



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

FIRST SECTION

**CASE OF ASKHAROVA v. RUSSIA**

*(Application no. 13566/02)*

JUDGMENT

STRASBOURG

4 December 2008

**FINAL**

***05/06/2009***

*This judgment may be subject to editorial revision.*



**In the case of Askharova v. Russia,**

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 13566/02) 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 Larisa Askharova (“the applicant”), on 4 March 2002.

2. The applicant, who had been granted legal aid, was represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that her husband had disappeared after being detained by servicemen in Chechnya on 18 May 2001. She complained under Articles 2, 3, 5 and 13.

4. By a decision of 22 November 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 1964 and lives in the village of Serzhen-Yurt, the Chechen Republic.

#### **A. Detention of Mr Sharani Askharov**

##### *1. The applicant's account*

7. The applicant lived with her husband, Mr Sharani Askharov (born in 1956), at 106 Sheripova Street in the village of Serzhen-Yurt. The applicant is a housewife, and her husband was a lorry driver. Together they had two daughters, one of whom is away from home for long periods of time for medical reasons. In the same courtyard there are five houses; the four others are owned by the applicant's husband's brothers and their families.

8. According to the applicant, early in the morning of 18 May 2001 a "sweeping operation" (*зачистка*) took place in Serzhen-Yurt. At about 5 a.m. a group of armed men wearing masks and dressed in camouflage broke into the applicant's home and entered the room where the applicant, her husband and their 12-year-old daughter were sleeping. The applicant was forced by a man armed with a sub-machine gun to stand against the wall in the hall, while other men held her husband down in another room. The applicant describes the men as well-built, tall and speaking unaccented Russian. One of them was, in her estimation, 40-45 years old. They did not introduce themselves, show any identification or ask anyone for identity documents, nor did they ask any questions. When the applicant asked them what they wanted and who they were looking for they told her to be quiet. The soldiers put a sack over Mr Sharani Askharov's head and took him outside into the courtyard. The applicant was prevented from following. The applicant's account of the events is supported by statements by three eyewitnesses.

9. The soldiers proceeded to another house in the same courtyard, and brought out one of the applicant's husband's brothers, Mr Yunus Askharov. They pulled a T-shirt over his head and put him into an armoured personnel carrier (APC). They also detained Mr Sharani Askharov's nephew, Mr Aslan Askharov, born in 1974.

10. Mr Yunus Askharov, who was later released, explained that his T-shirt was thin and that he could see that he was in the same APC as his brother Sharani. He tried to talk to his brother, but a sack was put over his

head too, and the detainees were forbidden to talk and were beaten with rifle butts if they attempted to.

11. The neighbours later told the applicant that they had noted the license plate numbers of two APCs that took part in the sweeping operation as 714 and 224. They also noted the plate numbers of the Ural military truck as 76-46 VA. There were also other vehicles, at least two other APCs, but their number plates were obscured with mud.

12. The applicant submitted that in the same sweeping operation nine men had been detained in Serzhen-Yurt. Two of them, including the applicant's husband, had disappeared. Mr Aslan Askharov, her nephew, had been found dead with bullet wounds later on 18 May 2001 on the outskirts of the village. Six others had been released on 18 and 19 May 2004, after having been subjected to interrogations accompanied by beatings and torture.

13. The applicant submitted written statements by Mr Yunus Askharov and Mr M. R., who were released on 18 May 2004. According to their statements, the APCs carrying the detainees drove for several hours. The men inside remained blindfolded and their hands were tied tightly behind their backs. On several occasions the vehicles stopped, the detainees were dragged out, beaten, tortured and then pulled back inside. Mr Yunus Askharov was asked questions about the Chechen fighters and their bases. At some point he heard his brother answering about himself that he was 46 years old and a truck driver. He therefore concluded that his brother was still with them. After one interrogation he heard someone say: "those – to the pit, those – to the car," indicating a separation of the group. At about 2 p.m. five men, including Mr Yunus Askharov, were dumped in a field by an old petrol station between the villages of Serzhen-Yurt and Shali. Their hands were freed but they were told to lie still. After the military had left, the men freed themselves and Yunus realised that his brother Sharani was not among them. The detainees had been so severely beaten that some of them were unable to move. The next day Mr Yunus Askharov was admitted to Shali Hospital, where he remained for a month.

