



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

FIRST SECTION

CASE OF SHAKHABOVA v. RUSSIA

(Application no. 39685/06)

JUDGMENT

STRASBOURG

12 May 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 Shakhabova 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,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 39685/06) 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 Rayshat Shakhabova, on 20 September 2006.

2. The applicant was represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 10 June 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 and to the application of Rule 41 of the Rules of Court. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in the town of Urus-Martan, in the Chechen Republic. She is the mother of Mr Adam Khurayev, born in 1978.

A. Disappearance of Adam Khurayev

1. The applicant's account

6. The applicant's house in Urus-Martan was destroyed during the military campaign in the Chechen Republic in the autumn of 1999. The applicant's family had to move temporarily to Ingushetia, where they lived at the material time. Adam Khurayev frequently visited his aunt, Ms M.M., who lived in Urus-Martan, and stayed at her house no. 14, Lomonosova Lane (the street name and the house number were later changed to 74, Kutuzova Street).

7. In the summer of 2002 Adam Khurayev and his twin brother Arbi Khurayev submitted their documents to the Urus-Martan District Department of the Interior (the ROVD) to exchange their old Soviet passports for new Russian ones. On 22 November 2002 Adam and Arbi Khurayev went to Urus-Martan to pick up their new passports. The brothers stayed at their aunt's house at the above address. At the material time the town of Urus-Martan was under curfew. The authorities maintained manned checkpoints at the entry and exit points to the town.

8. At about 10 p.m. on 23 November 2002 the family of M.M. was at home. When Adam Khurayev went outside, to the toilet located in the courtyard, a group of over fifteen armed masked men in camouflage uniforms broke into the house. The intruders neither introduced themselves nor produced any documents. The applicant's relatives thought that they were Russian servicemen. They dispersed into different rooms, pointed their guns at the family members and ordered everyone to stay in their rooms. M.M.'s daughter, Ms L.M., rushed to the window and heard the intruders order someone in Russian: "Lie on the ground!" She thought that the order must have been given to Adam Khurayev, as he was the only family member in the yard.

9. Without providing any explanations or reasons for their actions, the servicemen conducted a quick but thorough search of M.M.'s house. They did not find anything of interest to them.

10. After that the servicemen returned to the yard and walked out into the street. Shortly thereafter M.M. and L.M. heard the sound of heavy military vehicles in the street.

11. Ms. A.M., one of M.M.'s neighbours, residing at 47 Lomonosova Street, was woken up at about 10 p.m. on 23 November 2002 by the sound of heavy military vehicles in the street. She looked out of the window and saw an APC (armoured personnel carrier) and two military UAZ vehicles (“таблетка”) parked in the street. A.M. did not go outside because of the curfew. According to A.M., at the material time APCs were frequently driven in Urus-Martan at night and servicemen often took young men away. About fifteen minutes later the vehicles started their engines and drove away.

12. After the servicemen had left, the applicant's relatives realised that Adam Khurayev, who had been in the courtyard, had disappeared.

13. The applicant has had no news of Adam Khurayev since 23 November 2002.

14. The above account of the events is based on the applicant's application form and written statements by M.M. and A.M., dated 10 and 11 November 2005 respectively.

2. Information submitted by the Government

15. The Government submitted that on 23 November 2002 Adam Khurayev had been abducted by unidentified persons.

B. The search for Adam Khurayev and the investigation

1. The applicant's account

(a) The applicant's search for Adam Khurayev

16. In the morning of 24 November 2002 Arbi Khurayev went to Ingushetia to inform the applicant about the disappearance of Adam Khurayev. The applicant immediately went to Urus-Martan and started searching for her son. From 24 November 2002 for almost a month the applicant, who was elderly and illiterate, complained in person about her son's disappearance to a number of local law-enforcement agencies, including the Urus-Martan district military commander's office (hereafter “the district military commander's office”), the ROVD, and the Urus-Martan district prosecutor's office (“the district prosecutor's office”). The authorities denied any involvement on the part of their officials in the abduction of Adam Khurayev.

