



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

1959 · 50 · 2009

FIRST SECTION

CASE OF MAGOMADOVA v. RUSSIA

(Application no. 2393/05)

JUDGMENT

STRASBOURG

18 June 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Magomadova v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 2393/05) 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 Sabigat (also spelled as Sebigat and Sebikat, also known as Rosa) Saidovna Magomadova (“the applicant”), on 25 November 2004.

2. The applicant was represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 23 April 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

4. On the same date the Court decided 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.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1956 and lives in Urus-Martan, Chechnya. The applicant is the mother of Ibragim Uruskhanov (in the submitted documents also spelled as Ustarkhanov and Usturkhanov), who was born in 1973.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Disappearance of Ibragim Uruskhanov

1. The applicant's account

8. At the material time the town of Urus-Martan was under curfew. The applicant's house was located in the eastern part of the town, in the vicinity of a Russian military checkpoint.

9. On the night of 12 April 2002 the applicant, her son Ibragim Uruskhanov and other relatives were sleeping in their flat, no. 7, located on the second floor of a block of flats at 56 Lenina Street, Urus-Martan, Chechnya.

10. At about 3 a.m. the applicant heard a group of people going up the stairs to the second floor of the building. The applicant got up and looked out of the window. By the light of a street lamp she saw that the building and a nearby garage were surrounded by forty to fifty armed men in camouflage uniforms.

11. The applicant approached the entrance door and heard someone's order in Russian: "*No noise. Let nobody out of the building*". After that a group of seven or eight armed men broke down the door of the applicant's flat. Two of them were wearing masks; the others had no masks and had Slavic appearance. They neither identified themselves nor produced any documents. The applicant and her relatives thought that they were Russian military servicemen.

12. At first the servicemen rushed into the applicant's room, then into the room of her son Ibragim Uruskhanov and his family. The servicemen took Ibragim Uruskhanov's passport and ordered him to go with them. When the applicant asked why they were taking her son away, the servicemen told her that they were taking him "to find something out" (*для выяснения*) and that she would find him the next morning, either at the Urus-Martan temporary district department of the interior (the VOVD) or at the local military commander's office. While Ibragim Uruskhanov was

getting dressed the intruders searched the flat. They did not explain what they were looking for. It appears that they did not find anything of interest to them.

13. Having spent about fifteen minutes in the applicant's flat, the servicemen took her son outside. The applicant tried to follow them, but at the entrance to the building she was stopped by one of the officers, who ordered her to return home as she was violating the curfew. According to the applicant's neighbour, Mr A.M., ten to twelve intruders walked with Ibragim Uruskhonov in the direction of the Russian military checkpoint.

14. The applicant waited for a few minutes and ran to her daughter, who lived nearby. Having told her about the abduction of Ibragim Uruskhonov, the applicant went back home. On her way to the flat the applicant saw a military URAL vehicle moving slowly, behind another vehicle which looked like an APC (armoured personnel carrier). Both vehicles drove in the direction of the Russian military checkpoint located in the building of the former enterprise Selkhozkhimia on the eastern outskirts of Urus-Martan.

15. When the applicant returned home, a number of neighbours were waiting for her. They told her that they had seen from their windows Russian military servicemen arriving at the block of flats in an APC and a military URAL vehicle. The servicemen had ordered those neighbours who had attempted to go outside to stay in their flats.

16. The applicant has had no news of Ibragim Uruskhonov since the night of his abduction.

17. In support of her submission, the applicant furnished the Court with the following witness accounts: two statements by the applicant dated 1 October 2005 and 20 October 2008; an account by Mrs A. A. dated 30 September 2005; two accounts by Mrs R. Z. dated 29 September 2005 and 7 October 2008; an account by Mrs L. A. dated 22 April 2004; an account by Mrs M.M. dated 20 October 2008 and an account by Mr M.A. dated 20 October 2008.

2. Information submitted by the Government

18. The Government did not challenge most of the facts as presented by the applicant. According to the decision of the Urus-Martan district prosecutor's office of 18 April 2002 concerning the opening of a criminal investigation "...at about 3.45 a.m. on 12 April 2002 unidentified persons armed with automatic weapons entered the Uruskhonovs' flat at no. 56, Lenina Street in Urus-Martan, kidnapped Ibragim Tausovich Uruskhonov and left in an unknown direction..." The Government further pointed out that the criminal case file materials did not contain any indication to the effect that Ibragim Uruskhonov's abductors had searched the applicant's home.

B. The search for Ibragim Uruskhanov and the investigation

1. The applicant's account

(a) The official investigation

19. In the morning of 12 April 2002 the applicant went to a number of local law enforcement authorities, including the VOVD and the Urus-Martan district military commander's office (the district military commander's office). None of them had any information concerning the arrest or the whereabouts of Ibragim Uruskhanov.

20. On 12 April 2002 the applicant complained about her son's abduction to the Urus-Martan district prosecutor's office (the district prosecutor's office) and the VOVD and requested assistance in establishing his whereabouts. In her complaints to the authorities she stated that on the night of 12 April a group of masked men in camouflage uniforms had broken into her house and taken Ibragim Uruskhanov away.

21. On 18 April 2002 the district prosecutor's office instituted an investigation into the abduction of Ibragim Uruskhanov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was assigned number 61074.

22. On 19 April 2002 the applicant was granted victim status in the criminal case.

23. On 23 April 2002 the applicant wrote to the district prosecutor's office. She complained that her son had been abducted by a group of fifteen to twenty armed men in camouflage uniforms, and requested assistance in establishing his whereabouts.

24. On 27 April 2002 the applicant wrote to the military prosecutor of an unspecified military unit. She complained that her son had been abducted by a group of fifteen to twenty armed men in camouflage uniforms and requested assistance in establishing his whereabouts.