14. The applicant submitted copies of medical certificates issued to two other men detained on 18 May 2001: Mr M. S. and Mr M. R., whom the hospital doctors had diagnosed with concussion, fractured ribs, numerous bruises and haematomas to the face, neck, back and torso. Witnesses also testified that their teeth had been pulled out with pliers.

15. On the same day, on 18 May 2001, the applicant's nephew, Mr Aslan Askharov, was found dead on the outskirts of the village with gunshot wounds. On 3 June 2001 a doctor of the Serzhen-Yurt medical station issued a death certificate for Mr Aslan Askharov: born in 1974, died on 18 May 2001 in Serzhen-Yurt of gunshot wounds.

16. Another person detained in Serzhen-Yurt on 18 May 2001, a 14-year-old boy, was released the following day, on 19 May 2001. He told the

applicant and her sister that he had been taken to a military base blindfolded, and that he had understood that the applicant's husband and another man from their village, Mr A. S., were also there.

17. The applicant submitted several witness statements by her neighbours and by other men who had been detained on 18 May 2001 about the "sweeping" operation and about the treatment of the detainees.

18. The applicant and other members of her family have had no news of Mr Sharani Askharov since 19 May 2001.

## *2. The Government's account*

19. The Government submitted that the Prosecutor General's Office had established that on 18 May 2001 at around 6 a.m. unidentified persons in camouflage and masks, armed with automatic weapons and accompanied by armoured vehicles, had entered Serzhen-Yurt and apprehended Mr Sharani Askharov, Mr Yunus Askharov, Mr A. S., Mr M. S., Mr M. R., Mr Z. Z., Mr T. Z. and Mr R. Z. and had taken them to an unknown destination. On the same date Mr Aslan Askharov, who had been a member of an illegal armed group, had died in the village in unclear circumstances. On the evening of 18 May 2001 those apprehended had been released, with the exception of Mr Sharani Askharov and Mr A. S., whose whereabouts had not been established.

## *3. Media and NGO reports*

20. The applicant submitted two newspaper cuttings of May 2001. On 22 May 2001 the Moscow-based *Kommersant* published an article entitled "Khattab's Friend and Dudayev's Assistant are Killed". The article said:

"In the Shali district of Chechnya the federal forces carried out a special operation directed against the leaders of bandit groups. Last weekend, during that operation in Serzhen-Yurt, Sharani Askharov was killed. According to intelligence information, he was a well-known explosives expert and a close friend of one of the extremists' leaders, Khattab; he played the most active part in the activities of the illegal armed groups. In the same village the federal forces killed [S.], the chief of the criminal police during the reign of Dudayev, who had maintained close ties with the current leaders of bandit groups".

21. On 26 May 2001 the Moscow-based *Nezavisimaya Gazeta* published its regular update on the conflict in Chechnya, covering events between 12 and 25 May 2001. It reported that "on 19-20 May 2001 in Serzhen-Yurt, Shali district, a targeted special operation took place, as a result of which Sharani Askharov, a well-known explosives expert and a close friend of Khattab, and [A. S.], former chief of the criminal police in Dudayev's time, who had maintained ties with the current field commanders, were killed."

22. In April 2002 the NGO Human Rights Watch issued a report entitled "Last seen ... Continued disappearances in Chechnya". It describes the sweeping operation in Serzhen-Yurt on 18 May 2001 and lists Mr Sharani

Askharov as “disappeared”. It also describes the ill-treatment suffered by the other detainees who were later released.

### **B. The search for Sharani Askharov and the investigation**

23. According to the applicant, she started looking for her husband immediately after his detention, together with relatives of Mr A. S. For some days after 18 May 2001 the applicant, with Mr A. S.’s sister, went to Shali to be near the military commander’s office. After three days the women were informed by the commander that their relatives had been detained there for some time, but had then been demanded by a higher authority and transferred elsewhere. The commander did not tell them where the men had been taken.