17. The applicant's relatives assisted her in the search for Adam Khurayev. They contacted, both in person and in writing, various official

bodies, such as the President of the Russian Federation, the Envoy of the President of the Russian Federation for Ensuring Human Rights and Freedoms in the Chechen Republic, the Chechen administration, departments of the interior and prosecutors' offices at different levels, asking for help in establishing the whereabouts of Adam Khurayev. The applicant retained copies of a number of those complaints and submitted them to the Court. An official investigation was opened by the district prosecutor's office. The relevant information is summarised below.

(b) The official investigation into the abduction of Adam Khurayev

18. On 23 December 2002 the applicant complained in writing about her son's disappearance to a number of State authorities, including the district military commander's office, the district prosecutor's office and the ROVD. She stated that on 22 November 2002 she and her sons Arbi and Adam had gone to Urus-Martan to obtain her sons' identity documents. At about 10 p.m. on that day armed and masked members of law-enforcement authorities, wearing camouflage uniforms, had broken into the house at no. 14 Lomonosova Street and had abducted Adam Khurayev. The intruders had used an APC and two UAZ vehicles. She stressed that prior to his abduction her son had undergone stomach surgery.

19. On 20 January 2003 the prosecutor's office of the Chechen Republic ("the republican prosecutor's office") forwarded the applicant's complaint about her son's abduction to the district prosecutor's office for examination.

20. On 14 February 2003 the district prosecutor's office instituted an investigation into the abduction of Adam Khurayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The criminal case file was given number 34022.

21. On 15 March 2003 the district prosecutor's office granted the applicant the status of a victim in criminal case no. 34022.

22. On 24 April 2003 the applicant wrote to a number of State authorities, including the prosecutor and the military prosecutor of the Chechen Republic. She stated that her son had been abducted by servicemen from the law-enforcement agencies of the Urus-Martan district who had arrived in two UAZ vehicles and an APC. The applicant pointed out that her numerous complaints to various State bodies had failed to produce any results and that, apart from instituting an investigation into the abduction, the district prosecutor's office had failed to take any other measures aimed at establishing her son's whereabouts. She stressed that her son's abductors must have been representatives of the State as only they could have moved freely in the town during the curfew and used military vehicles.

23. On 22 May 2003 the republican prosecutor's office informed the applicant that on 14 February 2003 the district prosecutor's office had opened criminal case no. 34022 into the abduction of her son; that on 14 April 2003 the investigation had been suspended owing to the failure to

establish the perpetrators and that unspecified operational and search measures aimed at solving the crime were under way.

24. On 9 June 2003 the military prosecutor's office of the United Group Alignment ("the UGA military prosecutor's office") forwarded the applicant's complaint about her son's abduction to the military prosecutor's office of military unit no. 20102 for examination.

25. On 17 June 2003 the republican prosecutor's office forwarded the applicant's request for assistance in the search for her son to the district prosecutor's office and instructed the latter to inform the applicant of any developments in the investigation.

26. On 30 June and 2 July 2003 the military prosecutor's office of military unit no. 20102 informed the applicant that the examination of her complaints had failed to establish any involvement of Russian servicemen in the abduction of Adam Khurayev.

27. On 11 December 2003 the applicant complained to the minister of the interior of the Chechen Republic, submitting that her son had been abducted by a group of armed men in camouflage uniforms who had arrived in two UAZ cars and an APC without number plates. She stressed that the abductors must have been State servicemen as only they could have moved freely in the town during the curfew and used military vehicles. The applicant pointed out that her numerous complaints to various State bodies had failed to produce any effect and that the criminal investigation had been suspended and reopened and had failed to produce any results.