25. On 4 June 2002 the Chechnya department of the Federal Security Service (the Chechnya FSB) informed the applicant that they had forwarded her complaint about her son's abduction to the military prosecutor's office of military unit no. 20102 for examination.

26. On 18 June 2002 the investigation in the criminal case was suspended for failure to establish the perpetrators.

27. On 22 June 2002 the head of the VOVD informed the applicant that they had opened an operational search file to establish her son's whereabouts. The letter also stated that the search measures undertaken by the VOVD had failed to produce any results.

28. On 4 July 2002 the Chechnya prosecutor's office forwarded the applicant's complaint about her son's abduction to the district prosecutor's office for inclusion in the criminal case file materials.

29. On 20 January 2003 the applicant wrote to the district military commander's office. She stated that on 12 April 2002 a group of officers from law enforcement agencies of the Urus-Martan district had abducted her son; that they had neither identified themselves nor produced any documents and that they had not informed her whether any charges had been brought against her son. The applicant pointed out that she had complained about her son's abduction to a number of State authorities, but none of them had provided any information concerning her son's whereabouts and the identities of the perpetrators. Finally, she requested to be informed whether any criminal charges had been brought against Ibragim Urus Khanov and asked for assistance in the search for his whereabouts.

30. On 13 May 2003 the Department of the Prosecutor General's office in the Southern Federal Circuit informed the applicant that her complaint about the abduction and subsequent disappearance of her son had been forwarded to the Chechnya prosecutor's office for examination.

31. On 19 February 2004 the Pyatigorsk town prosecutor's office informed the applicant that Ibragim Urus Khanov was not detained in the no. 2 pre-trial detention centre (*СИ-2 УИИ МЮ РФ по СК*).

32. On 25 March 2004 the applicant wrote to the Chechnya FSB requesting assistance in the search for her son.

33. On 6 April 2004 the Chechnya FSB replied to the applicant stating that they had no information concerning the reasons for her son's abduction, his whereabouts or the identities of his abductors.

34. On 20 April 2004 the applicant again complained to the district prosecutor's office. She described in detail the circumstances of her son's abduction and pointed out that the abductors had failed to produce any documents for his arrest; that they had taken her son's passport and told her that she would find him the next morning at the VOVD.

35. On 7 February 2005 the applicant again wrote to the district prosecutor's office. In her letter she provided a detailed description of her son's abduction by officers of Urus-Martan law enforcement agencies and his subsequent disappearance. She pointed out that none of the local law enforcement agencies had acknowledged involvement in her son's abduction. The applicant stated that there was irrefutable evidence that her son had been abducted by representatives of State authorities. She pointed out that her son's abductors had used an APC and a military URAL vehicle, which could have been used only by federal forces; that the abduction had been conducted at night, during the curfew, and that the abductors must have coordinated their actions with the district military commander's office; that the abductors spoke unaccented Russian and were wearing camouflage uniform typical for Russian federal forces; that when on 12 April she had complained to the authorities about her son's abduction, they had failed to assist her in the search, which would not have been the case if they had suspected the involvement of illegal armed groups in the incident; that the

abductors had driven away with her son in the direction of the Russian military checkpoint and that a passage of any unauthorised vehicle would not have been possible without the authorities' permission. Further, the applicant complained about ineffectiveness of the investigation in criminal case no. 61074 and the lack of access to the criminal case file materials. She requested the prosecutor's office to take the following investigative measures: to establish the identity of the owners of the APC and the military URAL car; to question the vehicles' drivers and seize all related documentation; to identify and question the staff of local law enforcement agencies; to establish the identity of and question witnesses to her son's abduction; to examine and collect documentation from local detention centres on the possible detention of Ibragim Uruskhonov, and to question the heads of local law enforcement bodies. Finally, she requested the investigators to resume the investigation and provide her with access to the investigation file.

36. On 22 February 2005 the district prosecutor's office informed the applicant that on 9 February 2005 they had allowed her complaint in part and on 22 February 2005 they had resumed the investigation in the criminal case.

37. On 12 April 2005 the applicant wrote to the district prosecutor's office requesting information on the progress of the investigation in the criminal case.

38. On 15 April 2005 the district prosecutor's office informed the applicant that on 22 March 2005 they had suspended the investigation in the criminal case for failure to establish the identity of the perpetrators.

39. On 20 December 2005 the applicant wrote to the district military commander and requested assistance in the search for her son. She complained that her son had been abducted by Russian servicemen, who had arrived in an APC and a military URAL vehicle, provided a detailed description of her son's abductors and pointed out that the abductors had left in the direction of the military checkpoint.

40. On 26 June 2006 the applicant again requested the district prosecutor to inform her about the progress in the criminal case. The applicant stated that her son had been abducted by Russian federal servicemen; that there were a number of pieces of evidence proving the involvement of the Russian military in the abduction and that she had pointed them out to the investigators who nonetheless had failed to establish her son's whereabouts.

41. On 12 February 2007 the applicant again requested the authorities to inform her about the progress in the investigation and provide her with copies of procedural decisions.

42. On 14 February 2007 the district prosecutor's office granted the applicant's request in part, stating that she was entitled to familiarise herself only with those documents which reflected investigative measures taken with her participation.

43. On 8 February 2008 the investigators resumed the investigation in the criminal case and informed the applicant about it.

44. On 8 March 2008 the investigators suspended the investigation in the criminal case owing to the failure to establish the perpetrators and informed the applicant about it.

45. On 25 June 2008 the investigators resumed the investigation in the criminal case and informed the applicant about it. No other information concerning the investigation was provided to the applicant.

(b) Proceedings against law-enforcement officials

46. On 9 March 2005 the applicant lodged a complaint with the Urus-Martan Town Court (the Town Court). She described the events of 12 April 2002 and complained that the investigation in criminal case no. 61074 was ineffective. The applicant sought a ruling obliging the district prosecutor's office to take a number of investigative measures and provide her with access to the investigation file. On 30 March 2005 the court rejected her complaint and on 20 April 2005 this decision was upheld on appeal.