24. On numerous occasions, both in person and in writing, the applicant applied to prosecutors at various levels, to the Ministry of the Interior, to the administrative authorities and to public figures. In particular, she applied on 10 July 2001 to the Prosecutor’s Office of the Chechen Republic, on 3 October 2001 and 21 January 2002 to the Prosecutor General, and on 13 December 2001 to the Shali District Prosecutor’s Office. In her initial applications she stated the details of her husband’s abduction, listed the license plate numbers of the military vehicles that had participated in the operation, and asked for a criminal investigation into her husband’s abduction to be opened. In her subsequent applications she asked for an update on the progress of the investigation. The applicant received hardly any substantive information from official bodies about the investigation into her husband’s disappearance. On several occasions she was sent copies of letters by which her requests had been forwarded to different prosecutors’ services.

25. On 24 May 2001 a group of villagers of Serzhen-Yurt (over 50 persons) signed a petition to the Shali district temporary department of the interior (VOVD) administration, prosecutor and the military commander. They asked for the reasons for Mr Sharani Askharov’s detention to be investigated and for him to be released.

26. According to the Government, up to August 2001 the prosecuting authorities of the Chechen Republic had received no complaints from relatives of the persons abducted on 18 May 2001.

27. On 14 August 2001 the Shali District Prosecutor’s Office instituted criminal proceedings in case no. 23185 into the abduction of Mr A. S. His wife, Mrs I., was granted victim status on 20 August 2001.

28. On 30 August 2001 the Department for Legal Affairs and Military Liaison of the Chechen Government informed the applicant that her complaints had been transferred to the Chechen Department of the Interior for a search to be organised, and to the military prosecutor of military unit no. 20102 for a criminal investigation to be carried out.

29. On 15 October 2001 the Shali District Prosecutor's Office instituted criminal proceedings in case no. 23261 regarding the abduction of Mr Sharani Askharov by a group of persons (Article 126 (2) of the Criminal Code).

30. On 16 October 2001 the Shali District Prosecutor's Office informed the applicant that her husband's abduction was under investigation by that office. The letter contained no other details.

31. On 19 October 2001 the military prosecutor of military unit no. 20102 informed the applicant that her letter had been sent to the military prosecutor of military unit no. 20116 based in Shali.

32. According to the Government, on 20 October 2001 the applicant was granted victim status in criminal proceedings no. 23261. She was questioned on the same date and stated that her husband had been taken from his home together with his brother, Mr Yunus Askharov, at around 6 a.m. on 18 May 2001 by persons dressed in camouflage and wearing masks. Later she had learnt that other villagers had been apprehended too, but unlike her husband and Mr A. S. they had been released on the same day. She did not know the whereabouts of her husband or Mr A. S.

33. On 29 December 2001 the applicant was informed by the Shali District Prosecutor's Office of the institution on 15 October 2001 of criminal proceedings no. 23261 regarding her husband's abduction. The letter further informed the applicant of the name of the investigator in charge of the case and invited her to study the case file.

34. On 2 July 2002 the investigator of the Shali District Prosecutor's Office issued the following progress report in case no. 23261:

"On 18 May 2001 Mr. Sharani Vakhayevich Askharov, born in 1956, was detained and taken to an unknown destination by unidentified servicemen, during the conduct of a special operation, from his permanent residence at 106 Sheripova Street, Serzhen-Yurt, Shali district. So far his whereabouts have not been established. On 15 October 2001 the Shali District Prosecutor's Office opened criminal investigation no. 23261 regarding this event, under Article 126 (2) of the Criminal Code. On 15 December 2001 the criminal investigation was suspended because the culprits could not be identified. Nonetheless the search for the abducted person continues."

35. According to the applicant, she did not receive any further update on the investigation.

36. The Government submitted the following information concerning the progress of the investigation.

37. On 27 June 2005 criminal investigation no. 23261 regarding the abduction of Mr Sharani Askharov was joined with criminal investigation no. 23185 into the abduction of Mr A. S. and with a criminal investigation regarding the death of Mr Aslan Askharov.

38. On an unspecified date relatives of other persons apprehended on 18 May 2001 were questioned. They made statements similar to that of the applicant. Two women, Ms K. A. and Ms S. A, apparently relatives of

Mr Sharani Askharov and Mr Aslan Askharov, stated that Mr Aslan Askharov had been a member of an illegal armed group. On 18 May 2001 he left the house, trying to hide from the people who had arrived in the village. Later they had heard shooting and in the evening his body had been found on the outskirts of the village.

