



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

FIRST SECTION

CASE OF SADULAYEVA v. RUSSIA

(Application no. 38570/05)

JUDGMENT

STRASBOURG

8 April 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 Sadulayeva v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 38570/05) 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 Chovka (also known as Aymani) Sadulayeva, on 16 September 2005.

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

3. On 22 April 2008 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. The President of the Chamber acceded to the Government's request not to make publicly accessible the documents from the criminal investigation file deposited with the Registry in connection with the application (Rule 33 of the Rules of Court).

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 1947. She lives in the village of Martan-Chu, in the Urus-Martan district of Chechnya.

A. Disappearance of Aslan Sadulayev and subsequent events

1. The applicant's account

a. The abduction of the applicant's son

6. At the material time the applicant's son Aslan Sadulayev lived in a village in the Naurskiy district of Chechnya while the applicant and his other relatives lived in the Urus-Martan district of Chechnya.

7. On 9 December 2002 Aslan Sadulayev went to Urus-Martan to celebrate a holiday with his relatives. There he met an acquaintance, Mr M.M., who gave him a lift in his purple VAZ-2109 car to the nearby village of Alkhazurovo. In the early afternoon of 9 December 2002, on their way back from the village to Urus-Martan, Mr M.M. also agreed to give a lift to his acquaintance Ms T. S. and a young man.

8. The car with Mr M.M., Aslan Sadulayev, Ms. T.S. and the young man was stopped by Russian military servicemen at the intersection of the roads to Komsomolskoye village, Alkhazurovo and Urus-Martan. That day a mobile checkpoint of Russian military forces on two APCs (armoured personnel carriers) was conducting identity checks at the intersection. The servicemen let Ms T. S. go; she managed to get a lift in another car and left.

9. At that time a bus going from Urus-Martan to Alkhazurovo was also stopped at the intersection. The bus had many passengers, including Ms Khamila D., Ms Kaypa A. and Ms Tamara S. The servicemen checked the identity documents of two young men who were on the bus.

10. Meanwhile, the bus passengers saw from the windows that the servicemen at the intersection were checking the documents of the three men in the purple VAZ car. Ms Tamara S. and Ms Khamila D. recognised one of them as their acquaintance Aslan Sadulayev. They saw that the servicemen were not letting the three men go and that the APCs moved and surrounded the VAZ car. Ms Khamila D. tried to get out of the bus and ask the officers why they were detaining Aslan Sadulayev, but the servicemen ordered her to stay on board.

11. The three women and other bus passengers saw the VAZ car surrounded by the APCs drove away in the direction of Urus-Martan.

12. In support of her statements, the applicant submitted: an account of events by her; an account by Ms Kh. E.; an account by Ms Kaypa A.; an account by Ms Khamila D. and an account by Ms Tamara S., all dated 1 August 2006.

b. Subsequent events

13. On 14 December 2002 a resident of Martan-Chu, known to the applicant under the name of Mr Rizvan (also spelled as Rezvan), visited the applicant. He told her that Mr M. M. had asked him to inform her that her son Aslan Sadulayev had been abducted by Russian military servicemen. Mr Rizvan agreed to take the applicant the next day to his meeting with Mr M.M. in Urus-Martan.

14. In the morning of 15 December 2002 the applicant with Mr Rizvan arrived at Urus-Martan. At about midday they met Mr M.M., who informed the applicant about his car journey with Aslan Sadulayev on 9 December 2002. He told her that their car had been stopped at the intersection by Russian military servicemen. The officers had told the men in the car that they would take them to the Urus-Martan district military commander's office (the district military commander's office) for questioning and would release them afterwards. At the entrance to the district military commander's office Mr M.M. had met an acquaintance of his who worked there and who arranged his immediate release. Mr M.M. also told the applicant that the military officers had not returned his purple VAZ car and that he had not seen it since. He further promised to the applicant that he would arrange her son's release later in the evening and that she should wait for him at 5 p.m. at the local market in Urus-Martan.

15. The applicant waited for Mr M. M. at the agreed place from 5 p.m. to 8 p.m., but he did not turn up. For the next three days the applicant waited there for him, to no avail. The applicant searched for Mr M.M. through Mr Rizvan. The latter introduced her to the sister of Mr M.M., Ms Z.M., who informed the applicant that she had heard about the abduction of Aslan Sadulayev and that she had been unable to find Mr M.M. for several days.