28. On 17 December 2003 the applicant complained to the prosecutor of the Chechen Republic, stating that her son had been abducted by a group of armed men in camouflage uniforms who had arrived in two UAZ vehicles and an APC. She averred that her son's abductors must have been representatives of the State as only they could have moved freely in the town during the curfew and used military vehicles. The applicant pointed out that her numerous complaints to various State bodies had failed to produce any effect and that the criminal investigation into her son's abduction had failed to produce any results and had been suspended and reopened on a number of occasions. She emphasised that her previous complaint to the prosecutor about the inactivity of the district prosecutor's office had not produced any results. Lastly, she requested the prosecutor to oblige the district prosecutor's office to solve the crime.

29. On 13 January 2004 the republican prosecutor's office forwarded the applicant's complaint to the district prosecutor's office. The latter was to provide the applicant with detailed information on the investigation and its results.

30. On 23 January 2004 the head of the ROVD informed the applicant that they had opened an operational-search file for the search for her son and that they had sent an unspecified number of requests for information to

law-enforcement agencies in the Urus-Martan District and various regions of the Russian Federation.

31. Following a complaint by the applicant to the republican prosecutor's office, on 28 January 2004 the district prosecutor's office informed her that on 28 January 2004 it had resumed the investigation in criminal case no. 34022 and that the case file had been entrusted to another investigator.

32. On 1 March 2004 the republican prosecutor's office forwarded the applicant's complaint about her son's abduction to the district prosecutor's office for inclusion into the criminal case file and instructed the latter to inform the applicant of any developments in the case. The letter also stated that the investigation in case no. 34022 had been reopened.

33. On 24 March 2004 the district prosecutor's office informed the applicant that on 28 February 2004 they had suspended the investigation in criminal case no. 34022.

34. On 27 March 2004 the ROVD informed the applicant that their numerous requests for information to various law-enforcement agencies in Chechnya and other regions had failed to produce any results.

35. On 7 May 2004 the Prosecutor General's office in the Southern Federal Circuit informed the applicant that they had forwarded her complaint about the abduction of Adam Khurayev to the republican prosecutor's office.

36. On 31 May 2004 the district prosecutor's office informed the applicant that on 31 May 2004 they had resumed the investigation in criminal case no. 34022.

37. On 17 June 2004 the republican prosecutor's office informed the applicant that all information concerning the investigation into her son's abduction was to be obtained from the district prosecutor's office.

38. On 29 July 2004 the applicant wrote to a number of State authorities, including the Urus-Martan district prosecutor and the head of the ROVD. In her letter she described the circumstances of her son's abduction and pointed out that her numerous complaints to various State bodies had failed to produce any results. In particular, the criminal investigation into her son's abduction had been conducted in a superficial manner and had not produced any results. All her complaints about the ineffectiveness of the investigation, addressed to the supervisory bodies, had been forwarded to the district prosecutor's office. Although the latter body had replied to the complaints, none of those replies contained any information concerning investigative measures undertaken in the course of the criminal proceedings. Finally, the applicant submitted that her son's abductors must have been representatives of the State as only they could have moved freely in the town during the curfew, gone through existing checkpoints and used military vehicles.

39. On 4 August 2004 the district prosecutor's office replied to the applicant, stating that the investigation in criminal case no. 34022 had been

carried out in compliance with the law. The district prosecutor's office had taken all the investigative measures which could be carried out in the absence of those to be charged with the crime. They had sent numerous requests for information to various law-enforcement agencies and hospitals. The republican prosecutor's office's (unspecified) instructions concerning the investigation had been complied with. The theory that Russian military servicemen had been involved in the abduction of Adam Khurayev had been examined but had not been confirmed. The latest decision to suspend the investigation owing to the failure to identify the perpetrators was dated 30 June 2004.

40. On 23 August 2004 the republican prosecutor's office informed the applicant that on an unspecified date the investigation in criminal case no. 34022 had been suspended, but operational-search measures aimed at solving the crime were under way.

41. On 2 September 2004 the district prosecutor's office informed the applicant that her complaint of 1 September 2004 had been included in the case file of criminal case no. 34022.

42. On 30 September 2004 the ROVD forwarded the applicant's complaint about her son's abduction to the district prosecutor's office for examination.

