



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

1959 · 50 · 2009

FIRST SECTION

CASE OF PUKHIGOVA v. RUSSIA

(Application no. 15440/05)

JUDGMENT

STRASBOURG

2 July 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Pukhigova 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 11 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 15440/05) 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 Zina Pukhigova (“the applicant”), on 10 February 2005.

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

3. On 16 November 2007 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application, as well as to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. 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

5. The applicant was born in 1944 and lives in the village of Goyty, the Urus-Martan District, in the Chechen Republic.

6. The applicant was married to Mr Salman Abdulazizov, born in 1950. Salman Abdulazizov was a Category 1 disabled person. The couple are the parents of six children.

A. Disappearance of Salman Abdulazizov

1. The applicant's account

7. At about 2 a.m. on 12 February 2001 an armoured personnel carrier ("APC") and several UAZ vehicles with illegible registration numbers arrived at the applicant's house. Around twenty men armed with machine guns and sniper rifles got out of the vehicles and burst in. They did not identify themselves but the applicant believed that they belonged to the Russian military.

8. The servicemen searched the house without producing any warrant. Then they took Salman Abdulazizov away and put him into a Ural vehicle. There were also a red Niva car with no rear window, a Volga car and several UAZ vehicles parked nearby; the servicemen got into those vehicles and drove away. The applicant has not seen her husband since then.

9. On the night of 12 February 2001 five other inhabitants of the village of Goyty – Mr E., Mr I., Mr V. and two brothers, Mr D.M. and Mr V.M. – were abducted under similar circumstances. Later they were released and told the applicant that they had been kept together with her husband at the military commander's office of the Urus-Martan District.

2. Witnesses' statements submitted by the applicant

10. The applicant provided the Court with written statements by several Goyty villagers, including Mr I. and Mr V.M., who had been arrested on the night of 11-12 February 2001.

(a) Mr I.'s statement

11. At about 1 a.m. on 12 February 2001 Mr I. was sleeping at his home. Around twenty-five masked men in camouflage uniforms armed with sniper rifles entered his courtyard; seven of them proceeded to his house. The armed men spoke Russian without accent. They ordered Mr I. to get dressed and took him outside. The armed men searched and handcuffed Mr I. Some

ten minutes later a Ural vehicle and two UAZ vehicles arrived. The armed men covered Mr I.'s eyes with a cap and then fastened it with adhesive tape. However, Mr I. could see a little through holes. The armed men were putting Mr I. inside the Ural vehicle when he saw Salman Abdulazizov standing next to it. The servicemen told Salman Abdulazizov to climb into the Ural; he replied that he could not do it because he had only one leg. Then the men put him into the vehicle. Mr I. said hello to Salman Abdulazizov; a serviceman hit him, ordering him to keep silent. The Ural travelled for some fifteen minutes and then stopped. Mr I. was taken out of the vehicle and brought inside a building with stairs. He was left sitting in a corridor on a concrete floor for forty-eight hours. He was not given any food or drinks. Salman Abdulazizov spent a night in the same corridor and was questioned by servicemen on several occasions. Twenty-four hours later Salman Abdulazizov was taken away. Later someone approached Mr I. and asked him about Salman Abdulazizov. Two or three days later Mr I. was taken out of the building and put into a car. The servicemen brought him to the military commander's office of Goyty and left there. Mr I. spent an hour in the premises of the military commander's office of Goyty. Then his fellow villager Mr G. took him home.

(b) Mr V.M.'s statement

12. In 2001 the inhabitants of Goyty obtained the federal military's permission to organise a civilian night watch to protect their village from marauders.

