



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

FIRST SECTION

**CASE OF ALIYEVA v. RUSSIA**

*(Application no. 1901/05)*

JUDGMENT

STRASBOURG

18 February 2010

**FINAL**

*04/10/2010*

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



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

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinvernì,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 January 2010,

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

## PROCEDURE

1. The case originated in an application (no. 1901/05) 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 Khava Aliyeva, on 4 December 2004.

2. The applicant, who was granted legal aid, was represented by lawyers of the International Protection Centre, an NGO based in Moscow. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. On 17 September 2007 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. 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, Khava Aliyeva, was born in 1967 and lives in Grozny.

#### **A. Disappearance of Mr Abu Aliyev**

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

6. At the material time the applicant, her husband, Mr Abu Aliyev, born in 1962, and their five children lived in flat no. 77 at 141 Khmelnitskaya Street, Grozny, in the Chechen Republic. Mr Abu Aliyev was disabled as he had had one leg amputated.

7. At 2.00 a.m. on 29 October 2002 several armoured personnel carriers ("APCs") and UAZ vehicles arrived at 141 Khmelnitskaya Street and around thirty armed men wearing camouflage uniforms and masks got out of the vehicles. They broke down the door of the Aliyevs' flat and entered. The men did not identify themselves but the applicant believed that they belonged to the Russian military because they spoke unaccented Russian and had blue eyes.

8. The servicemen searched the flat and took money in the amount of 1,500 roubles, certain personal items and books on Islam. Then they dragged Mr Abu Aliyev out of the bed, forced him onto the floor and beat him. Meanwhile some of them ordered the applicant to go into the kitchen. She obeyed; once in the kitchen she grabbed a knife, but the servicemen threatened to shoot her unless she dropped it. The men tied the applicant up with adhesive tape and threw her on to the floor. Then they took with them Mr Abu Aliyev, who was wearing only his underwear, and left.

9. The applicant's neighbour, Ms B., looked through the window and saw masked men in camouflage uniforms dragging out the half-naked Mr Abu Aliyev. She rushed to the Aliyevs' flat and found the applicant tied up with adhesive tape and her children crying. After Ms B. had untied the applicant they rushed into the street, but heard only the sound of the vehicles. The applicant has enclosed a written statement by Ms B. to corroborate her account of the events.

10. The next day relatives of Mr Yu. A., who lived in the neighbouring district of Grozny, came to see the applicant. She had never met them before and believed that her husband did not know Mr Yu. A. either. They said that Mr Yu. A. had also been abducted the previous night by armed men in APCs and asked her whether she had any information about the captives. The applicant replied that she had no information. The applicant has not

furnished any statements by the relatives of Mr Yu. A. concerning the latter's alleged abduction.

*2. The Government's account*

11. According to the Government, on 1 November 2002 the Grozny Prosecutor's Office received from the Prosecutor's Office of the Chechen Republic the applicant's request to take measures to find her husband, Mr Abu Aliyev, taken on 29 October 2002 to an unknown destination by unidentified men in camouflage uniforms armed with automatic weapons and who had UAZ vehicles.

**B. Official investigation into Mr Abu Aliyev's disappearance**

12. On 30 October 2002 the applicant, requesting assistance in the search for her husband, reported his abduction to various State agencies, such as the prosecutors' offices of Grozny and the Chechen Republic, the Security Council of the Chechen Republic and the Chechen Administration.

13. On 11 November 2002 the Chechen Administration informed the applicant that her complaint had been forwarded to the Grozny Prosecutor's Office.

14. On 12 November 2002 the Grozny Prosecutor's Office informed the applicant that an investigation into her husband's kidnapping had been instituted on 11 November 2002 under Article 126 § 2 of the Russian Criminal Code ("aggravated kidnapping"). The decision to institute the investigation stated, *inter alia*:

"On 29 October 2002 at approximately 2 a.m. unidentified men armed with automatic weapons in masks and camouflage uniforms, having broken down the entrance door, entered apartment no. 77 at Bogdana Khmel'nitskogo street, house 141, building 5 in the Leninskiy District of Grozny and forcibly took [Mr] Abu Adamovich Aliyev, born in 1962, residing at the above stated address, to an unknown destination."