39. On 17 January 2005 Mr Yunus Askharov was granted victim status. He was questioned on 17 January and 12 June 2005. According to the Government, he had been summoned for questioning on several occasions earlier but had failed to appear. Mr Yunus Askharov confirmed the circumstances of his abduction by unknown persons and submitted that he had been beaten by them, but that he would not be able to identify them. On the afternoon of 18 May 2001 the unidentified persons had left him and the other villagers on the outskirts of the village and they had returned home by themselves. Mr Yunus Askharov did not confirm that he had been tortured or that his teeth had been pulled out, nor did he confirm that he had been taken to the military base.

40. On an unspecified date Mr Yunus Askharov underwent a medical examination. According to the results of the examination he had sustained insignificant injuries (*легкий вред здоровью*).

41. Mr Z. Z., Mr T. Z. and Mr R. Z., questioned on an unspecified date, submitted that neither they nor Mr M. R. had been beaten following their abduction.

42. It appeared impossible to question Mr M. R. since he had left the Chechen Republic. However, his relative, Ms H. R., submitted that he had not had any injuries when he had returned home.

43. It also appeared impossible to question Mr M. S. since he had been absent from his place of residence. The results of a medical examination conducted on an unspecified date showed that he had sustained significant injuries (*вред здоровью средней тяжести*).

44. Ms R. M., the applicant's neighbour, was questioned on an unspecified date. She submitted that at the end of May 2001 unidentified servicemen dressed in camouflage accompanied by armoured vehicles had abducted seven residents of Serzhen-Yurt. Later that day some of the abducted men had been found on the outskirts of Serzhen-Yurt. Then Mr Aslan Askharov's body had been found on the outskirts of the village.

45. On an unspecified date a forensic examination was conducted so as to establish the cause of death of Mr Aslan Askharov. Since his body was not exhumed, the examination was conducted on the basis of medical documents. The exact cause of death as well as the nature of the injuries could not be established. Nor was a connection established between the actions of the unidentified servicemen and Mr Aslan Askharov's death.

46. The investigation failed to establish the whereabouts of Mr Sharani Askharov and Mr A. S. The investigating authorities sent requests for information to the competent State agencies on 2 and 11 November 2001,

30 April and 22 December 2003, and 23 December 2004. However, it was not established that servicemen had been involved in the offence. Neither Mr Sharani Askharov nor Mr A. S. had been held in either criminal detention or administrative detention facilities.

47. According to the information of the Ministry of the Interior, the Federal Security Service (FSB) and the United Group Alignment (UGA), no operations had been conducted in respect of Mr Sharani Askharov and Mr A. S. and they had not been detained. The vehicles which the applicant claimed had been used in the offence did not belong to the above authorities.

48. The investigation in case no. 23261 had been suspended a number of times on account of a failure to identify persons to be charged with the offence. The most recent decision to suspend the investigation was quashed on 6 June 2005 and the investigation was taken up by the Shali District Prosecutor's Office.

49. According to the Government, the applicant had been informed of all the suspensions and resumptions. The information published in *Kommersant* and *Nezavisimaya Gazeta* was being checked.

### **C. Request for information**

50. Despite a specific request by the Court, the Government did not submit a copy of the file in criminal case no. 23261. They submitted nineteen pages of case-file materials containing certain decisions to resume the investigation and to grant victim status and copies of notifications sent to the applicant. 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.

## **II. RELEVANT DOMESTIC LAW**

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

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

#### A. Arguments of the parties

52. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies, since the investigation into the abduction of the applicant's husband had not yet been completed. They also argued that it had been open to the applicant to file court complaints about the allegedly unlawful detention of her husband or, in accordance with Article 125 of the Russian Code of Criminal Procedure, to challenge in court any actions or omissions of the investigating or other law-enforcement authorities during the investigation; however, she had not availed herself of any such remedy.

