiers inside the house with their relatives. The servicemen prevented the women from entering that house. They were hostile and aggressive. Some time later the servicemen left the house and forced Isa Kaplanov, Ruslan Sadulayev and Movsar Musitov outside. They ordered the three men to stand against the wall and checked their passports.

12. According to the applicant, the servicemen spent about 30 minutes in her courtyard and then left, having taken her son, her son-in-law and Movsar Musitov away. They told the applicant's daughter that they would check the three men's identities and release them. The servicemen then put the applicant's relatives and Movsar Musitov into the APCs and drove off in the direction of the centre of Grozny. The applicant submitted that the only road to the centre of Grozny had been blocked by a federal military check-point, but the APCs openly passed through it.

13. The applicant further relied on Movsar Musitov's statements to the effect that the three men had been taken to the Staropromyslovskiy District Temporary Department of the Interior of Grozny (*Старопромысловский временный отдел внутренних дел г. Грозного* – “the Staropromyslovskiy VOVD”) and interrogated. The interrogators did not introduce themselves or disclose what public bodies they represented. The three men were allegedly told that there was a report stating that they had been detained at the Staropromyslovskiy military check-point for insulting federal servicemen.

14. The applicant's two relatives and Movsar Musitov spent a night in a cell, along with another person. On 13 May 2001 at about 11.30 a.m. Isa Kaplanov and Ruslan Sadulayev were taken away from the Staropromyslovskiy VOVD in a UAZ all-terrain vehicle. Movsar Musitov was released two hours later and returned home. Isa Kaplanov and Ruslan Sadulayev remain missing to date.

(b) The Government's account

15. According to the Government, on 12 May 2001 “unidentified persons armed with firearms apprehended Isa Kaplanov, Ruslan Sadulayev and Movsar Musitov in a private household and delivered them to the Staropromyslovskiy VOVD. The next day Movsar Musitov was released, whilst Isa Kaplanov and Ruslan Sadulayev were taken away by unidentified persons in an unknown direction”.

2. The applicant's search for her relatives

16. On 12 May 2001, immediately after the detention of Isa Kaplanov and Ruslan Saydulayev, the applicant's daughter-in-law informed the applicant of the incident. Thereafter the applicant's daughter-in-law went to her brother-in-law, Mr R., who was an officer of the Chechen Department of the Federal Security Service (*Управление Федеральной Службы Безопасности по Чеченской Республике* – “the Chechen Department of the FSB”). The latter attempted to pursue the APCs in his personal car, but did not find them. He learnt from servicemen at the check-point near the applicant's house that the APCs had passed there at about 11 a.m. that day.

17. On 13 May 2001 the applicant went to the prosecutor's office of the Chechen Republic (*прокуратура Чеченской Республики* – “the

Prosecutor's Office of the Chechen Republic") and informed them about the detention of her relatives.

18. Thereafter she visited the Staropromyslovskiy VOVD. An officer whose name was B. told her that her two relatives had been taken away in an UAZ all-terrain vehicle by two military officers of the Staropromyslovskiy VOVD, T. and M. He also allegedly told the applicant that those two officers must have delivered her son and son-in-law to either the main federal military base at Khankala or the town of Gudermes and promised her that he would find out their whereabouts.

19. On 14 May 2001 the applicant and other members of her family went to the Staropromyslovskiy VOVD, where they were told by a serviceman named Ilyas that the two men had been released.

20. Since 12 May 2001 the applicant and other members of her family have been searching for Isa Kaplanov and Ruslan Sadulayev. On numerous occasions, both in person and in writing, they have applied to prosecutors at various levels, to the Ministry of the Interior, to the administrative authorities in Chechnya. In letters addressed to the authorities the applicant stated the facts of her relatives' detention and asked for assistance and details of the investigation. The applicant received hardly any substantive information from official bodies about the investigation into the disappearance of her son and son-in-law. On several occasions she received copies of letters by which her requests had been forwarded to various prosecutors.

21. The applicant also visited the federal military base at Khankala and saw a register of persons detained there. She claimed that the names of her son and son-in-law were not on that list.

22. On 3 July 2001 the Muzhichi village administration in Ingushetia issued a certificate to confirm that Isa Kaplanov had stayed there between October 1999 and April 2000.

3. Official investigation

23. According to the Government, on 12 June 2001 the Grozny Prosecutor's Office (*прокуратура г. Грозного*) instituted criminal proceedings in connection with the disappearance of Isa Kaplanov and Ruslan Sadulayev under Article 126 § 2 of the Russian Criminal Code (kidnapping of two or more persons by a group using firearms). The applicant insisted that the criminal proceedings had been instituted on 27 June 2001, as indicated in the decision of an investigator of the prosecutor's office of the Zavodskoy District of Grozny dated 15 July 2004. The case file was given the number 13093.

24. During the investigation the authorities identified two military servicemen who had taken part in the apprehension of the applicant's relatives. They were T. and M., both from Yekaterinburg and on mission in Chechnya. Those two servicemen were called for questioning to the Grozny

Prosecutor's Office on 31 June 2001. The applicant submitted copies of summonses. She alleged that in the case file she had seen a transcript of interviews with T. and M. in which they had admitted that they had illegally arrested Isa Kaplanov, Ruslan Sadulayev and Movsar Musaitov, but the investigator in charge had not allowed her to study that document or to make a copy of it. The Government submitted that the information on the existence of an interview transcript where T. and M. admitted the unlawful arrest of Isa Kaplanov was not true. The Government emphasised that T. and M. had not denied that they had brought the applicant's son to the Staropromyslovskiy VOVD; however, they had had no information about their whereabouts after that. The investigator had had valid grounds to deny the applicant permission to make copies of the transcript.

25. At some point in July 2001 the case file was transferred to the military prosecutor's office of military unit no. 20102 (*военная прокуратура – войсковая часть 20102*) located in Khankala.