16. According to the applicant, at some point after 2005 she contacted her acquaintances in the village of Goy-Chu and inquired whether Ms T.S., who had been in the same car with Aslan Sadulayev when it had been stopped at the intersection, lived there and worked in the local school. She had been told that Ms T.S. had indeed worked at the school and lived in the village, but she had got married and changed her maiden name to Ms T.I.

17. The applicant also submitted that she had managed to find out that the serviceman she had known by the name of Mr Rizvan was in fact Mr I.Kh., a resident of Goyskoye village, who had been serving at the district military commander's office in 2002 and who had been killed in 2004. She further stated that shortly after the commencement of the criminal

investigation she had informed the investigators that Mr M.M. had frequently visited Urus-Martan; that he had been married to Ms M.D. from Grozny, that he had had two children, had been registered as a resident of Komsomolskoye village and that he had had a temporary identification document.

2. Information submitted by the Government

18. The Government did not challenge most of the facts as presented by the applicant. According to their submission, "... in connection with the abduction of A.S. Sadulayev which had taken place on 9 December 2002 on the road between Alkhazurovo and Martan-Chu, the Urus-Martan district prosecutor's office opened criminal case no. 34010..."

B. The official investigation of the abduction

1. Information submitted by the applicant

19. Since 9 December 2002 the applicant has repeatedly applied in person and in writing to various public bodies. She has been supported in her efforts by the Memorial NGO. In her letters to the authorities the applicant referred to her son's abduction and asked for assistance and details of the investigation. Most of these enquiries have remained unanswered, or purely formal replies have been given in which the applicant's requests have been forwarded to various prosecutors' offices. The applicant submitted some of her letters to the authorities and their replies to the Court. These documents are summarised below.

20. On 18 and 19 December 2002 the applicant complained about her son's abduction to a number of local law enforcement agencies, including the military commander's office, the Urus-Martan district prosecutor's office (the district prosecutor's office) and the Urus-Martan district department of the interior (the Urus-Martan ROVD). She described the circumstances of her son's abduction by armed men in military vehicles at the Russian military forces checkpoint and requested assistance in establishing his whereabouts.

21. On 15 January, 3 June and 9 July 2003 the Chechnya prosecutor's office forwarded the applicant's complaints about her son's abduction by armed servicemen in camouflage uniforms to the district prosecutor's office for examination.

22. On 31 January 2003 the district prosecutor's office instituted an investigation into the disappearance of Aslan Sadulayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 34010.

23. On 31 March 2003 the district prosecutor's office granted the applicant victim status in the criminal case.

24. On 31 March, 5 June 2003 and 27 April 2004 the district prosecutor's office informed the applicant that the investigation in criminal case no. 34010 had been suspended for failure to establish the identities of the perpetrators.

25. On 5 April 2003 the military prosecutor's office of military unit no. 20102 forwarded the applicant's request for assistance in the search for her son to the district military commander's office.

26. On 30 April 2003 and 27 October 2004 the investigators resumed the investigation in the criminal case and informed the applicant about it.

27. On 23 July 2003 the military prosecutor's office of the United Group Alignment (the military prosecutor's office of the UGA) forwarded the applicant's request for assistance in the search for her son to the military prosecutor's office of military unit no. 20102.

28. On 31 May 2004 the applicant wrote to the district prosecutor's office asking them to grant her civil plaintiff status in the criminal case. On 9 June 2004 the district prosecutor's office granted the request and informed the applicant about it.

29. At some point in the autumn of 2007 the investigation of the criminal case was transferred to the Achkhoy-Martan district prosecutor's office. The applicant was neither informed about it nor about any of the subsequent steps taken by the investigators.

2. Information submitted by the Government

30. On 18 December 2002 the applicant complained about her son's abduction to a number of local law-enforcement authorities, including the district prosecutor's office, the military commander's office and the Urus-Martan ROVD. She stated that at about 3 p.m. on 9 December 2002 her son Aslan Sadulayev had been abducted at a mobile checkpoint of the Russian military forces by servicemen of an unidentified power structure. According to her complaint, after the purple VAZ car with her son and Mr M.M. had been stopped at the checkpoint, the car and the men inside it had been driven away in an unknown direction under the guard of military vehicles. The car's driver, Mr M.M., had been kicked out of the car on the road between Urus-Martan and Goyty village, whereas Aslan Sadulayev had been taken to an unknown destination. The applicant further stated that she had learnt about her son's abduction from Mr M.M. only on 12 December 2002.

