



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

1959 · 50 · 2009

FIRST SECTION

CASE OF KHASUYEVA v. RUSSIA

(Application no. 28159/03)

JUDGMENT

STRASBOURG

11 June 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Khasuyeva v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 28159/03) 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, Mrs Zura Abdullayevna Khasuyeva (“the applicant”), on 29 July 2003.

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 their Agent, Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their new representative, Mr G. Matyushkin.

3. The applicant alleged that her son had disappeared after being detained by servicemen in Chechnya on 30 August 2001. She complained under Articles 2, 3, 5 and 13.

4. By a decision of 25 September 2008, the Court declared the application partially admissible.

5. The President of the Chamber acceded to the Government’s request not to make publicly accessible the documents from the criminal investigation file deposited with the Registry in connection with the application (Rule 33 of Rules of Court).

6. 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

7. The applicant was born in 1955 and lives in Urus-Martan. The applicant is the mother of Abu Khasuyev, who was born in 1978.

A. The disappearance of the applicant's son

1. General background information

8. At the material time the applicant lived with her son, Abu Khasuyev, his wife and his minor daughter. Abu Khasuyev worked as a physical training teacher. The family lived in a flat in a two-storey block of flats at 20 Sovetskaya Street, Urus-Martan, Chechnya. The applicant submitted a copy of Abu Khasuyev's passport with the official registration of his domicile at 20 Sovetskaya Street in Urus-Martan. According to the applicant, houses in the street were renumbered at some point later, after the events, and their address was changed to 18 Sovetskaya Street. According to the Government, at the material time the applicant and her family resided at 18 Sovetskaya Street.

9. The Russian federal forces had had full control over the town of Urus-Martan since December 1999. Numerous military units were stationed in the town and on its outskirts. The various public bodies, including the town administration, the district military commander's office and law enforcement agencies, were functioning properly.

10. In August 2001 the federal military authorities placed further checkpoints around the town to ensure that all transport going into or out of Urus-Martan passed through those checkpoints.

11. At the time of the events described below one of the checkpoints was located just across the street from the applicant's block of flats. In the vicinity of the applicant's building there was another checkpoint of the Russian military forces, the town administration and the Urus-Martan district department of the interior (the ROVD). Several police officers stood watch on the roof of the ROVD round the clock. According to the applicant, her house could be clearly seen from the rooftop. The applicant produced a photograph of her street and indicated the location of the checkpoints and the respective administrative buildings.

2. Information submitted by the applicant

12. According to the applicant, on 30 August 2001 she was at work. Her son was at home. He was sick and was staying in bed with an intravenous

drip. His wife, daughter, and one of the applicant's sisters were also at home.

13. Around 1 p.m. the applicant's daughter-in-law was about to leave for a local food market. When she opened the door a group of about ten men in camouflage uniforms rushed into the flat. They had machine guns and sniper rifles with silencers ("*vintorez*"). They spoke unaccented Russian. All but two of them were wearing masks. Those without masks were fair-haired, blue-eyed and had a Slavic appearance. The applicant's relatives thought that the intruders were Russian military servicemen.

14. The intruders did not produce identity papers or any documents to justify their actions, gave no explanations, and quickly searched the flat.

15. The applicant's sister lost consciousness at the sight of the men. The men pointed their machine guns at the applicant's daughter-in-law and her three-month-old daughter. The applicant's daughter-in-law heard the intruders enter Abu Khasuyev's room and order him to lie on the floor. After that she saw the intruders taking her husband outside. He was barefoot, a T-shirt which he was wearing was pulled over his head and his hands were behind his head.

16. The applicant's daughter-in-law asked one of the men without masks why they were arresting Abu Khasuyev and where they were taking him. In response the officer asked her what relation she was to the arrested person, his wife or sister. The applicant's daughter-in-law replied that she was Abu Khasuyev's wife, and the man ordered the others not to let her out and to block the flat door. After that they left. The applicant's daughter-in-law managed to run out into the entrance hall of the block of flats. The intruders then blocked the hall's entrance door from the outside; the applicant's daughter-in-law could not get out and started screaming.

17. The men took Abu Khasuyev outside and forced him into a white VAZ-2107 ("*Zhiguli*") car parked next to the block of flats, a few metres from the checkpoint. According to eyewitnesses, the officers who were on duty at the checkpoint saw what was happening, but made no attempt to interfere. Two intruders placed Abu Khasuyev between them, and another one ordered the driver to go to "the base". One of the intruders stood next to the car, pointing his gun at the gathering crowd, and ordering them to keep away. He shouted that the detainee had a grenade.

18. When the applicant's daughter-in-law managed to get outside she ran to the white VAZ-2107 car and saw her husband in the car with his hands tied behind his head. He had no grenade. A red VAZ-2121 ("*Niva*") car with a man in military uniform and a UAZ vehicle ("*Tabletka*") with several masked men in camouflage uniforms were parked nearby. All the vehicles had tinted windows and no registration plates. The vehicles then left in a northerly direction.

19. The applicant has had no news of her son since 30 August 2001.

20. In support of her statement concerning the circumstances of Abu Khasuyev's abduction the applicant submitted the following documents: a statement by Mrs R.Zh. dated 8 June 2004; a statement by Mrs A.E. dated 14 July 2004; a statement by Mrs A.Kh. dated 20 July 2004; a statement by herself dated 3 July 2005 and a statement by Mr R.D. dated 18 July 2005.