26. On 4 August 2001 the latter replied to the applicant's husband and to the Grozny Prosecutor's Office that they had no criminal case file concerning the abduction of his son and son-in-law.

27. In a letter of 12 August 2001 the Chechen Department of the FSB informed the Grozny Prosecutor's Office that on 12 May 2001 their two officers, T. and M., had detained Isa Kaplanov, Ruslan Sadulayev and Movsar Musaitov for a breach of public order in the vicinity of the "Neftyanik" market in Grozny and had taken those three individuals to the Staropromyslovskiy VOVD, having reported the detention in writing to the head of the said VOVD. The letter also stated that the aforementioned officers had no information as to the subsequent fate of the detainees.

28. On 14 August 2001 the applicant's husband wrote to the Prosecutor's Office of the Chechen Republic and enquired about his relatives' whereabouts and details of the investigation. He also asked whether they had ever been charged with any crime.

29. On 15 August 2001 the applicant's daughter wrote to the Prosecutor General seeking assistance in ensuring that an effective investigation be carried out by local prosecutors.

30. On 20 August 2001 the applicant's husband applied to the military prosecutor of the Chechen Republic with a request to inform him about progress in the investigation. He re-stated the circumstances of the detention of Isa Kaplanov and Ruslan Sadulayev and referred to the information about the two servicemen, T. and M., insisting that they should be questioned in connection with the disappearance of his relatives.

31. On 25 August 2001 the Memorial Human Rights Centre, on behalf of the applicant, requested the Prosecutor General to provide information on the investigation in the criminal case opened in connection with the abduction of Isa Kaplanov and Ruslan Sadulayev.

32. In a letter of 27 August 2001 the military prosecutor's office of military unit no. 20102 replied that they did not have a file for criminal case no. 13093 or any information about the detained men or servicemen T. and M.

33. On 28 August 2001 the applicant's husband submitted an application to a department of the Chechen Ministry of the Interior responsible for searching for missing persons. He gave details of the detention of Isa Kaplanov and Ruslan Sadulayev, as well as their personal details, a description of the clothes they had been wearing on the day of detention and the known steps of the investigation.

34. On 28 August 2001 the applicant's daughter applied to the head of the Administration of Chechnya asking for help to find her relatives.

35. On 6 September 2001 the Prosecutor's Office of the Chechen Republic informed the applicant that it had studied the criminal case file opened in connection with her two relatives' abduction and then forwarded it to the Grozny Prosecutor's Office for further investigation, instructing the latter to take "more active steps" to locate the missing men. The letter contained no further information.

36. On 5 October 2001 the Office of the Chechen Government replied to the applicant that following her complaint the Chechen Ministry of the Interior had been instructed to take all possible measures to establish the whereabouts of Isa Kaplanov and Ruslan Sadulayev.

37. On 15 October and 19 December 2001 the applicant's husband submitted complaints to the Prosecutor's Office of the Chechen Republic. On the latter date he also submitted a similar complaint to the military prosecutor's office of military unit no. 20102.

38. On 30 November 2001 the Prosecutor's Office of the Chechen Republic informed the applicant's husband that they had studied the file of the investigation into the abduction of his relatives, and ordered the investigators in charge to take steps to establish the whereabouts of the victims and of the culprits. The letter assured that the investigation of the crime was supervised by the Prosecutor's Office of the Chechen Republic.

39. By letter of 4 July 2002 the Prosecutor's Office of the Chechen Republic informed the applicant that they had studied the file of the criminal case opened in connection with the abduction of her relatives and then forwarded it to the Grozny Prosecutor's Office for an additional investigation. The letter assured the applicant that the Grozny Prosecutor's Office had been instructed to carry out a number of investigative measures and that she would be notified of the results of the investigation.

40. On 9 August 2002 the Prosecutor's Office of the Chechen Republic forwarded the applicant's query regarding the investigation to the Grozny Prosecutor's Office and invited it to determine the question of the responsibility of servicemen T. and M., who had participated in the detention of the applicant's two relatives.

41. On 25 September 2002 the Prosecutor's Office of the Chechen Republic again transferred the file of case no. 13093, which they had studied following the applicant's request, to the Grozny Prosecutor's Office. The Prosecutor's Office of the Chechen Republic stated that its earlier instruction had not been complied with and invited the Grozny Prosecutor's Office to extend the time-limit for a preliminary investigation and to carry out a thorough investigation, as well as to conduct an internal inquiry in connection with the investigators' failure to comply with the instructions of the superior prosecutor's office.

42. According to the applicant, at some point she had found out that in 2003 the investigator in charge had gone to Yekaterinburg and interrogated T. and M., who had allegedly confirmed that they had arrested Isa Kaplanov and Ruslan Sadulayev.

43. At some point in 2003 criminal case no. 13093 had been transferred to the Zavodskoy District Prosecutor's Office (*прокуратура Заводского района г. Грозного*).

44. By decision of 15 July 2004 an investigator of the Zavodskoy District Prosecutor's Office ordered that the criminal proceedings in case no. 13093 instituted on 27 June 2001 in connection with the abduction of Isa Kaplanov and Ruslan Sadulayev be discontinued. The decision stated in particular:

"The preliminary investigation has established that on 12 May 2001 at 10.30 a.m. officers of the FSB in camouflage uniforms armed with firearms entered unlawfully and without authorisation a household at 76 Voronezhskaya Street ... in Grozny belonging to the Kaplanovs, and after a search had delivered Kaplanov I.G., Sadulayev R.A. and Musitov M.S. to the Staropromyslovskiy VOVD of Grozny. Thereafter [the officers] left without drawing up reports on the detention of the aforementioned persons. The next day Musitov M.S. was released whilst Kaplanov I.G. and Sadulayev R.A., whose whereabouts have not been established to date, were taken away from the territory of the Staropromyslovskiy VOVD of Grozny by FSB officers [T.] and [M.] to an unknown destination."

