



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

FIRST SECTION

CASE OF MUSAYEVA v. RUSSIA

(Application no. 12703/02)

JUDGMENT

STRASBOURG

3 July 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 Musayeva 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 Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 12703/02) 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 Khapta Musayeva (“the applicant”), on 3 February 2002.

2. The applicant was represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their representative, Mrs V. Milinchuk.

3. The applicant alleged that her son had disappeared after being detained by servicemen in Chechnya on 5 February 2000. She complained under Articles 2, 3, 5 and 13 of the Convention.

4. By a decision of 18 January 2007, the Court declared the application admissible.

5. 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 1921 and lives in Grozny, the Chechen Republic.

A. The applicant's son arrest

7. The applicant lives with her family in a private house at 17 Zabolotny Lane in the Oktyabrskiy District of Grozny. In the winter of 1999–2000 most members of the applicant's family left Grozny because of the hostilities, which had begun in early October 1999. The applicant's youngest son, Yakub Iznaurov, who was born in 1966, remained in Grozny in order to look after the applicant who was unwell and could not travel. He had previously lived with his family in the Republic of Kalmykia, but came back to Grozny several years before the events described below to stay with his mother because of her state of health.

8. Yakub Iznaurov was married and had five minor children. In November 1999 Yakub Iznaurov's wife and children left for the Republic of Ingushetia with the rest of the applicant's family.

(a) The applicant's account of the events

9. According to the applicant, the federal armed forces regained control over the northern and central parts of Grozny by the end of December 1999 and January 2000, respectively. The applicant further submitted that the southern part of the city, in which her house was situated, was taken over by the federal forces by 4 February 2000. On that day Russian servicemen warned those living in the applicant's street that a “sweeping” operation (“*zachistka*”) would take place there the next day.

10. On 5 February 2000 at around 10 a.m. a group of about 50 servicemen in camouflage uniforms arrived at Zabolotny Lane and started checking the houses one by one. They left their military vehicles and armoured personnel carriers (“APCs”) at the end of the lane and proceeded along the street. They did not introduce themselves or produce any documents in justification of their actions.

11. Having been notified of the “sweeping” operation, the residents of Zabolotny Lane gathered in front of the applicant's house, because there was a big cellar in the basement of the house in which they used to hide from shelling during the winter. The federal soldiers ordered the men to undress and show their shoulders, arms and knees, in order to enable the servicemen to check if there were any signs of them having used firearms. When the

soldiers did not find any suspicious signs, they ordered the male residents to show their identity documents.

12. A soldier who was checking Yakub Iznaurov's passport noted that his permanent place of residence was in the Republic of Kalmykia. The serviceman asked the applicant's son why he had come to Grozny and whether he had come to Chechnya to fight against the Russian forces. Without listening to Yakub Iznaurov's explanations, he then called his superior, who ordered that Yakub be taken away for "clarification of the circumstances".

13. The applicant and other neighbours from the street tried to intervene and explain that Yakub had not been involved in any unlawful activities and that he had been staying with the other residents in the basement during the winter, but the servicemen kept saying that they would release him after the check. They then placed the applicant's son in a military vehicle without registration plates. There was another man, M. D., together with his five-year-old son, in the car. The vehicle moved towards the settlement of Novye Aldy, and the applicant and other residents followed it.

14. The vehicle having stopped near the tram rails, the soldiers ordered the men out. They then brought three other men, Z. D., M. G. and R. A., to the same place. The servicemen ordered all the detained men to kneel on the rails and to put their hands up.

15. Then a new officer with the rank of colonel arrived in a car. The colonel, who was wearing military insignia (shoulder straps with three stars), saw the child among the detained men and ordered the soldiers to take him away, but when they tried to do so the boy started screaming and clung to his father's leg. This made the colonel check M. D.'s documents himself, and he released him together with his son.

16. The rest of the men remained kneeling and undressed to their waists. The servicemen tied the men's hands behind their backs with metal wire and pulled their caps over their faces. They also recorded these actions with a video camera.

17. The detained men were kept in that position for about two hours. Then the soldiers took them back into the same military vehicle. The applicant and other relatives asked the servicemen where they were taking the men. The soldiers replied that the detainees would be delivered to Staraya Sunzha, a suburb of Grozny, for questioning. The servicemen also said that they were from the special police unit of St. Petersburg ("the St. Petersburg OMON"). The military vehicles then drove off in a column, together with other vehicles that had arrived from Novye Aldy.

18. There has been no news of the applicant's son or the other three detainees ever since.

19. The applicant submitted detailed eye-witness statements about the events of 5 February 2000, including those by her neighbours N. M., V. S., Z. S., S. Sh. and S. M., and by M. D., who had been apprehended on

5 February 2000 with his five-year-old son but later released. She also submitted a number of press articles and NGO reports, including that by the Memorial Human Rights Centre entitled “Mopping Up. Settlement of Novye Aldy, 5 February 2000 – Deliberate Crimes Against Civilians” (*«Зачистка». Поселок Новые Алды, 5 февраля 2000 – преднамеренные преступления против мирного населения*), relating to the events in the southern suburbs of Grozny on 5 February 2000 and subsequent investigation. They stated that on 5 February 2000 at least 60 civilians had been killed in the settlements of Novye Aldy and Chernorechye in the southern suburbs of Grozny. The Human Rights Watch Report of June 2000 entitled “February 5: A Day of Slaughter in Novye Aldi” put the blame for extra-judicial executions on the Russian police special units and military.