47. On 20 May 2005 the applicant lodged another complaint with the Town Court. She sought a ruling obliging the district prosecutor's office to resume the investigation in criminal case no. 61074 and conduct it in an effective and thorough manner. On 20 June 2005 the court rejected the applicant's complaint.

48. In the summer of 2005 the applicant lodged another complaint with the Town Court. She stated that her son had been abducted by Russian servicemen who had arrived in military vehicles. She complained that the criminal investigation was ineffective, that it had been repeatedly suspended and reopened with no tangible results in more than three years. The applicant sought a ruling obliging the district prosecutor's office to resume the investigation in criminal case no. 61074 and conduct it in an effective and thorough manner. On 5 August 2005 the court allowed the applicant's complaint. It instructed the district prosecutor's office to resume the investigation in the criminal case and conduct it in an effective and thorough manner. In its decision the court stated, *inter alia*, the following:

"... in her request of 7 February 2005 S. Magomadova requested the investigation to take the following measures:

- to establish which power structures owned APCs and URAL vehicles in April 2002 in the Urus-Martan district and establish where those vehicles were on the night of 12 April 2002.....

- to establish the identity of and question the drivers of the above vehicles to find out where they were on the night [of the abduction]...

- to establish and question the staff of all those law enforcement agencies who in April 2002 in Urus-Martan conducted arrests of persons suspected of illegal armed activities; to establish where they were on the night [of the abduction];

- to take measures in order to establish witnesses [to the abduction] among the local population...

- to collect all relevant documentation in detention centres to establish whether her son had been detained in these centres; to question the heads of the detention centres;

- to question the heads of the military commander's office and other law enforcement agencies in the Urus-Martan district to establish which group of law enforcement officers obtained permission to move around in Urus-Martan on the night between 11 and 12 April 2002....

... However, from the file of criminal case no. 61074 it follows that ... the investigators conducted only ...the examination of the registration logs of persons arrested... and detained... in the Urus-Martan district department of the interior; ... they also forwarded requests for assistance in establishing the whereabouts of [the applicant's son] and the perpetrators [of his abduction]...

There is no indication that any other investigative measures ...stated in the [applicant's] request.... were taken by the investigators, which demonstrates the incompleteness of the preliminary investigation..."

(c) Official acknowledgement of Ibragim Uruskhanov's death

49. On 1 April 2008 the Town Court granted the applicant's claim and declared her son Ibragim Uruskhanov deceased as of 1 April 2008. The court reasoned, *inter alia*, as following:

"...the fact of the disappearance of Ibragim Tausovich Uruskhanov in life-threatening circumstances, or in the circumstances providing grounds to presume his death is proved by the evidence collected in the [criminal] case..."

50. On 21 October 2008 the Urus-Martan town registration office issued death certificate no. 588252 confirming the death of Ibragim Uruskhanov as of 1 April 2008.

2. Information submitted by the Government

51. On 12 April 2002 the applicant complained about her son's abduction to the head of the VOVD.

52. On 18 April 2002 the district prosecutor's office instituted an investigation of Ibragim Uruskhanov's abduction under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was assigned number 61074.

53. On 19 April 2002 the applicant was granted victim status in the criminal case and questioned. A copy of the applicant's witness statement was not provided by the Government.

54. On an unspecified date in April 2002 the district prosecutor's office conducted a scene of crime examination in the Michurina orchards located in the village of Goyty in the Urus-Martan district. According to the

transcript, blown-up remains of four male corpses had been found on the site and forwarded for forensic examination and identification.

55. On 1 May 2002 the VOVD informed the investigators that the applicant's son was not listed as one of their detainees.

56. On 6 May 2002 the investigators again questioned the applicant, who stated that at about 12 noon on 2 May 2002 in the central square of Urus-Martan a stranger had told her that on the outskirts of the village of Goyty, in the direction of Chechen-Aul, fragments of two human bodies had been discovered. The applicant immediately had gone to the site. There she had found fragments of trousers, a black T-shirt and two pieces of the footwear her son Ibragim Uruskhanov had been wearing on the night of his abduction. According to the applicant, she recognised those items by their colours, the way they were damaged and special features such as the stripe on the legs of the trousers, the shape of the heels on the shoes and traces of brown paint on the soles. The applicant had collected the items. She was ready to provide them to the investigators for inclusion into the investigation file. It appears that the investigators did not collect the items from the applicant.

57. On 8 May 2002 the Urus-Martan FSB informed the investigators that they had not detained the applicant's son.

58. On 26 April 2004 the investigators informed the applicant that they were taking operational search measures to establish her son's whereabouts.

59. On 7 February 2005 the applicant wrote to the Urus-Martan district prosecutor. In her letter she stated that her son had been abducted by representatives of Russian power structures and pointed out that there was irrefutable evidence to this effect, such as: the abductors had used armoured military vehicles; the abductors must have obtained the permission of the Russian military to move around in the area during curfew; the large number of the abductors and their unaccented Russian had also demonstrated that they were military servicemen; when on the morning of 12 April 2002 the applicant had complained about the abduction to the law enforcement agencies, they had failed to block the roads or arrest the culprits; after the abduction the military vehicles had driven away in the direction of the Russian military checkpoint; at the material time the town had been under the full control of Russian federal forces and all roads leading to and from the city were blocked by checkpoints. The applicant requested the investigators to take, *inter alia*, the following measures: to establish the identity of the owners of the APCs and URAL vehicles in Urus-Martan; to question their drivers about the night in question; to establish the identity of and question the staff of local law enforcement agencies about their participation in arrests in April 2002; to question officers of the military commander's office and other power structures about any permissions issued for moving around on the night of 12 April 2002.

