



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

FIRST SECTION

CASE OF DZHABAYEVA v. RUSSIA

(Application no. 13310/04)

JUDGMENT

STRASBOURG

2 April 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Dzhabayeva v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 13310/04) 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 Salimat Vakhayevna Dzhabayeva (“the applicant”), on 24 February 2004.

2. The applicant, who had been granted legal aid, was represented by Ms L. Khamzayeva, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. On 2 May 2007 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 12 March 2009 the Court dismissed the Government’s objection concerning the application of Article 29 § 3 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Urus-Martan.

6. The applicant's husband, Mr Magomed Uvaysovich Dzhabayev, was born in 1953. They resided together with their three children born in 1985, 1987 and 1994 at 50 Tobolskaya Street in Grozny (*Грозный, ул. Тобольская, д. 50*). However, on an unspecified date in 1999 the applicant with her three children temporarily moved to the neighbouring republic of Ingushetia where they stayed in the town of Karabulak in a camp for migrants from Chechnya.

A. Apprehension and subsequent disappearance of Mr Magomed Dzhabayev

1. The applicant's account

7. In her application form the applicant submitted that on 10 March 2000 Mr Dzhabayev had been apprehended by officers of the Oktyabrskiy Temporary Office of the Interior (VOVD) in the yard of his house at 50 Tobolskaya Street in Grozny. Subsequently he had been taken to the Oktyabrskiy VOVD, after which he was never seen again.

8. At the same time the applicant enclosed a copy of her application to the Chairman of the National Public Commission for Investigation of Offences and Protection of Human Rights in the North Caucasus of 25 August 2000 where she provided a detailed account of the circumstances of her husband's alleged detention and contended that he had been apprehended while queuing at a centre of distribution of foodstuffs. The application read as follows:

"I ... ask you for help in searching for my husband, the father of my children, Magomed Uvaysovich Dzhabayev, born in 1953, a resident of Grozny.

During the attack at Grozny and the military campaign my husband... stayed at home in Grozny at the address Oktyabrskiy district, Tobolskaya Street, 50, Apt. 1 (Okruzhnaya District). I saw him for the last time on 2 March 2000. He passed all the checks by the federal [forces] and was entitled to receive foodstuffs at the centre located at Saykhanova Street. On 10 March 2000 at 10 a.m. my husband ... went to the centre to receive foodstuffs, and there he saw [officers of federal forces] bullying a man. He came towards them, showed his passport and asked, what the man had done wrong. Having checked his papers, [the officers of federal forces] grabbed my husband and threatened him with execution. A woman who was also queuing at the centre rushed to their help, but [the officers of federal forces] threatened to execute her as well. After that [the officers of federal forces] took my husband and the other

man, [Mr T.], born in 1951 and handicapped. They took them to a destroyed house and started bullying them. They put machine guns on their necks, put glasses on them and took photos. [The officers] told them to stand like rebel fighters. Then they called somebody by portable radio transmitter and said that ... they were bringing two more [men]. After that they placed sacks on the head of my husband and [Mr T.] and started to beat and kick them..., they beat their heads against an armoured personnel-carrier and when they lost consciousness put them in [a military car] and drove to an unknown destination. According to a witness, they were officers of the Moskovskiy SOBR [Special Fast Deployment Team] together with officers of the Oktyabrskiy ROVD [*District Department of the Interior*]. I have witnesses to confirm these facts.

At the time I was not at home, I was in Ingushetia together with the children. On 11 March 2000 [Ms H.A.], the wife of [Mr T.] applied to the Military Commander's Office located at the railway hospital asking for assistance in searching for her husband. The Military Commander's Office ordered that she be taken to her husband. [Ms H.A.] was taken to the Oktyabrskiy ROVD, however, [upon arrival] she was told that neither [my husband] nor [Mr T.] were there. Then they arrested [Ms H.A.] and held her at the Oktyabrskiy ROVD until 6 p.m. When [Ms H.A.] began to make a fuss and call for the Head [of the ROVD], she heard her husband's voice from the adjacent room. They were in the Oktyabrskiy ROVD and my husband asked her to tell somebody that he had been taken away. On 11 March 2000 I came to Grozny and asked a relative, an officer of the Special Police Unit, to help with the search.

When we checked at the Oktyabrskiy ROVD they told us that [my husband and Mr T.] had been detained as a result of a passport check and had been released shortly afterwards at checkpoint no. 26. However, it appeared that checkpoint no. 26 did not exist. At the Oktyabrskiy ROVD my relative was also shown my husband's explanatory note that later disappeared. I checked all possible places my husband might have been detained, in vain. Since 11 March 2000 my husband... has been a missing person.

...I ask you to assist in the search for my husband..."

2. The Government's account

9. The Government submitted that an investigation into the disappearance of Mr Magomed Dzhabayev had been instituted. However, the circumstances in which he had disappeared had not yet been established since there were no eyewitnesses to the events in question.

B. The search for Mr Magomed Dzhabayev and the investigation

1. Information and documents submitted by the applicant

10. According to the applicant, following her husband's disappearance she had applied to various State authorities, including the Ministry of the Interior and Prosecutor's Office of the Chechen Republic, in order to initiate the search. However, the applicant did not enclose copies of her applications apart from the one quoted in paragraph 8 above.