15. On 4 December 2002 the Grozny Prosecutor's Office granted the applicant victim status in case no. 48193. It appears that she was questioned on the same date. According to the Government, she stated that on the night of 29 October 2002 she had been woken up by noise from the stairwell. She had got dressed and when she had approached the door she had heard her neighbour telling somebody not to break down the door. She had wanted to go out and see what was happening, however at that moment armed men wearing camouflage uniforms and masks had broken down the door and burst into the apartment. Without giving any explanations they had searched the apartment. They had put adhesive tape on her mouth, tied up her hands and feet and thrown her on to the kitchen floor. Then, having taken some minor personal things, books on Islam, subha (Muslim prayer beads) and money in the amount of RUB 1,500 they had left, taking her husband with

them. When she ran outside she saw an APC and a UAZ vehicle with its lights off going towards the veterinary clinic. She has had no information about her husband since.

16. On an unspecified date Ms B. was questioned. According to the Government she submitted that on the night of 29 October 2002 she had heard noise and had gone out to the stairway enclosure. There she had seen somebody breaking down the door between the lobby and the staircase. She had said not to break down the door as she would open it herself. However, unknown persons had broken down the door and entered. They were armed men in masks with automatic guns. One of them had said to her in Russian "Stand back!" and had closed the door to her apartment. She had heard them breaking down the door of the Aliyevs' apartment. When she looked out into the street she saw a man in camouflage uniform with an automatic weapon sitting there. Then she opened the door again and saw an armed man in a mask who noticed her and turned towards her. She got frightened and closed the door. Then she heard the noise in the stairway enclosure and went to the kitchen window to see what was going on in the yard. There she saw a group of approximately ten men in camouflage uniforms walking fast towards Bogdana Khmelnitskogo Street. Two of them were carrying Mr Abu Aliyev. There was nobody else in the street. She left her apartment and went to see the applicant to find out what had happened. The applicant told her that those men had been looking for her husband. They had tied her up but had not touched the children.

17. On 13 January 2003 the Grozny Prosecutor's Office informed the applicant that the investigation into her husband's kidnapping had been stayed for a failure to identify those responsible.

18. On 17 and 23 January 2003 the Grozny Prosecutor's Office informed the Special Envoy of the Russian President in Chechnya for Rights and Freedoms and the applicant that an investigation in case no. 48193 had been instituted on 11 November 2002.

19. On 9 March 2003 the Grozny Prosecutor's Office informed the applicant that the investigation in case no. 48193 had been stayed for a failure to identify those responsible and that investigative measures were being taken to resolve the crime.

20. On 23 June 2003 the applicant was again questioned. According to the Government, she submitted no new information.

21. On 27 August 2003 the investigating authorities sent instructions to district prosecutors in the Chechen Republic to intensify search measures.

22. On 7 October 2003 the applicant asked the Grozny Prosecutor's Office to clarify what stage the investigation into her husband's kidnapping had reached. She further requested that, if the proceedings had been stayed, the decision to suspend the investigation be quashed.

23. On 8 October 2003 Ms Sh., the applicant's neighbour, was questioned. According to the Government, she stated that on the night of the

abduction she had been woken up by the noise. However, she had noticed nothing else and had fallen asleep again. The next morning she had learned that Mr Abu Aliyev had been abducted.

24. On 9 October 2003 Mr B., another neighbour of the applicant, was questioned. According to the Government, he submitted that he was living with his ex-wife in the apartment next to the Aliyevs. On 29 October 2002 she had been woken up by loud noise in the stairway enclosure. He had thought that it was thieves, but his wife had said that it was servicemen. She had asked him not to go out and had gone to the window herself. They had heard noise from apartment no. 77 but had not been able to understand what was going on there. In about ten minutes everything had calmed down and they had gone to apartment no. 77 to find out what had happened. There in the kitchen he had seen the applicant who had said that the armed men in camouflage uniforms had taken away her husband. His wife had confirmed that she had seen armed men in camouflage uniforms.

25. On 10 October 2003 the Leninskiy District Prosecutor's Office informed the applicant that the decision to suspend the investigation in case no. 48193 was compatible with domestic law and thus there were no reasons to quash it.

26. On 13 October 2003 Ms G., who apparently also lived in Bogdana Khmel'nitskogo Street, was questioned. According to the Government, she stated that she had no close relationship with the Aliyevs. She had learned about the abduction a few days later from her neighbours. Mr G., questioned on the same date, made a similar statement.