13. At about 1 a.m. on 12 February 2001 Mr V.M. was on his way home after serving his shift on the night watch. At some point he noticed twelve or fifteen heavily armed men in masks and camouflage uniforms. The servicemen asked him where he was going and then forced him on to the ground. Ten minutes later the men entered Mr V.M.'s house and took his brother, Mr D.M., outside. The servicemen handcuffed the two men and took Mr V.M. to the Ural vehicle parked near the applicant's house. There were also three or four APCs and Urals on the street. Mr V.M. saw Salman Abdulazizov and greeted him in Chechen; both of them were put into the Ural. The servicemen put a cap over Mr V.M.'s eyes and fastened it with adhesive tape. The vehicle drove off in the direction of Urus-Martan; there were two federal checkpoints on the road between Goyty and Urus-Martan. After a twenty-minute ride Mr V.M. was taken out of the vehicle and led to the first or second floor of a building. He and his brother were kept in a big room. During the first two nights Mr V.M. did not see Salman Abdulazizov, but on the third night he saw a bearded one-legged man sitting on a chair and recognised him as Salman Abdulazizov. Mr V.M. could not see clearly because of the cap over his eyes. Later Mr V.M. was taken to another room and spent three days there. He was kept in the building for six days in total. On the fifth day the servicemen brought Mr D.M. into the same room; on

the sixth day they took the caps off their eyes. An officer with colonel's rank with visible insignia on his uniform told them that they had been arrested by mistake, apologised and let the brothers go. When he left the building Mr V.M. realised that it was the military commander's office of Urus-Martan District.

3. Information submitted by the Government

14. On the night of 12 February 2001 unidentified persons wearing camouflage uniforms abducted Salman Abdulazizov from his house at 1 Vygonnaya Street, Goyty village, and took him away.

B. Investigation into Salman Abdulazizov's disappearance

1. The applicant's account

15. Immediately after her husband's abduction, despite the curfew, the applicant, with several other women, went to the military commander's office in Goyty. The applicant saw in the courtyard of the Goyty military commander's office the same red Niva with no rear window that she had seen earlier near her house.

16. In the morning of 12 February 2001 the applicant went to the Urus-Martan District military commander's office. During the lunch hour she heard her husband singing a prayer. The voice was coming from the second floor of the building of the Urus-Martan District military commander's office. On the same day the applicant informed several State agencies that her husband was being kept in that building.

17. At some point the Urus-Martan District military commander told the applicant in a private conversation that her husband had been arrested by servicemen under his command but refused to confirm it officially. According to the applicant, the head of the Chechen Department of the Federal Security Service also said that Salman Abdulazizov had been kept at the military commander's office of the Urus-Martan District. Later the applicant was told that her husband had been sent to the town of Mozdok.

18. On 12 and 21 February 2001 the applicant complained in writing to the Urus-Martan District military commander, the head of the local administration and the Urus-Martan District prosecutor's office ("the district prosecutor's office") about her husband's abduction and requested assistance in establishing his whereabouts.

19. On 1 March 2001 the district prosecutor's office informed the applicant that her letter of 21 February 2001 had been forwarded to the Urus-Martan District military commander's office for examination on the merits.

20. On 3 June 2001 the district prosecutor's office instituted an investigation into Salman Abdulazizov's kidnapping under Article 126 § 1 of the Russian Criminal Code ("kidnapping"). The case file was assigned the number 25306.

21. On an unspecified date the applicant was granted victim status.

22. On 16 April 2001 the applicant was questioned as a victim.

23. On 18 July 2001 the applicant requested the military prosecutor's office of military unit no. 20102 ("the unit prosecutor's office") to establish her husband's whereabouts and to identify and punish his kidnappers.

24. On 29 April 2001 the Urus-Martan department of the interior ("ROVD") sent the materials of the inquiry into the arrest of Salman Abdulazizov by servicemen to the unit prosecutor's office.

25. On 20 July 2001 the applicant requested the district prosecutor's office to question as witnesses the five villagers who had been kept at the military commander's office of the Urus-Martan District, to inform her which number had been assigned to the criminal case related to her husband's kidnapping and to update her on progress in the investigation.