(b) The Government's account of the events

20. The Government relied on information provided by the Prosecutor General's Office (*Генеральная Прокуратура РФ*) to the effect that, at about 10 a.m. on 5 February 2000, “unidentified men wearing camouflage uniforms and masks and armed with automatic firearms had arrived at Zabolotny Lane in the city of Grozny, detained the applicant's son and taken him away in an unknown direction.”

21. They also submitted that until the middle of February 2000 the vicinity of the applicant's domicile was out of the federal armed forces' control, which had ruled out the possibility for them to carry out any special operations within that territory on the date in question.

B. The applicant's search for Yakub Iznaurov and the authorities' replies

22. Immediately after her son's detention, the applicant and other members of her family started searching for him. They coordinated their efforts with relatives of the three other men who had been detained on 5 February 2000 and subsequently disappeared. On numerous occasions, both in person and in writing, they applied to the prosecutors at various levels, to the Ministry of the Interior and to the administrative authorities in Chechnya. In their letters to the authorities the applicant and her family members stated the facts of Yakub Iznaurov's detention and asked for assistance and details on the investigation. They also visited different military commander's offices and pre-trial detention centres in Chechnya and further afield in the region. These attempts yielded little result. On several occasions the applicant received copies of letters from various officials, forwarding her requests to different prosecutors' services.

23. On 6 February 2000 the applicant, together with the mothers of the three other detainees, went to Staraya Sunzha, because on the day of her son's detention the servicemen had mentioned that they would take the

detained men there for questioning. A military officer in Staraya Sunzha told them that all the detainees had been taken to Khankala, the main Russian military base in Chechnya. The applicant tried to enter the Khankala military base, but was denied access by guards. On the same day the applicant and the mothers of the other detainees went to the administration of the Staropromyslovskiy District and talked to the head of the district administration, who wrote down the names of the detainees and promised to help.

24. On 7 February 2000 the applicant and the relatives of the other detainees lodged an application with the military commander of the Oktyabrskiy District of Grozny and asked for their children's release. They applied to him again on 12 March and 5 May 2000.

25. On 15 February 2000 they lodged a similar application with the head of the Grozny police department. They contacted him again on 10, 13 and 20 April 2000.

26. On 17 March 2000 the applicant's husband applied to the Special Representative of the Russian President for Rights and Freedoms in the Chechen Republic (*Специальный представитель Президента РФ по соблюдению прав и свобод человека в Чеченской Республике*). He described briefly the circumstances of his son's detention and listed the authorities and detention centres which he and his relatives had visited by that date. He resubmitted his application on 12 May and 26 July 2000.

27. On 28 March 2000 the applicant's husband wrote to the prosecutor's office of the Chechen Republic (*прокуратура Чеченской Республики* – “the republican prosecutor's office”), seeking their assistance in establishing his son's whereabouts and securing his release.

28. On 3 April 2000 the applicant's daughter wrote to the military prosecutor of the Chechen Republic (*военный прокурор Чеченской Республики*) asking for assistance in finding her brother. The family resubmitted their request on 15 November 2001.

29. On 15 May 2000 the applicant's daughter received a letter from the military commander of the Oktyabrskiy District of Grozny, which stated that her brother had not been listed among those detained in the district.

30. On 16 May 2000 the Chief Military Prosecutor's Office (*Главная военная прокуратура*) forwarded a request lodged on the applicant's behalf by the Memorial Human Rights Centre to the military prosecutor's office of the Northern Caucasus Military Circuit (*военная прокуратура Северо-Кавказского военного округа*). The latter transferred this request to the republican prosecutor's office on 13 June 2000.

31. By letter of 31 May 2000 the republican prosecutor's office instructed the Chechen Department of the Interior to organise a search for a number of missing persons, listed in the applications lodged by relatives of those missing with the Special Representative of the Russian President for Rights and Freedoms in the Chechen Republic.

32. On 5 July 2000 the applicant's husband wrote to the military prosecutor's office of the Northern Caucasus Military Circuit, asking for information concerning his son's disappearance.

33. On 19 July 2000 the applicant's husband applied to the republican prosecutor's office, stating the circumstances of Yakub Iznaurov's detention, listing official bodies to which he had applied and asking for assistance in finding his son. The applicant's husband sent another letter to the republican prosecutor's office on 14 November 2001.

34. Following the applicant's request, on 3 October 2000 the military commander of the Oktyabrskiy District of Grozny issued her with a certificate confirming that between 20 September 1999 and 5 February 2000 she and her son, Yakub Iznaurov, had remained in Grozny.

35. On 22 October 2000 the applicant's husband requested assistance from the Office of the Mayor of Grozny in the search for his son.

36. On 21 December 2000 the applicant wrote to the Grozny prosecutor's office (*прокуратура г. Грозного*), seeking to have a criminal investigation into her son's kidnapping opened. A similar request was submitted by another member of the applicant's family on 5 January 2001.

37. On 31 January 2001 the applicant's family addressed the military commander of Grozny and asked for help in finding Yakub Iznaurov.

38. In February 2001 Yakub Iznaurov's wife applied to a court in Ingushetia, seeking to have her husband declared a missing person, which would enable her, their five children and Yakub Iznaurov's elderly parents to obtain social benefits in connection with the loss of the family's breadwinner. On 17 April 2001 the Nazran District Court granted this request. The court heard two witnesses and examined copies of the family's requests to various authorities and the latter's replies concerning Yakub Iznaurov's whereabouts. On the basis of that evidence, the court established that there had been no news of Yakub Iznaurov for a year and declared him a missing person.