53. The applicant disputed that objection. In her view, the fact that the investigation had been ongoing for seven years with no tangible results proved that it was an ineffective remedy in this case. She further claimed that she could not effectively challenge actions or omissions of the investigating authorities because she had not been duly informed of its progress during the five years that it had been under way. Furthermore, those complaints that she had lodged remained unanswered. The applicant also contended that the Government had not demonstrated that the remedies to which they had referred were effective and, in particular, were capable of leading to the identification and punishment of those responsible, as required by the Court's settled case-law in relation to complaints under Article 2 of the Convention.

#### B. The Court's assessment

54. 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).

55. The Court first notes, having regard to the Government's objection concerning the applicant's failure to complain of her husband's unlawful detention to the domestic authorities, that after Mr Sharani Askharov had been taken away by armed men, the applicant actively attempted to establish his whereabouts and applied to various official bodies, whereas the

authorities denied responsibility for the detention of the missing person. 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 court complaint of the unacknowledged detention of Mr Sharani Askharov 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 Mr Sharani Askharov and the identification and punishment of those responsible (see *Musayeva and Others v. Russia*, no. 74239/01, § 69, 26 July 2007). Accordingly, the Government's objection concerning non-exhaustion of domestic remedies must be rejected in this part.

56. As regards criminal law remedies, the Court observes that the applicant complained to the law enforcement authorities immediately after the abduction of Mr Sharani Askharov and that an investigation has been ongoing since 14 August 2001. The applicant and the Government dispute the effectiveness of this investigation.

57. The Court considers that this limb of the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation 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.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

58. The applicant complained under Article 2 of the Convention that her husband had disappeared after having been apprehended by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation into the matter. Article 2 reads:

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

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

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

## **A. Alleged violation of Sharani Askharov's right to life**

### *1. Arguments of the parties*

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

60. 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. In particular, no special operations were conducted in Serzhen-Yurt on the relevant date.

### *2. The Court's assessment*

#### **(a) General principles**

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

#### **(b) Establishment of the facts**

62. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, pp. 64-65, § 161, Series A no. 25).

63. The applicant maintained that it was beyond reasonable doubt that the men who had intruded into her home and taken away Mr Sharani

Askharov had been State agents. In support of her complaint she submitted that those men had spoken Russian without an accent, and had arrived very early in the morning, which indicated that they were able to circulate freely during the curfew. The applicant further referred to three witness statements to the effect that at the time of the events they had seen military vehicles, including APCs, and the armed men entering the applicant's house and then shoving Mr Sharani Askharov into one of the APCs. Furthermore, the applicant enclosed statements by Mr Yunus Askharov and Mr M. R., who were apprehended by the same men the same morning but released later. They confirmed that they had been put in an APC and driven for several hours. They had been released following an interrogation concerning Chechen rebel fighters.

64. The Government submitted that on 18 May 2001 unidentified men in camouflage and masks, armed with automatic weapons and accompanied by armoured vehicles had abducted Mr Sharani Askharov and seven other men. They further contended that the investigation into the incident was in progress, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicant's rights. They further argued that there was no convincing evidence that the applicant's husband was dead, given that his whereabouts had not been established and his body had not been found.

65. The Court notes that despite its repeated requests for a copy of the investigation file concerning the abduction of Mr Sharani Askharov, the Government have 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-... ).

66. In view of the foregoing 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 husband's abduction on 18 May 2001. She was herself an eyewitness to the events and relied on statements by her neighbours, who were also eyewitnesses to the events, collected by the applicant herself and by the investigation, 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 spoken Russian without an accent and used armoured military vehicles, which were not available to paramilitary groups. The applicant also referred to the fact that several other residents had been apprehended on that date and submitted statements by two of them who had subsequently been released. They confirmed that they had been out in an APC together with Mr Sharani

Askharov and then interrogated in relation to Chechen rebel fighters. In her applications to the authorities the applicant consistently maintained that her husband had been detained by unknown servicemen and requested the investigators to look into that possibility.

67. The Court finds that the fact that a large group of armed men in uniform, equipped with military vehicles and able to move freely through military roadblocks, proceeded to apprehend several persons at their homes in a town area strongly supports the applicant's allegation that these were State servicemen. The other detainees' accounts about the circumstances of their detention, questioning and release support this conclusion. The Court further notes that after seven years the domestic investigation had produced no tangible results.