26. On 27 August 2001 the investigation in case no. 25306 was suspended for failure to identify those responsible.

27. On 2 November 2001 the applicant requested the district prosecutor's office to question as witnesses the five villagers who had been kept at the military commander's office of the Urus-Martan District and to take other investigative measures. It appears that the request remained unanswered.

28. On 26 March 2002 the district prosecutor's office informed the applicant that they had resumed the investigation in case no. 25306. They commented that they intended to transfer the case file to the military prosecutor's office.

29. On 30 September 2002 the applicant requested the district prosecutor's office to inform her of progress in the investigation.

30. On 12 May 2003 the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office") forwarded the applicant's complaint to the unit prosecutor's office.

31. On 16 May 2003 the Main Military Prosecutor's Office forwarded the applicant's complaint to the UGA prosecutor's office.

32. On 4 June 2003 the prosecutor's office of the Chechen Republic forwarded the applicant's complaint to the district prosecutor's office.

33. On 15 June 2003 the applicant was questioned again.

34. On 17 June 2003 the unit prosecutor's office informed the applicant that an inquiry had established no traces of military personnel's implication in Salman Abdulazizov's kidnapping and commented that the investigation into it had been opened by the district prosecutor's office.

35. On 11 July 2003 the UGA prosecutor's office forwarded the applicant's complaint to the unit prosecutor's office.

36. In autumn 2007 the investigation file was forwarded to the Investigative Committee of the Russian Prosecutor's Office for the Chechen Republic.

2. Information submitted by the Government

37. On 1 April 2001 the district prosecutor's office received a complaint by several Goyty villagers concerning Salman Abdulazizov's arrest by officers of the Ministry of the Interior. As an inquiry conducted had not established any implication of law enforcement agencies in Salman Abdulazizov's disappearance, on an unspecified date the district prosecutor's office instituted an investigation in case no. 25306 under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping).

38. The applicant was granted victim status and questioned. She stated that on the night of 12 February 2001 some fifty servicemen had entered her courtyard and fifteen of them had entered the house. The servicemen had been masked; two of them had been wearing grey uniforms and the other had been wearing camouflage uniforms. The servicemen had forcibly taken Salman Abdulazizov away and ordered the applicant not to leave the house. The applicant had seen a white UAZ-452 vehicle, a red Niva without a rear window and an Ural vehicle. Two APCs had been parked on the adjacent street. Later the applicant had learned that Mr E., Mr I., Mr V. and two brothers, Mr D.M. and Mr V.M., had also been arrested together with her husband, but they all had returned home within the next four days. The applicant had heard her husband's voice while he had been praying inside the Urus-Martan military commander's office. Salman Abdulazizov had lost his right leg as a result of a bombardment and walked with crutches. He had not participated in any illegal armed groups.

39. On 21 September 2001 the district prosecutor's office granted the applicant's request to be admitted to the criminal proceedings as a civil plaintiff.

40. On an unspecified date Ms N., the applicant's neighbour, was questioned and stated that at about 1 a.m. on 12 February 2001 she had heard the applicant screaming. Ms N. had stepped outside her house and observed through a hole in the fence a group of servicemen forcing Salman Abdulazizov into a Ural vehicle. The servicemen had also thrown his crutches into the Ural and driven away. On the following day she and other villagers had gone to the police unit from Saint-Petersburg, which had been on mission in Goyty. The commander of the unit, whose name was Yura, had told them that his subordinates had not been involved in Salman Abdulazizov's arrest. On 19 or 20 February 2001 Ms N. and other women had gone to Urus-Martan and heard Salman Abdulazizov's voice coming from the second floor of the building of the Urus-Martan military commander's office. She had recognised the voice because Salman

Abdulazizov had always recited prayers to the villagers during religious holidays. He had not participated in illegal armed groups.