3. Information submitted by the Government

21. The Government did not challenge most of the facts as presented by the applicant. They stated that it had been established that "on 30 August 2001, at about 1 p.m., unidentified persons in camouflage uniforms and masks, armed with automatic weapons, abducted A. Kh. Khasuyev from 18 Sovetskaya Street in the town of Urus-Martan, Chechnya".

B. The applicant's search for Abu Khasuyev

22. Immediately after Abu Khasuyev's abduction, the applicant's daughter-in-law found the applicant and informed her about the events.

23. On 30 August 2001 the applicant went to the ROVD and submitted a written complaint about her son's abduction to the head of the ROVD. The officer told her that he was unaware that her son had been taken away.

24. On the same date the applicant went to the military commander's office; a duty officer informed her that the military commander was away.

25. On 31 August 2001 the applicant requested in writing that the military commander, the head of the ROVD, and the head of the Urus-Martan administration assist her in establishing her son's whereabouts.

26. On 1 September 2001 the applicant spoke to the military commander, General Gadzhiyev. He told her that he had been away from Urus-Martan on 30 August 2001, was unaware of the incident, and invited her to come again on 3 September 2001.

27. On 3 September 2001 the applicant again met Mr Gadzhiyev and enquired about her son. The military commander asked her whether she was talking about someone from the two-storey block of flats. The applicant answered in the affirmative and then Mr Gadzhiyev told her that the person in question was not detained in the military commander's office and had probably been taken to the Chernokozovo detention centre.

28. On the following day the applicant went to Chernokozovo and spoke with the head of the detention centre, who informed her that Abu Khasuyev was not listed among the detainees.

29. On 20 September 2001 the applicant spoke with the deputy head of the Chechnya Department of the Federal Security Service (the FSB) who assured her that they had not arrested her son and that they were unaware of his whereabouts. He also stated that it was difficult to find out who had detained Abu Khasuyev, as there were a lot of different military units in Urus-Martan.

30. Since then the applicant has repeatedly applied in person and in writing to various public bodies, including prosecutors of various levels, administrative authorities of Chechnya, the ROVD, the Urus-Martan military commander, the Chechnya FSB, the Special Envoy of the Russian President in the Chechen Republic for Rights and Freedoms, a deputy of the State Duma, and the Russian President. She has also addressed herself to the OSCE and various NGOs, including Memorial and the International Committee of the Red Cross. In her letters to the authorities the applicant referred to the circumstances of her son's abduction and asked for assistance and details of the investigation. She also stated that her son was a school teacher and had never participated in illegal armed groups. Those enquiries mostly remained unanswered, or only formal responses were given by which the respective requests were forwarded to various prosecutors' offices "for examination".

31. According to the applicant, she and her daughter-in-law also participated in examinations of unidentified corpses found in Chechnya.

C. The official investigation into the disappearance of Abu Khasuyev

1. Information submitted by the applicant

32. At some point in October 2001 an investigator from the ROVD visited the applicant's home and informed her that a search for her son had commenced on 10 October 2001. Then the investigator questioned the applicant, her daughter-in-law and one of the neighbours. According to the applicant, the questions related mostly to Abu Khasuyev's personality rather than to the circumstances of his disappearance.

33. Some time later in October 2001 the applicant was summoned to the ROVD; an investigator, who introduced himself as Sasha, told her that her son was dead. In reply to the applicant's request for proof, the investigator referred to a certain register in which there was an entry to this effect. Some time later she spoke to an officer from the ROVD, who showed her the register and read out from it that "Khasuyev had been killed". During the ensuing conversation the applicant found out that the investigator had mistakenly been referring to another person. After that the investigator assured her that the search for her son would be continued.

34. On 29 October 2001 the Chechnya FSB informed the applicant that they had not detained Abu Khasuyev, and that they were unable to establish his whereabouts.

35. On 12 November 2001 the military prosecutor of the North Caucasus Military Circuit forwarded the applicant's complaint about her son's abduction to the military prosecutor of military unit no. 20102.

36. On 22 December 2001 the Urus-Martan district prosecutor's office (the Urus-Martan prosecutor's office) opened a criminal investigation into

Abu Khasuyev's disappearance under Article 126 § 1 of the Criminal Code (kidnapping). The file was assigned no. 25170.

37. On 9 January 2002 the applicant was granted victim status in the criminal case.

38. On 22 February 2002 the investigators suspended the investigation in the criminal case for failure to establish the identity of the perpetrators. The applicant was informed about this decision on 3 December 2002 (see paragraph 42 below).

39. On 18 April 2002 the Department of Administration of Punishments of the Volgograd Region informed the applicant that Abu Khasuyev had not been detained in their pre-trial detention centres or penitentiary facilities.

40. On 1 July 2002 the Chechnya representative in the State Duma referred the applicant's complaint that her son had been abducted to the Chechnya prosecutor's office.

41. On 2 October 2002 the Department of the Prosecutor General's office in the Southern Federal Circuit forwarded the applicant's request for assistance in establishing Abu Khasuyev's whereabouts to the Chechnya prosecutor's office for examination.