68. 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 lack of the necessary documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

69. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that her husband 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 for the events in question, the Court considers that Mr Sharani Askharov was apprehended on 18 May 2001 at his house in Serzhen-Yurt by State servicemen during an unacknowledged security operation.

70. The Court further notes that there has been no reliable news of the applicant's husband since 18 May 2001. His name has not been found in the official records of any detention facilities. Lastly, the Government did not submit any explanation as to what had happened to him after his apprehension.

71. 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-... ), 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 Mr Sharani Askharov or any news of him for over seven years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of Mr Sharani Askharov's disappearance and the official investigation into his abduction, dragging on for seven years, has produced no tangible results.

72. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that on 18 May 2001 Mr Sharani Askharov was apprehended by State servicemen and that he must be presumed dead following his unacknowledged detention.

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

73. Article 2, which safeguards the right to life and sets out the circumstances in which 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 v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

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

75. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Mr Sharani Askharov.

**B. The alleged inadequacy of the investigation into the abduction**

*1. Arguments of the parties*

76. 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 it had been adjourned and reopened a number of times and thus the taking of the most basic steps had been protracted. The applicant argued that the fact that the investigation had been ongoing for such a long period of time without producing any known results was further proof of its ineffectiveness.

77. The Government claimed that the investigation of the disappearance of the applicant's husband 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

78. 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).

79. The Court notes at the outset that the documents from the investigation were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicant and the information about its progress presented by the Government.

80. Turning to the facts of the case, the Court notes that the authorities were made aware of the crime shortly after the events. Although the Government submitted that the prosecuting authorities had not received any complaints in this connection until August 2001, the Court notes that residents of Serzhen-Yurt had applied to the Shali VOVD requesting it to investigate the reasons for Mr Sharani Askharov's detention on 24 May 2001. A copy of the request provided to the Court contains a stamp of the Shali VOVD acknowledging the receipt of the document on the same date. However, the investigation was not opened until 15 October 2001, that is, almost five months later. This delay in itself was liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action has to be taken in the days immediately following the event.

81. On 20 October 2001 the applicant was granted victim status and questioned. However, it appears that after that a number of crucial steps

were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all.

82. In particular, the Court notes that Mr Yunus Askharov was questioned for the first time on 17 January 2005, that is, three and a half years after the events. Although the Government submitted that he had been summoned for questioning earlier but failed to appear, they provided no details of the earlier attempts to question him. It appears that Mr Z. Z., Mr T. Z. and Mr R. Z., who had been apprehended in the same circumstances, and Ms R. M., an eye-witness to the events, were also questioned only in 2005. Furthermore, the failure to question Mr M. R. and Mr M. S. appears attributable to the delay in taking the investigative measures. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced.

83. From the materials available to the Court it appears that a number of essential steps were never taken. Most notably, there is no information that there had ever been an inspection of the crime scene or of the place where five residents of Serzhen-Yurt apprehended by the same men on 18 May 2001 had been dumped. Apparently no meaningful efforts had been made to trace the APCs after they had left Serzhen-Yurt. Furthermore, it appears that no efforts were made to question the Shali military commander, who had allegedly told the applicant that her husband had been detained at the military commander's office for some time (see paragraph 23 above).

84. The Court observes that in the present case the investigating authorities not only did not comply with 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), but failed to take the most elementary investigative measures.

85. The Court also notes that even though the applicant was granted victim status, she was not informed of significant developments in the investigation apart from several decisions to suspend and resume it. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, and to safeguard the interests of the next of kin in the proceedings.

86. Finally, the Court notes that the investigation was adjourned and resumed several times. Such handling of the investigation could not but have had a negative impact on the prospects of identifying the perpetrators and establishing the fate of Mr Sharani Askharov.

87. Having regard to 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 in progress, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for many years having produced

no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection.

88. The Government also mentioned the possibility for the applicant to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. 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 of investigating authorities before a court. Furthermore, the investigation has been resumed by the prosecuting authorities themselves a number of times due to the need to take additional investigative measures. However, they still failed to investigate the applicant's allegations properly. Moreover, owing to the time that had elapsed since the events complained of, certain investigative steps that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Therefore, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection in this part also.