39. On 9 February 2001 the Grozny prosecutor's office provided the applicant's husband with a notice which stated that their office had opened a criminal investigation into Yakub Iznaurov's disappearance. The notice contained no other information.

40. In a letter of 21 May 2001 to the Southern Federal Circuit Department of the Prosecutor General's Office (*Управление Генеральной прокуратуры РФ в Южном федеральном округе*) the applicant's husband enquired about the developments in locating Yakub Iznaurov.

41. On 16 July 2001 the republican prosecutor's office forwarded the letter to the Grozny prosecutor's office, ordering the latter to conduct a check and decide whether criminal proceedings should be instituted under Article 126 (2) of the Russian Criminal Code (aggravated kidnapping).

42. On 25 July 2001 the applicant asked a military prosecutor to verify whether her son had ever been detained at the Khankala military base. She

received no clear reply, and on 15 August 2001 applied again. From a note made by an official on her application it follows that she was “given explanations” on that date.

43. In August 2001 the office of the Special Envoy of the Russian President for Rights and Freedoms in the Chechen Republic wrote to the republican prosecutor's office, asking them to reply to their letter of 26 July 2000 concerning the applicant's situation.

44. On 28 August 2001 the applicant lodged a complaint with the military prosecutor's office of military unit no. 20102, based in Khankala.

45. On 26 September 2001 the republican prosecutor's office replied to the applicant, stating that her son's whereabouts had not been established. Yakub Iznaurov had not been listed among those kept in the pre-trial detention centres in the Stavropol Region, and the Ministry of the Interior continued searching for him. The letter contained no reference to a criminal investigation file.

46. On 26 November 2001 the Administration of Chechnya informed the applicant that her son was being searched for as a “missing (forcibly detained) person”.

47. On 6 December 2001 the applicant's husband wrote to the member of the State Duma elected in respect of Chechnya and asked for his assistance in finding his son. He sent another letter on 14 January 2001. In February 2002 the member of the State Duma replied that this letter had been forwarded to the Prosecutor General's Office.

48. The Memorial Human Rights Centre applied on 29 December 2001 to the Grozny prosecutor's office on the applicant's behalf. They referred to investigation file no. 15029, opened in relation to Yakub Iznaurov's disappearance by the Grozny prosecutor's office, and asked for details on the investigation.

49. On 30 December 2001 an investigator, apparently from the Grozny Prosecutor's Office, issued the following notice about the progress of the investigation: “Criminal case no. 15029 opened on 22 March 2001 by the first deputy of the Grozny prosecutor into the kidnapping of Mr Iznaurov Ya. A. Questioned as witnesses: Mrs [Sh], Mrs Musayeva. Granted the status of victim: the sister of the kidnapped, Mrs Iznaurova R. The investigation was suspended on 22 May 2001 by an investigator of the Grozny Prosecutor's Office under Article 195 (3) of the Russian Code of Criminal Procedure”.

50. The Southern Federal Circuit Department of the General Prosecutor's Office forwarded the applicant's complaint about “the unfounded suspension of the investigation in criminal case no. 15029” to the republican prosecutor's office on 14 February 2002.

51. On 6 March 2002 an investigator from the Grozny prosecutor's office issued a notice which stated that “on 22 March 2001 the Grozny prosecutor's office opened criminal case file no. 15029 under Article 126 (2)

of the Criminal Code into the kidnapping of Yakub Alamatovich Iznaurov on 5 February 2000. The whereabouts of Iznaurov Ya.A. have not been established". The notice contained no further details about the investigation.

52. On 26 March 2002 the Department of the Prosecutor General's Office for the Northern Caucasus informed the applicant that the criminal case concerning her son's kidnapping had been suspended on 22 April 2001 due to a failure to identify the alleged perpetrators. There were no reasons to review that decision. It was not possible to establish which federal agencies had taken away Yakub Iznaurov during the special operation in Grozny on 5 February 2000.

53. Following a request by the applicant's husband, on 29 May 2002 the republican prosecutor's office asked for information about the criminal case from the Grozny prosecutor's office.

54. On 6 November 2002 the applicant's husband requested assistance from the department of the Chechnya Administration charged with searching for missing persons. On 21 November 2002 his letter was forwarded to the prosecutor's office, the Chechen Department of the Interior and the Oktyabrskiy District Office of the Interior.

55. On 25 November 2002 the republican prosecutor's office again informed the applicant's husband that the decision to suspend the investigation in the criminal case had been well-founded, because it had been impossible to establish which federal agencies had taken away his son during the special operation. The letter stated that measures were being taken to establish Yakub Iznaurov's whereabouts and that he would be informed of any results.

56. The criminal investigation division of the Chechen Department of the Interior replied to the applicant on 4 December 2002, stating that they had been searching for her son since 3 October 2000 and that she would be informed of any results.

57. In reply to the applicant's query, on 9 December 2002 the Oktyabrskiy ROVD confirmed that they had opened a search file in respect of Yakub Iznaurov.

58. In March 2003 the applicant's husband again wrote to the Special Envoy of the Russian President for Rights and Freedoms in the Chechen Republic. That latter forwarded his letters to the republican prosecutor's office, to the military prosecutor of the Chechen Republic and to the Chechen Department of the Interior.

59. On 27 March 2003 the applicant's husband complained to the Chairman of the State Duma that he had by that time applied to every possible authority in Russia and Chechnya which could help him establish his son's whereabouts, but despite these efforts and numerous witness-statements to the effect that the St. Petersburg OMON had taken his son on 5 February 2000, there were no results.