31. On 28 January 2003 an officer of the Urus-Martan ROVD questioned the father of Aslan Sadulayev, Mr S.S., who stated that on 12 December 2002 he had learnt that on 9 December 2002 his son had been detained at the checkpoint of the Russian federal forces located at the crossroads between the settlements of Komsomolskoye and Alkhazurovo.

Aslan Sadulayev had been a passenger in a dark-blue VAZ-2109 car, which had been stopped by military servicemen, who had taken him and another man away. The servicemen had kicked the third man, Mr M., out of the car.

32. On 28 January 2003 an officer of the Urus-Martan ROVD questioned the applicant, who stated that on 9 December 2002 her son Aslan Sadulayev had been on his way from Alkhazurovo to Urus-Martan, when the dark-blue VAZ-2109 car he was in had been stopped by military servicemen at the intersection. The servicemen had driven away the car along with its passengers, but one of the passengers, Mr M., had been kicked out of the vehicle by the servicemen at some point later.

33. On 18 February 2003 the investigators from the district prosecutor's office questioned the applicant, who stated that at about 3 p.m. on 9 December 2002 her son Aslan Sadulayev had been detained by unknown men at a federal forces mobile checkpoint located at the junction near Komsomolskoye village. According to the applicant, her son had been riding with Mr. M.M. and another man in a purple VAZ-2109 car when their car was stopped at the checkpoint. After that Aslan Sadulayev and Mr M.M. had been taken away, but the latter had been released at some point later. A few days later Mr M.M. had told the applicant about her son's arrest and promised to help her to get Aslan Sadulayev released. However, her son had not been released and she had not had any news of him ever since. The applicant further provided Mr M.M.'s description and stated that she had spoken with his sister, Ms Z.M., who had told her that her other brother, Mr Mu.M., had witnessed the detention of Aslan Sadulayev and Mr M.M. at the checkpoint, when he had also been stopped there for an identity check.

34. On 18 February 2003 military unit no. 6779 informed the investigators that they had not detained Aslan Sadulayev on 9 December 2002.

35. On an unspecified date in February-March 2003 the Chechnya Ministry of the Interior (the MVD) informed the investigators that they had neither opened criminal proceedings against Aslan Sadulayev nor detained him.

36. On 9 March 2003 the Chechnya Department of the Federal Security Service (the FSB) informed the investigators that they had neither detained Aslan Sadulayev nor opened criminal proceedings against him.

37. On 12 March 2003 the Chechnya Address Bureau informed the investigators that they did not have any information concerning Mr M.M.'s permanent address.

38. On 17, 20 and 22 March, 1 and 2 April, 24 June 2003 the Argun town department of the interior (the Argun OVD), the Naurskiy ROVD, the Nozhay-Yurt ROVD, the Shali ROVD, the Kurchaloy ROVD, the Shelkovskoy ROVD and the Shatoy ROVD informed the investigators that they did not have any information concerning the possible detention of

Aslan Sadulayev in local remand prisons or discovery of his corpse in their districts.

39. On 18 and 25 March, 17 April 2003 the Nadterechniy district prosecutor's office, the Achkhoy-Martan district prosecutor's office and the Gudermes district prosecutor's office informed the investigators that they did not have any information concerning the whereabouts of Aslan Sadulayev.

40. On 30 April 2003 the investigators questioned Ms Z.M., who stated that she was Mr M.M.'s sister. According to her, Mr M.M., Aslan Sadulayev, Ms T.S. and another man had been driving to Urus-Martan in a dark-blue VAZ-2109 car when at a junction between Alkhazurovo and Urus-Martan they had been stopped at a mobile checkpoint by men in military uniforms. The men had fired several shots to stop the car. After that they had taken everyone out of the vehicle and searched it. Next they had stopped a passing car and sent Ms T.S. in it to Urus-Martan. After that they had taken away the three men from the VAZ car. Mr M.M. had been released at some point later; he had been on his knees in the yard of military unit no. 6779 when a certain Mr Rizvan had recognised him and somehow expedited his release. According to the witness, Ms T.S. had worked as a teacher in Goy-Chu village and Mr Rizvan had lived in Goyskoye village.

41. On 10 June 2003 an operational and search officer of the Urus-Martan ROVD informed the investigators that he had been unable to establish the whereabouts and the address of Ms T.S.