45. The decision further referred to statements from a number of witnesses, including the applicant's daughter and daughter-in-law, the applicant's two neighbours and Movsar Musitov, all of whom had given a similar description of the events of 12 May 2001. The decision also stated that FSB officer T. had been questioned on 10 July and 22 October 2001 and FSB officer M. had been questioned on 16 July 2001 and 23 October 2002. They both testified that on 12 May 2001 in the vicinity of the "Neftyanik" market in Grozny they had apprehended three men, including Isa Kaplanov and Ruslan Sadulayev, for insulting local residents with swearwords, had taken them to the Staropromyslovskiy VOVD and had left the detainees there. The next day they had found out that the detainees had been released. Officer T. stated that he had drawn up a report on the detention of the three men, whilst officer M. submitted that he did not remember whether he had drawn up any reports. The decision further stated

that the fact of the apprehension on 12 May 2001 of the applicant's relatives and Movsar Musitov had been confirmed by the head of the Staropromyslovskiy VOVD in a letter of 8 June 2001 and by the acting head of the Chechen Department of the FSB in a letter of 12 August 2001. The decision continued that on 14 May 2001 an investigator of the Grozny Prosecutor's Office had examined the register of persons held in the Staropromyslovskiy VOVD and had found out that the names of the applicant's son, son-in-law and Movsar Musitov had not been listed among those detained there. The decision also referred to the statement of B., who between 12 April and 23 July 2001 had been seconded to Chechnya as the head of the police of the Staropromyslovskiy VOVD. B. had stated that on a date which he could not remember FSB officers had delivered four or five persons, who, as claimed by those officers, had been detained during a "sweeping-up" operation in the Oktyabrskiy District of Grozny on suspicion of their involvement in illegal military activity. Officers T. and M. had asked B. to keep the detainees until the next morning and then release them except for Isa Kaplanov and Ruslan Sadulayev, as those two were to be taken away by FSB personnel. According to B., on 13 May 2001 he had released the detainees, whilst Kaplanov and Sadulayev had been taken away by T. and M. The decision further relied on a letter of 23 May 2003 from the head of the Sverdlovskiy Regional Department of the FSB, the permanent place of service of officers T. and M., who had confirmed that on 12 May 2001 the said two officers had, indeed, delivered the applicant's relatives to the Staropromyslovskiy VOVD, but had no information as to the subsequent fate of Isa Kaplanov and Ruslan Sadulayev, as on the morning of 13 May 2001 those two individuals had been taken away by personnel of another division of the Chechen Department of the FSB. The decision continued as follows:

"During the preliminary investigation only a fact of the breach by the head of the Staropromyslovskiy VOVD of the procedural requirements relating to placement in detention and transfer of detainees was reliably established; however, the said actions did not constitute a criminal offence under Article 126 of the Russian Criminal Code and were punishable in disciplinary proceedings. The fact of the abduction of Kaplanov I.G. and Sadulayev R.A. by officials of the Staropromyslovskiy VOVD was not confirmed during the preliminary investigation."

46. The decision thus concluded that there was no evidence of a criminal offence under Article 126 of the Russian Criminal Code in the actions of officials of the Staropromyslovskiy VOVD of Grozny.

47. On 23 December 2004 the criminal proceedings in case no. 13093 were resumed and, according to the Government's submissions, on 28 December 2004 the case file was forwarded to the military prosecutor's office of the United Group Alignment (*военная прокуратура Объединенной группировки войск*) for a further investigation, so as to

check the possible involvement of the military personnel in the alleged offence.

48. On 20 January 2005 the investigation was suspended for failure to identify those responsible, and then resumed on 5 April 2005.

49. The Government submitted that the applicant had been questioned by the investigators on 27 July and 30 October 2002, 30 May 2003 and 6 April 2005 respectively and had been granted the status of victim on 30 October 2002. The applicant's husband had been questioned and declared a victim on 30 May 2003. The applicant's daughter and daughter-in-law had been questioned on 28 June and 5 July 2001 respectively and granted the status of victim on 21 July 2001. The investigating authorities had also questioned Mr Musitov, three neighbours of the applicant and more than 20 officials of the FSB and the Ministry of the Interior who at the material time had been working in Grozny. The Government did not specify on what date witness statements had been obtained and submitted that the witnesses concerned had testified that they had no information regarding the perpetrators of the offence in question. According to the Government, it was impossible to establish other witnesses in the case but the search for them was currently underway. Lastly, the Government stated that the investigating authorities had sent a number of queries to various State bodies on 14 and 28 June 2001, 2, 5 and 24 July 2001, 2, 6, 13 and 16 August 2001, 3 May and 29 October 2002, 22 May and 10 June 2003 and had undertaken other investigative measures, but did not specify what those measures had been.

50. The Government further submitted that during the questioning on 6 April 2005 the applicant had stated that on the day following the apprehension of her son and son-in-law she had learnt from an acquaintance, Mr R., that her son had been abducted because of a debt owed to Mr Ts. by his brother. They had then gone to see Mr R. and discussed the payment of the debt. During questioning on an unspecified date, Mr Ts. had confirmed that the applicant's son owed him money in the amount of 60,000 roubles (RUR) but denied any involvement in his abduction. The statement was confirmed by a witness, Mr A. The investigating authorities could not question Mr R. because he had died in 2002.

51. On 18 April 2005 the investigator sent requests for information on the possible detention of Isa Kaplanov and Ruslan Sadulayev to penitentiary facilities of the Caucasia and surrounding regions. Furthermore, he sent requests to departments of the interior and the FSB located in eleven administrative units of the Russian Federation concerning their possible detention and institution of criminal proceedings against them. No relevant information was received.

52. On 5 May 2005 the investigation was suspended on account of the failure to identify the culprits. The applicant was informed accordingly.

53. On 10 June 2005 the investigation was resumed.

54. On 14 June 2005 the applicant informed the investigating authorities that Mr Musitov had left the Chechen Republic. Therefore he could not be questioned.