60. On 7 April 2003 the department of criminal investigations of the Chechen Department of the Interior replied to the Special Envoy of the Russian President for Rights and Freedoms in the Chechen Republic, with a copy to the applicant, stating that on 12 November 2000 the Grozny prosecutor's office had opened criminal case no. 12255 into the abduction of the applicant's son. The search for Yakub Iznaurov was in progress.

61. In a letter of 21 April 2003 the republican prosecutor's office informed the applicant that on 19 March 2003 the investigation in case no. 12255 had been suspended. On 21 April 2003 the decision to suspend had been quashed by the republican prosecutor's office and the case had been remitted for further investigation with instructions to take more active steps.

62. On 28 April 2003 the applicant's husband was granted the status of victim in criminal case no. 15025.

63. On 1 December 2003 the Memorial Human Rights Centre requested, on the applicant's behalf, an update on the investigation from the Prosecutor General's Office. On 8 December 2003 the applicant also wrote to the Prosecutor General's Office.

64. The republican prosecutor's office replied on 11 February 2004 to the Memorial Human Rights Centre, stating that a criminal investigation into Yakub Iznaurov's abduction was pending.

65. According to the applicant, in their replies to her queries the authorities had referred to three different registration numbers for the investigation file concerning her son's abduction, namely to nos. 12255, 15025 and 15029, as well as to two different dates on which the investigation had allegedly been commenced, namely 12 November 2000 and 22 March 2001.

C. Official investigation

66. According to the Government, neither the applicant nor any other relative of Yakub Iznaurov had applied to the law-enforcement bodies until 8 June 2000, when the applicant's husband lodged a complaint about his son's abduction with the Oktyabrskiy District Office of the Interior ("the Oktyabrskiy ROVD"). The latter had carried out an inquiry following this complaint and on 30 September 2000 had refused to institute criminal proceedings in the absence of evidence of a crime, as it had not been established during the inquiry that Yakub Iznaurov had been kidnapped.

67. On 3 October 2000 the Oktyabrskiy ROVD commenced a search for Yakub Iznaurov and opened search file (*розыскное дело*) no. 030/00.

68. Following this decision, on 9 November 2000 the Ministry of the Interior placed Yakub Iznaurov on the federal list of missing persons. The applicant was informed of this step on 4 January 2001.

69. The Government submitted that the Grozny prosecutor's office had carried out an inquiry in connection with the information submitted by the Memorial Human Rights Centre on the involvement of personnel from the St. Petersburg OMON in the kidnapping of the applicant's son. The inquiry had established that the area around the applicant's domicile had been out of the federal forces' control until February 2000 and that therefore they had been unable to conduct any special operations there at the material time. Accordingly, on 12 October 2000 it had been decided to dispense with criminal proceedings as there was no evidence of a crime.

70. According to the Government, on 22 February 2001 the Grozny prosecutor's office had quashed the decision of 12 October 2000 and instituted criminal proceedings in connection with Yakub Iznaurov's abduction under Article 126 (2) of the Russian Criminal Code (aggravated kidnapping). The case file had been assigned the number 15025.

71. The Government also submitted that on 22 February 2001 the Grozny prosecutor's office had set aside the decision of 30 September 2000 and on 22 March 2001 had instituted criminal proceedings in connection with Yakub Iznaurov's kidnapping under Article 126 (2) of the Russian Criminal Code. That case file had been assigned the number 15029. On 16 April 2001 cases nos. 15025 and 15029 had been joined and given the number 15025.

72. According to the Government, the investigation had been suspended on 22 April 2001, 28 May 2003, 4 July 2004 and 21 March 2005, and resumed on 28 April 2003, 2 June 2004, 20 January, 23 June and 23 July 2005 respectively, but had to date failed to identify the alleged perpetrators. The investigation was being carried out by the prosecutor's office of the Oktyabrskiy District of Grozny and was being supervised by the Prosecutor General's Office. It was resumed on 19 March 2007.

73. The Government submitted that the investigating authorities had taken a number of measures during the investigation. In particular, on 13 April 2001 the investigator in charge had instructed the head of the Oktyabrskiy VOVD to take measures to search for and establish the whereabouts of the applicant's son. The applicant and her two neighbours had been questioned as witnesses on 22 April 2001. The applicant had been questioned as a witness on numerous occasions and she had received detailed replies to all her queries. The applicant's daughter, Yakub Iznaurov's sister, had been given victim status and questioned on 22 April 2001 and then again on 2 February 2005. The applicant's husband, Yakub Iznaurov's father, had been granted victim status and questioned as a witness on 28 April 2003. The investigating authorities had also questioned five other witnesses, including Yakub Iznaurov's other relatives and acquaintances, on 29 April 2003 and between 7 and 14 June 2004. Subsequently the authorities had questioned five more witnesses. All the

witnesses had confirmed the circumstances of Yakub Iznaurov's detention and stated that they had no information as to his whereabouts.

74. The Government stated that on 21 January 2005 the prosecutor of the Oktyabrskiy District of Grozny had set up an investigative group to investigate the kidnapping of the applicant's son and on 23 January 2005 the investigator in charge had inspected the scene of the incident. The investigating authorities had also sent a number of queries to various State bodies on 13 April 2001, 12 May 2003, 23 and 30 January 2005 and 25 June 2005 and had taken other investigative measures. The Government did not specify what those measures had been. In the Government's submission, the investigation had not established that the representatives of federal agencies had participated in Yakub Iznaurov's kidnapping. Furthermore, the personnel of the St. Petersburg OMON had not conducted any special operations in the vicinity of the applicant's domicile on 5 February 2000.