27. On 16 October 2003 Ms S., the applicant's neighbour, was questioned. According to the Government, she submitted that on the night of 29 October 2002 she had been woken up by the noise. She had opened the door to the balcony and had called out to the applicant since she had thought that the noise had been coming out from their apartment. She had heard no reply and had gone down to the applicant's apartment. There she had seen the applicant who had just been untied by her daughter. Later Ms S. had learned that armed men had taken away Mr Abu Aliyev.

28. On 17 October 2003 Ms A., the applicant's daughter, was questioned. According to the Government, she stated that on the night of 29 October 2002 she had been woken up by a horrible noise. Her three-year-old brother had also woken up and they had got frightened and started to cry. The armed people burst into their apartment. One of them ordered her to stop crying and to calm down her brother. They had left in approximately ten to fifteen minutes. Then she had heard her mother calling her. Ms A. had gone to the kitchen and found her mother there, tied up with adhesive tape. Ms A. had untied her, and her mother had run outside. Ms A. had not seen her father being taken away.

29. On the same date the applicant requested the Prosecutor's Office of the Chechen Republic that she be permitted to copy the investigation file, at her own expense.

30. On 27 October 2003 the applicant requested the Prosecutor's Office of the Chechen Republic to help her find her husband, who had been kidnapped by armed men in camouflage uniforms.

31. On 5 November 2003 the Prosecutor's Office of the Chechen Republic denied the applicant access to the case file, giving the reason that the investigation had not been completed.

32. On 9 February 2004 the Leninskiy District Prosecutor's Office informed the applicant that the investigation into her husband's kidnapping had been resumed and invited her to visit their premises on 14 February 2004 for additional questioning as a victim.

33. On 14 February 2004 Mr A., Mr Abu Aliyev's brother, was questioned. According to the Government, he submitted that he had learned of his brother's abduction from his cousin. He had been surprised because the day before his brother had visited him and they had been planting apple trees together.

34. On 9 March 2004 the investigation in case no. 48193 was again suspended; the applicant was not promptly informed of the decision.

35. On 16 June 2004 the applicant requested the Leninskiy District Prosecutor's Office to inform her of recent developments in the investigation and to allow her access to the case file.

36. On 26 June 2004 she repeated the request.

37. According to the Government, in the course of the investigation measures were taken to establish the whereabouts of Mr Abu Aliyev and to identify the perpetrators. In particular, requests for information were sent to Departments of the Interior and prosecutors of different levels in Chechnya and Dagestan, the FSB Department in Chechnya, the Chechen penitentiary and passport-visa authorities, the Ministry of the Interior and other bodies. As a result of those measures it was established that Mr Abu Aliyev had not been detained by State authorities and had not been placed in either remand or administrative detention facilities. He was not found in hospitals, nor was his body to be found in any morgue either. No special operations were being conducted by the federal forces in Grozny on the date in question. The investigation did not establish that servicemen were involved in the crime. Operational search measures were being taken in the criminal case.

38. The Government provided documents related to the investigation on ten pages, including copies of the decisions to institute the investigation and to grant the applicant victim status and of notifications sent to the application concerning the institution, suspension and resumption of the investigation. The Government enclosed no transcripts of questioning and no other documents concerning the investigative measures allegedly taken.



### C. Judicial proceedings against the investigators

On 22 December 2003 the applicant lodged a complaint with the Leninskiy District Court of Grozny. She requested that the decision on suspension of the investigation be quashed and that the investigators' inactivity be found unlawful.

On 16 June 2004 the applicant requested the Leninskiy District Court of Grozny to inform her whether the complaint of 22 December 2003 had been examined.

On 15 July 2004 the Leninskiy District Court of Grozny dismissed the applicant's complaint having found that the investigators had taken all requisite measures to resolve the crime.

On 22 July 2004 the applicant appealed against the court's decision.

On 15 September 2004 the Supreme Court of the Chechen Republic dismissed the applicant's appeal, finding no flaws in the investigation.

## II RELEVANT DOMESTIC LAW

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

## THE LAW

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

40. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies since the investigation into the disappearance of Mr Abu Aliyev had not yet been completed. The applicant stated that the criminal investigation had proved to be ineffective and that her complaints to that effect, including her application to the district court, had been futile.

41. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73-74, 12 October 2006). The Court observes that the applicant complained to the law enforcement authorities shortly after the kidnapping of Mr Abu Aliyev and that an investigation has been pending since 11 November 2002. The applicant and the Government dispute the effectiveness of the investigation of the kidnapping.

42. 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. 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

The applicants complained under Article 2 of the Convention that their relative had been deprived of his life 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

43. The Government pointed out a number of inconsistencies in the applicant's submissions. In the first place, whereas she alleged that there had been approximately thirty abductors, Ms B. referred only to ten. The applicant's allegations that they had arrived and left in APCs was not supported by any other witness. The Government considered that the abductors' conduct, as described by the applicant, had not been typical for servicemen. Furthermore, the applicant failed to mention any specific military insignia, whereas weapons and camouflage uniforms could have been accessible to offenders other than servicemen. The applicant's allegations that a certain Mr Yu. A. had been detained by the same persons is irrelevant. Moreover, she had never mentioned it to the domestic investigating authorities. The Government also submitted that there had been no curfew in Grozny on the date of Mr Abu Aliyev's abduction, but conceded that checkpoints had been operating. They enclosed a letter of the commander of the United Group Alignment (UGA) in this respect.

44. The Government argued that the investigation into the abduction of the applicant's husband had met the Convention requirement of effectiveness. It was promptly instituted, and all measures available under national law were being taken to identify those responsible, which was supported by findings of domestic courts with respect to the applicant's complaint.

45. The applicant submitted that at the relevant time the district where she lived with her husband was under the full control of Russian federal troops. She argued that, on the contrary, the abductors' conduct clearly showed that they were servicemen, since they had acted openly, clearly convinced of their impunity. In the applicant's view, her account of the events was supported by other witnesses. She also stated that at the time of the abduction Grozny was under curfew. To support her statement she referred to several cases where the Court had found that there had been curfew in different parts of the Chechen Republic in the autumn – winter of 2002, in particular, to *Dangayeva and Taramova v. Russia*, no. 1896/04, § 81, 8 January 2009, and *Dokayev and Others v. Russia*, no. 16629/05, § 72, 9 April 2009, where the Court had established that there had been curfew in Grozny on 23 October and 10 December 2002 respectively.

46. The applicant also argued that the investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law. In particular, necessary investigative measures were either not taken promptly enough or not taken at all. She had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any known results was 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*

47. 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 42 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

## 2. Merits

### (a) The alleged violation of the right to life of Mr Abu Aliyev

#### i. General principles

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

#### ii. Establishment of the facts

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

50. The applicant alleged that on the night of 29 October 2002 her husband, Mr Abu Aliyev, was abducted by Russian servicemen and then disappeared. She invited the Court to draw inferences as to the well-foundedness of her allegations from the Government's failure to provide the documents requested from them. She said that she had witnessed Mr Abu Aliyev's abduction and provided a coherent account of the sequence of events. The applicant also enclosed a witness statement by her neighbour Ms B. to support her account of the events.

51. The Government conceded that Mr Abu Aliyev had been abducted by unknown armed men on the night of 29 October 2002. However, they denied that the abductors were State servicemen and, consequently, that the State was responsible for the disappearance of the applicant's husband.

52. The Court notes that despite its repeated requests for a copy of the investigation file into the abduction of Mr Abu Aliyev, the Government, relying on Article 161 of the Code of Criminal Procedure, have produced no documents from the case files apart from several copies of procedural decisions. 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)).

53. In view of this, and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect. It considers that the applicant has presented a coherent and convincing picture of her husband's abduction on the night of 29 October 2002. It observes that the Government did not deny that Mr Abu Aliyev had been abducted by armed men, although they did deny that the men were State agents.

54. The Government argued that the applicant's submissions were inconsistent. In particular, while according to her there had been approximately thirty abductors, Ms B. stated that she had seen only ten armed men. However, the Court sees no contradiction in that when Ms B. had glanced out the window she had only seen ten out of the thirty abductors.