41. The investigators also questioned Ms Z., Ms A. and Ms E., who made statements similar to that by Ms N.

42. On an unspecified date Mr D.M. was questioned and stated that on the night of 12 February 2001 he had been at home when ten masked men wearing camouflage uniforms and armed with machine guns had entered his house. The men had checked his identity papers, taken him and his brother Mr V.M. outside and placed them in the Ural vehicle. There had also been two UAZ vehicles parked nearby. Inside the Ural the armed men had blindfolded Mr D.M. and his brother with adhesive tape. When the Ural had stopped, the two brothers had been taken to an unknown place; they had gone up some stairs to get inside. They had been asked whether there were any insurgents in Goyty. For four days Mr D.M. and Mr V.M. had been kept locked in the same room and then released. Mr D.M. had not seen any other detainees in that room except for his brother.

43. On unspecified dates Mr I. and Mr E. were also questioned. They denied that they had seen Salman Abdulazizov after their abduction or heard his voice.

44. On 5 March 2008 the investigators questioned Mr V. He stated that at about 1 a.m. on 12 February 2001 unidentified armed persons had entered his house, taken him outside and put into a Ural vehicle. Mr V. could not see if there were other persons inside the Ural. They travelled for some forty minutes. Then Mr V. was kept in a building for two days and then released.

45. Mr E. was also questioned and made a statement analogous to that by Mr V.

46. The investigation in case no. 25306 was ongoing.

47. Despite specific requests by the Court the Government did not disclose any documents of the investigation file in case no. 25306. The Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning witnesses or other participants in the criminal proceedings.

C. Judicial proceedings against the investigators

48. On 28 April 2003 the applicant lodged a complaint with the Urus-Martan Town Court of the Chechen Republic ("the town court") that the district prosecutor's office was taking no action in the investigation into her husband's kidnapping.

49. On 29 March 2004 the town court observed that the district prosecutor's office had failed to examine the applicant's request of 2 November 2001 properly, and declared that omission unlawful. The

remainder of the complaint was dismissed for the reason that the alleged implication of military personnel in the kidnapping had not been proven.

50. On 3 August 2004 the Supreme Court of the Chechen Republic dismissed an appeal by the applicant, finding that military servicemen had not been involved in the kidnapping and that the district prosecutor's office had taken ample investigative measures to solve the crime.

II. RELEVANT DOMESTIC LAW

51. 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

52. 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 Salman Abdulazizov had not yet been completed. They further argued that it had been open to the applicant to challenge either in court or before higher prosecutors any actions or omissions of the investigating or other law enforcement authorities and that in fact she had lodged a court complaint. They also stated that the applicant could have lodged civil claims for damages caused by the investigators' actions but had failed to do so.

53. The applicant contested that objection and stated that the criminal investigation pending for eight years had proved to be ineffective.

B. The Court's assessment

54. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35

§ 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and further that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

55. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

56. The Court notes that the Russian legal system provides in principle two avenues of recourse for victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

57. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies and dismisses the Government's objection in this part.

58. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicant complained to the law enforcement agencies immediately after the kidnapping of Salman Abdulazizov and that an investigation has been pending since 1 April 2001. The applicant and the Government dispute the effectiveness of the investigation of the kidnapping.

59. The Court considers that this part of the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant's complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

60. The applicant complained that Salman Abdulazizov had been arrested by Russian servicemen and then disappeared and that the domestic authorities had failed to carry out an effective investigation of the matter. She relied on Article 2 of the Convention, which reads:

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

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

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

A. Arguments of the parties

1. The Government

61. The Government submitted that it had not been proved that any State servicemen had been involved in Salman Abdulazizov’s kidnapping or that he was killed. Mr I., Mr E. and Mr D.M. had not stated in the course of their witness interviews before the domestic investigation that they had seen Salman Abdulazizov in the premises of the military commander’s office of the Urus-Martan District. At different stages of the investigation the applicant’s description of the vehicles she had allegedly seen had varied. The applicant had not reported her husband’s kidnapping to the authorities immediately after the incident. The villagers had applied to law-enforcement agencies, not the applicant. Salman Abdulazizov had not been kept in any penitentiary facilities in the South of Russia; his dead body had not been discovered.