55. On 20 June and 30 August 2005 the investigator sent instructions to district prosecutors of the Republic of Udmurtia to take certain investigative measures in respect of former officials of the Staropromyslovskiy VOVD, which were later complied with.

56. On 30 June 2005 the investigator questioned Mr S., who stated that the register of the temporary detention centre contained no relevant information. It is not clear who Mr S. was, but he apparently referred to the temporary detention centre of the Staropromyslovskiy VOVD.

57. On 7 July 2005 the investigator instructed the prosecutor of the Gudermes District of the Chechen Republic to question Mr Ts. During the questioning Mr Ts. stated that Mr M. Kaplanov, Isa Kaplanov's brother, had not repaid the debt but he had nothing to do with his brother's abduction.

58. On 10 July 2005 the investigation was again suspended on account of the failure to identify the culprits.

59. On 1 August 2005 the investigation was resumed.

60. On 2 and 8 August 2005 respectively the applicant's relatives Mr Kh. and Ms A. were questioned. They made no relevant statements.

61. On 31 August 2005 the investigation was suspended on account of the failure to identify the culprits. The applicant was informed accordingly.

62. On 5 December 2005 the investigation was resumed.

63. On 6 December 2005 a request was sent to the Commander of the North-Caucasian military District. He replied that he had no information on the detention of any persons in the relevant period.

64. On an unspecified date the applicant was questioned again. She stated that she believed Mr Ts. had been involved in the abduction.

65. On an unspecified date former officials of the Zavodskoy Prosecutor's Office were questioned. They stated that they had no information on law-enforcement officials' involvement in an abduction of Isa Kaplanov allegedly instigated by Mr Ts.

66. On 6 January 2006 the investigation was suspended on account of the failure to identify the culprits. The applicant was informed accordingly.

67. On 12 March 2006 the investigator sent requests concerning the whereabouts of Isa Kaplanov and Ruslan Sadulayev to military commander's offices, the FSB units, departments of the interior, town and district prosecutor's offices of the Chechen Republic and other competent authorities. No relevant information was received.

68. On 25 May 2006 the investigation was resumed. The investigator reiterated the requests sent on 12 March 2006.

69. On 27 June 2006 the investigation was suspended on account of the failure to identify the culprits.

70. On 31 July 2006 the investigation was resumed.

71. On 7 August 2006 Mr M. Kaplanov, Isa Kaplanov's brother, was questioned. He stated that he had not been at home when his brother had been apprehended and had heard from others about what had happened.

72. On 19 August 2006 Mr M. Kaplanov was granted victim status in the proceedings and reiterated his previous statement. The Government submitted that from his statement and the applicant's statement made on 3 September 2006 it appeared that Isa Kaplanov could be detained in penitentiary facilities of the Yamalo-Nenetskiy Region. The investigator sent relevant requests to the penitentiary facilities. However, according to the information received, he had not been held there.

73. It appears that the investigation was suspended once again and then resumed on 22 December 2006.

4. Court proceedings against the investigating authorities

74. On 21 May 2004 the applicant lodged a complaint against the investigators with the Zavodskoy District Court of Grozny ("the District Court"). She claimed that the investigating authorities had not taken all possible and necessary measures and had thus failed to carry out an effective investigation into the disappearance of her son and son-in-law. She also complained that the question of the responsibility of servicemen T. and M. had not been investigated and that all her requests regarding the results of the investigation had remained unanswered or had only produced standard replies. In her court complaint the applicant referred to the Russian Constitution and Article 13 of the European Convention on Human Rights. She requested that the court find unlawful the inactivity of the investigating authorities and order the Grozny Prosecutor's Office to carry out an effective investigation.

75. By decision of 11 July 2004 the District Court dismissed the applicant's complaint, having stated that "the investigating authorities had undertaken all necessary measures" and that the applicant "had not pointed out what particular measures could otherwise be taken".

76. On 8 September 2004 the Supreme Court of the Chechen Republic dismissed the applicant's appeal and upheld the first-instance decision on appeal. It noted in particular that the involvement of federal servicemen in the detention and subsequent disappearance of Isa Kaplanov and Ruslan Sadulayev had been established and therefore the investigation of the case fell within the competence of military prosecutors. In this connection, on 24 August 2004 the Zavodskoy District Prosecutor's Office had transmitted the case file to the Prosecutor's Office of the Chechen Republic for its further transfer to the military prosecutor's office of military unit no. 20102.

5. The Court's request to submit the investigation file

77. Despite specific requests made by the Court on two occasions, the Government did not submit a copy of any of the documents to which they referred. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings. At the same time, the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted, with the exception of "the documents [disclosing military information and personal data of the witnesses], and without the right to make copies of the case file or to transmit it to others".

78. On 24 October 2006 the Court declared the application admissible and reiterated its request for a copy of investigation file no. 13093. The Court also requested information on the progress of the investigation after April 2005.

79. In response, the Government submitted an update on the investigation but no documents from the investigation file except for decisions to suspend and resume the investigation and the decision to grant victim status to Mr M. Kaplanov. They reiterated that disclosure of the documents would violate Article 161 of the Code of Criminal Procedure since the file contained information concerning military operations as well as personal data of participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

80. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR. On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (the new CCP).

81. Article 125 of the new CCP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

82. Article 161 of the new CCP stipulates that evidence from the preliminary investigation may not be disclosed. Part 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator, but only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of participants in criminal proceedings without their permission.

THE LAW

I. GOVERNMENT'S PRELIMINARY OBJECTION FOR FAILURE TO EXHAUST DOMESTIC REMEDIES

A. The parties' submissions

83. The Government contended that the application should be declared inadmissible as the applicant had failed to exhaust the domestic remedies available to her. They submitted that the applicant could have brought civil proceedings for compensation in respect of non-pecuniary damage in connection with the abduction of her relatives but had never availed herself of that remedy.