42. On 31 May 2004 the applicant wrote to the district prosecutor's office complaining that her son had been detained by servicemen at the mobile checkpoint of the federal forces and that local power structures had denied involvement in the incident.

43. On 9 June 2004 the investigators granted the applicant civil plaintiff status in the criminal case.

44. On an unspecified date the Urus-Martan ROVD and the district military commander's office informed the investigators that they had been unable to identify the serviceman named Rizvan. He was not listed as their employee and his whereabouts could not be established.

45. On unspecified dates the investigators forwarded a number of requests to various authorities, such as the Tangi-Chu military commander's office, the district military commander, the Chechnya FSB, and various detention centres in Chechnya and other regions in the northern Caucasus, asking for information concerning the possible detention of Aslan Sadulayev by these agencies or if any criminal proceedings had been opened against him. According to the agencies' replies, they had not arrested or detained the applicant's son, no criminal proceedings were pending against him, and his corpse had not been found.

46. The investigation failed to establish the whereabouts of Aslan Sadulayev. The investigating authorities sent requests for information to the

relevant State agencies and took other steps to have the crime resolved. The investigation found no evidence to support the involvement of the federal forces in the incident. The law-enforcement authorities of Chechnya had never arrested or detained Aslan Sadulayev on criminal or administrative charges and had not carried out a criminal investigation in his respect. No special operations had been carried out in respect of the applicant's son.

47. According to the Government, the applicant had been duly informed of all decisions taken during the investigation.

48. In response to the Court's request, the Government submitted only a few documents from the criminal investigation file. The Government requested the Court to apply Rule 33 § 3 of the Rules of Court concerning confidentiality of the submitted documents and to restrict public access to the submitted documentation. In their request the Government stated that the criminal investigation was still in progress and that public disclosure of the documents could be detrimental to the interests of participants in the criminal proceedings.

49. The Government further stated that a copy of the entire investigation file could not be submitted to the Court owing to the absence of any guarantees on the part of the Court of non-disclosure of the secret data contained in the investigation file. In this respect the Government referred to Article 161 of the Criminal Procedure Code, since the file contained information concerning participants in criminal proceedings. They also cited, by way of comparison, the Rome Statute of the International Criminal Court of 17 July 1998 (Articles 70 and 72) and the Statute of the International Criminal Tribunal for the former Yugoslavia (Articles 15 and 22) and argued that these instruments provided for personal responsibility for a breach of the rules of confidentiality.

C. Proceedings against law-enforcement officials

50. On an unspecified date in 2004 the applicant complained to the Urus-Martan town court (the town court). She sought a ruling obliging the district prosecutor's office to conduct an effective investigation of Aslan Sadulayev's abduction and to provide her with access to the investigation file.

51. On 14 May 2004 the town court allowed her complaint in part. The court instructed the district prosecutor's office to conduct an effective and thorough investigation in the criminal case and to question witnesses Ms T.S. and Mr M.M. The remainder of the applicant's complaint was rejected.

52. On 3 March 2005 the applicant again complained to the town court. She sought a ruling obliging the district prosecutor's office to conduct an effective investigation in the criminal case. In her complaint the applicant

pointed out that the authorities had failed to comply with the court's decision of 14 March 2004.

53. On 22 March 2005 the town court rejected her complaint. The court stated that the investigation had taken all measures possible in the absence of those to be charged with the crime. On 15 June 2005 this decision was upheld on appeal.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

55. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Aslan Sadulayev had not yet been completed. They further argued that it had been open to the applicant to challenge in court any acts or omissions of the investigating authorities and that she could have pursued civil complaints but she had failed to do so.

56. The applicant contested that objection. She stated that the criminal investigation had proved ineffective and that her complaints to that effect, including her applications to the local court, had been futile. Referring to the other cases concerning similar incidents which had been reviewed by the Court, she also alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in Chechnya rendered any potentially effective remedies inadequate and illusory in her case.

B. The Court's assessment

57. 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).

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

59. As regards a civil action to obtain redress for damage sustained through 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 (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

60. As regards criminal law remedies, the Court observes that the applicant complained to the law-enforcement authorities after the abduction of Aslan Sadulayev and that an investigation has been pending since 31 January 2003. The applicant and the Government dispute the effectiveness of the investigation of the kidnapping.