11. On an unspecified date the Head of the Oktyabrskiy VOVD provided her with a certificate stating that between 10 and 12 March 2000 Mr Dzhabayev had not been taken to the premises of the VOVD.

12. On 7 November 2000 the Head of the Oktyabrskiy VOVD forwarded the case file concerning the applicant's application to the Head of the Karabulak Department of the Interior in order to gather information about the time and place of Mr Dzhabayev's apprehension and the existing witnesses. In the letter he noted that Mr Dzhabayev had not been taken to the Oktyabrskiy VOVD and no records of his detention had been retained.

13. On 18 December 2000 the Deputy Prosecutor of Grozny instituted criminal investigation file no. 12365 into abduction of Mr T. on 10 March 2000 by unknown persons dressed in camouflage.

14. On an unspecified date the applicant obtained the following certificate signed by investigator G. of the Grozny Prosecutor's Office, which was neither on a letterhead nor dated:

"On 10 March 2000 officers of the Oktyabrskiy VOVD of Grozny and servicemen of the Federal Forces, during a "sweeping" operation [*зачистка*], apprehended [Mr T.] and Magomed Uvaysovich Dzhabayev at their homes and took them to an unknown destination.

On 27 May 2000 Oktyabrskiy VOVD opened search file no. 017/00 concerning Magomed Uvaysovich Dzhabayev.

On 18 December 2000 the Grozny Prosecutor's Office instituted criminal investigation no. 12365 into [the abduction]. The whereabouts of the above-mentioned persons have not yet been established."

15. On 25 June 2001 assistant prosecutor B. of the Grozny Prosecutor's Office issued the applicant with a certificate stating that on 10 March 2000 unidentified persons in camouflage uniforms had apprehended Mr Magomed Dzhabayev and taken him to an unknown destination. The Grozny Prosecutor's Office instituted a criminal case in connection with the events.

16. On 19 July 2001 the applicant was granted victim status in case no. 12365.

17. The applicant provided copies of the documents referred to in paragraphs 11-16 above.

2. Information and documents submitted by the Government

18. The Government submitted the following information on the progress of the investigation.

19. On 20 September 2000 the Prosecutor's Office of the Chechen Republic received the applicant's application concerning the disappearance of her husband after he had allegedly been apprehended in the Oktyabrskiy district of Grozny on 10 March 2000 and then held at the Oktyabrskiy VOVD until 12 March 2000.

20. On 30 September 2000 the Prosecutor's Office of the Chechen Republic forwarded the application to the department of the Ministry of the Interior in the Chechen Republic to seek to organise a search for the applicant's husband.

21. On 4 November 2000 the Grozny Prosecutor's Office received Ms H.A.'s application, according to which on 10 March 2000 unidentified men dressed in camouflage had apprehended her husband, Mr T., and Mr Magomed Dzhabayev and had taken them to the Oktyabrskiy VOVD. At 11 a.m. on 10 March 2000 A.H. had come to the VOVD where she had also been detained and held until late evening. The next day she had come to the VOVD with warm clothes for her husband. However, they had told her that he had been released with Mr Magomed Dzhabayev on 10 March 2000. She had applied to the operative brigade in Mozdok, the military commander of the Oktyabrskiy district of Grozny and the military commander of the Chechen Republic. She had been told that her husband's name was not on the lists of detained persons.

22. On 12 December 2000 the applicant applied to the Karabulak Department of the Interior (GOVD) with a request for a search for her husband and Mr T. The application was sent back to the GOVD three times by the Prosecutor's Office of the Chechen Republic for lack of information required to place the persons concerned on the wanted list. On 12 July 2001 it was finally accepted by the Prosecutor's Office of the Chechen Republic and enclosed in the investigation file.

23. On 17 December 2000 the Oktyabrskiy VOVD handed the search case in respect of Mr T. over to the Grozny prosecutor.

24. According to the Government, on 18 December 2000 the Grozny Prosecutor's Office instituted criminal investigation no. 12365 into the abduction of the applicant's husband and Mr T. However, from a copy of the decision submitted to the Court it follows that the investigation was instituted only in respect of Mr T.

25. On 30 December 2001 the investigation file was transmitted to the Prosecutor's Office of the Chechen Republic.

26. On 17 January 2001 Ms H.A. was granted victim status and questioned. She submitted that on 10 March 2000 at 10 a.m., when she had gone to the market with her daughter, her husband, Mr T., and their neighbour, Mr Magomed Dzhabayev, had been apprehended by unidentified persons in camouflage uniforms and taken to the Oktyabrskiy VOVD. She had learned of the events from her neighbours. In the morning of 11 March 2000 she had gone to the VOVD together with the applicant and her neighbours. In the VOVD she had been told that neither Mr T. nor Mr Magomed Dzhabayev had been held there. On 15 May 2000 her relative residing in Nazran had told her that he had learned from a TV programme that her husband had been held in a remand prison in the village of

Chernokozovo. However, officials of the remand prison denied that Mr T. had been held there.