84. The applicant argued that the remedy invoked by the Government would have been ineffective in her case, as it was incapable of leading to the identification and punishment of those responsible, as required by the Court's settled case-law in relation to complaints under Articles 2 and 5 of the Convention. She also pointed out that under national law she could only make use of this remedy after those responsible for the crime had been identified in the course of criminal proceedings. The applicant also referred to the Court's case-law to the effect that the State's obligation under Articles 2 and 13 of the Convention to seek those guilty of fatal assault might disappear if, in respect of complaints under those Articles, an applicant was required to exhaust a remedy leading only to an award of damages (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 74). The applicant also stated that she had repeatedly applied to law-enforcement bodies, including various prosecutors, and had actively participated in the investigation. This avenue, however, had proved futile, given that the criminal investigation had been pending for several years but had failed to identify those responsible for the illegal detention and disappearance of Isa Kaplanov and Ruslan Sadulayev despite compelling evidence confirming the involvement of federal servicemen.

B. The Court's assessment

85. The Court notes that, in its decision of 24 October 2006, it considered that the question of exhaustion of domestic remedies was closely linked to the substance of the applicant's complaints and that it should be joined to the merits.

86. The Court has already found in a number of similar cases that a civil court is unable to pursue any independent investigation and is incapable,

without the benefit of the conclusions of a criminal investigation, of making any meaningful findings as to the perpetrators of fatal assaults, still less of establishing their responsibility (see, among other authorities, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005). Furthermore, a Contracting State's obligation under Articles 2 and 13 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault might be rendered illusory if, in respect of complaints under those Articles, an applicant were required to exhaust an action leading only to an award of damages (see *Yaşa*, cited above, § 74).

87. In the light of the above the Court finds that the applicant was not obliged to pursue the civil remedies suggested by the Government in order to exhaust domestic remedies, and dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

88. The applicant complained under Article 2 of the Convention of the violation of the right to life of her son, Isa Kaplanov, and her son-in-law, Ruslan Sadulayev.

Article 2 of the Convention provides:

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

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

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

A. The alleged violation of the right to life of Isa Kaplanov and Ruslan Sadulayev

1. Arguments of the parties

89. The applicant maintained her complaints. In her opinion, it was beyond reasonable doubt that Isa Kaplanov and Ruslan Sadulayev had been detained by representatives of the federal forces, this fact having been confirmed by eyewitness statements and the findings of the domestic investigating authorities. The applicant stressed that her relatives had been

apprehended in life-endangering circumstances, given that their arrest had been effected by a group of about 20 armed men who had arrived in six APCs and had not produced any documents to authorise the arrest. In this respect she referred to documents of the Council of Europe and of various human-rights NGOs reporting on a widespread practice of forced disappearances, extrajudicial executions, tortures and ill-treatment of detainees in Chechnya by representatives of the federal forces. She thus argued, relying on Article 2 of the Convention, that the fact that her relatives had remained missing since 12 May 2001 proved that they had been killed.

90. According to the Government, Isa Kaplanov and Ruslan Sadulayev had been detained by unidentified armed men who had brought them to the Staropromyslovskiy VOVD, from which the applicant's two relatives had then been taken away by unidentified persons. They argued, with reference to a reply from the Prosecutor General's Office, that the investigation had obtained no evidence to the effect that Isa Kaplanov and Ruslan Sadulayev were dead or that State agents had been involved in their disappearance, and therefore there were no grounds to claim that the State had breached their right to life secured by Article 2 of the Convention.

2. The Court's assessment

(a) General principles

91. In cases in which there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information capable of corroborating or refuting an applicant's allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of those allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

92. The Court points out that a number of principles have been developed in its case-law for situations where it is faced with a task of establishing facts on which the parties disagree. As to the facts in dispute, the Court reiterates its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others*, cited above, § 160).

93. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance

tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 32, and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

94. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, 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 *Timurtaş v. Turkey*, no. 23531/94, § 82, ECHR 2000-VI).

95. These principles apply also to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation of what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Taniş and Others*, cited above, § 160).

(b) Establishment of the facts

96. The applicant submitted that on 12 May 2001 federal servicemen had entered her household, had put Isa Kaplanov, Ruslan Sadulayev and Movsar Musitov into an APC and had driven off in the direction of Grozny. The applicant produced a statement from Movsar Musitov testifying that they had been taken to the Staropromyslovskiy VOVD, where they had spent the night. The next day he had been released while Isa Kaplanov and Ruslan Sadulayev had been taken to an unknown destination.

97. The Government submitted that on 12 May 2001 Isa Kaplanov, Ruslan Sadulayev and Movsar Musitov had been apprehended in a private household by “unidentified persons armed with firearms” who had delivered them to the Staropromyslovskiy VOVD. The next day Isa Kaplanov and Ruslan Sadulayev had been taken away by “unidentified persons in an unknown direction” while Movsar Musitov had been released.

98. The Court notes that in the letter of 12 August 2001 the Chechen Department of the FSB stated that on 12 May 2001 their two officers, T. and M., had detained Isa Kaplanov, Ruslan Sadulayev and Movsar Musitov for a breach of public order near the “Neftyanik” market in Grozny and had taken them to the Staropromyslovskiy VOVD. According to the letter, the officers had no information as to the fate of the detainees.

99. The Court further notes that, in the decision of 15 July 2004 to discontinue the criminal proceedings in case no. 13093, an investigator of the Zavodskoy District Prosecutor's Office stated that the preliminary investigation had established that on 12 May 2001 at 10.30 a.m. officers of the FSB had entered unlawfully and without authorisation the applicant's household and after a search had delivered Isa Kaplanov, Ruslan Sadulayev and Movsar Musitov to the Staropromyslovskiy VOVD of Grozny. The next day Movsar Musitov had been released while Isa Kaplanov and Ruslan Sadulayev had been taken away from the territory of the Staropromyslovskiy VOVD by FSB officers T. and M. to an unknown destination.