55. The Government further asserted that the applicant's allegations that the abductors had arrived in APCs were not supported by other witnesses. Furthermore, she did not mention any specific military insignia and, in the Government's view, the described conduct of the abductors did not correspond to that of servicemen. The Court notes with regard to the first argument that, indeed, no other witness had seen the APCs. Several witnesses had only heard the sound of unspecified vehicles. However, the Court considers that neither argument refutes the applicant's contention that the abductors were servicemen, for the following reasons.

56. The Court notes that the parties disagreed as to whether there had been curfew in Grozny at the time of the abduction. The Government submitted that there had been none, but conceded that checkpoints had been operating. They enclosed a letter from the UGA commander to corroborate their submissions. The applicant maintained that there had been curfew and referred to, in particular, the cases of *Dangayeva and Taramova* (cited above, § 81) and *Dokayev and Others* (cited above, § 72) where the Court had established that curfew had been operating in Grozny on 23 October and 10 December 2002 respectively. Having regard to the cases cited, the Court finds it unlikely that the curfew in Grozny should be lifted and re-imposed during such a relatively short period in 2002. It also notes that the Government did not provide copies of any relevant orders. However, the Court is not called upon to decide on this issue in the present case since it is

not in dispute between the parties that checkpoints in Grozny were operating at the time of the abduction.

57. The Court observes that, apart from the applicant's account, the circumstances of Mr Abu Aliyev's abduction were described in concordant statements of several witnesses, including Ms B., the applicant's neighbour, and Ms A., the applicant's daughter. In the Court's view, the fact that a large group of armed men in uniform in several vehicles, even if those were not the APCs, was able to pass freely through checkpoints, proceeded to search the apartment and spoke unaccented Russian suffices to corroborate the applicant's allegation that they were State servicemen.

58. The Court also notes that in her applications to the authorities the applicant consistently maintained that Mr Abu Aliyev had been detained by unknown servicemen and requested the investigating authorities to look into that possibility. It further notes that after seven years the domestic investigation has produced no tangible results.

59. 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 such 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).

60. Taking into account the above elements, the Court is satisfied that the applicant has made out a *prima facie* case that her husband was detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide a plausible explanation of the events in question, the Court finds it established that Mr Abu Aliyev was abducted on 29 October 2002 from his home in Grozny by State servicemen during an unacknowledged security operation.

61. The Court further notes that there has been no reliable news of Mr Abu Aliyev since October 2002. His name has not been found in the official records of any detention facilities. Finally, the Government have not submitted any explanation as to what happened to him after his abduction.

62. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts)), the Court considers that, in the context of the

conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Mr Abu Aliyev or any news of him for over seven years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of his disappearance and the official investigation into his abduction, which has gone on for over seven years, has produced no tangible results.

63. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Mr Abu Aliyev was abducted on 29 October 2002 by State servicemen and that he must be presumed dead following his unacknowledged detention.

*iii. The State's compliance with Article 2*

64. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

65. The Court has already found it established that the applicant's husband must be presumed dead following unacknowledged detention by State servicemen. Noting that the authorities do not rely on any ground of justification in respect of any use of lethal force by their agents, it follows that liability for his presumed death is attributable to the respondent Government.

66. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Mr Abu Aliyev.

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

67. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, judgment of 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 and carried out with reasonable promptness and expedition. It should also be effective in the sense that it is capable of leading to a determination of whether or not the force used in such cases was lawful and justified in the circumstances, and should afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

68. The Court notes at the outset that no documents from the investigation file were disclosed by the Government, apart from copies of two procedural decisions and notifications sent to the applicant on ten pages. 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.

69. Turning to the facts of the present case, the Court notes that, according to the applicant, she notified the authorities about the abduction on 30 October 2002. This is not disputed by the Government. The investigation into the abduction was instituted on 11 November 2002, that is twelve days after Mr Abu Aliyev's abduction. Such a delay *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.

70. The Court further has to assess the scope of the investigative measures taken. According to the Government, apart from the applicant, six other witnesses were questioned. Ms B. was questioned on an unspecified date and five other witnesses were questioned in October 2003. Furthermore, a number of requests were sent to various State authorities with a view to establishing Mr Abu Aliyev's whereabouts. However, the Government have produced no documents, such as inspection reports, transcripts of questioning or copies of the requests and responses, to corroborate their submissions. Accordingly, not only is it impossible to establish how promptly some of those measures were taken, but whether they were taken at all.