27. On 19 July 2001 the applicant was granted victim status and questioned. She submitted that at the end of 1999 she had left for the Republic of Ingushetia. On 11 March 2000 she had learned from her husband's relatives that he and his neighbour had been apprehended by servicemen and taken to the Oktyabrskiy VOVD. In the evening of 11 March 2000 Mr D., her husband's relative, after visiting the Oktyabrskiy VOVD, had stated that her husband had been held there and that he had been shown an "explanation" written by Mr Magomed Dzhabayev. The next day Mr D. had again gone to the VOVD where he had been told that Mr Magomed Dzhabayev had been released. Subsequently officers of the VOVD had refused to confirm the information concerning the detention of Mr Magomed Dzhabayev and Mr T. According to Mr T.'s wife, she knew that they had been apprehended by servicemen near the food distribution centre, beaten, put in a UAZ car and taken away. Mr H.A. herself and the applicant's neighbour, Ms Z., had witnessed the events. The next day Mr H.A. had come to the Oktyabrskiy VOVD where she had been placed in a solitary cell. There she had heard her husband's voice from the adjacent cell. Her husband had said that Mr Magomed Dzhabayev was also in the cell. Then Mr H.A. had been released. Ms Z. had moved and the applicant did not know her whereabouts.

28. In the course of the investigation it appeared impossible to identify Ms Z. and to establish her whereabouts in order to carry out investigative measures with her participation.

29. On 22 July 2001 the investigating authorities sent a request for information to the remand prison in Chernokozovo. According to the response, neither Mr T. nor Mr Magomed Dzhabayev had been held there.

30. On the same date the investigating authorities sent a request for information to the Oktyabrskiy VOVD concerning passport checks possibly conducted on 10 March 2000 in Tobolskaya street in Grozny. According to the response, no passport checks had been conducted. The whereabouts of Mr T. and Mr Magomed Dzhabayev were not established.

31. On 28 July 2001 the head of the Oktyabrskiy VOVD stated that Mr Magomed Dzhabayev had not been brought to the VOVD between 10 and 12 March 2000.

32. On 3 August 2001 the investigating authorities questioned Mr D., who submitted that he held the post of deputy head of the special police unit (OMON) in the Chechen Republic. On 12 March 2000 he had come to the Oktyabrskiy VOVD where he had met high-ranking officers of the VOVD whose names he could not recall. They had shown him an "explanation" by Mr Magomed Dzhabayev and stated that Mr T. and Mr Magomed Dzhabayev had been released on 11 March 2000. On the fourth day after Mr Magomed Dzhabayev's detention he had again come to the VOVD. He

had not found the names of Mr Magomed Dzhabayev and Mr T. in the VOVD register. At the same time he had been told that Mr Magomed Dzhabayev's "explanation" had been lost.

33. On 10 August 2001 a request to conduct operational-search measures aimed at identification of persons involved in the offence were sent to the Oktyabrskiy VOVD and the Oktyabrskiy District Department of the Interior (ROVD). According to the response, measures were being taken.

34. On 26 December 2001 a request was sent to the military commander of the Oktyabrskiy District of Grozny to provide information on Khanty-Mansiysk police officers deployed in Grozny in 2000-2001. A similar request was sent to the Oktyabrskiy VOVD.

35. On 30 December 2001 and 4 January 2002 instructions were sent to the prosecutor of the Khanty-Mansiysk district and the head of the Khanty-Mansiysk police to seize documents relating to the Khanty-Mansiysk police officers commissioned to Grozny in 2000-2001.

36. In January 2002 the investigating authorities questioned Mr Sadykov (*Sadykov v. Russia*, application no. 41840/02) and Mr K., who during a certain period in spring 2000 were held in one cell in the Oktyabrskiy VOVD.

37. On 8 and 21 January 2002 Mr Sadykov was questioned. He submitted that from 5 March to 24 May 2000 he had been held in the temporary detention centre of the Oktyabrskiy VOVD. On 10 March 2000 two men had been placed in the adjacent cell. At 9 or 10 p.m. on that date a woman had been placed in his cell. She had introduced herself as Ms H.A. and had stated that she had come to inquire after her husband, Mr T. She had stayed in the cell for three or four hours. She had talked to her husband through the wall. He had asked her to bring warm clothes and to look after their daughter. On 11 March 2000 police officers had entered the adjacent cell and started beating the detainees. In the morning of 12 March 2000 Mr Sadykov had been taken out of his cell. When he returned there was nobody in the adjacent cell.

38. On 21 January 2002 Mr K. was questioned. He submitted that from 10 March to 8 May 2000 he had been held in the temporary detention centre of the Oktyabrskiy VOVD. On 10 March 2000 two men had been placed in the adjacent cell. It was forbidden to talk to them. They [*he and Mr Sadykov*] had not found out their names. On the same date a woman had been placed in their cell. She had come to the VOVD to hand over her husband's documents. She had not said anything about herself, apart from that she lived in the village of Okruzhnoy in the Oktyabrskiy district. A man had called her from the adjacent cell and they had realised that it was her husband. Then the woman had been released. On 11 March 2000 police officers had entered the adjacent cell and had started beating the detainees. When the police officers left they had heard moaning from the cell. In the

morning of the next day he and Mr Sadykov had been taken out of their cell. In some five hours they had been placed in the cell where the two men had been previously held. However, they had been no longer there.