Finally, the applicant requested that the investigation in the criminal case be resumed and she be provided with access to the investigation file.

60. On 22 February 2005 the district prosecutor's office informed the applicant that they had partially granted her request and resumed the investigation on the same date.

61. On 25 February 2005 the applicant was again granted victim status in the criminal case and questioned. The applicant stated that at about 3 a.m. on 12 April 2002 she had been woken by the sound of steps on the staircase. She had looked out of the window and seen that the house had been surrounded by armed men in camouflage uniforms. Then a group of seven to eight men in camouflage uniforms, armed with machine guns, had broken down the door, entered the flat and proceeded to her son's bedroom. The applicant had not been able to see the insignia on the intruders' uniform. One of them requested and took away Ibragim Uruskhanov's passport. The men had ordered the applicant's son to get dressed and follow them. When the applicant had asked why he was being taken away, one of them had told her that they were taking him to find something out and that in the morning the applicant would find him in the VOVD. The men had taken Ibragim Uruskhanov with them. They had ordered the applicant to stay inside and threatened to shoot her if she disobeyed, as the curfew was in force. The applicant had waited until the men had left the flat and had followed them, keeping some distance. The group, which consisted of about forty armed men, had walked through the local hospital's yard and then proceeded towards Obyezdnaya Street. When the witness reached the street she saw an APC without registration numbers driving towards the Russian military checkpoint. The applicant returned home. Early in the morning of 12 April 2002 she had gone to the VOVD, the military commander's office and the prosecutor's office. All these law enforcement agencies had denied any involvement in the abduction of Ibragim Uruskhanov. The applicant further stated that on the night of the abduction her son had been wearing a black sheepskin coat, a black T-shirt, a brown pullover, dark trousers, dark blue underpants, blue socks and black leather slippers. In May 2002 the applicant had found out that in the Chernorechenskiy forest human remains had been found. Residents of the nearby village of Goyty had collected remains of two bodies, while pieces of clothing and a slipper had remained on the site. According to the applicant, she immediately had gone to the place of the discovery. There she had found pieces of clothing and a slipper that her son had been wearing on the night of the abduction. On the following day the applicant had gone to the site again, this time with representatives of the VOVD and the prosecutor's office. They had found the applicant's son's second slipper at the top of a tree. After that the applicant and the officers had gone to Goyty and asked local residents to show them the remains of the two bodies. Local residents had informed the applicant that they had identified these remains as belonging to their children. Then the officers had

told the applicant that after abductions detainees were usually forced to exchange their clothing with other detainees, therefore it was possible that Ibragim Uruskhanov's clothing had been worn by other men.

62. On 27 February 2005 the investigators examined the registration log of detainees of the temporary detention centre in the VOVD and the registration log of persons arrested by the VOVD. According to the results, no entries concerning an arrest or detention of Ibragim Uruskhanov were found.

63. On 12 March 2005 the applicant requested the investigators to inform her about the progress of the investigation in the criminal case.

64. On 22 March and 15 April 2005 the district prosecutor's office informed the applicant that the investigation in the criminal case had been suspended on 22 March 2005 for failure to establish the identity of the perpetrators.

65. On 24 March 2005 the deputy head of the Urus-Martan FSB informed the investigators that they had information about the involvement of the applicant's son in activities of an illegal armed group under the command of Mr T. Udayev. However, they had no information either concerning Ibragim Uruskhanov's whereabouts or the identity of his abductors. The Government did not submit a copy of this document.

66. On 26 March 2005, in September 2005 (the date is illegible) and on 5 October 2006 the Operational Search Bureaus in the Southern Federal Circuit (the ORB and ORB-2) informed the investigators that their staff had been instructed to search for Ibragim Uruskhanov and that they did not have any incriminating information concerning the applicant's son.

67. On 15 August 2005 the district prosecutor's office informed the applicant that the investigation in the criminal case had been resumed. On the same date the applicant was informed that the investigation had been suspended.

68. On 17 August 2005 a number of detention centres in various regions of the Russian Federation informed the investigators that Ibragim Uruskhanov was not listed among their detainees.

69. On 25 and 26 August 2005 the investigators requested a number of law enforcement agencies, including the district military commander's office and the Urus-Martan FSB, to provide the following information: registration logs' entries concerning all persons detained on 12 April 2002; records reflecting the usage of military vehicles by the law enforcement agencies on the night of the abduction; information about the drivers of APCs and URAL vehicles who had been serving in the area at the material time; information concerning whether the military commander's office had checked the movement of vehicles on the night of 12 April 2002. The Government did not submit a copy of either these requests or responses to them.

70. On 31 August 2005 the Operational Group of the Ministry of the Interior in Urus-Martan district informed the investigators that they did not have any information concerning Ibragim Uruskhanov's abduction (the surname of the applicant's son was misspelled in the document and stated as Usturkhanov). The letter also stated that at the material time, namely April 2002, the VOVD had been staffed by officers from the Orenburg region.

71. On an unspecified date in August 2005 and on 4 September 2005 the Chechnya FSB informed the investigators that they did not have any incriminating information against the applicant's son.

72. On unspecified dates in August and September 2005 the Staropromyslovskiy district department of the interior (the ROVD), the Vedenskiy ROVD, the Urus-Martan ROVD, the Shelkovskiy ROVD, the Shatoiskiy VOVD, the Sharoiskiy ROVD, the Itum-Kalinskiy ROVD, the Gudermeskiy ROVD, the Nadterechniy ROVD, the Zavodskoy ROVD, the Achkhoy-Martan district prosecutor's office and the Naurskiy district prosecutor's office informed the investigators that they had not arrested or detained the applicant's son and that they had not brought any criminal proceedings against him; that he had not applied for medical assistance and that his corpse had not been found. The name of the applicant's son was misspelled in the documents and stated as Usturkhanov.