42. On 3 December 2002 the Chechnya prosecutor's office informed the applicant that the criminal investigation had been suspended on 22 February 2002, then resumed on 20 November 2002, and that it was currently in progress.

43. On 24 March 2003 (in the submitted documents the date is also given as 25 March 2003) the Urus-Martan prosecutor's office suspended the investigation in the criminal case for failure to establish the identity of the perpetrators. The applicant was not informed about this decision.

44. On 5 April 2003 the military prosecutor of the United Group Alignment (the UGA) forwarded the applicant's complaint that her son had been abducted to the military prosecutor of military unit no. 20102. On 16 and 22 May 2003 the latter informed the applicant that "[her] request did not contain any information concerning the involvement of military personnel in the abduction of Abu Khasuyev".

45. On 2 September 2003 the applicant complained to the Urus-Martan district prosecutor that her son had been abducted. In her letter she stated that Abu Khasuyev had been abducted by representatives of law-enforcement agencies, who had arrived in a red VAZ-2121 car and a white VAZ-2107 car with blackened windows and without registration numbers and that her son had been taken away in the white car. Further, the applicant complained that the officers from the military commander's office who had been on duty that day had failed to stop the abductors. The applicant pointed out that she had spoken with the military commander General Gadzhiyev, who had told her that her son had probably been taken to the Chernokozovo detention centre. No response was given to this complaint.

46. On 4 October 2003 the investigation in the criminal case was suspended for failure to establish the identity of the perpetrators.

47. On 20 January 2004 the investigators informed the applicant that on 4 October 2003 they had suspended the investigation in the criminal case.

48. On 27 April 2004 the Urus-Martan prosecutor's office rejected the applicant's request for access to the investigation file, stating that access could be granted only upon completion of the criminal investigation.

49. On 7 June 2004 the investigators informed the applicant that they had suspended the investigation in the criminal case owing to the expiration of the time-limits and failure to establish the identity of the perpetrators.

50. On 7 August 2004 the applicant requested the Urus-Martan prosecutor's office to inform her about the progress of the investigation in the criminal case. No response was given to this request.

51. On 15 August 2004 the Urus-Martan prosecutor's office resumed the investigation in criminal case no. 25170. The applicant was informed about the decision on the same date.

52. On 3 December 2004 the applicant requested the Urus-Martan prosecutor's office to inform her of progress in case no. 25170; to question the officers who had been manning the checkpoint located in the vicinity of the applicant's house and to resume the investigation. No response was given to this request.

53. On 15 June 2004 the applicant complained to the Urus-Martan Town Court ("Town Court") that the investigation in the criminal case was ineffective. She requested the court to order the prosecutor's office to resume the criminal investigation, carry it out in a thorough and effective manner, take necessary investigative measures, and authorise her access to the investigation file.

54. On 16 June 2005 the applicant complained to the Urus-Martan district prosecutor that her son had been abducted by servicemen of the Urus-Martan power structures (*силовых структур*). In her letter she pointed out that employees of the Urus-Martan district military commander's office had witnessed the abduction as they had been on watch duty in close proximity to her house. The applicant pointed out that she had already submitted her account to this effect to the investigative authorities but the latter had failed to establish the whereabouts of her abducted son. The applicant complained about the lack of information concerning the investigation and requested to be informed in writing of what measures were being taken by the prosecutor's office. No response was given to this complaint.

55. On 29 June 2004 the Town Court allowed the applicant's complaint in part and ordered the prosecutor's office to carry out a thorough and effective investigation. As regards the request for access to the investigation file, the court stated that the investigation was still pending and therefore the

applicant had no right of access to the file. On 17 August 2004 the Chechnya Supreme Court upheld this decision on appeal.

56. On 15 September 2004 the investigators suspended the investigation in the criminal case for failure to establish the identity of the perpetrators. The applicant was informed about the decision on the same date.

57. On 21 October 2005 the applicant again complained to the Urus-Martán prosecutor's office. She stated that she had not received any response to her request of 16 June 2005 and pointed out that the lack of information concerning the criminal proceedings precluded her from appealing against the actions of the prosecutor's office, which had been procrastinating in the investigation. The applicant requested to be informed about the progress of the investigation and asked the authorities to resume the investigation in the criminal case. No response was given to this complaint.

58. On 25 October 2005 the Urus-Martán prosecutor's office resumed the investigation in the criminal case owing to "the need to carry out a number of investigative actions aimed at solving the crime". The applicant was informed about this decision on the same date.

59. On 25 November 2005 the investigation in the criminal case was suspended for failure to establish the identity of the perpetrators. The applicant was informed about this decision on the same date.

60. On 19 June 2006 the Urus-Martán prosecutor's office resumed the investigation in the criminal case. The applicant was informed about the decision on the same date. The applicant was not informed about further developments in the criminal case.

2. Information submitted by the Government

61. Referring to the information provided by the Prosecutor General's office, the Government stated in their initial submission that upon receipt of the applicant's written complaint about her son's abduction, on 22 December 2001 the Urus-Martán prosecutor's office had opened criminal case no. 25170 under Article 126 of the Criminal Code (kidnapping). At the same time, in their later submission, the Government stated that on 27 October 2001 the district prosecutor's office opened another investigation into the same events and the criminal case file was assigned no. 25140. The investigation of both criminal cases was joined in one criminal case in December 2006 (see paragraph 75 below).