39. On 30 January 2002 the applicant was questioned. She confirmed her previous statement.

40. On the same date Ms H.A. was questioned. She submitted that on 10 March 2000 at 5.30 p.m. she had returned home and had learned that her husband, Mr T., had been apprehended by officers of the Oktyabrskiy VOVD dressed in camouflage uniform and masks. Mr Magomed Dzhabayev had been apprehended with him. She had gone immediately to the Oktyabrskiy VOVD where they had told her to come tomorrow. On 11 March 2002 she had gone again to the VOVD. They had let her in and then had placed her in a cell with two men. She had shouted to the officer on duty to let her out when she had heard her husband's voice from the adjacent cell where he had been held with Mr Magomed Dzhabayev. After approximately eight hours she had been released and had returned home. On 12 March 2002 she had been told at the VOVD that her husband had also been released. She did not state who had given her this information.

41. On 9 August 2002 the investigating authorities instructed the deputy prosecutor of the Khanty-Mansiysk District to question fifteen officers of the Khanty-Mansiysk police. Nine officers questioned submitted that the names of Mr Magomed Dzhabayev and Mr T. were unfamiliar to them.

42. On 18 November 2002 requests for information were sent to Departments of the Interior in the North-Caucasus Region. According to the replies, Mr Magomed Dzhabayev had not been charged with any criminal offences.

43. On 25 November 2002 a request to question and seize photographs of four officers of the Khanty-Mansiysk police was sent to the prosecutor of the Khanty-Mansiysk District.

44. On 16 January 2003 requests were sent to the prison authorities of the North Caucasus Region to inform whether Mr Magomed Dzhabayev and Mr T. had been held in custody. The replies were negative.

45. On 27 January 2003 a similar request was sent to the remand prison of the Federal Security Service (FSB) department in the Krasnodar Region and the penitentiary authority in the Stavropol Region. The replies were negative.

46. On the same date a request to establish the place of residence of Mr Magomed Dzhabayev's parents in Urus-Martan and to seize his photograph was sent to the prosecutor of the Urus-Martan District.

47. On 12 February 2002 M., an officer of the Khanty-Mansiysk police, was questioned. He submitted that since February to May 2000 he served as a doctor at the Oktyabrskiy VOVD, where he provided medical service to residents and persons placed in the temporary detention centre. He could not remember whether he had provided medical aid to Mr Magomed Dzhabayev

and Mr T. or whether they had been held at the detention centre. Mr D. had not applied with questions in respect of their whereabouts or any medical aid provided to them. M. did not know him.

48. From March to May 2003 a number of officers of the Khanty-Mansiysk police were questioned and Mr Magomed Dzhabayev's photograph was shown to them for identification. All officers questioned stated that the names of Mr Magomed Dzhabayev and Mr T. were unfamiliar to them and that they did not recognise Mr Magomed Dzhabayev. The Government did not disclose the names of the officers and designated them by capital letters. Since some letters were similar, it is not clear whether they referred to the same person or different persons. Likewise, it is unclear why their statements could have been relevant. They might have served at the Oktyabrskiy VOVD at the relevant time, however, no precise information has been provided in this respect.

49. On unspecified dates photographs of all officers of the Khanty-Mansiysk police commissioned to the Chechen Republic at the relevant time were seized.

50. On 21 February 2007 Mr Sadykov was again questioned. He submitted that in the morning of 10 March 2000, when he had been held at the temporary detention centre of the Oktyabrskiy VOVD, two men had been placed in the adjacent cell. One of them had been wearing a dark coat and the other a dark anorak. On 11 March 2000 at approximately 10 a.m. a woman was placed in the cell where he had been held with Mr K. The woman had said that she had been detained for having a document with the symbol of illegal armed groups. She had been held in the cell for about four hours. From the conversation between the woman and the man in the dark coat which they had had through the cell's wall Mr Sadykov had understood that they were spouses. The man had asked her why she had come. Then the woman had been released. Later Mr Sadykov met her at the Prosecutor's Office of the Chechen Republic where she came in connection with her husband's disappearance. On 11 March 2000 at approximately 11 p.m. to 12 midnight two men had entered Mr Sadykov's and Mr K.'s cell and had started beating Mr Sadykov. Then they had left, after which Mr Sadykov and Mr K. had heard screaming, moaning and swearing from the adjacent cell. The next morning, on 12 March 2000, he and Mr K. had been taken out of their cell and taken to an adjacent building of the VOVD for approximately six hours.

51. According to the Government, the investigation was repeatedly suspended and resumed due to the necessity to carry out additional investigative measures.