73. On 2 September 2005 the investigators requested the Main Information Centre of the Russian Ministry of the Interior to provide information concerning the criminal record of Ibragim Uruskhanov. The name of the applicant's son was misspelled in the document and stated as Usturkhanov.

74. On an unspecified date in 2005 the Urus-Martan VOVD informed the investigators that they did not have any information concerning the participation of the applicant's son in the activities of illegal armed groups.

75. On 26 June 2006 the applicant requested the district prosecutor to inform her about the progress of the investigation. In her letter she stated that her son had been abducted by representatives of Russian power structures; that this had been confirmed by numerous pieces of evidence; and that she had requested the investigators to give their attention to this evidence.

76. On the same date, 26 June 2006, the district prosecutor's office replied to the applicant and stated that on 15 September 2005 they had suspended the investigation in the criminal case for failure to establish the identity of the perpetrators.

77. On 27 September 2006 the district prosecutor's office informed the applicant that the investigation in the criminal case had been resumed.

78. On 5 October 2006 the investigators questioned Mr Z.T., who stated that he was a friend of Ibragim Uruskhanov. About a month prior to the abduction Ibragim had returned to Urus-Martan from his temporary residence in Ingushetia. Some time later the friends had met and the

applicant's son had told the witness that he had seen his own photograph on public display in Urus-Martan. According to the witness, Ibragim Uruskhanov had been planning to visit the military commander's office to find out why they had put his photograph up on the display, as he had not been abducted nor was he wanted by the authorities. On 12 April 2002 the witness had learnt about Ibragim Uruskhanov's abduction.

79. On 6 October 2006 the investigators questioned the applicant's distant relative, Mrs R.V., who stated that she had learnt from her relatives that on 12 April 2002 Ibragim Uruskhanov had been abducted by armed men in APCs. The Government did not submit a copy of her witness statement.

80. Between 7 and 13 October 2006 the investigators questioned the following witnesses: Mr Ya.K., Mr Kh.A., Mr V.K., Mrs Kh.K., Mrs Z.K., Mrs L.G. and Mrs M.S., whose statements were similar to the one provided by Mrs R.V. The Government did not submit a copy of any of these witness statements.

81. On 8 October 2006 the investigators questioned the applicant's sister, Mrs S.M., who stated that on 12 April 2002 the applicant had informed her about Ibragim Uruskhanov's abduction. According to the witness, on 24 April 2002 she had found out that human remains had been discovered on the outskirts of a nearby village. After she had arrived at the site, she saw fragments of human bodies and pieces of clothing scattered around. The witness had found black leather slippers that she had purchased for her nephew Ibragim Uruskhanov and dark blue trousers which, according to Ibragim Uruskhanov's wife, had also belonged to him. At some point later the witness had found out that residents of Goyty had identified the remains and buried them.

82. On 11 October 2006 the investigators collected from the applicant's relative a number of Ibragim Uruskhanov's medical documents for inclusion in the investigation file.

83. On 12 October 2006 the investigators again questioned the applicant, who stated that her son had been abducted on the night of 12 April 2002 by a group of armed men in camouflage uniform. They had arrived in an APC and a military URAL vehicle, which they had parked in Obyezdnaya Street. The applicant stated that the abductors had taken her son to the vehicles on foot. She also provided a detailed description of the clothing Ibragim Uruskhanov had worn on the night of the abduction.

84. On 17 October 2006 the Urus-Martan FSB informed the investigators that they did not have any incriminating information concerning Ibragim Uruskhanov.

85. On 25 October 2006 the investigators questioned the applicant's relative, Mrs M.M., who stated that in mid-April of 2002 she had been in Moscow when a relative of hers had informed her about Ibragim Uruskhanov's abduction by armed masked men in camouflage uniform.

86. On 26 October 2006 the investigators questioned the applicant's daughter, Mrs Z.M. She stated that at the material time she had lived close to the applicant's house in Urus-Martan. According to the witness, on the night of 12 April 2002 the applicant had arrived at her house at about 3 a.m. and told her Ibragim Uruskhanov had been abducted by armed masked men in camouflage uniforms. About a month later the witness had found out that human remains had been discovered in the countryside. Four days later the witness had gone to the site and found there fragments of clothing, black trousers, a black T-shirt and black leather slippers. The witness did not know whether those items had belonged to her abducted brother.

87. On the same date the investigators questioned Mrs S.Z., who stated that on 17 April 2002 unidentified armed men had abducted her son Mr B.Z. and another resident of Urus-Martan, Mr Sh.D. On 24 April 2002 human remains had been discovered on the outskirts of Goyty village in Urus-Martan district. According to the witness, she had identified some of those remains by the clothing as those of her son Mr B.Z. The witness and her relatives had buried the remains in a local cemetery.

88. On the same date the investigators questioned Mrs Z.G., who stated that her husband Mr B.Z. had been abducted in April 2002 and that later, on 24 April 2002, some remains had been identified as those of her husband.

89. On 27 October 2006 the investigators questioned Mrs B.D., who stated that on 17 April 2002 unidentified armed men had abducted her son Mr Sh.D. On 24 April 2002 human remains had been discovered on the outskirts of Goyty village in Urus-Martan district. According to the witness, she had identified some of those remains by the clothing as those of her son Mr Sh.D. The witness and her relatives had buried the remains in a local cemetery.

90. On the same date the investigators questioned Mr M.D. who stated that on 17 April 2002 unidentified armed men had abducted his son Mr Sh.D. On 24 April 2002 human remains had been discovered on the outskirts of Goyty village in Urus-Martan district. According to the witness, he had identified some of these remains by the clothing as those of his son Mr Sh.D. The witness and his relatives had buried the remains in a local cemetery.

91. On an unspecified date the investigators conducted identification procedures on the clothing found on the site of the discovery of the human remains in Goyty. The copy of this document, as submitted to the Court by the Government, is illegible.