100. In the same decision it was stated that during the questioning T. and M. had submitted that on 12 May 2001, in the vicinity of the "Neftyanik" market in Grozny, they had apprehended three men, including Isa Kaplanov and Ruslan Sadulayev, and had taken them to the Staropromyslovskiy VOVD. The next day they had learnt that the detainees had been released.

101. The decision further referred to the statement of B., who acted as the head of the police of the Staropromyslovskiy VOVD in the relevant period. He had stated that on a date which he had not remembered FSB officers delivered four or five persons including Isa Kaplanov and Ruslan Sadulayev. According to him, officers T. and M. had asked him to release the next day all the detainees except for Kaplanov and Sadulayev, who had been taken by T. and M.

102. The Court observes that the parties' submissions, as well as the letter of 12 August 2001 and the decision of 15 July 2004, contain conflicting information as to who took Isa Kaplanov and Ruslan Sadulayev to and from the Staropromyslovskiy VOVD. However, the Court does not find it necessary to establish the truthfulness of each and every allegation of the parties, since it is not in dispute between them that on 12 May 2001 Isa Kaplanov and Ruslan Sadulayev were taken to the Staropromyslovskiy VOVD, where they spent the night.

103. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that from 12 to 13 May 2001 Isa Kaplanov and Ruslan Sadulayev were held at the Staropromyslovskiy VOVD, which was their last known whereabouts.

(c) The State's compliance with Article 2

104. The Court takes note of the applicant's submission that, in the circumstances, her son and son-in-law should be presumed dead, and of the Government's argument that their death has not been confirmed by domestic courts and, therefore, that there are no grounds for such a presumption.

105. The Court observes that there has been no reliable news of the applicant's son and son-in-law since May 2001. Having regard to its finding

in paragraph 103 above that Isa Kaplanov and Ruslan Sadulayev had been held at the Staropromyslovskiy VOVD, the Court notes that their names were not found in any of the detention facilities records. Furthermore, the Government did not submit any plausible explanation as to what happened to them after their placement in the Staropromyslovskiy VOVD.

106. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-... , and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-...), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Isa Kaplanov and Ruslan Sadulayev or any news of them for over six years corroborates this assumption. Furthermore, the Government have failed to provide any explanation for the disappearance of Isa Kaplanov and Ruslan Sadulayev and the official investigation, dragging on for more than six years, has produced no tangible results.

107. For the above reasons the Court considers that Isa Kaplanov and Ruslan Sadulayev must be presumed dead following their unacknowledged detention. Consequently, the responsibility of the respondent State is engaged. Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, it follows that liability for his presumed death is attributable to the respondent Government.

108. Accordingly, there has been a violation of Article 2 on that account in respect of Isa Kaplanov and Ruslan Sadulayev.

B. The alleged inadequacy of the investigation into the disappearance of Isa Kaplanov and Ruslan Sadulayev

1. Arguments of the parties

109. The applicant argued that the investigation in the present case had fallen short of the requirements of domestic law and Convention standards. She pointed out that even though she had immediately notified the authorities about the detention of her relatives, no measures to establish their whereabouts had followed and the investigation had not been commenced before 27 June 2001, that is to say more than a month after her relatives' detention and disappearance. In this respect she also referred to a discrepancy between the Government's statement to the effect that the investigation had been commenced on 12 June 2001, and the fact that the decision of the Zavodskoy District Prosecutor's Office dated 15 July 2004 to discontinue the criminal proceedings in case no. 13093 had mentioned 27 June 2001 as the date on which the investigation had been initiated. In

the applicant's view, this fact clearly demonstrated the Russian authorities' indifference towards the disappearance of her relatives as well as to the investigation into these events. The applicant further contended that the investigation had been pending since June 2001 but had not brought any tangible results so far, having been repeatedly suspended and reopened. Moreover, the investigating authorities had failed to inform her about its progress or of the investigative measures that had been taken. The applicant also claimed that even though she had been declared a victim in case no. 13093, she had not been allowed to have access to the case file, let alone to study it or make copies of any documents from the file.

110. The Government claimed that the investigation into the disappearance of the applicant's son and son-in-law met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

2. *The Court's assessment*

111. 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, p. 49, § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86). The essential purpose of such 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, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and 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).

112. The Court notes that despite its requests the Government failed to produce a copy of the entire investigation file. It further notes that the Government neither requested the application of Rule 33 § 2 of the Rules of Court, which permits a restriction on the principle of the public character of the documents deposited with the Court for legitimate purposes, nor specified the nature of the documents and the grounds on which they could not be disclosed (see, for similar conclusions, *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006). The Court observes that,

furthermore, Article 161 of the Code of Criminal Procedure, to which the Government refer, does not preclude disclosure of the documents from a pending investigation file, but rather sets out a procedure for and limits to such disclosure. For these reasons, the Court considers the Government's explanations concerning the disclosure of the case file insufficient to justify the withholding of the key information requested. Furthermore, the failure to produce the documents had hampered its examination of the complaints raised by the applicant (see also paragraphs 133-140 below).

113. The Court notes that the parties disagreed on the date of institution of the investigation, which according to the applicant was 27 June 2001 and according to the Government 12 June 2001. However, from the parties' submissions it follows that, in any event, the investigation was not instituted until one month after Isa Kaplanov and Ruslan Sadulayev had been placed in Staropromyslovskiy VOVD on 12 May 2001. Therefore, the investigation was instituted with a significant delay in a situation where prompt action was vital.

114. The Court observes that in July 2001 the investigating authorities questioned a number of eyewitnesses to the apprehension of Isa Kaplanov and Ruslan Sadulayev on 12 May 2001 as well as the FSB officers T. and M. The officers confirmed that they had apprehended Isa Kaplanov and Ruslan Sadulayev on the above date and had taken them to the Staropromyslovskiy VOVD, but denied that they had taken them away from the VOVD the next day. The investigating authorities also questioned the head of the VOVD, who stated that officers T. and M. had brought Isa Kaplanov and Ruslan Sadulayev to the VOVD on 12 May 2001 and had taken them away from the VOVD the next day. However, despite the fact that the investigation established the whereabouts of Isa Kaplanov and Ruslan Sadulayev after their apprehension and obtained information about the persons who took them to and from the Staropromyslovskiy VOVD, no meaningful investigative measures were taken in the following three years, and on 15 July 2004 the investigation was inexplicably discontinued on the ground of a lack of evidence that a criminal offence had been committed.