71. Even assuming the accuracy of the Government's submissions, the Court notes that five witnesses, including the applicant's neighbours and her daughter, were questioned for the first time a year after the events. 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.

72. Furthermore, it appears that a number of crucial steps were never taken. In particular, there is no evidence that the crime scene was ever inspected or that any officials of local law-enforcement and military authorities were questioned. Neither the identity of the owners of the



vehicles that had moved around Grozny on the night of 29 October 2002 nor their itinerary were established.

73. The delays and omissions, 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).

74. The Court also notes that even though the applicant was granted victim status in the investigation concerning the abduction of their relative, she was only informed of the suspensions and resumptions of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

75. Finally, the Court notes that the investigation was adjourned and resumed on several occasions. It also appears that there were lengthy periods of inactivity on the part of the prosecuting authorities when no investigative measures were being taken.

76. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been 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 preliminary objection.

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

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

78. The applicant relied on Article 3 of the Convention, submitting that Mr Abu Aliyev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention and that no effective investigation had been conducted in this respect. She also complained that as a result of her husband's disappearance and the State's failure to investigate it properly she had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

### **A. The parties' submissions**

79. The Government disagreed with these allegations and argued that the investigation had not established that Mr Abu Aliyev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention by State agents. Likewise, since it had not been established by the domestic investigation that Mr Abu Aliyev had been abducted by State agents, the applicant's mental suffering could not be imputable to the State.

80. The applicant maintained her submissions.

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

#### *1. Admissibility*

81. 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*

##### **(a) The complaint concerning Mr Abu Aliyev**

###### *i. General principles*

82. In so far as the applicant complained that her husband had been ill-treated when abducted, the Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161 *in fine*).

83. The Court reiterates that “where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to ‘secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention’, requires by implication that there should be an effective official investigation” (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

*ii. The alleged ill-treatment*

84. The Court notes that the applicant herself and her neighbour, Ms B., witnessed her husband's abduction. They saw that the servicemen took Mr Abu Aliyev, who had had one leg amputated, and dragged him into the street in the night in late October in only his underwear.

85. It further notes the Government's submission that the domestic investigation had not established that Mr Abu Aliyev had been subjected to inhuman or degrading treatment. The Court observes, however, that despite its repeated requests the Government did not provide a copy of the investigation file, having failed to adduce sufficient reasons for the refusal (see paragraph 52 above), and finds that it can draw inferences from the Government's conduct in this respect.

86. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, amongst other authorities, the *Tekin v. Turkey* judgment of 9 June 1998, *Reports* 1998-IV, § 52).

87. The Court has found it established that Mr Abu Aliyev was abducted on 29 October 2002 by State agents. The evidence submitted shows that he, a disabled person, was dragged outside by armed men at night in cold weather with only his underwear on. The Court considers that, in the circumstances of the present case, this treatment reached the threshold of "inhuman and degrading" since it not only made Abu Aliyev suffer from cold, but must have made him feel humiliated, defenceless and caused fear and anguish as to what might happen to him.

88. There has therefore been a violation of Article 3 of the Convention in respect of Mr Abu Aliyev.

*iii. Effective investigation*

89. The Court notes that the domestic investigation instituted in relation to Mr Abu Aliyev's abduction produced no tangible results. For the reasons stated above in paragraphs 67-77 in relation to the procedural obligation under Article 2 of the Convention, the Court concludes that the Government has failed to conduct an effective investigation into the ill-treatment of Mr Abu Aliyev.

90. Accordingly, there has been a violation of Article 3 also in this respect.

**(b) The complaint concerning the applicant's mental suffering**

91. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be

victims of treatment in violation of Article 3. 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 (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

92. In the present case the Court notes that the applicant is the wife of the disappeared person and that she witnessed his abduction. For seven years she has not had any news of him. During this period the applicant has made enquiries to various official bodies, both in writing and in person, about her husband. Despite her attempts, the applicant has never received any plausible explanation or information about what became of him following his detention. The responses she received mostly denied State responsibility for her husband's arrest or simply informed her that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

#### IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

94. The applicant further stated that Mr Abu Aliyev had been detained in violation of the guarantees contained in 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**

95. The Government asserted that no evidence had been obtained by the investigators to confirm that Mr Abu Aliyev had been deprived of his liberty by State agents. He was not listed among the persons kept in detention centres and none of the regional law enforcement agencies had information about his detention.