92. On 27 October 2006 the investigators informed the applicant that they had suspended the investigation in the criminal case.

93. On 2 November 2006 the investigators informed the applicant that they had resumed the investigation in the criminal case.

94. Between 3 and 29 November 2006 the investigators questioned the following witnesses: Mrs L.I., Mr A.K., Mr S.U., Mrs T.M., Mrs A.M.,

Mrs L.N., Mr S.M., Mr R.S., Mr M.M., Mr Sh.Zh. and Mr M.N. According to the Government, their statements did not provide any significant information. The Government did not submit copies of any of these statements.

95. On 6 November 2006 the Operational Group of the Ministry of the Interior informed the investigators that their operational search measures had failed to establish Ibragim Uruskhanov's whereabouts.

96. On 10 November 2006 the investigators collected from the applicant's daughter a pair of black slippers and a piece of a black T-shirt for inclusion in the criminal case file.

97. On 16 November 2006 the Operational Search Bureau of the Ministry of the Interior in Grozny informed the investigators that they were taking operational search measures aimed at the identification of Ibragim Uruskhanov's abductors.

98. On 20 November 2006 the Chechnya FSB informed the investigators that they had no information concerning the perpetrators of Ibragim Uruskhanov's abduction.

99. On 24 November 2006 the investigators questioned the applicant's relative, Mr R.S., who stated that he had been in the Kalmyk Republic when he had been informed about Ibragim Uruskhanov's abduction on 12 April 2002. Around 24 April 2002 human remains had been discovered on the outskirts of a nearby village. The relatives had informed the witness that they had found Ibragim Uruskhanov's trousers and slippers on the site.

100. On 3 December 2006 the investigators informed the applicant that they had suspended the investigation in the criminal case.

101. On 12 February 2007 the applicant requested the district prosecutor's office to provide her with access to the investigation file and allow her to make copies of its contents.

102. On 11 February 2008 the investigators forwarded a number of information requests to various military and law enforcement bodies, including military unit no. 68797. The investigators requested to provide information as to which military units which had been stationed in Urus-Martan in the vicinity of the applicant's house from 11 to 20 April 2002. The Government did not provide a copy of either any of these requests or responses to them.

103. On the same date the investigators requested the VOVD to establish additional witnesses of the abduction, including those who could have seen the APCs.

104. Between 13 and 19 February 2008 the investigators questioned the following witnesses: Mr Kh.A., Mr Kh.G. and Mr I.B. According to the Government, their statements did not provide any significant information. The Government did not submit a copy of any of these statements.

105. On 14 February 2007 the investigators partially granted the applicant's request for access to the investigation file. The decision stated

that the applicant was allowed to familiarise herself only with documents which reflected investigative measures taken with her participation. The applicant was informed about the decision on the same date.

106. On 8 February 2008 the investigators informed the applicant that on the same date they had resumed the investigation in the criminal case.

107. On 8 March 2008 the investigators informed the applicant that on the same date they had suspended the investigation in the criminal case owing to the failure to establish the perpetrators.

108. According to the Government, the information received from various law-enforcement agencies stated that Ibragim Uruskhonov “had not been detained by representatives of military or law-enforcement bodies; no special operations had been conducted against him”. The applicant had been duly informed of all decisions taken during the investigation.

109. According to the documents submitted by the Government, the investigation in the criminal case was suspended and resumed on several occasions. Although the investigation failed to establish the whereabouts of Ibragim Uruskhonov or the perpetrators of his abduction, the Government submitted that the description of the abductors as provided by the applicant did not demonstrate that they had been Russian servicemen. The body of the applicant’s son was not found and there was no proof that any of bodies discovered on the outskirts of Goyty in the end of April 2002 had belonged to Ibragim Uruskhonov.

110. In response to the requests by the Court the Government disclosed some documents from the investigation file in criminal case no. 61074. At the same time, the Government stated that the investigation was in progress and, therefore, disclosure of other documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained personal data concerning the witnesses or other participants in the criminal proceedings. The Government submitted copies of a number of documents from the case file running up to 123 pages. These documents mostly included letters to the applicant informing her about suspension and resumption of the investigation, information requests to various law-enforcement agencies, copies of the applicant’s requests and complaints, decisions to take some investigative measures, such as collection of evidence, and copies of a few witness statements.

II. RELEVANT DOMESTIC LAW

111. 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 OBJECTION REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

112. 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 Ibragim Uruskhonov had not yet been completed.

113. The applicant contested that objection. She stated that the criminal investigation had proved to be ineffective. Referring to the other cases concerning such crimes reviewed by the Court, she also alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in the Chechnya rendered any potentially effective remedies inadequate and illusory in her case.

B. The Court's assessment

114. As regards the Government's objection concerning criminal-law remedies, the Court observes that the applicant complained to the law-enforcement agencies immediately after her son's abduction and that an investigation has been pending since 18 April 2002. The applicant and the Government were in disagreement about the effectiveness of this investigation.

115. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant's complaints under Article 2. Thus, it decides to join this objection to the merits and considers that these matters fall to be examined below under the relevant substantive provisions of the Convention.

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

A. The parties' arguments

116. The applicant maintained that it was beyond reasonable doubt that the men who had taken away Ibragim Uruskhonov were State agents, this

being confirmed by witness statements. In support of her complaint she referred to the following facts. At the material time the town was under full control of Russian federal forces. Checkpoints manned by military servicemen were located on the roads leading to and from the settlement. The area was under curfew. Ibragim Uruskhanov's abduction was carried out by a large group of armed men in camouflage uniform, which was similar to the one used by Russian military. The men spoke unaccented Russian, had Slavic appearance, were armed with machine guns and moved freely around Urus-Martan at night, during the curfew. On the night of the abduction an APC and a URAL military vehicle had been seen in Obyezdnaya Street, not far from the applicant's house, and after the abduction of the applicant's son these vehicles drove in the direction of the Russian military checkpoint. On 1 April 2008 the local court declared Ibragim Uruskhanov as a deceased person.