89. 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 of Mr Sharani Askharov, in breach of Article 2 under its procedural head. Accordingly, there has been a violation of Article 2 on this account also.

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

90. The applicant further relied on Article 3 of the Convention, submitting that her husband had most likely been tortured during his detention and that no effective investigation had been carried out on that account. The applicant also claimed that as a result of her husband's disappearance and the State's failure to investigate those events properly, she had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

91. The applicant argued that her allegations of a violation of Article 3 in respect of Mr Sharani Askharov were supported by the fact that other men detained on 18 May 2001 who had subsequently been released had sustained serious injuries as a result of torture. She claimed that the Government had failed to produce any evidence that could refute her allegations. The applicant also maintained her complaint that she herself had been subjected to treatment contrary to Article 3 of the Convention because

of the anguish and distress she had suffered as a result of her husband's disappearance.

92. The Government disagreed with these allegations and argued that the investigation had not established that Mr Sharani Askharov had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. The Government accepted that the applicant must have suffered as a result of her husband's disappearance. However, since the involvement of State agents into his abduction had not been established, the State could not be held responsible for her suffering.

#### **A. The alleged ill-treatment of the applicant's husband**

93. In so far as the applicant alleged ill-treatment of her husband upon arrest, 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*, cited above, pp. 64-65, § 161 *in fine*).

94. The Court has found it established that Mr Sharani Askharov was detained on 18 May 2001 by State agents. It has also found that, in view of all the known circumstances, he can be presumed dead and that the responsibility for his death lies with the State authorities (see paragraph 74 above). However, the exact way in which he died and whether he was subjected to ill-treatment while in detention have not been established. The Court takes note of statements by Mr Yunus Askharov and Mr M. R. that when the APCs stopped the detainees were beaten and tortured and the fact that they had suffered injuries as a consequence of the ill-treatment. However, they did not allege to have eye-witnessed Mr Sharani Askharov having been ill-treated. Therefore, the Court finds that on the basis of those statements it cannot establish beyond all reasonable doubt that the applicant's husband was subjected to treatment contrary to Article 3 of the Convention.

95. Accordingly, there has been no violation of Article 3 of the Convention in respect of Mr Sharani Askharov.

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

96. 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*, cited above, § 358 and *Imakayeva*, cited above, § 164).

97. In the present case the Court notes that the applicant is the wife of the disappeared man. She was an eyewitness to his apprehension. For more than seven years she has not had any news of him. During this period the applicant has applied to various official bodies with enquiries about her husband, 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 husband following his detention. The responses received by the applicant mostly denied that the State was responsible for his detention 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.

98. 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 husband 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.

99. 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

100. The applicant further stated that Mr Sharani Askharov 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.”

101. The applicant contended that her husband’s detention did not fall under any of the exceptions provided for by Article 5 § 1 of the Convention. Moreover, although he had been detained by State agents, she had never been provided with any information about his whereabouts and, therefore, his detention should be regarded as unacknowledged.

102. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Mr Sharani Askharov was detained by State agents.

103. 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).

104. The Court has found it established that Mr Sharani Askharov was detained by State servicemen on 18 May 2001 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

105. 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 husband had been apprehended 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.

106. Consequently, the Court finds that Mr Sharani Askharov 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

107. 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.”

108. The applicant contended that she had had recourse to the only potentially effective remedy, the criminal investigation. However, in her case it had proved to be ineffective, and the flaws of the investigation undermined the effectiveness of other remedies that might have existed.

109. The Government contended that the applicant had had effective domestic remedies, as required by Article 13 of the Convention, and that the Russian authorities had not prevented her from using those remedies. The investigation into her husband’s disappearance was still ongoing. At the same time the applicant had not applied to the domestic courts with either civil claims or complaints concerning actions of the agents of the law-enforcement bodies. The Government enclosed copies of the domestic courts’ decisions on claims for compensation for pecuniary and non-pecuniary damage caused by offences committed by Russian servicemen in the North Caucasus Region.

110. 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 *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 *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

111. 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 applicants should accordingly have been able to avail themselves 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.