62. Salman Abdulazizov had not been prosecuted by the authorities. The Government suggested that he could have been kidnapped by Wahhabi insurgents wanting to take revenge on him because in 1997 he had been a head of the local administration and had followed a religious movement which disapproved of Wahhabi teaching.

63. The fact that the case materials had been forwarded to a military prosecutor’s office did not prove military involvement in the crime. The VOVD officers had merely written down the applicant’s account of events

and had not established that any servicemen had been implicated in the kidnapping.

64. The Government also observed that a considerable number of armaments and APCs had been stolen from Russian arsenals by insurgents in the 1990s and that members of illegal armed groups could have possessed camouflage uniforms and masks. Neither the applicant nor the witnesses had seen any insignia on camouflage uniforms.

65. The Government further argued that the investigation into the kidnapping had been effective and was pending before an independent State agency. The applicant had been informed of progress in the investigation in due course. The applicant had been responsible for the delay in commencement of the investigation as she had not promptly reported the crime to the authorities. Repeated suspensions and resumptions of the investigation only showed that the proceedings had been pending and requisite investigative measures had been taken.

2. The applicant

66. The applicant claimed that it was beyond reasonable doubt that the men who had taken away Salman Abdulazizov were State agents. In support of her assertion she referred to the following. At the material time the village of Goyty had been under the control of federal troops. The armed men who had abducted Salman Abdulazizov had Slavic features and spoke Russian without an accent, which proved that they were not of Chechen origin. They travelled in military vehicles, such as APCs, UAZ and Ural vehicles, past curfew hours and had passed by at least two federal checkpoints on their way to Urus-Martan. They arrested five other villagers together with Salman Abdulazizov.

67. The applicant had seen the red Niva car used by the perpetrators in the courtyard of the Goyty military commander's office. The applicant and other witnesses had heard Salman Abdulazizov's voice coming from the Urus-Martan District military commander's office. She had informed the authorities that her husband had been kept there as early as 12 February 2001.

68. The other detainees had been released from the premises of the military commander's office of the Urus-Martan District. Mr I. and Mr V.M. had confirmed that they had seen Salman Abdulazizov inside that building. Mr V.M. had also noticed insignia designating an officer with colonel's rank on the uniform of the person who he had seen before his release.

69. The ROVD officers had issued a certificate confirming that the case materials had been sent to a military prosecutor's office, which proved servicemen's involvement in the crime.

70. The applicant had received the first visit from an investigator six months after the kidnapping; she had not been properly questioned but only asked to point out villagers who were eyewitnesses to the crime.

71. The investigation into the kidnapping had been protracted and ineffective. During the first seven years of the proceedings the investigators had failed to question Mr V. and Mr V.M., those witnesses who had heard Salman Abdulazizov's voice coming from the Urus-Martan District military commander's office, or the servicemen of that office. The servicemen of the Goyty military commander's office, those who had been manning the two checkpoints or the ROVD servicemen had not been interviewed either. The applicant also suggested that the investigation should have been transferred to a military prosecutor's office.

B. The Court's assessment

1. Admissibility

72. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court has already found that the Government's objection concerning the alleged non-exhaustion of criminal domestic remedies should be joined to the merits of the complaint (see paragraph 59 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 Salman Abdulazizov

i. Establishment of the facts

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

no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

74. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-09, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

75. The Court notes that despite its requests for a copy of the entire investigation file into the kidnapping of Salman Abdulazizov, the Government refused to produce any documents from the file, on the grounds that they were precluded from providing them by Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has 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)).

76. In view of the foregoing and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in this respect. It considers that the applicant has presented a coherent and convincing picture of her husband's abduction.

77. The Court takes note of the Government's assertion that Salman Abdulazizov could have been kidnapped by insurgents wishing to take revenge on him but considers nonetheless that this is outweighed by the applicant's arguments for the following reasons.