C. Proceedings before domestic courts

1. Proceedings to declare Mr Magomed Dzhabayev a missing person

52. On 18 April 2002 the Oktyabrskiy District Court of Grozny examined the applicant's application and declared Mr Magomed Dzhabayev a missing person. The court stated, in particular:

"The fact that Mr Dzhabayev has been missing from his place of residence for more than a year is corroborated by the evidence in the case. In particular, [the applicant's] neighbours [Ms Sh.] and [Ms I.] have stated that they have not seen [Mr Magomed Dzhabayev] at his place of residence since March 2000 and have no information concerning his whereabouts. However, on 10 March 2000 at around 10 a.m. they saw, in the street not far from their place of residence, Russian servicemen apprehending [Mr Magomed Dzhabayev] without giving any explanations. According to the certificate of 25 June 2001 of the Grozny Prosecutor's Office, on 10 March 2000 [Mr Magomed Dzhabayev] had been apprehended and taken to an unknown destination by unidentified persons in camouflage uniform and a criminal case was opened in connection with the events. From a certificate [issued by] an investigator of the Grozny Prosecutor's Office it follows that on 27 May 2000 the Oktyabskiy VOVD opened [a search file] no. 017/00 in connection with [Mr Magomed Dzhabayev's] apprehension.

The court has no reason to doubt the credibility of the witnesses' account of the facts."

2. Proceedings for compensation of non-pecuniary damage

53. On an unspecified date the applicant made a claim against the Ministry of Finance for compensation for non-pecuniary damage caused by the abduction of her husband by servicemen of the Russian Armed Forces.

54. On 7 February 2003 the Basmanniy District Court of Moscow refused to accept the claim for examination on account of lack of jurisdiction. The court noted that damage had been caused to the applicant by actions of servicemen and officers of the Office of the Interior located in Chechnya. Since under Article 28 of the Code of Civil Procedure a claim for damages should be brought before a court having territorial jurisdiction at the wrongdoer's location, the claim should be brought before a competent court in the Chechen Republic. The applicant appealed.

55. On 12 August 2003 the Moscow City Court quashed the ruling of 7 February 2003 and remitted the claim for a fresh examination. The court noted that the claim had been lodged against the Ministry of Finance, and under Articles 1069, 1070, 1071 of the Civil Code damage caused by unlawful actions of State authorities should be compensated at the expense of the State treasury represented by respective financial authorities.

56. On 29 August 2003 the Basmanniy District Court of Moscow stayed the proceedings concerning the applicant's claim, because she had not paid

the court fees. It ordered the applicant to pay the fees by 1 October 2003. The applicant lodged a complaint against the ruling, stating that the court should have exempted her from paying the fees due to the nature of her claim.

57. On 6 April 2004 the Moscow City Court upheld the ruling. The court held that Article 89 of the Code of Civil Procedure provided for exemption from court fees in respect of claims for pecuniary damage caused by an offence, whereas the applicant had claimed in respect of non-pecuniary damage.

58. On 8 April 2004 the Basmanniy District Court of Moscow dismissed the applicant's claim for damages. The court noted that, according to a certificate of an investigator of the Grozny Prosecutor's Office, enclosed in the case file, on 10 March 2000 officers of the Oktyabrskiy VOVD and servicemen of the federal forces, in the course of the counter-terrorist operation in the Chechen Republic, had apprehended Mr Magomed Dzhabayev at his home and taken him to an unknown destination. At the same time on 18 April 2002 the Oktyabrskiy District Court of Grozny established that Mr Magomed Dzhabayev had been apprehended by unidentified persons in camouflage uniform and an investigation was pending into these events. The court found that from the materials available it did not follow that there was any connection between the disappearance of Mr Magomed Dzhabayev and any allegedly unlawful actions by the State authorities.

D. The Court's request for the investigation file

59. Despite a specific request by the Court, the Government did not submit a copy of the investigation file into Mr Magomed Dzhabayev's disappearance. They submitted twenty pages of case file materials containing decisions to institute, suspend and resume the investigation. Ten of the twenty pages are unreadable due to the poor quality of the copies. The Government also submitted nine pages containing copies of court decisions in respect of the applicant's claims. They stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

61. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Mr Magomed Dzhabayev had not yet been completed.

62. The applicant contested that objection. She stated that the criminal investigation had proved to be ineffective and that their complaints to that effect, including the application to the court, had been futile.

B. The Court's assessment

63. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73-74, 12 October 2006).

64. The Court observes that the applicant complained to the law enforcement authorities after the abduction of her husband and that the criminal proceedings have been pending since 18 December 2000. The applicant and the Government dispute the effectiveness of the investigation into the complaint.