96. The applicant reiterated the complaint.

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

#### *1. Admissibility*

97. 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*

98. 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).

99. The Court has found that Mr Abu Aliyev was abducted by State servicemen on 29 October 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).

100. 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 relative 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.

101. In view of the foregoing, the Court finds that Mr Abu Aliyev 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

102. 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

103. 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. She had been granted victim status in the criminal proceedings and had had an opportunity to challenge the acts or omissions of the investigating authorities in court and had availed herself of it. The Government added that participants in criminal proceedings could also claim damages in civil proceedings and referred to cases where victims in criminal proceedings had been awarded damages from state bodies and, in one instance, the prosecutor's office. In sum, the Government submitted that there had been no violation of Article 13.

104. The applicant reiterated the complaint.

### B. The Court's assessment

#### *1. Admissibility*

105. 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

106. 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 the national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, judgment of 25 June 1997, § 64, *Reports* 1997-III).

107. As regards the complaint of a lack of effective remedies in respect of the applicants' complaints under Article 2 concerning the disappearance of Mr Abu Aliyev and under Article 3 concerning the ill-treatment he was subjected to, 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 *Süheyra Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

108. It follows that in circumstances where, as here, the criminal investigation into the disappearance and ill-treatment 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.

109. Consequently, there has been a violation of Article 13 in conjunction with Articles 2 and 3 of the Convention.

110. As regards the violation of Article 3 of the Convention found on account of the applicant's mental suffering as a result of the disappearance of her husband, her inability to find out what had happened to him and the way the authorities had handled her complaints, the Court notes that it has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that

led to the suffering endured by the applicant. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

111. As regards the applicant's reference to Article 5 of the Convention, the Court reiterates that, according to its established case-law, the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a violation of Article 5 of the Convention as a result of unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Pecuniary damage

113. The applicant claimed pecuniary damage in the amount of 120,000 euros (EUR), that is EUR 12,000 for each of the ten years during which she had and would still have to be bringing up her five children alone.

114. The Government regarded these claims as totally unsubstantiated.

115. The Court reiterates that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. Since the applicant has failed to produce any calculations regarding the pecuniary damage claimed, the Court decides to make no award under this head (see *Elmurzayev and Others v. Russia*, no. 3019/04, § 156, 12 June 2008).

### B. Non-pecuniary damage

116. The applicant claimed EUR 100,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her husband, the indifference shown by the authorities towards him and the failure to provide any information about his fate.

117. The Government found the amounts claimed exaggerated.



118. The Court has found a violation of Articles 2, 3, 5 and 13 of the Convention on account of the unacknowledged detention, ill-treatment and disappearance of the applicant's husband. The applicant herself has been found to have been a victim of a violation of Article 3 of the Convention. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations. It awards the applicant EUR 60,000, plus any tax that may be chargeable thereon.

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

119. The applicant also claimed EUR 4,000 for the costs and expenses incurred before the Court on account of the work performed by lawyers of the International Protection Centre. She enclosed no documents to support the amount claimed.

120. The Government pointed out that the applicant should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had been actually incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005).

121. The Court may make an award in respect of costs and expenses in so far that they were actually and necessarily incurred and are reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V, and *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

122. The Court notes that the applicant enclosed no documents to corroborate the amount claimed. At the same time it observes that the applicant issued authority forms for lawyers of the International Protection Centre, who submitted an application form and observations on her behalf. Therefore, the Court is satisfied that the applicant's representatives did carry out a certain amount of legal work in relation to the present application.

123. The Court further notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. Furthermore, the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that research was necessary to the extent claimed by the representatives.

124. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 2,500, 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 applicants.

**D. Default interest**

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

**FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Mr Abu Aliyev;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Mr Abu Aliyev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of Mr Abu Aliyev on account of the ill-treatment to which he had been subjected;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the ill-treatment of Mr Abu Aliyev;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant on account of her mental suffering;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Mr Abu Aliyev;
9. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 and Article 3 of the Convention on account of the ill-treatment of Mr Abu Aliyev;
10. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Article 3 on account of the applicant's mental suffering and Article 5 of the Convention;

11. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,650 (one thousand six hundred fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President