43. On 15 May 2005 the applicant wrote to the Urus-Martan district prosecutor, describing in detail the circumstances of her son's apprehension and pointing out that her son had been abducted by representatives of the State. The applicant complained that the investigation into Adam Khurayev's abduction had been too lengthy, that basic investigative measures had not been taken and that she had no information about its progress. The applicant requested the authorities to resume the investigation, to provide her with access to the criminal case-file materials and with copies of basic investigative documents to which she was entitled by law.

44. On 24 June 2005 the district prosecutor's office informed the applicant that on 6 June 2005 they had resumed the investigation in criminal case no. 34022 and that she could obtain a copy of the decision to grant her victim status and certain other documents from their office.

45. On 30 July 2005 the military prosecutor's office of military unit no. 20102 informed the applicant that the examination of her complaint about her son's abduction had failed to confirm any involvement of Russian servicemen in the abduction of her son.

46. On 11 November 2005 the applicant wrote to the Urus-Martan district prosecutor. She described in detail the circumstances of her son's apprehension and pointed out that her son had been abducted by representatives of the State. The applicant submitted that the investigation into Adam Khurayev's abduction had been ineffective and that it had failed to produce any results for more than three years. She complained about the

lack of information about the investigation, requested the authorities to grant her victim status in the criminal case, to resume the investigation and provide her with access to the criminal case-file materials.

47. By a letter of 14 November 2005 the republican prosecutor's office forwarded the applicant's complaint about her son's abduction to the district prosecutor's office for examination.

48. On 18 November 2005 the district prosecutor's office informed the applicant that her complaint of 11 November 2005 had been granted only in part. The letter did not specify in which part, but stated that the applicant's request concerning access to the criminal case-file materials had been rejected pursuant to Article 42 of the Criminal Procedure Code.

49. On 15 December 2005 the applicant wrote to the district prosecutor's office. She pointed out that on 11 November 2005 she had requested the authorities to resume the investigation in criminal case no. 34022 and provide her with access to the case-file materials; that on 18 November 2005 the authorities had partially granted her request but had failed to specify in which part. The lack of clarity in the decision had precluded her from appealing against it. She requested that that matter be clarified.

50. On 23 December 2005 the district prosecutor's office replied to the applicant that she had been granted victim status on 15 March 2003 and that she was only entitled to access to procedural documents concerning investigative measures she had participated in.

51. On 24 April 2006 the district prosecutor's office informed the applicant that on an unspecified date they had resumed the investigation in criminal case no. 34022.

2. Information submitted by the Government

52. On 14 February 2003 the district prosecutor's office instituted a criminal investigation into the abduction of Adam Khurayev under Article 126 § 2 of the Criminal Code. The case file was attributed number 34022.

(a) Witnesses interviewed by the investigation

53. Being interviewed as a witness on 18 February 2003, M.M. stated that at 10 p.m. on 23 November 2002 armed persons in masks and camouflage uniforms had broken into her house and had abducted Adam Khurayev. Before coming to her household, the abductors had looked for Adam Khurayev in her brother's house. Neighbours known as "Zulay" and "Tamusa", whose family names M.M. did not remember, had seen the abductors use APCs and UAZ vehicles.

54. On 15 March 2003 the applicant was granted victim status and interviewed. She stated that she had learnt from M.M. that at about 10 p.m.

on 23 November 2002 armed and masked persons had broken into M.M.'s house and had taken Adam Khurayev with them.

55. I.M., questioned on 20 January 2004 as a witness, submitted that on 24 November 2002 he had learnt from M.M. about the abduction of the applicant's son. M.M. had told him that she had not witnessed the abduction and that two women known as Zulay and Tamusa had told her that the abductors had arrived in an APC and two UAZ vehicles.

56. Zara S., interviewed as a witness on 4 February 2004, stated that in the morning of 24 November 2002 she had learnt from the applicant and other neighbours about the abduction of Adam Khurayev. Zara S. had not seen any vehicles and, apart from herself, there were no other women known as "Tamusa" who lived in the vicinity. Zara S. confirmed her statement while being questioned as a witness on 18 June 2004.