62. According to the Government, the criminal investigation into the abduction of Abu Khasuyev had been suspended on a number of occasions, specifically: on 22 February 2002, 24 March and 4 October 2003, 15 September 2004, 25 November 2005, 19 July 2006 and 12 January 2007, and had been resumed on 20 November 2002, 4 September 2003, 15 August 2004, 25 October 2005, 19 June and 12 December 2006 and 10 April 2008; but it had failed to identify those responsible for the abduction of the

applicant's son. However, the applicant had been duly informed about all suspensions and resumptions of the criminal proceedings.

63. According to the Government, on 9 January 2002 the applicant was granted victim status in criminal case no. 25170 and questioned. Nonetheless, in November 2006 the applicant was again granted victim status, this time in criminal case no. 25140, and questioned again (see paragraph 74 below). On both occasions she provided similar statements by describing in detail the circumstances of her son's abduction. She stated that her son had been abducted by military servicemen, who had arrived in a red VAZ-2121 car, a white VAZ-2107 car, and a UAZ vehicle; that the abductors had spoken unaccented Russian and refused to explain the reasons for her son's abduction.

64. On 6 September 2004 the investigators again questioned the applicant. Her witness statement was similar to the one provided on 9 January 2002. In addition, the applicant stated that although the servicemen who had been manning the checkpoint across the street from her house had witnessed the abduction, they had failed to stop the perpetrators; that the military commander General Gadzhiyev had told her that Abu Khasuyev had been taken to the detention centre in Chernokozovo and that the administration of the detention centre had denied having him as one of their detainees.

65. On 8 September 2004 the investigators questioned the wife of Abu Khasuyev, Mrs R.Zh., who stated that at 1.30 p.m. on 30 August 2001 a group of about ten armed men in camouflage uniform had broken into the flat. They spoke unaccented Russian. Abu Khasuyev had been sick and stayed at home that day. The intruders had taken him away without providing any explanations. The men had arrived in a red VAZ-2121 car, a white VAZ-2107 car, and a UAZ vehicle; none of the vehicles had had registration numbers. The witness had seen the intruders forcing her husband into the white VAZ car and the cars driving away in the direction of Grozny.

66. On 29 October 2005 the investigators again questioned the applicant. She explained that she had nothing to add to the statements she had given previously.

67. The Government further submitted that on 19 June 2006 the district prosecutor had approved a plan of measures to be taken by the investigation into the disappearance of the applicant's son. According to the plan, a number of requests for investigative measures had been issued to various law enforcement bodies; however, those efforts had failed to produce any tangible results.

68. On 20 June 2006 the investigators forwarded a number of requests for information to various detention centres concerning the whereabouts of Abu Khasuyev. According to their replies, the applicant's son was not detained in any of those centres.

69. On 22 June 2006 the investigators questioned Mrs A.Kh., who stated that at about 1 p.m. on 30 August 2001 she had arrived at the applicant's house. Abu Khasuyev was ill and had stayed at home that day. According to the witness, she had been changing in one of the rooms when two armed men in camouflage uniforms, one of them masked, walked into the room. When Mrs A.Kh. saw the men she fainted. When she regained consciousness the intruders had already gone, taking Abu Khasuyev with them.

70. On 28 June 2006 the investigators questioned an officer of the ROVD, Mr R.G., who stated that in October 2002 the applicant had not requested any information from him and that he had not shown to her any registration logs.

71. On 28 June 2006 the investigators also questioned Mr R.D., who stated that at lunchtime on 30 August 2001 he and his friend Mr Kh.O. had been walking past the two-storey apartment building at 20 Sovetskaya Street and past the checkpoint situated across from the building when they saw men in military uniforms armed with automatic weapons; two of them were putting a tall young man who was barefoot and had his T-shirt pulled over his head into a white VAZ-2107 car. The third man, who was the driver, had ordered: "To the base, to the base". Another armed man had been standing next to the car, pointing his machine gun around and yelling that everyone should keep away. The witness and Mr Kh.O. had been standing about five metres away and could observe closely what was happening. Another two vehicles had been parked nearby; a military UAZ vehicle had been on the left side of the road and a VAZ-2121 car on the right. After the young man had been placed in the car, all three vehicles had driven away in a northerly direction.

72. According to the Government, on 28 June 2006 the investigators also questioned Mrs A.E., who stated that at about 10 a.m. on 30 August 2001 she had been at home. Suddenly, she had heard screaming from the applicant's flat and gone to the yard. She had seen a group of men armed with automatic weapons taking a young man outside with a T-shirt pulled over his head. Some time later she had found out that this young man was Abu Khasuyev.

73. On 6 July 2006 the investigators conducted a crime scene examination in the applicant's flat. Nothing was collected from the scene.

74. On 8 November 2006 the applicant was granted victim status in criminal case no. 25410 and questioned again. The applicant provided a statement similar to the ones she had provided on 9 January 2002 and 6 September 2004.

75. On 12 December 2006 the investigators joined the investigation of criminal cases no. 25140 and no. 25170. The joined case file was assigned no. 25170.