117. The Government submitted that the investigation of the incident was pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicant's rights. They further argued that the Slavic appearance of the perpetrators and their unaccented Russian, along with camouflage uniform did not mean that they belonged to the Russian military. The Government further contended that the witnesses had been unable to recognise insignia on the perpetrators' uniform; that the military APC and the URAL vehicle had had nothing to do with the abduction of Ibragim Uruskhanov and none of the witnesses had seen the perpetrators putting the applicant's son into the vehicles. Finally, the Government contended that the decision of the domestic court recognising Ibragim Uruskhanov as a deceased person was irrelevant to establishment of the death of the applicant's son and that there was no proof that the human remains discovered near the village of Goyty in April 2002 belonged to the applicant's son.

B. The Court's evaluation

118. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of matters 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).

119. The Court notes that despite its requests for a copy of the investigation file into the abduction of Ibragim Uruskhanov, the Government produced only a part of the documents from the file. The

Government referred to Article 161 of the Criminal Procedure Code. 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)).

120. 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.

121. The applicant alleged that the persons who had taken Ibragim Uruskhonov away on 12 April 2002 and then killed had been State agents.

122. The Government suggested in their submission that the persons who had detained Ibragim Uruskhonov could be members of paramilitary groups who were able to speak unaccented Russian, obtain camouflage uniforms anywhere in Russia and purchase machine guns illegally. However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

123. The Court notes that the applicant's allegation is supported by the witness statements collected by the applicant and by the investigation. It finds that the fact that a large group of armed men in uniform during curfew hours was able to move freely through military roadblocks and proceeded to check identity documents and abduct the applicant's son at his home strongly supports the applicant's allegation that these were State servicemen conducting a security operation. In her application to the authorities the applicant consistently maintained that Ibragim Uruskhonov had been abducted by unknown servicemen and requested the investigation to look into that possibility (see paragraphs 29, 34, 35, 39, 40, 59, 61, 75 above). The domestic investigation also accepted factual assumptions as presented by the applicant and took steps to check whether law enforcement agencies were involved in the kidnapping (see paragraphs 62, 69, 70, 102 above). From the submitted documents it is unclear whether the investigation was able to establish which military or security units had carried out the operation, but it does not appear that any serious steps had been taken in that direction.

124. The Court observes that where the applicant makes out a *prima facie* case and the Court is prevented from reaching conclusions as to the facts, 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).

125. Taking into account the above elements, the Court is satisfied that the applicant has made a prima facie case that her son was abducted by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Ibragim Uruskhonov was abducted on 12 April 2002 by State servicemen during an unacknowledged security operation.

126. There has been no reliable news of Ibragim Uruskhonov since the date of the kidnapping. 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.

127. Having regard to the previous cases concerning disappearances in Chechnya which have come before the Court (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*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), in the context of the conflict in the Republic, 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 Ibragim Uruskhonov or of any news of him for several years supports this assumption, which was similarly acknowledged by a local court.

128. The Court further notes that, regrettably, it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose most of the documents from the file (see paragraph 110 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

129. Accordingly, the Court finds that the evidence available permits it to establish that Ibragim Uruskhonov must be presumed dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

130. The applicant complained under Article 2 of the Convention that her son had disappeared after having been detained by Russian servicemen

and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

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

A. The parties’ submissions

131. The Government contended that the domestic investigation had obtained no evidence to the effect that Ibragim Uruskhanov was dead or that any servicemen of the federal law enforcement agencies had been involved in his kidnapping or alleged killing. They claimed that the investigation into the kidnapping 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.

132. The applicant argued that Ibragim Uruskhanov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. She pointed out that the Government had not challenged any of the factual circumstances surrounding her son’s abduction other than pointing out that the uniform, the machine-guns and the unaccented Russian could not serve as the definitive proof of the involvement of Russian servicemen in the abduction. The applicant further pointed out that the Government did not deny the presence of the military vehicles on the night of the abduction in the street located close to the applicant’s house. The applicant also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court’s case-law on Article 2. She stated that from the commencement of the investigation in April 2002 until October 2006 that is for more than four years she had been the only witness questioned by the investigators; that between October 2006 and October 2008 only two of her neighbours had been questioned by the investigators and that a number of other witnesses had been questioned only four and more years after the abduction, that the investigators had failed to verify the witnesses’ statements concerning the involvement of the military vehicles in the abduction. The investigation into

Ibragim Uruskhanov's kidnapping had been opened six days after the events and then had been suspended and resumed a number of times – thus delaying the taking of the most basic steps. The applicant submitted that she had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for almost seven years without producing any tangible results had been further proof of its ineffectiveness. The applicant invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to her or to the Court.

B. The Court's assessment

1. Admissibility

133. 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. Further, 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 115 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 Ibragim Uruskhanov

134. The Court reiterates that 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, from 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*, 27 September 1995, §§ 146-147, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

135. The Court has already found that the applicant's son must be presumed dead following unacknowledged detention 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 Ibragim Uruskhanov.

(b) The alleged inadequacy of the investigation of the kidnapping

136. 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).

137. In the present case, the kidnapping of Ibragim Uruskhanov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

138. 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.