D. The Court's request for submission of the investigation file

75. 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, except for two decisions on the suspension and resumption of the investigation, of 23 July 2005 and 19 March 2007 respectively. 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 Russian 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 and to transmit it to others".

II. RELEVANT DOMESTIC LAW

76. 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).

77. 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.

78. 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. Arguments of the parties

79. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the abduction of the applicant's son had not yet been completed. They further argued that it had been open to the applicant to file court complaints about the allegedly unlawful detention of her son or to challenge in court any actions or omissions of the investigating or other law-enforcement authorities; however, she had not availed herself of any such remedy. The Government also enclosed a number of letters from various higher courts in Russia, stating that the applicant had never lodged complaints regarding her son's detention or the authorities' inactivity with the courts in question.

80. The applicant disputed the Government's objection. She claimed that, rather than indicating that her complaints were premature, the fact that the investigation into the circumstances of her son's disappearance was still pending cast doubt on its effectiveness. The applicant also argued that the Government had failed to demonstrate that a court complaint against the actions or omissions of the investigating authorities would have been an effective remedy in her situation. She stated that this remedy was incapable of leading to the identification and punishment of those responsible and that under national law she could only make use of it after those responsible for the crime had been identified in the course of criminal proceedings.

B. The Court's assessment

81. In the present case, the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will now proceed to 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).

82. Inasmuch as the Government's preliminary objection concerns the applicant's failure to complain of her son's unlawful detention, the Court observes that after he was taken away by armed men on 5 February 2000, the applicant actively attempted to establish his whereabouts and applied to various official bodies, whereas the authorities denied that they had ever detained Yakub Iznaurov. In such circumstances, and in particular in the absence of any proof to confirm the very fact of the detention, even assuming that the remedy referred to by the Government was accessible to the applicant, it is more than questionable whether a complaint to a court about the unacknowledged detention of the applicant's son by the authorities would have had any prospects of success. Moreover, the Government have not demonstrated that the remedy indicated by them would have been capable of providing redress in the applicant's situation, namely that it would have led to the release of Yakub Iznaurov and the identification and punishment of those responsible.

83. Inasmuch as the Government's objection relates to the fact that the domestic investigation is still pending, the Court observes that the applicant complained to the law enforcement authorities shortly after the detention of Yakub Iznaurov and that an investigation had subsequently been instituted. The applicant and the Government dispute the effectiveness of this investigation. The Court considers that this limb of the Government's preliminary objection raises issues which are closely linked to the merits of the applicant's complaints. Thus, it considers that these matters fall to be examined below under the substantive provisions of the Convention (see paragraph 115 below).

84. The Government also pointed out that the applicant had not complained to a court about the actions or omissions of the investigating or other law-enforcing authorities.

85. Inasmuch as this limb of the Government's preliminary objection concerns complaints that might be lodged by the applicant outside the framework of criminal proceedings, the Government have submitted neither any evidence that this remedy was accessible to the applicant in practice nor any explanation as to how it could have provided the applicant with adequate redress. Therefore, the Government have not substantiated their contention that the remedy which the applicant had allegedly failed to exhaust was an effective one.

86. Inasmuch as this limb of the Government's preliminary objection concerns complaints that might be lodged by the applicant within criminal proceedings, the Court notes that the accessibility and prospects of success of this remedy largely depended on whether the applicant had been duly informed about the progress of the investigation and the way it had been handled. The Court considers that these issues are closely linked to the question of the effectiveness of the investigation, and therefore it would be appropriate to address the matter in the examination of the substance of the applicant's complaints under Article 2 of the Convention (see paragraph 115 below).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

87. The applicant complained under Article 2 of the Convention that her son had disappeared after having been detained by Russian servicemen 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. The alleged violation of the right to life of Yakub Iznaurov

1. Arguments of the parties

88. The applicant maintained her complaint and argued that her son had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years.

89. The Government referred to the fact that the investigation had obtained no evidence to the effect that this person was dead, or that representatives of the federal forces had been involved in his abduction or alleged killing.

2. *The Court's assessment*

(a) General principles

90. 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 able to corroborate or refute the applicants' 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 the applicant's allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-...).

91. The Court points out that a number of principles have been developed in its case-law when it is faced with a task of establishing facts on which the parties disagree. As to the facts that are 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 (extracts)). 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 Other*, cited above, § 160).

92. 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 v. Turkey*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

93. 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 *Tomasi v. France*, 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11; *Ribitsch*, cited above, § 34; and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

94. 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*, cited above, § 160).

(b) Establishment of the facts

95. The applicant alleged that on 5 February 2000 her son, Yakub Iznaurov, had been apprehended by Russian servicemen and then disappeared. She invited the Court to draw inferences as to the well-foundedness of her allegations from the Government's failure to provide the documents requested from them. The applicant supported her allegations with statements by several witnesses, including her neighbours and M. D., who had been also apprehended on 5 February 2000 but later released. The witnesses provided a coherent account of the special operation conducted on that date and stated that Yakub Iznaurov had been apprehended by the servicemen involved in the operation.

96. The Government contended that the federal forces had not regained control over the Oktyabrskiy District of Grozny in which the applicant and her family lived until the middle of February 2000, and had therefore been unable to conduct any operations there on 5 February 2000. They particularly stressed that the St. Petersburg OMON had not participated in “a passport check in Zabolotny Lane on 5 February 2000”. They did not deny, however, that Yakub Iznaurov had been abducted by unknown armed men on the same date. However, the Government referred to the absence of conclusions from the pending investigation and denied that the State was responsible for the disappearance of the applicant's son.