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

A. The parties' arguments

62. The applicant maintained that it was beyond reasonable doubt that the men who had taken away Aslan Sadulayev were State agents. In support of her complaint she referred to the following facts. The armed men who had abducted Aslan Sadulayev had acted at the checkpoint of the Russian military forces; they drove around in military APCs, they were armed and wearing military uniform. All the information disclosed from the criminal investigation file supported the applicant's assertion as to the involvement of State agents in the abduction. She further pointed out that the Government had failed to provide any plausible explanation to the events in question. Since Aslan Sadulayev had been missing for a very lengthy period, he could be presumed dead. That presumption was further supported by the circumstances in which he had been arrested, which should be recognised as life-threatening.

63. The Government submitted that unidentified armed men, possibly members of illegal armed groups or criminals pursuing a blood feud, had

kidnapped Aslan Sadulayev. They further contended that the investigation of the incident was pending, that there was no evidence that the men were State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicant's rights. They further argued that there was no convincing evidence that the applicant's son was dead. The Government further stated that the fact that the perpetrators of the abduction were wearing camouflage uniforms did not mean that these men could not have been members of illegal armed groups. They also contended that the applicant's description of the circumstances surrounding the abduction was inconsistent. In particular, the applicant had failed to inform the investigators about the three women who had witnessed the incident, that is Ms Khamila D., Ms Kaypa A. and Ms Tamara S.; it was not clear whether one of the abducted men had been either kicked out from the abducted VAZ vehicle or he had been taken to the military commander's office; and that taking into account that the investigation had failed to establish the identities of Mr M.M. and Ms T.S., their information allegedly given to the applicant about the circumstances of the abduction could not be considered trustworthy.

B. The Court's evaluation of the facts

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

65. The Court notes that despite its requests for a copy of the investigation file into the abduction of Aslan Sadulayev, the Government produced only a part of the documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006- ... (extracts)).

66. In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicant's allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicant's son can be presumed dead and whether his death can be attributed to the authorities.

67. The applicant alleged that the persons who had taken Aslan Sadulayev away on 9 December 2002 and then killed him were State agents. The Government did not dispute any of the main factual elements underlying the application.

68. The Government suggested in their submissions that the abductors of Aslan Sadulayev may have been members of paramilitary groups or criminals pursuing a blood feud. However, this allegation was not specific and the Government did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

69. The Court notes that the applicant's allegation is supported by the witness statements collected by the applicant and by the investigation. It finds that the fact that a group of armed men in uniform at the military checkpoint, equipped with military APCs, proceeded to check identity documents and detained several persons strongly supports the applicant's allegation that these were State servicemen conducting a security operation. In her application to the authorities the applicant and her relatives consistently maintained that Aslan Sadulayev had been detained by unknown servicemen and requested the investigation to look into that possibility (see paragraphs 30-33 and 42 above). The domestic investigation also accepted factual assumptions as presented by the applicant and took steps to check whether State bodies were involved in the abduction by forwarding information requests to various agencies (see paragraphs 34-36, 38-39, 44 above), but it does not appear that any serious steps were taken in that direction.

70. The Government questioned the credibility of the applicant's statement in view of certain discrepancies relating to the exact circumstances of the arrests and the description of the hours immediately following the detention. The Court notes in this respect that no other elements underlying the applicant's submissions of facts have been disputed by the Government. The Government provided the Court only with part of the investigation file materials to which they referred in their submissions. In the Court's view, the fact that over a period of several years the applicant's recollection of the event differed in rather insignificant details does not in itself suffice to cast doubt on the overall veracity of her statements.

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

72. Taking into account the above elements, the Court is satisfied that the applicant has made a prima facie case that her son had been detained by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of State agents in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Aslan Sadulayev was arrested on 9 December 2002 by State servicemen during an unacknowledged security operation.

73. There has been no reliable news of Aslan Sadulayev since the date of the abduction. His name has not been found in any official detention facility records. Finally, the Government have not submitted any explanation as to what happened to him after his arrest.

74. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Aslan Sadulayev and of any news of him for more than seven years supports this assumption.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

76. The applicant complained under Article 2 of the Convention that her son 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

77. The Government contended that the domestic investigation had obtained no evidence to the effect that Aslan Sadulayev was dead or that any State agents had been involved in his abduction or alleged killing. The Government claimed that the investigation into the kidnapping of the applicant's son met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible.