76. On 12 December 2006 the investigators again forwarded a number of requests to various law enforcement agencies asking for assistance in carrying out investigative measures aimed at establishing the whereabouts of Abu Khasuyev and identifying the perpetrators. According to their responses, the efforts made by the agencies in connection with those requests had failed to produce any tangible results.

77. On 14 December 2006 the investigators questioned Mr S.G., who stated that in the evening of 30 August 2001 he had found out that a group of unidentified men armed with automatic weapons had abducted Abu Khasuyev.

78. On 15 December, 22 December and 27 December 2006, and probably on 25 June 2007 (the date is illegible) the investigators questioned Mrs A.G, Mr L.M. Mr I.I. and Mr M. Sh., each of whom provided a statement similar to that of Mr S.G.

79. On 22 June 2007 applicant was questioned again. Her statement was similar to the ones provided on 9 January 2002, 6 September 2004 and 8 November 2006.

80. On 10 April 2008 a supervisory prosecutor from the Chechnya prosecutor's office ordered the investigators to resume the suspended investigation in the criminal case. The decision stated, *inter alia*, the following:

“...On 12 January 2007 the investigator of the Urus-Martan district prosecutor's office decided to suspend the investigation in criminal case no. 25170 for failure to establish the identity of the perpetrators...”

This decision is unlawful and unsubstantiated, as in violation of Article 208 § 5 of the Criminal Procedure Code the investigation failed to take all possible measures in the absence of the culprits.

For instance, the investigation failed to establish or question the witnesses to Abu Khasuyev's abduction; to question the former head of the ROVD, as well as the head of the criminal search division of the ROVD and the head of the public safety division of the ROVD... during the questioning of Z. Khasuyeva the investigators failed to clarify a number of important circumstances surrounding her son's abduction and take other possible investigative and operational search measures.

The decision to suspend the investigation in the criminal case should be overruled and the case should be returned [for further investigation]...”

81. On the same date the supervising prosecutor issued a decision ordering the investigation to take the following actions in the criminal case:

“1. To make a plan of the investigative and operational search measures ...

2. To establish the identity of eyewitnesses to Abu Khasuyev's abduction and question them about the incident.

3.to question the former head of the ROVD, as well as the head of the criminal search division of the ROVD and the head of the public safety division of the

ROVD about the circumstances of the case; also, to find out what measures they had taken to establish the identity of the armed men who had been driving around in Urus-Martan on 30 August 2001 in a white VAZ-2107 or VAZ-2106 car, red Niva car [VAZ-2121] and a khaki UAZ Tabletka vehicle and had abducted Abu Khasuyev from his house.

4. ...to question Mr G. Gadzhiyev, the former Urus-Martan district military commander, who, according to Z.Khasuyeva..., knew who had arrested her son Abu Khasuyev and told her that her son had probably been taken to the remand detention centre in Chernokozovo; [the investigators] should establish officers of which law enforcement agency had been manning the checkpoint located across from Z. Khasuyeva's house...

5...to establish to the owners of the white VAZ-2107 or VAZ-2106, the red Niva car and the khaki UAZ Tabletka.

6. To establish which power structures had stationed people in August 2001 in Urus-Martan and to find out whether they used VAZ-2107 or VAZ-2106, the red Niva car and the khaki UAZ Tabletka.

7.to establish who was on duty at the checkpoint situated across the street from the house of Z. Khasuyeva on 30 August 2001 at about 1 p.m.....;

8. ...to request from the UGA information concerning special operations on 30 August 2001 in Urus-Martan and to find out whether any military orders to conduct operational-search measures had been issued [by them] to the units stationed [at the time] in Urus-Martan.

9. To request the same information from the Central Archives of the Ministry of Defence.

10. To question again Z. Khasuyeva and find out the following:

-which relatives of hers had received information "from unofficial sources" that after the abduction her son Abu Khasuyev had been taken to the Urus-Martan district military commander's office where he had been detained on the third floor?.....

11. To question the witnesses.... about the persons Z. Khasuyeva referred to as "unofficial sources of information"...

12. To establish the reasons for the failure [to act] by... the officers of the ROVD who.... had been on duty on the roof of the ROVD on 30 August 2001, from where [they] could clearly see the house....

13. ... to question Mr Kh.O., who on 30 August 2001 was walking down Sovetskaya Street in Urus-Martan with Mr R.D. and saw the abduction of Abu Khasuyev.....

14.to verify whether any information concerning Abu Khasuyev is available in the Main Information Centre of the Chechnya Ministry of the Interior, the Main

Informational and Analytical Centre of the Russian Ministry of the Interior and its Data Base...

17. ... if there is sufficient information about the involvement of servicemen of the Russian federal forces ...to forward the case ... under the rules of jurisdiction... to an appropriate military investigating authority...”

82. On 9 June 2008 the supervising prosecutor decided that the investigation in the criminal case should be conducted by a joint investigation group consisting of investigators from the public prosecutor’s office and the military prosecutor’s office. The reasons for this decision were as follows:

“...upon examination of the criminal case file it was established that there were sufficient grounds to assume that the crime [the abduction of Abu Khasuyev] had been committed with the participation of servicemen of the Russian federal forces, and this had been confirmed, in particular, by the use of armoured vehicles during the crime and by the carrying out of the special operation...”