65. The Court considers that the Government's objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicant's complaint. Thus, it considers that the objection should be joined to the merits of the complaint and falls to be examined below under the substantive provisions of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

66. The applicant complained under Article 2 of the Convention that her husband 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. Arguments of the parties

67. The Government argued that the complaint was unfounded. They 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.

68. They noted in this regard a number of inconsistencies in the applicant’s submissions and submissions of witnesses questioned by the investigation and the absence of eyewitnesses to the events. In particular, the applicant, who had been in Ingushetia at the time of the events, at a certain point alleged that she had learned of her husband’s abduction from Ms H.A., who had witnessed it. However, Ms H.A. submitted to the investigation that she had not witnessed the events but had learned about them from her neighbours. The applicant then submitted that her neighbour Ms Z. had witnessed the events. However, Ms Z. has since changed her place of residence and the applicant provided no information apart from her first name, which made it impossible to find her. The submissions of Mr D., Mr Magomed Dzhabayev’s relative, who had allegedly been told that Mr T. and Mr Magomed Dzhabayev had been held at the Oktyabrskiy VOVD and had been shown an “explanation” by the latter should be given no credit at all. Firstly, he provided no details as to who had given him such information and had shown the “explanation”. Furthermore, being a police officer himself, he should have filed an official report concerning his relative’s allegedly unlawful detention, which he had not done. Finally, the Government pointed out that submissions of Ms H.A., Mr Sadykov and Mr K. were inconsistent as to the exact date, 10 or 11 March 2000, and the time of day when Ms H.A. had been placed in the Oktyabrskiy VOVD and had allegedly talked to her husband, Mr T., in the adjacent cell.

69. The Government also contested the authenticity of the certificate signed by investigator G., since it was not issued on a letterhead and was undated, thus failing to meet the requirements for official documents. Furthermore, its content did not correspond to the findings of the investigation. Likewise, the Government contested the validity of the certificate of 25 June 2001 issued by assistant prosecutor B. of the Grozny

Prosecutor's Office. According to them, its content did not correspond to the findings of the investigation either and furthermore assistant prosecutor B. was not involved in the investigation.

70. The Government also claimed that the investigation of the disappearance of the applicant's husband met the Convention requirement of effectiveness, as evidenced by the questioning of witnesses and requests sent by the investigating authorities to other State agencies. They also pointed out that the delay in institution of the investigation was attributable to the applicant, since it took her several months to inform the competent authorities of her husband's abduction.

71. The applicant maintained her complaint and contended that statements of witnesses questioned in the course of the investigation corroborated the fact that her husband together with Mr T. had been detained in the Oktyabskiy VOVD. The absence of any traces of them strongly suggests that they were killed there. She further argued that the investigation had not met the requirements of effectiveness and adequacy required by the Court's case-law on Article 2. She submitted that she could not have notified the competent authorities of the events sooner, since as she had been living in Ingushetia at the relevant time and had had difficulties in contacting authorities in the Chechen Republic.

B. The Court's assessment

1. Admissibility

72. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 65 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Mr Magomed Dzhabayev

i. General principles

73. 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).

ii. Establishment of the facts

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

75. The applicant alleged that on 10 March 2002 her husband, Mr Magomed Dzhabayev, had been apprehended by Russian servicemen and then disappeared. She was not an eyewitness to the events since at the relevant time she was living in Ingushetia. The applicant submitted no witness statements either. She enclosed copies of two certificates of the Grozny Prosecutor's Office to the effect that her husband had been abducted on 10 March 2002. The applicant also submitted a copy of the decision of the Oktyabrskiy District Court of Grozny of 18 April 2002 which referred to statements of two witnesses corroborating that her husband had been apprehended by Russian servicemen on 10 March 2000.

76. The Government denied that servicemen had been involved in the abduction of Mr Magomed Dzhabayev. They referred to the absence of conclusions from the ongoing investigation and the inconsistencies in the applicant's and other witnesses' statements. They also contested the validity of the certificates submitted by the applicant.

77. The Court observes that the applicant's submissions are indeed inconsistent. In her application form she stated that her husband had been apprehended in the yard of his house. However, at the same time she enclosed a copy of her application to the Chairman of the National Public Commission for Investigation of Offences and Protection of Human Rights in the North Caucasus of 25 August 2000 where she stated that her husband had been apprehended while queuing for foodstuffs. Furthermore, not being an eyewitness of the events herself, she failed to provide any coherent explanation as to from whom exactly and in what circumstances she had

learned about her husband's alleged abduction. Moreover, the applicant provided no evidence to support her allegation that, when Ms H.A. had come to the Oktyabskiy VOVD to search for her husband, Mr T., it had been Mr Magomed Dzhabayev and not somebody else held in the same cell as Mr T.

78. As regards the Government's submissions, the Court notes in the first place that despite its repeated requests for a copy of the investigation file into the abduction of Mr Magomed Dzhabayev, apart from twenty pages of copies of procedural decisions, of which ten are unreadable, the Government have produced no documents from the case file, relying on 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)).

79. In view of the Government's failure to provide any documents corroborating their account of the witnesses' statements made in the course of the investigation, the Court doubts whether any weight would be attached to them for the purposes of establishment of the facts. However, even proceeding from the assumption of the accuracy of the Government's account, the Court observes, firstly, that none of the persons questioned had been eyewitnesses to the alleged abduction of Mr Magomed Dzhabayev. Secondly, Mr D.'s submissions were too vague to be regarded as credible evidence. Thirdly, no witnesses made statements from which it would unequivocally follow that the other man held in the same cell as Mr T., Ms H.A.'s husband, was Mr Magomed Dzhabayev. In view of the latter the Court does not find it necessary to address the Government's submissions concerning the inconsistencies in Ms H.A.'s, Mr Sadykov's and Mr K.'s statements.