78. The applicant's allegation that her husband's kidnappers were State agents is strongly supported by the witness statements. For instance, Mr D.M. stated before the domestic authorities that he and his brother had been kept locked up for four days following their abduction by armed men travelling in UAZ and Ural vehicles (see paragraph 42 above). It appears from the meagre information submitted by the Government that Mr I., Mr E. and Mr V. gave a similar description of the circumstances of their arrest and detention.

79. Moreover, the Government accepted that at least four witnesses had claimed before the investigators to have heard Salman Abdulazizov's voice coming from the premises of the Urus-Martan District military commander's office (see paragraphs 40 and 41 above).

80. The Court observes that certain points of the witness statements are disputed by the parties. The Government noted that the applicant's account of events had changed in the course of the domestic investigation. They further insisted that Mr D.M., Mr I. and Mr E. had not claimed in the course of their respective interviews to have seen or heard Salman Abdulazizov while in detention. The applicant submitted a written statement by Mr I.

confirming that he had seen her husband inside the Ural vehicle and later in the building in which he had been kept.

81. In the Court's view it is understandable that the applicant might omit or add certain details to her depositions made at different stages of the investigation, as a human being could not normally be expected to repeat his or her narrative on several occasions word by word. The Court is unable to verify whether there were any discrepancies between Mr I.'s statements made before the investigators and the Court as the Government failed to provide a transcript of his interview with the district prosecutor's office. In any event, it does not deem it necessary to do so for the following reason. Mr I. and Salman Abdulazizov, as well as Mr E., Mr V., Mr D.M. and his brother, were taken away on the same night from the same village under nearly identical circumstances by armed men travelling in the same types of vehicles. The Court thus assumes that all the six men were abducted by the same group of armed men.

82. The Court is not persuaded by the Government's argument that the persons who arrived in Goyty village could have been insurgents since it is unclear how a motorcade of several vehicles carrying heavily armed members of illegal armed groups could have driven past military checkpoints and remained unnoticed.

83. The Court thus finds that the fact that a large group of armed men in uniforms was able to move freely about the village controlled by the federal forces late at night past curfew, to abduct six men and then to pass two federal checkpoints strongly supports the applicant's allegation that these were State servicemen.

84. The Court reiterates that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of documents withheld by the Government, it is for the latter 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).

85. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that Salman Abdulazizov was arrested by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court considers that Salman Abdulazizov was abducted on

12 February 2001 at his house in Goyty by State servicemen during an unacknowledged security operation.

86. The Court has to decide further whether Salman Abdulazizov is to be considered dead. It notes in this regard that there has been no reliable news of the missing man since 12 February 2001. His name has not been found in any official records of detention facilities. Lastly, the Government did not submit any explanation as to what happened to him after his abduction.

87. Having regard to the previous cases concerning disappearances of people in the Chechen Republic which have come before the Court (see, for example, *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-...), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Salman Abdulazizov or any news of him for eight years corroborates this assumption.

88. Accordingly, the Court finds it established that on 12 February 2001 Salman Abdulazizov was abducted by State servicemen and that he must be presumed dead following his unacknowledged detention.

ii. The State's compliance with Article 2

89. 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 (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324).

90. The Court has already found it established that Salman Abdulazizov must be presumed dead following his unacknowledged detention by State servicemen (see paragraph 88 above). Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, it considers that responsibility for this death lies with the respondent Government.

91. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in respect of Salman Abdulazizov.