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

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

114. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the complaint under Article 3 that Mr Sharani Askharov had been ill-treated following his apprehension by State agents, the Court notes that the complaint under Article 3 was found unsubstantiated in this part in paragraphs 94-95 above. In the absence of an "arguable claim" of a violation of a substantive Convention provision the Court finds that there has been no violation of Article 13 in this respect either.

115. As regards the violation of Article 3 of the Convention found on account of the applicant's mental suffering as a result of the disappearance of her husband, her inability to find out what had happened to him and the way the authorities had handled her complaints, the Court notes that it 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.

116. 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 on account of 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 38 § 1 (a) OF THE CONVENTION

117. 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 38 § 1 (a) of the Convention, which provides, in so far as relevant:

"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;

..."

118. 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.

119. The Government reiterated that the submission of the case file would be contrary to Article 161 of the Code of Criminal Procedure.

120. 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.

121. 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 those 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 as to 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).

122. The Court notes that despite its repeated requests for a copy of the investigation file opened into the disappearance of the applicant's husband, the Government refused to produce such a copy, having produced very few documents from the case-file. They invoked Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this reference insufficient to justify refusal (see, among other authorities, *Imakayeva*, cited above, § 123).

123. 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 Mr Sharani Askharov.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. 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

125. The applicant claimed that she had sustained damage in respect of the loss of her husband's earnings following his apprehension and subsequent disappearance. The applicant claimed a total of 233,788.81 roubles (RUR) under this head (approximately 6,440 euros (EUR)).

126. She claimed that Mr Sharani Askharov had been employed as a lorry driver. The applicant did not provide any documents to support the alleged amount of his wages. Having regard to the provisions of the Civil Code on calculations of lost earnings, she claimed that the amount of her husband's earnings should be equal to the average remuneration of a person with similar qualifications and could not be based on an amount lower than the subsistence level determined by federal laws. She submitted that she and her daughters were financially dependent on her husband and would have benefited from his financial support in the amount indicated above, that is, 70% of his earnings (30% for the applicant herself and 20% for each of their daughters). Her calculations were based on provisions of the Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("the Ogden tables").

127. The Government argued that no compensation for pecuniary damage should be awarded to the applicant since it was not established that her husband was dead. Furthermore, she should have applied to the domestic courts with a claim for compensation for damage caused by the death of the family's main breadwinner.

128. 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 husband 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 husband's alleged earnings. Nevertheless, the Court finds it reasonable to assume that the applicant's husband would eventually have had some earnings and that the applicant would have benefited from them. Having regard to the applicant's submissions, the Court awards her EUR 6,440 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

### **B. Non-pecuniary damage**

129. The applicant claimed EUR 80,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her husband, the indifference shown by the authorities towards him and the failure to provide any information about his fate.

130. The Government found the amount claimed exaggerated.

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

### **C. Costs and expenses**

132. The applicant was represented by the SRJI. She submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. She also claimed postal, administrative and

translation expenses in the amount of EUR 962,49. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 8,359.99.

133. The Government did not dispute the details of the calculations submitted by the applicant, but pointed out that they should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had been actually incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They objected, however, to the applicant's representatives' claim in the part related to the work of lawyers other than those whose names were on the power of attorney.

134. The Court has to establish first whether the costs and expenses indicated by the applicant were actually incurred and, second, whether they were necessary and reasonable (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

135. Having regard to the details of the information available, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation. It notes, however, that the case involved 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 applicant's representatives.

136. As regards the Government's objection, the Court notes that the applicant was represented by the SRJI. It is satisfied that the lawyers indicated in her claim formed part of the SRJI staff. Accordingly, the objection must be dismissed.

137. 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 7,000, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicant.

#### **D. Default interest**

138. 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 Sharani Askharov;
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 Sharani Askharov had disappeared;
4. *Holds* that there has been no violation of Article 3 of the Convention in respect of the alleged ill-treatment of the applicant's husband;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant on account of her mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Sharani Askharov;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that there has been no violation of Article 13 of the Convention as regards the alleged violation of Article 3 of the Convention in respect of Sharani Askharov;
9. *Holds* that no separate issues arise under Article 13 of the Convention as regards the alleged violation of Article 5 and as regards the alleged violation of Article 3 of the Convention in respect of the applicant;
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*
  - (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 6,440 (six thousand four hundred and forty 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 6,150 (six thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President