80. As regards the certificates adduced by the applicant, the Court finds no reason to doubt the authenticity of the certificate of 25 June 2001. As regards the undated certificate issued by investigator G. (see paragraph 14 above), the Court notes that, although it is not issued on a letterhead, it bears the stamp of the Grozny Prosecutor's Office. Furthermore, it is not alleged that investigator G. lacked the authority to issue such a certificate and it appears that the Oktyabrskiy District Court of Grozny in its decision of 18 April 2002 and the Basmanniy District Court of Moscow in its decision of 8 April 2004 relied on this certificate among other evidence. Accordingly, the Court finds no reason to doubt that the information set out in the certificate reflected interim findings of the investigation.

81. The Court further observes that in its decision of 18 April 2002 to declare Mr Magomed Dzhabayev a missing person the Oktyabrskiy District Court of Grozny relied, apart from the certificates of the Grozny Prosecutor's Office discussed above, on witnesses' statements. In particular, the district court noted that Ms Sh. and Ms I., the applicant's neighbours,

stated that they had seen Mr Magomed Dzhabayev being apprehended by Russian servicemen on 10 March 2000 at around 10 a.m. The district court further found that it had no reasons to doubt the credibility of the witnesses' account of the facts.

82. The Court observes that witnesses Ms Sh. and Ms I. were not mentioned in the Government's account of the investigation. There is no evidence that they were questioned or that any efforts were made in that respect by the investigative authorities. Taking into account that after over eight years the domestic investigation has produced no tangible results and since the Court has not been provided with any evidence that would enable it to depart from the findings of the domestic court in this respect, the Court finds it established that Mr Magomed Dzhabayev was apprehended by servicemen on 10 March 2000 in Grozny.

83. The Court further notes that there has been no reliable news of Mr Magomed Dzhabayev since that date. His name has not been found in the official records of any detention facilities. The Court finds that the applicant's allegations that after his apprehension he was held in the Oktyabskiy VOVD are not corroborated by any credible evidence. At the same time it notes that the Government did not submit any explanation as to what had happened to him after he was apprehended.

84. 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 Mr Magomed Dzhabayev or any news of him for over eight years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of Mr Magomed Dzhabayev's disappearance and the official investigation into his abduction, which has gone on for over eight years, has produced no tangible results.

85. Accordingly, the Court finds it established that on 10 March 2000 Mr Magomed Dzhabayev was apprehended by State servicemen and that he must be presumed dead following his unacknowledged detention.

iii. The State's compliance with Article 2

86. 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 v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

87. The Court has already found 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, or otherwise accounting for his death, it follows that responsibility for his presumed death is attributable to the respondent Government.

88. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Mr Magomed Dzhabayev.

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

89. 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, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, 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).

90. The Court notes at the outset that most of 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 parties and the information about its progress presented by the Government.

91. Turning to the facts of the present case, the Court notes that it has inconsistent information as to when the authorities were notified of the offence by the applicant and when they took the first steps in this connection. According to the Government, the Prosecutor's Office of the Chechen Republic was first notified of the events by the application received on 20 September 2000, following which certain steps were taken to

organize the search for Mr Magomed Dzhabayev. A criminal investigation was opened on 18 December 2000. However, from the decision to institute the investigation it follows that it concerned only the disappearance of Mr T. It appears that the episode concerning the disappearance of Mr Magomed Dzhabayev was joined to the proceedings later, but before 19 July 2001, when the applicant was granted victim status. According to the applicant, she could not have notified the authorities sooner because at the relevant time she was living in Ingushetia and contacting authorities in Chechnya was difficult. At the same time from the materials of the case it follows that on 27 May 2000 the Oktyabskiy VOVD opened a search file in respect of Mr Magomed Dzhabayev.

92. The Court observes in this regard that although the applicant was living in Ingushetia at the relevant time, it was open to her to contact the prosecuting authorities in the Chechen Republic by post or to submit the information via competent authorities in Ingushetia, which she appears to have done eventually (see paragraphs 12 and 19 above). Accordingly, the Court considers that the delay in taking promptly the initial steps aimed at establishing the whereabouts of her husband is attributable to the applicant. At the same time it notes that a criminal investigation into Mr Magomed Dzhabayev's disappearance was instituted several months after the prosecuting authorities had been notified of the events. The Government has provided no explanation for this delay.

93. The Court further notes that after the institution of the investigation the authorities questioned a number of witnesses and sent numerous requests to other State bodies. However, a number of investigative actions were significantly delayed. In particular, while Ms H.A. was first questioned on 17 January 2001, the applicant was questioned for the first time on 19 July 2001, that is approximately a year after the authorities had been notified of her husband's abduction. Likewise, the first requests for information were sent in July 2001. Mr D. was questioned in August 2001, Mr Sadykov and Mr K. were first questioned only in January 2002 and several officers of the Khanty-Mansiysk OMON were first questioned in August 2002, whereas Mr Magomed Dzhabayev's photograph was first produced to them for identification in March-May 2003.

94. It is obvious that these investigative 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. Such 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).