83. According to the Government, the investigation into the abduction of Abu Khasuyev was still in progress. From the information obtained by the investigation it followed that Abu Khasuyev had not been detained by the Russian federal forces and that no special operations had been carried out in his respect.

3. Documents submitted by the Government

84. After the partial admissibility decision of 25 September 2008, the Court again requested the Government to submit a copy of the investigation file into the disappearance of Abu Khasuyev.

85. In response to the Court’s request, the Government submitted a substantial number of documents from the investigation file, comprising two volumes and running to 416 pages. The Government requested the Court to apply Rule 33 § 3 of Rules of Court concerning confidentiality of the submitted documents and to restrict public access to the documentation submitted. In their request the Government stated that the criminal investigation was still in progress and that public disclosure of the documents submitted could be detrimental to the interests of participants in the criminal proceedings.

86. The Government further stated that a copy of the entire investigation file could not be submitted to the Court owing to the absence of any guarantees on the part of the Court of non-disclosure of the secret data contained in the investigation file. In this respect the Government referred to Article 161 of the Criminal Procedure Code, since the file contained information concerning the participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

87. For a summary of 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

88. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies as the investigation into the disappearance of Abu Khasuyev was still in progress. They further submitted that the applicant had the right to appeal against the investigators' decisions to supervising prosecutors or domestic courts.

89. The applicant contested that objection. She contended that the Government had not indicated which particular domestic remedy she had not availed herself of and further stated that the Government's argument to the effect that the investigation was pending related to the merits of the present case rather than to the question of its admissibility.

B. The Court's assessment

90. 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).

91. As regards the Government's objection concerning the pending criminal investigation, that is criminal law remedies, the Court observes that the applicant complained to the law enforcement authorities after the abduction of her son and that the investigation has been pending since 27 October 2001. The applicant and the Government dispute the effectiveness of this investigation.

92. 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. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS

A. The parties' arguments

93. The applicant argued that it was beyond reasonable doubt that Abu Khasuyev had been detained by representatives of the Russian federal forces, this fact being confirmed by eyewitness statements. In particular, she stated that the abduction of Abu Khasuyev had been carried out by a large group of Russian-speaking representatives of law enforcement agencies who had been armed and driving the military cars. The applicant's son had been detained in the daytime, in close proximity to the Russian federal forces' checkpoint, in the town centre of Urus-Martan, which had been under the full control of the authorities, who nonetheless had failed to take any measures to stop the abduction. She further stressed that Abu Khasuyev had been taken away in life-threatening circumstances, given the widespread practice of forced disappearances in Chechnya during the period in question. The applicant thus argued that, in view of the above and given that her son had been missing for almost five years at the time of the submission of the observations, he may be presumed to have been deprived of his life by representatives of the State.

94. The Government argued that the investigation had not obtained any evidence to the effect that representatives of the Russian federal forces had been involved in the abduction of Abu Khasuyev. They argued therefore that there were no grounds to claim that Abu Khasuyev's right to life, guaranteed by Article 2 of the Convention, had been breached by representatives of the Russian power structures. The Government further claimed that the investigation into the disappearance of the applicant's son met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

B. Article 38 § 1 (a) and consequent inferences drawn by the Court

95. In their observations made before the decision on admissibility, the Government stated that it would be contrary to Article 161 of the Code of Criminal Procedure for them to submit the complete investigation file. After the decision on admissibility of the application the Government provided an update on the progress of the investigation and 416 pages of documents from the file, including copies of the investigators' decisions, which contained descriptions of the investigative steps that had been taken, and a

number of witness statements. They argued that other documents from the investigation files could not be submitted and again referred to Article 161 of the Criminal Procedure Code.

96. The Court has on many occasions reiterated that the Contracting States are required to furnish all necessary facilities to the Court and that a failure on a Government's part to submit information which is in their hands, 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 (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI).

97. The Court notes that in previous cases it has already found a reference to Article 161 of the Criminal Procedural Code insufficient to justify the withholding of key information requested by the Court (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)). It therefore regrets the Government's position in respect of the remaining documents from the investigation file and does not find that reference to the above-mentioned provision of the national legislation can serve as a basis for withholding documents requested by the Court.

98. At the same time, the Court reiterates that Article 38 § 1 (a) of the Convention is applicable to cases which have been declared admissible. It notes that the Government have submitted a large part of the procedural documents from the criminal investigation file, as requested by the Court. These documents contain a detailed description of the investigation and witness statements which have made a significant contribution to the examination of the case. As to the remainder, the Court finds that it can draw inferences from the Government's failure to disclose the entire contents of the file.

99. In view of these inferences and the circumstances of the present case, the Court does not find it necessary to draw separate conclusions under Article 38 § 1 (a) of the Convention.

C. The Court's evaluation of the facts

100. 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). In view of this, and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicant's allegations. The Court will thus proceed

to examine crucial elements in the present case that should be taken into account when deciding whether the applicant's son can be presumed dead and whether his death can be attributed to the authorities.

101. The applicant alleged that the persons who had taken Abu Khasuyev away on 30 August 2001 and then killed him were State agents. The Government did not dispute any of the factual elements underlying the application and did not provide any other explanation of the events.