97. The Court notes that despite its repeated requests for a copy of the investigation file into the abduction of Yakub Iznaurov, the Government failed to produce it. The Government 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 *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

98. In view of this and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect. It considers that the applicant has presented a coherent and convincing picture of her son's detention on 5 February 2000. She was herself an eye-witness to the events and collected statements from six other eye-witnesses which referred to the involvement of the military or security forces in the abduction. The applicant and the other witnesses stated that the perpetrators had acted in a manner similar to that of a security operation – they had checked the residents' identification papers and used military vehicles such as APCs, which would not have been available to paramilitary

groups. In their applications to the authorities the applicants consistently maintained that their relatives had been detained by unknown servicemen and asked the investigation to look into that possibility.

99. The Court finds that the fact that a large group of armed men in uniform, equipped with military vehicles, proceeded in broad daylight to check identity papers and apprehend several persons at their homes in a town area strongly supports the applicant's allegation that these were State servicemen. It further notes that after six years the domestic investigation produced no tangible results.

100. The Court observes that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the absence of the documents requested, 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).

101. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that her son was detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Yakub Iznaurov was apprehended on 5 February 2000 at his house in Grozny by State servicemen during an unacknowledged security operation.

102. The Court further notes that there has been no reliable news of the applicant's son since 5 February 2000. His name has not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to him after his apprehension.

103. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts)), 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 Yakub Iznaurov or any news of him for over eight years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of Yakub Iznaurov

disappearance and the official investigation into his abduction, dragging on for almost eight years, has produced no tangible results.

104. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that on 5 February 2000 Yakub Iznaurov was apprehended by State servicemen and that he must be presumed dead following his unacknowledged detention by State servicemen.

(c) 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, to 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*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar*, cited above, § 391).

106. The Court has already found it established that the applicant's son must be presumed dead following unacknowledged apprehension by State servicemen. 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.

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

B. The alleged inadequacy of the investigation into the abduction

1. Arguments of the parties

108. The applicant argued that the investigation had not been effective and adequate, as required by the Court's case-law on Article 2. She noted that the investigation had been opened belatedly, that it had been adjourned and reopened a number of times and thus the taking of the most basic steps had been protracted, and that the applicant had not been informed properly of the most important investigative steps. She argued that the fact that the investigation had been pending for such a long period of time without producing any known results had been further evidence of its ineffectiveness.

109. The Government claimed that the investigation into the disappearance of the applicant's son met the Convention requirement of

effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators. They also submitted that, unlike Yakub Iznaurov's father and sister, the applicant had not been granted victim status because she had never applied for it. However, this question would be decided upon in the course of the additional investigation.

2. *The Court's assessment*

110. 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).

111. The Court notes that the materials of the case contain conflicting information on the date of institution of the investigation, which was either 12 November 2000 or 22 March 2001. Furthermore, the parties have disagreed on the date when Yakub Iznaurov's family applied to law-enforcement agencies in connection with his disappearance. According to the applicant, they did so immediately after his apprehension on 5 February 2000. The applicant submitted a copy of their application to the Military Commander dated 7 February 2000, which however had no stamp acknowledging its receipt. The Government contended that neither the applicant nor other relatives of Yakub Iznaurov had applied to the law-enforcement bodies until 8 June 2000. The Court notes that in May 2000 military and prosecuting authorities issued certain instructions in connections with the applicant's request for investigation of her son's disappearance which proves that they had been aware of the event by that time. Therefore, even assuming that the authorities had not become immediately aware of Yakub Iznaurov's abduction and that the investigation was instituted on 12 November 2000, it follows that it was not opened until

several months after the authorities had become informed of his disappearance. Therefore, the investigation was instituted with a significant delay, for which there has been no explanation, in a situation where prompt action was vital.

112. As to the manner in which the investigation was conducted, the Court notes that in a period of almost eight years it was repeatedly adjourned and reopened. The applicant and her neighbours who witnessed the events of 5 February 2000 were questioned for the first time as late as in April 2001, that is, more than a year after Yakub Iznaurov's disappearance. In 2003-2004 the investigating authorities questioned five more witnesses who also confirmed the events as presented by the applicant. These delays, 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 crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

113. The Court further notes that, according to the Government, between April 2001 and June 2005 the investigating authorities had sent a number of requests to various State bodies to take certain investigative measures. However, the Government submitted no details as to what those measures had been and did not disclose any relevant documents. On the basis of the information available to it, the Court concludes that a number of essential steps were never taken. Most notably, it does not appear that the investigating authorities had tried to find out whether any special operations had been carried out in Grozny on the day in question, let alone to identify and question any of the servicemen who might have been involved in the apprehension of Yakub Iznaurov or his fellow detainees.

114. As to ensuring the interests of the next-of-kin, the Government contended that while Yakub Iznaurov's father and sister had been granted victim status in the proceedings, the applicant had not been granted victim status because she had never applied for it. The Court notes firstly that Yakub Iznaurov's sister was granted victim status in April 2001 and his father in April 2003, that is, more than a year and more than three years respectively after the events in question. The Court further observes that, in any event, neither the applicant nor her relatives were duly informed of the progress of the investigation. Almost no information concerning the investigative actions was provided to them and they were informed about suspensions and resumptions of the investigation either with significant delay or not at all.