57. M.Ch. was interviewed as a witness on 11 February 2004. She stated that on the night of 23 November 2002 she had been at home with her husband A.Ch., who worked in the local military commander's office. At about 10 p.m. she had heard noise coming from the neighbouring household of Z.Ch. (see below). M.Ch. and her husband had rushed to Z.Ch.'s house and seen armed men wearing masks there. A.Ch. had asked them why they had broken into Z.Ch.'s house. In response the armed men had forced A.Ch. to the ground. M.Ch. had run back home and had fetched her own and her husband's identity papers. She had presented them to the armed men, explaining to them that her husband worked at the local military commander's office. At that moment the armed men had been ordered over a portable radio to leave, which they did quickly. They had left in several vehicles but M.Ch. did not remember what their models were. On the next morning M.Ch. had learnt about the abduction of Adam Khurayev.

58. On 17 February 2004 the investigation questioned A.Ch. as a witness. He stated that on the night of 23 November 2002 he had been at home with his family. One of his family members had alerted him to the fact that something had been going on in Z.Ch.'s (his brother's) house. A.Ch. had rushed outside and in Z.Ch.'s yard he had run into several armed men wearing masks; their clothes had borne no insignia. When A.Ch. had asked what they were doing there, the armed men had forced him to the ground and ordered him to lie down. Several minutes later A.Ch. had overheard somebody order the armed men to leave, which they had done. A.Ch. and his wife had returned home and had learnt on the following day about the abduction of Adam Khurayev.

59. On 20 February 2004 the investigation interviewed Z.Ch. as a witness. He stated that at about 10 p.m. on 23 November 2002 he had been at home in his house in Urus-Martan. At that moment several armed men in camouflage uniforms had burst into his house and had requested his identity papers. Having carried out a passport check, they had left.

60. M.B., the wife of Z.Ch., was questioned as a witness on an unspecified date in February 2004. She stated that on the night of 23 November 2002, while she had been at home with her husband, several armed men in camouflage uniforms and masks had burst into their house and had ordered the family members to produce their identity documents for a passport check. Upon checking the documents one of the intruders had apologised, saying that the group had come to the wrong address, and they had left. M.B. had not noticed any insignia and did not remember how many intruders there had been. On the next day she had learnt about the abduction of the applicant's son.

61. On 9 June 2004 M.M. was again questioned as a witness. She confirmed the previous statement she had given to the investigation and stated also that the intruders had carried out a search in her house; that the applicant's son had been outside in the toilet when the armed men had burst into her house and that in the morning on 24 November 2002 she had found his slippers at the toilet entry; and that she herself had not seen whether the intruders had come in military vehicles.

62. On 12 June 2004 the investigation questioned R.Kh., the applicant's daughter. She stated that on an unspecified date she had learnt from the applicant that on 23 November 2002 Adam Khurayev had been abducted while he had been at M.M.'s house in Urus-Martan.

63. When questioned again on 15 June 2004 the applicant stated that on 22 November 2002 she had arrived in Urus-Martan with her sons, Arbi and Adam Khurayev, to pick up their passports. In the evening of 23 November 2002 the applicant and Arbi had stayed at Z.Ch.'s place, while Adam Khurayev had gone to stay at M.M.'s place. At about 10 p.m. several armed and masked men had burst into Z.Ch.'s house and had forced Z.Ch. to the ground. One of the intruders had said "I don't think it's him" and another armed man had replied to him "I don't think so either". On the following morning the applicant had learnt from M.M. that armed men in camouflage uniforms had abducted Adam Khurayev on the previous night.

(b) Further investigative steps

64. On an unspecified date the investigator inspected the crime scene. No objects were seized during the inspection.

65. With a view to examining the possibility that representatives of the State had been involved in the applicant's son's abduction, on unspecified dates the investigating authorities made enquires with various State bodies, including the commander of military unit no. 6779, the military commander of the Urus-Martanovskiy District, the ROVD, unspecified remand prisons, detention centres and hospitals in the region as to Adam Khurayev's whereabouts. From the replies of those State authorities it followed that their officials had not arrested Adam Khurayev, had not instituted criminal proceedings against him and had no information on his whereabouts.