102. The Court notes that the applicant's version of the events is supported by the witness statements collected by her and by the investigation. The applicant and the neighbours stated that the perpetrators had acted in a manner similar to that of a security operation – they had been wearing masks and camouflage uniforms, had been armed with automatic weapons and spoke Russian among themselves and to the residents. They had broken into the applicant's flat during the daytime, in close proximity to the checkpoint of the Russian federal forces. In her applications to the authorities the applicant consistently maintained that her son had been detained by unknown servicemen and requested the investigation to look into that possibility (see paragraphs 45 and 54 above).

103. The Court finds that the fact that a large group of armed men in uniform in broad daylight, equipped with vehicles, was able to move freely through military roadblocks and to proceed to arrest the applicant's son at his home in a town area, across the street from a military checkpoint, strongly supports the applicant's allegation that these were State servicemen. The domestic investigation also accepted factual assumptions as presented by the applicant and took steps to check whether law enforcement bodies were involved in the arrest. The investigation did establish that the military were involved in the abduction of the applicant's son (see paragraph 82 above), but it does not appear that any further steps were taken to establish exactly which military unit.

104. The Court observes that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of 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).

105. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that her son was detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof.

Drawing support from the consistent explanations and accounts contained in the documents submitted by the parties and having regard to the Government's failure to provide any other plausible explanation of the events in question, the Court considers that Abu Khasuyev was arrested on 30 August 2001 in his flat in Urus-Martan by State servicemen during an unacknowledged security operation.

106. There has been no reliable news of the applicant's son since 30 August 2001. His name has not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to him after his arrest.

107. The Court notes with great concern that a number of cases have come before it which suggest that the phenomenon of "disappearances" is well known in Chechnya (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007). A number of international reports point to the same conclusion. The Court has already found that, in the context of the conflict in Chechnya, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Abu Khasuyev or of any news of him for more than seven years supports this assumption. For the above reasons the Court considers that it has been established beyond reasonable doubt that he must be presumed dead following unacknowledged detention by State servicemen.

108. As it follows from the documents submitted by the Government, as late as April 2008, that is more than six and half years after the crime had occurred and the investigation had been opened, the most basic steps had not been taken related to the establishment of the identity of the perpetrators and the questioning of the witnesses about the events of 30 August 2001 (see paragraph 81 above).

109. Furthermore, in a case involving disappearance, the Court finds it particularly regrettable that there should have been no thorough investigation of the relevant facts by the domestic prosecutors or courts. The documents submitted by the Government from the investigation file opened by the prosecutor's office do not suggest any progress in more than six years and, if anything, show the incomplete and inadequate nature of those proceedings. Moreover, the stance of the prosecutor's office and the other law enforcement authorities after the news of Abu Khasuyev's detention had been communicated to them by the applicant contributed significantly to the likelihood of the disappearance, as no necessary steps were taken in the crucial first days and weeks after the arrest. The authorities' behaviour in the face of the applicant's well-substantiated complaints gives rise to a

strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation.

110. For the above reasons the Court considers that it has been established that Abu Khasuyev must be presumed dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

111. The applicant complained under Article 2 of the Convention that her son had disappeared after being detained by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

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

A. The alleged violation of the right to life of Abu Khasuyev

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

113. The Government referred to the fact that the investigation had obtained no evidence to the effect that Abu Khasuyev was dead, or that representatives of the federal power structures had been involved in his abduction or alleged killing.

114. 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, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

115. The Court has already established that the applicant's son must be presumed dead following unacknowledged arrest by State servicemen. In the absence of any justification put forward by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of Article 2 in respect of Abu Khasuyev.

B. The alleged inadequacy of the investigation into the abduction

116. The applicant argued that the investigation into her son's disappearance had fallen short of the requirements of domestic law and the Convention standards. She pointed out that although she had informed the authorities about her son's abduction on 30 August 2001 the investigation had not commenced until 27 October 2001 (and/or 22 December 2001), almost two months after her son's abduction. The applicant pointed out that from 22 December 2001 to 29 June 2004, that is for more than two years, she had been the only witness questioned by the investigation. The applicant also pointed out that prior to the communication of her application to the respondent Government, only she and two of her relatives had been questioned by the investigation; that the authorities had failed to question a number of important witnesses, including the military servicemen who had been on duty at the checkpoint and could have witnessed Abu Khasuyev's abduction, as well as local residents who also could have witnessed the events. In addition, the investigation had failed to take any measures to establish the law enforcement agency to which the vehicles used during her son's abduction could have belonged. The applicant argued that the investigation had been excessively long, that it had been pending for more than seven years but had failed to produce any tangible results, having been repeatedly suspended and reopened. Furthermore, although the authorities had provided the applicant with copies of the decisions concerning the suspensions of the criminal investigation, these documents had not contained sufficient information which would have enabled her to appeal against them. In addition, the applicant had not been granted access to the case file.

117. The Government claimed that the investigation into the disappearance of the applicant's son met the Convention requirement of effectiveness as all measures envisaged in national law were being taken to identify those responsible.

118. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of 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. It has developed a number of guiding principles to be followed for an

investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

119. In the present case, an investigation of the abduction was carried out. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

120. The Court notes at the outset that the documents from the investigation were partially disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of these documents, documents submitted by the applicant and the information about the investigation's progress presented by the Government.

121. As to the facts of the case, it has already been established that no proper investigation has taken place into the disappearance of Abu Khasuyev. The Court notes that the investigation was opened on 27 October 2001, that is one month and twenty-seven days after the detention had occurred. 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 first days after the event. The crime scene investigation in the applicant's flat was conducted only on 6 July 2006, which is four years, ten months and seven days after the abduction (see paragraph 73 above). It also appears that within the two years following the abduction the applicant was the only witness questioned by the investigators. In April 2008 the supervising prosecutor criticised the investigation, indicated the number of crucial steps which had been delayed and ordered the investigators to carry them out (see paragraph 81 above).

122. 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. These delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

123. A number of essential steps were never taken. Most notably, it does not appear that the investigation tried to identify and question the servicemen who had been manning the checkpoint situated across the street from the applicant's house or that they had tried to identify and question any of the servicemen who might have participated in a special operation in Urus-Martan and could have been involved in the detention of Abu Khasuyev.

124. The Court also notes that even though the applicant was granted victim status twice (see paragraphs 63 and 74 above), she was only informed of the suspensions and resumptions of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to

ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

125. Finally, the Court notes that the investigation was suspended and resumed at least seven times and that on several occasions the supervising prosecutors and the local court criticised deficiencies in the proceedings and ordered remedial measures. However, it appears that these instructions were not complied with.

126. The Government raised the possibility for the applicant to make use of 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 the 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 steps. 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 measures that should have been carried out much earlier could no longer be usefully conducted. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

127. In the light of the foregoing, the Court dismisses the Government's preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation, and holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Abu Khasuyev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

128. The applicant relied on Article 3 of the Convention, submitting that as a result of her son's disappearance and the State's failure to investigate 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."

129. The Government contended that there was no evidence confirming that the applicant had been subjected to treatment in breach of Article 3 of the Convention stating that "the investigation did not receive any information concerning inhuman or degrading treatment of the applicant by officials of the Russian Federation".

130. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably having been caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

131. In the present case the Court notes that the applicant is the mother of the disappeared man. 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 son, both in writing and in person. Despite her attempts, she has never received any plausible explanation or information as to what became of her son following his detention. The responses received by the applicant mostly denied that the State was responsible for his arrest or simply informed her that an investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

134. The applicant further stated that Abu Khasuyev had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

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

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

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

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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

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

135. In the Government’s opinion, no evidence was obtained by the investigation to confirm that Abu Khasuyev was detained in breach of the guarantees set out in Article 5 of the Convention.

136. 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).

137. The Court has found that Abu Khasuyev was detained by State servicemen on 30 August 2001 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

138. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicant’s complaints that her son had been detained and taken away in

life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation, leave no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

139. Consequently, the Court finds that Abu Khasuyev 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.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

140. 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.”

141. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. In particular, the applicant had had an opportunity to appeal against the actions or omissions of the investigating authorities to supervising prosecutors and to the courts.

142. 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 *Süheylya 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).

143. It follows that in circumstances where, as here, the criminal investigation into the disappearance was ineffective and the effectiveness of any other remedy that may have existed was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

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

145. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in conjunction with Articles 3 and 5 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

146. 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

147. The applicant made a claim in respect Abu Khasuyev's loss of earnings. She claimed a total of 567,497 Russian roubles (RUB) under this head (16,200 euros (EUR)).

148. The applicant submitted that she was financially dependent on her son Abu Khasuyev and that she would have benefited from his financial support in the above amount. The applicant's calculations were based on the provisions of the Russian 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 (“Ogden tables”).

149. The Government regarded these claims as unsubstantiated.

150. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicant's son and the loss by her of the financial support which he could have provided. Having regard to the applicant's submissions and the absence of any documents substantiating the earnings of Abu Khasuyev at the time of the abduction, the Court awards the applicant EUR 12,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

151. The applicant claimed EUR 50,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her family member, the indifference shown by the authorities towards her and the failure to provide any information about the fate of her son.

152. The Government found the amounts claimed excessive.

153. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicant's son. The applicant herself has been found to have been 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

154. The applicant was represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Chechnya 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 and experts. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 8,943.

155. The Government did not dispute the details of the calculations submitted by the applicant.

156. The Court has to establish first whether the costs and expenses indicated by the applicant were actually incurred and, second, whether they were necessary (see *McCann and Others*, cited above, § 220).

157. Having regard to the details of the contract and submitted documents, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives.

158. 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.

159. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount of EUR 8,943 as claimed, 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

160. 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 Abu Khasuyev;
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 Abu Khasuyev had disappeared;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
5. *Holds* that there has been a violation of Article 5 of the Convention in respect of Abu Khasuyev;
6. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2;
7. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
8. *Holds* that there is no need to examine separately the applicant's complaints under Article 38 § 1 (a) of the Convention;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement, save for the payment in respect of costs and expenses:
 - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the applicant;
 - (ii) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;

(iii) EUR 8,093 (eight thousand and ninety three 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;

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

Done in English, and notified in writing on 11 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President