115. The Court further notes that in the subsequent period between 15 July 2004 and 22 December 2006 the investigation was suspended and resumed at least eight times. Such handling of the investigation could not but have had a negative impact on the prospects of arriving at the truth. It appears that no real effort was made by the authorities to identify the persons that had been involved in the apprehension of Isa Kaplanov and Ruslan Sadulayev and ultimately their whereabouts and fate, even though relevant information was obtained at the early stages of the investigation.

116. As to ensuring the interests of the next-of-kin, the Court notes that the applicant was granted victim status in the proceedings more than a year after the institution of the investigation. Furthermore, she was not duly informed of the progress of the investigation. Although she was informed of

a number of suspensions and resumptions of the investigation, almost no information concerning the important investigative actions was provided to her.

117. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance and presumed death of Isa Kaplanov and Ruslan Sadulayev. Accordingly, there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

118. The applicant claimed that the provisions of Article 5 of the Convention as a whole, relating to the lawfulness of detention and guarantees against arbitrary detention, had been violated in respect of Isa Kaplanov and Ruslan Sadulayev.

Article 5 of the Convention provides:

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

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within

a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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

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

119. The applicant claimed that her relatives’ detention had not satisfied any of the conditions set out in Article 5 of the Convention, had had no basis in national law and had not been in accordance with a procedure established by law or been formally registered.

120. In the Government’s submission, no evidence had been obtained by the investigators to confirm that the applicant’s family members had been detained in breach of the guarantees set out in Article 5 of the Convention. Isa Kaplanov and Ruslan Sadulayev were not listed among the persons held in detention centres.

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

122. The Court has found it established that from 12 to 13 May 2001 Isa Kaplanov and Ruslan Sadulayev were held at the Staropromyslovskiy VOVD and have not been seen since. Their detention was not logged in any custody records and there exists no official trace of their 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).

123. 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 and son-in-law 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 Isa Kaplanov and Ruslan Sadulayev against the risk of disappearance.

124. Consequently, the Court finds that Isa Kaplanov and Ruslan Sadulayev were held in unacknowledged detention without any of the safeguards contained in Article 5. Accordingly, there has been a violation of the right to liberty and security enshrined in Article 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

125. The applicant alleged that there were no effective remedies in respect of the above violations of her rights, 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.”

126. The applicant contended that in her case the domestic remedies usually available had proved to be ineffective, given that the investigation had been pending for several years without any progress, that she had not been allowed to have access to the case file and that all her applications to public bodies had remained unanswered or had only produced standard replies.

127. The Government argued 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 particular, the applicant had received reasoned replies to all her complaints lodged in the context of criminal proceedings. Furthermore, under Article 125 of the new CCP she could complain to a court about actions or omissions of the investigating authorities. Moreover, it was open to the applicant to file a claim for compensation in civil proceedings. In this respect the Government relied on the case of *Khashiyev v. Russia* in which the applicant had sought and obtained compensation for the death of his relatives (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, 24 February 2002).

128. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV; *Assenov and Others*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3293, § 117; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005).

The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Orhan*, cited above, § 384, and *Khashiyev and Akayeva*, cited above, § 183).

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

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

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

132. As regards the applicant's reference to Article 5 of the Convention, the Court notes that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements (see *Dimitrov v. Bulgaria* (dec.), no. 55861/00, 9 May 2006) and in view of its above findings of a violation of Article 5 of the Convention on account of the unacknowledged detention of Isa Kaplanov and Ruslan Sadulayev, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

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

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

Article 34

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

Article 38

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

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

...”

134. The applicant invited the Court to conclude that the Government’s refusal to submit a copy of the entire investigation file in response to the Court’s requests was incompatible with their obligations under Article 38 of the Convention. In her view, through their handling of the Court’s request for documents, the Government had additionally failed to comply with their obligations under Article 34 of the Convention.

135. The Government reiterated that the submission of the case file would be contrary to Article 161 of the Code of Criminal Procedure. They also pointed out that it had been suggested that a Court delegation have access to the file at the place where the preliminary investigation was being conducted. The Government further maintained that there was no breach of the applicant’s rights under Article 34 of the Convention since her application had been accepted for examination by the Court. As for the relevant domestic proceedings, she could have access to those materials of the investigation that could be produced to her at the present stage and, upon the completion of the investigation, to all the materials contained in the case file.

136. The Court reiterates that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications.

137. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting these allegations. A failure on a Government’s part to submit such information which is in their possession without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant’s allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under

Article 38 § 1 (a) of the Convention. In a case where the application raises issues of the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrıku v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

138. The Court notes that despite its repeated requests for a copy of the investigation file opened into the disappearance of the applicant's son and son-in-law, the Government failed to produce such a copy. They referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see, among other authorities, *Imakayeva*, cited above, § 123).

139. Referring to the importance of a respondent Government's cooperation in Convention proceedings, and mindful of the difficulties associated with the establishment of facts in cases of such a nature, the Court finds that the Government fell short of their obligations under Article 38 § 1 of the Convention because of their failure to submit copies of the documents requested in respect of the disappearance of Isa Kaplanov and Ruslan Sadulayev.

140. In view of the above finding, the Court considers that no separate issues arise under Article 34.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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. Pecuniary damage

142. The applicant claimed damages in respect of Isa Kaplanov's lost wages from the time of his apprehension and subsequent disappearance. She claimed that she and her son's other dependants would have benefited from his financial support in the amount of 22,259.10 pounds sterling (GBP) (approximately 29,900 euros (EUR)). Her calculations were based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2004.