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

92. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such an investigation is to secure the

effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

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

94. Turning to the facts of the case, the Court notes that, according to the applicant, she applied to the authorities for assistance in establishing the whereabouts of her husband immediately after his abduction, that is, on 12 February 2001. The Government contested this information and claimed that the applicant had not lodged any complaints and that it had been her fellow villagers who had contacted the authorities two months after the incident. The Court points out that indeed it is unable to establish with certainty whether the applicant lodged a formal complaint on 12 February 2001 as it does not have a copy of it at its disposal. Nevertheless, the applicant submitted a copy of her complaint of 21 February 2001 addressed to the military commander of the Urus-Martan District, the district prosecutor's office and the head of administration of the Urus-Martan District. It follows from the letter of 1 March 2001 that the district prosecutor's office received the applicant's complaint of 21 February 2001 (see paragraph 19 above).

95. The Court notes that the date of commencement of the investigation in case no. 25306 remains unclear, as the parties did not produce a copy of the relevant decision. According to the applicant, the proceedings were instituted on 3 June 2001. The Government did not contest this statement but merely observed that the investigation had been opened on the basis of the complaint by the applicant's fellow villagers lodged on 1 April 2001 (see paragraph 37 above). The Court does not deem it necessary to establish the exact date of the commencement of the investigation, since it is evident that the district prosecutor's office failed to respond to the applicant promptly once she had reported the crime to them. The investigators had been aware of Salman Abdulazizov's kidnapping for at the very least one month before they started taking measures to solve it. This important delay, for which no explanation was provided, was in itself liable to affect the

investigation of a crime such as abduction in life-threatening circumstances, where crucial action must be taken expeditiously.

96. The Court observes that, owing to the inadequacy of the information at its disposal, it cannot establish when most of the witness interviews referred to by the Government took place. However, it notes with astonishment that Mr V., a key witness who had been abducted on the same night as Salman Abdulazizov and who resided in the same village as the applicant, was questioned for the first time on 5 March 2008, that is seven years and twenty-three days after the incident (see paragraph 44 above). Therefore, the investigators failed, despite the applicant's explicit requests (see paragraphs 25 and 27 above), to take such a basic investigative measure as questioning an important witness in a timely fashion.

97. The Court observes that in the present case the investigating authorities not only did not comply with the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II), but failed to take the most elementary investigative steps. Most notably, there is no indication that the crime scene was ever inspected. Moreover, nothing in the materials at the Court's disposal allows the conclusion that the investigators ever tried to question servicemen of the Urus-Martan District military commander's office or the Goyty military commander's office. They made no attempts to find the vehicles described by the applicant and the witnesses, including the red Niva, or to identify their owners. Lastly, the Government did not show that the investigators had ever questioned Mr V.M.

98. The Court also notes that even though the applicant was eventually granted victim status, she was not informed of any significant developments in the investigation apart from a few decisions on its suspension and resumption. Accordingly, the Court finds that 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 (see *Oyur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

99. Finally, the Court notes that the investigation has been pending for nearly eight years and was suspended and resumed several times, so that there were lengthy periods of inactivity on the part of the investigators. Such handling of the investigation could not but have had a negative impact on the prospects of identifying the perpetrators and establishing the fate of Salman Abdulazizov.

100. Having regard to the limb of the Government's objection that was joined to the merits of the application, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for almost eight years and has produced no tangible results. Accordingly, the Court finds that the remedy

relied on by the Government was ineffective in the circumstances and rejects their objection in this part.

101. The Government also mentioned that the applicant had the opportunity to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicant indeed tried to make use of the remedy suggested by the Government. However, the authorities still failed to investigate her allegations properly. Moreover, owing to the time that had elapsed since the events complained of, certain investigative steps that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy invoked would have had any prospects of success. Therefore, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection in this part as well.

102. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Salman Abdulazizov, in breach of Article 2 of the Convention in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

103. The applicant complained that as a result of her husband's disappearance and the State's failure to investigate it properly she had endured severe mental and emotional suffering. In her initial application form she also argued that Salman Abdulazizov had probably been ill-treated after his arrest. She relied on Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

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

105. In the observations on admissibility and merits of 21 April 2008 the applicant stated that she no longer wished the complaint concerning the alleged ill-treatment of Salman Abdulazizov to be examined. She maintained her complaint concerning the mental suffering she had endured.