115. 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 authorities' failure to take necessary and urgent investigative measures undermined the effectiveness of the investigation in its early

stages. Inasmuch as it concerns complaints that might be lodged by the applicant within the criminal proceedings, the Court observes that the applicant, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions by investigating authorities before a court. Furthermore, taking into account that the effectiveness of the investigation had already been undermined in its early stages, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedies relied on by the Government were ineffective in the circumstances and dismisses their preliminary objection as regards the applicant's failure to exhaust domestic remedies.

116. 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 Yakub Iznaurov. Accordingly, there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

117. The applicant further relied on Article 3 of the Convention, submitting that her son had been ill-treated during his apprehension and that the State had failed to investigate properly the events. She also claimed that as a result of her son's disappearance and the State's failure to investigate the events, she had endured mental suffering in breach of Article 3 of the Convention, which reads as follows:

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

118. The applicant maintained that her son had been ill-treated during his apprehension as he had been ordered to get half undressed, to kneel on the rails and to stay in this position for over two hours while his hands had been tied behind his back with iron wire. She further contended that the State had failed to conduct an effective investigation into these events. The applicant also contended that the anguish and suffering she had endured amounted to a violation of Article 3 of the Convention.

119. The Government disagreed with these allegations and argued that the investigation had not established that either Yakub Iznaurov or the applicant had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

A. The violation of Article 3 in respect of Yakub Iznaurov

1. General principles

120. In so far as the applicant complained about alleged ill-treatment of her son upon his apprehension, the Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161 *in fine*).

121. The Court reiterates that “where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention', requires by implication that there should be an effective official investigation” (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

2. The alleged ill-treatment

122. The Court notes that the applicant herself and her neighbours witnessed her son's apprehension and saw that the servicemen ordered him to undress to his waist and to kneel on the rails. They then tied his hands behind his back with an iron wire, pulled a cap over his face and kept him in this position for about two hours. The applicant furnished eye-witness statements to corroborate her submissions.

123. It further notes the Government's submission that the domestic investigation had not established that Yakub Iznaurov had been subjected to inhuman or degrading treatment. The Court observes, however, that despite its repeated requests the Government refused to provide a copy of the investigation file, having failed to adduce sufficient reasons for the refusal (see paragraph 97 above), and finds that it can draw inferences from the Government's conduct in this respect.

124. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, amongst other authorities, the *Tekin v. Turkey* judgment of 9 June 1998, *Reports* 1998-IV, § 52).

125. The Court has found it established that Yakub Iznaurov was apprehended on 5 February 2000 by State agents. The evidence submitted

shows that during approximately two hours Yakub Iznaurov had to remain half undressed and kneeling on the rails with his hands tied behind his back with a metal wire and with a cap pulled over his face. The Court considers that this treatment reached the threshold of “inhuman and degrading” since it not only made Yakub Iznaurov suffer from cold, but must have made him feel humiliated and caused fear and anguish as to what might happen to him.

126. There has therefore been a violation of Article 3 of the Convention in respect of Yakub Iznaurov.

3. Effective investigation

127. The Court notes that eye-witnesses' statements to the effect that Yakub Iznaurov had been subjected to the ill-treatment during his apprehension had been enclosed with the applicant's applications and requests to the investigating authorities. However, the domestic investigation produced no tangible results.

128. For the reasons stated above in paragraphs 111-116 in relation to the procedural obligation under Article 2 of the Convention, the Court concludes that the Government has failed to conduct an effective investigation into the ill-treatment of Yakub Iznaurov.

129. Accordingly, there has been a violation of Article 3 also in this respect.

B. The violation of Article 3 in respect of the applicant

130. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that 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. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

131. In the present case the Court notes that the applicant is the mother of the disappeared man. She was eye-witness to his apprehension, during which he was subjected to inhuman and degrading treatment. For almost

eight years she has had no news of him. During this period the applicant has applied to various official bodies with enquiries about her son, both in writing and in person. Despite her attempts, the applicant has never received any plausible explanation or information as to what became of her son following his apprehension. The responses received by the applicant mostly denied that the State was responsible for his disappearance or simply informed her that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

132. In view of the above, the Court finds that the applicant suffered, and continues to suffer, distress and anguish as a result of the disappearance of her son and her inability to find out what happened to him. The manner in which her complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

133. The Court therefore concludes that there has been a violation of Article 3 of the Convention also in respect of the applicant.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

134. The applicant further stated that Yakub Iznaurov had been detained in violation of the guarantees of 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.”

135. The applicant maintained that her son's 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.

136. In the Government's opinion, no evidence was obtained by the investigators to confirm that Yakub Iznaurov was detained in breach of the guarantees set out in Article 5 of the Convention. He was not listed among the persons kept in detention centres.

137. 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).

138. The Court has found it established that Yakub Iznaurov was apprehended by State servicemen on 5 February 2000 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).

139. 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.

140. Consequently, the Court finds that Yakub Iznaurov 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

141. 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.”

142. The applicant alleged 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 and that all her applications to public bodies had remained unanswered or had produced only standard replies.

143. 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 particular, the applicant had received reasoned replies to all her complaints lodged in the context of criminal proceedings.

144. 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, §§ 161-162, ECHR 2002-IV, and *Süheyra 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 *Khashiyev and Akayeva*, cited above, § 183).

145. It follows that in circumstances where, as here, the criminal investigation into the violent death and ill-treatment was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

146. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention and with Article 3 of the Convention in respect of Yakub Iznaurov.

147. As regards the violation of Article 3 of the Convention on account of the applicant's mental suffering as a result of the disappearance of her son, her inability to find out what had happened to him and the way the authorities had handled her complaints, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicant. The Court considers that, in the

circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

148. 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 and, in view of its above findings of a violation of Article 5 of the Convention by unacknowledged detention, 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.