139. The Court notes that the authorities were immediately made aware of the crime by the applicant's submissions. The investigation in case no. 61074 was instituted on 18 April 2002 that is, six days after Ibragim Uruskhanov's abduction. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were delayed and were eventually taken only several years after the abduction. Furthermore, the Court notes that, as can be seen from the decision of the local court of 5 August 2005, for almost three and half years of the investigation the investigators had not identified or questioned any servicemen, they had not established the owners of the APCs and URAL vehicles that had moved around Urus-Martan on the night of 12 April 2002, and that they had failed to establish and question witnesses of the abduction (see paragraph 48 above). In addition, only in November 2006 the investigators collected the pieces of clothing and the footwear found on the site of the discovery of human remains in April 2002 (see paragraph 96 above) and it is unclear whether any measures were taken to establish to whom they belonged. 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).

140. A number of essential steps were never taken. Most notably, it does not appear that the investigation took steps to verify the applicant's

allegations that the human remains found in April 2002 on the outskirts of Goyty had belonged to her son; that they had tried to identify and question the servicemen who had been manning the checkpoint to which the applicant and witnesses referred; that they had attempted to identify and question any of the local servicemen to establish their involvement in special operations in Urus-Martan at the material time and their possible involvement in the detention of Ibragim Uruskhanov.

141. The Court also notes that even though the applicant was twice granted victim status in the criminal case, she was only informed of the suspension and resumption 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.

142. Finally, the Court notes that the investigation in the criminal case was suspended and resumed a number of times and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending. The town court criticised deficiencies in the proceedings and ordered remedial measures. It appears that these instructions were not complied with.

143. Having regard to the limb of the Government's objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years having produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their objection concerning non-exhaustion of criminal domestic remedies.

144. 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 Ibragim Uruskhanov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

145. 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 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

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

147. The applicant maintained her complaint.

B. The Court's assessment

1. Admissibility

148. The Court notes that this complaint under Article 3 of the Convention 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

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

150. In the present case the Court notes that the applicant is the mother of the disappeared person and that she witnessed his abduction. For more than seven years she has not had any news of Ibragim Uruskhonov. 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 abduction. 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.

151. In view of the above, the Court finds that the applicant suffered distress and anguish as a result of the disappearance of her family member 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.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

153. The applicant further stated that Ibragim Uruskhonov 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

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

155. The applicant reiterated her complaint.

B. The Court's assessment

1. Admissibility

156. 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 the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

157. 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).

158. The Court has found that Ibragim Uruskhanov was abducted by State servicemen on 12 April 2002 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).

159. 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.

160. In view of the foregoing, the Court finds that Ibragim Uruskhanov 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 6 OF THE CONVENTION

161. The applicant complained that the proceedings brought by her against the investigators were unfair. She relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

162. The Court finds that Article 6 § 1 of the Convention is, in principle, inapplicable to the proceedings in question, as they clearly have not involved the determination of the applicant’s civil rights or obligations or a criminal charge against the applicant, within the meaning of the Convention (see *Akhmadov and Others v. Russia* (dec.), no. 21586/02, 3 May 2007).

163. It follows that these complaints are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

VII. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION

164. In her initial application form the applicant stated that the search conducted in her house on the night of Ibragim Uruskhonov’s abduction constituted an unlawful and unjustified interference with right to respect for home, in breach of Article 8 of the Convention.

Article 8 of the Convention, in so far as relevant, provides:

“1. Everyone has the right to respect for... his home....

“2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

165. In her observations on admissibility and merits the applicant stated that she no longer wished her complaint under Articles 8 of the Convention to be examined.

166. The Court, having regard to Article 37 of the Convention, finds that the applicant does not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character, affecting respect for human rights, as defined in the Convention, which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

167. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

168. 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

169. 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. The applicant had had an opportunity to challenge the actions or omissions of the investigating authorities in court pursuant article 125 of the Code of Criminal Procedure. In addition, she could have lodged a civil claim for compensation in respect of non-pecuniary damage. In sum, the Government submitted that there had been no violation of Article 13.

170. The applicant reiterated the complaint.

B. The Court’s assessment

1. *Admissibility*

171. 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*

172. 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*, 25 June 1997, § 64, *Reports of Judgments and Decisions* 1997-III).

173. As regards the complaint of 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*, cited above, § 183).

174. 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*, 27 April 1988, § 52, Series A no. 131). The applicant should accordingly have been able to avail herself of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

175. 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.

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

177. As regards the applicant’s reference to Articles 3 and 5 of the Convention, the Court considers that in the circumstances no separate issues arise 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).

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

178. 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. Damage

179. The applicant did not submit any claims for pecuniary damage. As regards non-pecuniary damage, she stated that she had lost her son and endured stress, frustration and helplessness in relation to her son’s abduction, aggravated by the authorities’ inactivity in the investigation of those events for several years. She left the determination of the amount of compensation to the Court.

180. The Government submitted that finding a violation of the Convention would be adequate just satisfaction in the applicant’s case.

181. 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 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 35,000 euros (EUR) plus any tax that may be chargeable thereon.

B. Costs and expenses

182. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicant’s legal representation amounted to EUR 2,600 (1,712 pounds sterling (GBP)). They submitted the following breakdown of costs:

- (a) GBP 400 for four hours of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;
- (b) GBP 1,137 for translation costs; and
- (c) GBP 175 for administrative and postal costs.

183. The Government did not dispute the reasonableness and the justification of the amounts claimed under this heading.

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

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

186. 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. The Court thus has no doubts that research was necessary to the extent claimed by the representatives.

187. Having regard to the details of the claims submitted by the applicant's representatives, the Court awards them the amount as claimed of EUR 2,600 together with any value-added tax that may be chargeable to the applicant, the net award to be paid in pounds sterling into the representatives' bank account in the UK, as identified by the applicant.

C. Default interest

188. 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 strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicant's complaints under Article 8 of the Convention;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and dismisses it;
3. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Ibragim Uruskhonov;
5. *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 Ibragim Uruskhonov had disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;

7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ibragim Uruskhonov;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Articles 3 and 5;
10. *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 date of settlement, save for the payment in respect of costs and expenses:
 - (i) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (ii) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the UK;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 18 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President