B. The Court's assessment

1. The complaint concerning Salman Abdulazizov

106. Since the applicant has lost the interest in this complaint under Article 3 of the Convention, the Court, having regard to Article 37 of the Convention, finds that she 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 further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *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).

107. It follows that the complaint concerning the alleged ill-treatment of Salman Abdulazizov must be struck out in accordance with Article 37 § 1 (a) of the Convention.

2. The complaint concerning the applicant

(a) Admissibility

108. The Court notes that the part of the complaint under Article 3 of the Convention concerning the applicant's mental suffering 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.

(b) Merits

109. 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 applicants 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).

110. In the present case the Court notes that the missing person was the applicant's husband. For eight years the applicant has had no news of him. Throughout this period she has persistently applied to various official bodies with enquiries about Salman Abdulazizov, both in writing and in person. Despite her attempts, she has never received any plausible explanation or information as to what became of him following the kidnapping. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

113. The applicant further stated that Salman Abdulazizov was 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

114. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Salman Abdulazizov was had been deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention.

115. The applicant reiterated the complaint.

B. The Court’s assessment

1. Admissibility

116. 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

117. 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).

118. The Court has found it established that Salman Abdulazizov was detained by State servicemen on 12 February 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).

119. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicant’s complaints that her husband was detained and taken away in life-threatening circumstances.

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

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

121. The applicant complained that she had been deprived of effective remedies in respect of the above complaints, 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

122. The Government contended that the applicant 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 an opportunity to challenge the actions or omissions of the investigating authorities in court or before higher prosecutors and to claim civil damages.

123. The applicant reiterated the complaint.

B. The Court’s assessment

1. *Admissibility*

124. 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*

125. 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* 1997-III).

126. 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, 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, §§ 161-62, 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).

127. 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.

128. 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.

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

130. As regards the applicant’s reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on account of the applicant’s mental and emotional suffering as a result of the disappearance of her husband, her inability to find out what had happened to him and the way the authorities had handled her complaints. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities’ conduct that led to the suffering endured by the applicant. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in conjunction with Article 3 of the Convention.

131. As regards the applicant’s reference to Article 5 of the Convention, the Court reiterates that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a

violation of Article 5 of the Convention resulting unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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

133. The applicant made no claims as regards pecuniary damages. She claimed 80,000 euros (EUR) as non-pecuniary damages for the suffering she had endured as a result of the loss of her husband and the indifference shown by the authorities towards her.

134. The Government found the amounts claimed exaggerated.

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

B. Costs and expenses

136. The applicant was represented by Mr D. Itsleyev. She submitted an itemised schedule of costs and expenses that included thirty-one hours of research and legal drafting at a rate of EUR 150 per hour. She also claimed translation fees confirmed by relevant invoices and administrative expenses unsupported by any evidence. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 5,607.

137. The Government stated that the costs claimed should be actually incurred and be reasonable.

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

139. Having regard to the details of the information, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representative.

140. 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.

141. Having regard to the details of the claims submitted by the applicant, the Court awards under this head EUR 5,607, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to the applicant.

C. Default interest

142. 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 complaint under Article 3 of the Convention concerning the alleged ill-treatment of Salman Abdulazizov;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
3. *Declares* the complaints under Articles 2, 5 and 13 of the Convention, as well as the complaint under Article 3 of the Convention concerning the applicant's mental suffering, admissible;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Salman Abdulazizov;
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 Salman Abdulazizov had disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant on account of her mental and emotional suffering;

7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Salman Abdulazizov;
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:
 - (i) EUR 35,000 (thirty-five thousand euros) in respect of non-pecuniary damage to the applicant, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (ii) EUR 4,757 (four thousand seven hundred and fifty-seven euros) in respect of costs and expenses to be paid to the applicant's representative, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;
 - (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;
11. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

André Wampach
Deputy Registrar

Christos Rozakis
President