78. The applicant argued that Aslan Sadulayev had been detained by State servicemen and should be presumed dead, in the absence of any reliable news of him for several years. The applicant also argued that the investigation had not met the effectiveness and adequacy requirements, laid down by the Court's case-law. The applicant pointed out that the district prosecutor's office had not taken some crucial investigative steps, such as identification of the APCs which had been used by the abductors and questioning of their drivers, and detailed questioning of such key witnesses to the abduction as Ms Z.M., Mr M.M. and Mr Rizvan. The investigation had been opened several weeks after she had lodged her official complaint about the abduction and then it had been suspended and resumed a number of times, thus delaying the taking of the most basic steps. The applicant further contended that she had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for more than six years without producing any tangible results was further proof of its ineffectiveness. She also 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

79. 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 61 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 Aslan Sadulayev

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

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

81. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

82. In the present case, the kidnapping of Aslan Sadulayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

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

84. The Court notes that on 18 December 2002 the authorities were made aware of the abduction by the applicant's submissions (see paragraphs 20 and 30 above). The investigation in the criminal case was instituted on 31 January 2003, that is one month and thirteen days after the authorities were informed about the incident. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were either delayed or not taken at all. For instance, as can be seen from the decision of the town court of 14 May 2004, by that date the investigators had not identified or questioned key witnesses to the abduction (see paragraph 51 above). Further, the investigators had not taken such crucial steps as identifying the

APCs used by the abductors and questioning their drivers; they had not questioned any representatives of local military and law-enforcement agencies about possible involvement of their personnel in the abduction; they had failed to take any measures to establish the whereabouts of the purple VAZ car which had been taken away by the abductors and had failed to question any of the local residents to establish the whereabouts of the key witnesses to the abduction. In addition, it does not appear that the investigators attempted to take any steps to identify the driver and the passengers of the bus which had also been stopped at the checkpoint by the military servicemen or any other local residents who had been present at the checkpoint during the incident (see paragraph 9 above) and to question them about 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. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

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

86. Finally, the Court notes that the investigation was suspended and resumed on numerous occasions and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending.

87. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years without producing any tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection.

88. 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 Aslan Sadulayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. The parties' submissions

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

91. The applicant maintained her submissions.

B. The Court's assessment

1. Admissibility

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

2. Merits

93. 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).

94. In the present case the Court notes that the applicant is the mother of the disappeared person. For more than seven years she has not had any news of the missing man. During this period the applicant has made enquiries of various official bodies, both in writing and in person, about her missing son. 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 son'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.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

96. The applicant further stated that Aslan Sadulayev 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

97. The Government asserted that no evidence had been obtained by the investigators to confirm that Aslan Sadulayev had been deprived of his liberty. He was not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

98. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

99. 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

100. 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).

101. The Court has found that Aslan Sadulayev was apprehended by State servicemen on 9 December 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).

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

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

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

104. 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

105. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The applicant had had an opportunity to challenge the acts or omissions of the investigating authorities in court and had availed herself of it. They added that participants in criminal proceedings could also claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

106. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

107. 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

108. The Court reiterates that in circumstances where, as here, a criminal investigation into the disappearance has been ineffective and the effectiveness of any other remedy that might 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 (see *Khashiyev and Akayeva*, cited above, § 183).

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

110. As regards the applicant's reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction with Articles 3 and 5 of

the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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

112. The applicant did not claim in respect of pecuniary damage. As to non-pecuniary damage, she stated that she had lost her son and endured stress, frustration and helplessness in relation to her son's abduction aggravated by the authorities' inactivity in the investigation for several years. She left the determination of the amount of compensation to the Court.

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

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

B. Costs and expenses

115. The applicant was represented by lawyers from the EHRAC/Memorial Human Rights Centre. They submitted that the aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to 881 pounds sterling (GBP) (approximately EUR 1,110) with the following breakdown of costs:

- (a) GBP 300 for 3 hours of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;
- (b) GBP 413 for translation costs, as certified by invoices; and
- (c) GBP 175 for administrative costs and expenses.

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

117. The Court has to establish first whether the costs and expenses indicated by the applicant's representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

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

119. As to 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.

120. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount as claimed of EUR 1,110 together with any value-added tax that may be chargeable to the applicant, the net award to be paid into the representatives' bank account in the UK, as identified by the applicant.

C. Default interest

121. 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 domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Aslan Sadulayev;
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 Aslan Sadulayev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant on account of her moral suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Aslan Sadulayev;

7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds*
 - (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (ii) EUR 1,110 (one thousand one hundred and ten euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the UK;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President