95. Furthermore, certain crucial steps were not taken at all. In particular, the Court has no information that any efforts were made to question Ms Sh. and Ms I., whose statements were relied upon by the Oktyabskiy District Court of Grozny in its decision of 18 April 2002. The Court considers it to be a most serious failure, especially in the absence of other eyewitnesses to Mr Magomed Dzhabayev's abduction.

96. The Court also notes that even though the first applicant was granted victim status, she was only informed of certain decisions to suspend and resume the investigation. It appears that she was not informed of any other significant developments. 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.

97. Finally, the Court notes that the investigation was adjourned and resumed several times and that there were lengthy periods of inactivity of the district prosecutor's office when no proceedings were pending, in particular, between May 2003 and February 2007. This manner of conducting the investigation could only be detrimental to the prospects of establishing the fate of the applicant's husband and ensuring the accountability of those responsible for his abduction.

98. Having regard to the Government's preliminary objection that was joined to the merits of the complaint, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for many years and has produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection in this part.

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

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

100. The applicant relied on Article 3 of the Convention, submitting that as a result of her husband's disappearance and the State's failure to investigate it properly, she had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

101. The Government submitted that the investigation had not established that the applicant had been subjected to treatment contrary to Article 3 of the Convention.

102. The applicant maintained her complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

104. 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).

105. In the present case the Court notes that the applicant is the wife of Mr Magomed Dzhabayev. Although the applicant was not an eyewitness to his apprehension and delayed her application to the appropriate authorities in connection with his disappearance, the Court considers that, in the circumstances of the present case, she nevertheless can claim to be a victim of the alleged violation. In particular, she constituted immediate family of the disappeared person. For more than eight years she has not had any news of him. During this period she has applied, albeit with an initial delay, 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 abduction. The responses received by her mostly denied that the State was responsible for his detention or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

106. In view of the above, the Court finds that the applicant suffered 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.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

108. The applicant further stated that Mr Magomed Dzhabayev 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.”

A. The parties' submissions

109. In the Government's opinion, no evidence was obtained by the investigators to confirm that Mr Magomed Dzhabayev had been deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention.

110. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

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

113. The Court has found it established that Mr Magomed Dzhabayev was apprehended by State servicemen on 10 March 2000 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and no official trace of his subsequent whereabouts or fate exists. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

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

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

116. The applicant complained that she had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties’ submissions

117. The Government contended that the applicant had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them.

118. The applicant reiterated the complaint.

B. The Court’s assessment

1. *Admissibility*

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

2. *Merits*

120. The Court reiterates that 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. According to the Court’s settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the

Convention (see, among many other authorities, *Halford v. the United Kingdom*, judgment of 25 June 1997, § 64, *Reports* 1997-III).

121. As regards the complaint of a lack of effective remedies in respect of the applicant's complaint under Article 2, the Court emphasises that, 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).

122. In view of the Court's above findings with regard to Article 2, this complaint is clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The applicant should accordingly have been able to avail 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.

123. 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.

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

125. 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.

126. As regards the applicant's reference to Article 5 of the Convention, the Court reiterates 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 as a result 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

127. The applicant alleged that the circumstances of the present case gave rise to a violation of Articles 6, 9, 10 and 12 of the Convention, Articles 1 and 2 of Protocol No. 1 and Article 2 of Protocol No. 4 in respect of her husband, of Article 12 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 in respect of herself and of Articles 1 and 2 of Protocol No. 1 and Article 2 of Protocol No. 4 in respect of her children.

128. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols other than those examined above. Accordingly, these complaints must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. 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

130. The applicant claimed that she had sustained damage in respect of the loss of her husband’s earnings following his apprehension and subsequent disappearance. She claimed a total of 84,000 euros (EUR).

131. She claimed that Mr Magomed Dzhabayev had been an entrepreneur and earned EUR 1,000 per month. He had been the only breadwinner since the applicant, a housewife, looked after the children. After her husband’s disappearance she was left with three children and no financial support. The applicant did not provide any documents to corroborate the alleged amount of her husband’s earnings.

132. 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, the applicant failed to submit any

documents not only corroborating the amount of her husband's earnings, but even his registration as an entrepreneur.

133. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants 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".

134. 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. Although the applicant did not furnish any documents to corroborate the amount of her husband's alleged earnings, the Court finds it reasonable to assume that her husband would eventually have had some earnings and that she would have benefited from them. Having regard to the applicant's submissions, the Court awards her EUR 5,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

135. The applicant claimed the following amounts in respect of non-pecuniary damage: EUR 100,000 on account of the violation of Article 2 of the Convention in respect of her husband; EUR 25,000 on account of 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; and EUR 25,000 on account of the violation of Article 5 of the Convention in respect of her husband.

136. The Government found the amounts claimed exaggerated.

137. 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 a 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 to the applicant EUR 35,000, plus any tax that may be chargeable thereon.

B. Costs and expenses

138. The applicant has made no claim for the compensation of costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

139. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Mr Magomed Dzhabayev;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Mr Magomed Dzhabayev had disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Mr Magomed Dzhabayev;
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 no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds*
 - (a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of pecuniary damage;
 - (ii) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate

applicable at the date of settlement, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President