143. The Government regarded the claim as excessive and based on conjecture. They also pointed out that Isa Kaplanov's other relatives could not be taken into account since they were not applicants in the present case.

144. The Court points out 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 appropriate cases, include compensation for loss of earnings (see, among other authorities, *Çakici*, cited above). The Court notes that, from the material available to it, it appears that at the time of his placement in the Staropromyslovskiy VOVD Isa Kaplanov was unemployed. It further notes that the applicant failed to submit any documents to confirm the amount of the applicant's earnings in 1999 or any evidence to show from which part of them she benefited. However, the Court considers it reasonable to assume that the applicant's son would eventually have had some earnings and that the applicant would have benefited from a certain share of them (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, §§ 209-213, 9 November 2006, and *Estamirov and Others v. Russia*, no. 60272/00, §§ 123-129, 12 October 2006). The Court cannot, however, take into account the applicant's claim in respect of her son's other relatives since they are not applicants in the present case.

145. Having regard to its above conclusions, the Court finds that there is a direct causal link between the violation of Article 2 in respect of the applicant's son and the loss by the applicant of the financial support which he could have provided to her. Having regard to the applicant's submissions, the Court awards her EUR 2,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

146. The applicant claimed EUR 200,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her son and son-in-law, the indifference shown by the authorities towards her and their failure to provide any information about the fate of her relative.

147. The Government found the amount claimed to be excessive.

148. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and death of the applicant's son and son-in-law. Furthermore, the Court has found that the Government have not complied with Article 38 § 1 of the Convention, having failed to submit copies of the documents requested in respect of the disappearance of the applicant's relatives. The Court thus accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant EUR 70,000, plus any tax that may be chargeable on that amount.

C. The applicant's request for an investigation

149. The applicant also requested, referring to Article 41 of the Convention, that “an independent investigation which would comply with Convention standards be conducted into her relatives’ disappearance”. She relied in this connection on the cases of *Assanidze v. Georgia* ([GC], no. 71503/01, §§ 202-203, ECHR 2004-II) and *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, § 84, ECHR 2003-VI).

150. The Government argued that the investigation into the murder of the applicant's relatives was still in progress and that there was therefore no need for the Court to indicate any special measures in this regard.

151. The Court reiterates that, in the context of the execution of judgments in accordance with Article 46 of the Convention, a judgment in which it finds a breach imposes on the respondent State a legal obligation under that provision to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). However, its judgments are essentially declaratory in nature and, in general, it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see, among other authorities, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; *Akdivar and Others v. Turkey* (Article 50), judgment of 1 April 1998, *Reports* 1998-II, pp. 723-24, § 47; and *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 25, § 58). This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1) (see, *mutatis mutandis*, *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34).

152. In the Court's opinion, the present case is distinguishable from those referred to by the applicant. In particular, the *Assanidze* judgment ordered the respondent State to secure the applicant's release so as to put an end to the violations of Article 5 § 1 and Article 6 § 1, whereas in the *Tahsin Acar* judgment the effective investigation was mentioned in the context of the Court's examination of the respondent Government's request for the application to be struck out on the basis of their unilateral declaration. The Court further notes its above finding that in the present case the effectiveness of the investigation had already been undermined at its early stages by the domestic authorities' failure to take meaningful investigative measures (see paragraphs 114-118 above). It is therefore very doubtful that the situation existing before the breach could be restored. In

such circumstances, having regard to the established principles cited above and the Government's argument that the investigation is currently under way, the Court finds it most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention.

D. Costs and expenses

153. The applicant claimed EUR 6,300 and GBP 1,869.95 for the fees and costs she had incurred in the proceedings before the Court. These amounts included EUR 4,050 for the lawyers of the Memorial Human Rights Centre, EUR 2,250 for the work done by the field staff of the Memorial Human Rights Centre office in the Northern Caucasus, GBP 833.30 for the lawyers of the European Human Rights Advocacy Centre, GBP 966.65 for translation of documents and GBP 70 in respect of administrative costs, such as postage, photocopying, faxing and other expenses.

154. The Government did not dispute the details of the calculations submitted by the applicant, but contested the applicant's claims in their entirety as excessive. They relied on the Court's case-law to the effect that costs and expenses should be awarded only in so far as they were actually incurred, were necessary and were reasonable as to their amount. The Government also insisted that the applicant's claims were not supported by any relevant documents.

155. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

156. The Court notes firstly that the applicant did not submit any documents in support of her claim for administrative costs. The Court further observes that in January 2002 the applicant gave authority to the lawyers of the Memorial Human Rights Centre and the European Human Rights Advocacy Centre to represent her interests in the proceedings before the Court and that these lawyers acted as the applicant's representative throughout the procedure. The applicant also produced invoices from translators for the total amount of GBP 876.65 (approximately EUR 1,175.80). The Court is therefore satisfied that the applicant's claims in this part were substantiated. The Court further notes that this case was rather complex and required a certain amount of research work.

157. In these circumstances, having regard to the details of the claims submitted by the applicant, the Court awards her a reduced amount of EUR 8,600, together with any tax that may be chargeable.

E. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of Isa Kaplanov and Ruslan Sadulayev;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Isa Kaplanov and Ruslan Sadulayev disappeared;
4. *Holds* that there has been a violation of Article 5 of the Convention in respect of Isa Kaplanov and Ruslan Sadulayev;
5. *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;
6. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Article 5;
7. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
8. *Holds* that no separate issues arise under Article 34 of the Convention;
9. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) in respect of pecuniary damage;
 - (ii) EUR 70,000 (seventy thousand euros) in respect of non-pecuniary damage;

- (iii) EUR 8,600 (eight thousand six hundred euros) in respect of costs and expenses, to be paid to the applicant's representatives' bank account in the United Kingdom;
- (iv) any tax that may be chargeable on the above amounts;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President