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

149. 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;

...”

150. 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.

151. 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.

152. 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.

153. 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 which 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 *Tanrikulu v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

154. The Court notes that despite its repeated requests for a copy of the investigation file opened into the disappearance of the applicant's son, the Government refused to produce such a copy with a reference to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this reference insufficient to justify the refusal (see, among other authorities, *Imakayeva*, cited above, § 123).

155. 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 in that they failed to submit copies of the documents requested in respect of the disappearance of Yakub Iznaurov.

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

157. 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

158. The applicant claimed damages in respect of Yakub Iznaurov's lost wages from the time of his apprehension and subsequent disappearance. She submitted that her son had worked as a farmer, although he had not been officially registered as such. His average income during the last months of employment had been approximately 1,500 United States dollars per month. The applicant claimed that she and her son's other dependants, including his father, his wife and five children, would have benefited from his financial support in the amount of 198,174.22 pounds sterling (GBP) (approximately 250,958.64 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 (“Ogden tables”).

159. The Government regarded these claims as unfounded. They noted that the applicant failed to submit any documents to corroborate the amount claimed, such as any contracts or financial documents to confirm her son's earnings. Furthermore, as the applicant herself had submitted, he had never been officially registered as a farmer, which meant that he had never paid taxes and, therefore, no information about his actual earnings could have been obtained from competent authorities. The Government further submitted that the method of the applicant's calculations was not applicable to the circumstances in Russia. They argued that the claim should be rejected in full.

160. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. The Court finds that there is indeed 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 for her. However, it notes that the applicant did not furnish any documents to corroborate the amount of her son's alleged earnings. Nevertheless, the Court finds it reasonable to assume that the applicant's son would eventually have had some earnings and that the applicant would have benefited from these. Having regard to the applicant's submissions, the Court awards her EUR 10,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

161. The applicant claimed EUR 100,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her son, the indifference shown by the authorities towards him and the failure to provide any information about his fate. The applicant made this claim also on behalf of Yakub Iznaurov's father, his wife and five children.

162. The Government found the amount claimed exaggerated.

163. The Court has found a violation of Articles 2, 3, 5 and 13 of the Convention on account of the unacknowledged detention, ill-treatment and disappearance of the applicant's son. The applicant herself has been found to have been victim of a violation of Article 3 of the Convention. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. 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. Having regard to the foregoing, it awards to the applicant EUR 35,000, plus any tax that may be chargeable thereon.

C. The applicant's request for an investigation

164. The applicant also requested, referring to Article 41 of the Convention, that “an independent investigation which, would comply with the requirements of the Convention, be conducted into her son's 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).

165. 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).

166. 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 111-113 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

167. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 8,775 and GBP 2,159.89. They submitted the following breakdown of costs:

- (a) EUR 3,000 for 120 hours of research in Chechnya and Ingushetia at a rate of EUR 25 per hour;
- (b) EUR 375 in travel expenses for the field workers;
- (c) EUR 5,400 for 108 hours of drafting legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour by the lawyers in Moscow;

- (d) 666 pounds sterling (GBP) for 6 hours and 40 minutes of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;
- (e) GBP 400 for the professional fees of a barrister in London consulted as to the evidence;
- (f) GBP 918,89 for translation costs, as certified by invoices; and
- (g) GBP 70 for administrative and postal costs.

168. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. They also objected to the representatives' request to transfer the award for legal representation directly into their account in the UK. The Government further pointed out that the applicant had not enclosed any documents supporting the amount claimed under administrative costs and, furthermore, produced no evidence that the amounts claimed for lawyers' fees had actually been paid.

169. 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).

170. The Court notes that the applicant produced invoices from translators for the total amount of GBP 918.89 (approximately EUR 1,115) as well as the invoice for the advice on the evidence in the amount of GBP 400 (approximately EUR 500). It notes that the applicant neither submitted any documents in support of her claim for administrative costs nor any invoices to support the amounts claimed for lawyers' fees. The Court observes, however, that in February 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 representatives throughout the procedure. Furthermore, the applicant enclosed calculations of the lawyers' fees submitted by her representatives. Having regard to the details of the information, the Court is satisfied that it reflects the expenses actually incurred by the applicant's representatives.

171. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary and reasonable. The Court notes that this case was relatively complex and required a substantial amount of research and preparation. It notes, however, that the case involved very little documentary evidence, in view of the Government's refusal to submit the case file. The Court thus doubts that research was necessary to the extent claimed by the representative.

172. The Court further notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicant's representatives' accounts (see, for example, *Toğcu*, cited above, § 158; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; and *Imakayeva*, cited above).

173. Having regard to the details of the claims submitted by the applicant and acting on an equitable basis, the Court awards her the amount of EUR 8,000, plus any tax that may be chargeable to the applicant, to be paid into the representatives' bank account in the UK, as identified by the applicant.

E. Default interest

174. 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 Yakub Iznaurov;
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 Yakub Iznaurov had disappeared;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of Yakub Iznaurov;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the ill-treatment of Yakub Iznaurov;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Yakub Iznaurov;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Articles 2 of the Convention and of Article 3 of the Convention in respect of the Yakub Iznaurov;

9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Article 3 in respect of the applicant and of Article 5;
10. *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;
11. *Holds* that no separate issues arise under Article 34 of the Convention;
12. *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:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the applicant, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the UK;
 - (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;
13. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Søren Nielsen
Registrar

Christos Rozakis
President