According to those replies, he had not been held in detention and had not applied for medical assistance.

66. On an unspecified date the detention logs of the ROVD and its temporary detention ward were examined. No information concerning Adam Khurayev was found.

67. On 6 July 2005 the investigation in case no. 34022 was suspended.

68. On 18 November 2005 the investigation was resumed and the applicant was notified of that decision.

69. Despite a specific request by the Court, the Government did not disclose most of the contents of the file in criminal case no. 34022, providing only copies of the records of the witness interviews described in paragraphs 53-63 above. The Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained personal data concerning the witnesses or other participants in the criminal proceedings.

C. Court proceedings against the investigators

70. On 3 March 2006 the applicant complained to the Urus-Martanovskiy Town Court ("the Town Court") about the ineffectiveness of the investigation into the abduction of her son. She requested that the investigation be resumed and the necessary investigative measures be taken and also sought access to the case file.

71. By a decision of 30 March 2006 the Town Court allowed the applicant's complaint in part. In particular, it held that the district prosecutor's office had unlawfully refused to provide the applicant with information concerning the developments in the investigation, which had prevented her from challenging the investigator's acts or inaction in court. The court ordered the district prosecutor's office to provide for the applicant's access to the case file, subject to the restrictions applicable under the rules of criminal procedure. Lastly, the court declared unlawful and unfounded the decision to suspend the investigation in case no. 34022 and ordered the district prosecutor's office to carry out an effective investigation. The decision, in so far as relevant, reads as follows:

"... It emerges from the materials of case file no.34022 ... that on 23 November 2002 at about 10 p.m. unidentified masked persons carrying submachine guns broke into the household of [M.M.]'s family ... and abducted Adam Khurayev.

The investigation took steps aimed at solving the crime and identifying the perpetrators. In particular, M.M., I.M., Z.S., Z.Ch., R.B., M.Ch. and A.Ch. were interviewed as witnesses. ...

... The investigation failed to identify the persons who had abducted Adam Khurayev or establish his whereabouts. In that connection it had been suspended ... on

numerous occasions and then reopened again. The latest decision to suspend the investigation is dated 18 December 2005.

However it transpires from the case file that the investigator failed to take all relevant investigative steps. In particular:

- it was not established which [military] units or power structures on the territory of the Urus-Martanovskiy District were equipped with APCs; where each military vehicle had been located at the time of the abduction, and where and on whose order it had been used [at the time of the abduction]”;
- the commanders of units equipped with APCs at the time of the abduction and the drivers of the APCs were not interviewed;
- the logbooks of the departments keeping records of the use of military vehicles at the time of the abduction were not examined;
- the heads of the military commander's office, the district department of the FSB and the district department of the Interior were not questioned with a view to establishing who had been granted authorisation to pass through Urus-Martan on 23 November 2002 at night during the curfew;
- the logbooks of detention facilities were not seized and checked and the persons responsible for detainees were not questioned with a view to verifying whether the abducted person was being or had been held in any detention facility.”

72. On 5 July 2006 the Supreme Court of the Chechen Republic upheld the decision on appeal.

II. RELEVANT DOMESTIC LAW

73. 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

74. 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 Adam Khurayev had not yet been

completed. They also pointed out that the applicant had not lodged a claim for compensation of non-pecuniary damage under Articles 1069-70 of the Civil Code.

75. The applicant contested that objection. She stated that the criminal investigation had proved to be ineffective and that her complaints to that effect had been futile. With reference to the Court's practice, she argued that she was not obliged to apply to civil courts in order to exhaust domestic remedies.

B. The Court's assessment

76. 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).

77. 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.

78. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (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.

79. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that the applicant complained to the law-enforcement authorities shortly after the kidnapping of Adam Khurayev and that an investigation has been ongoing since 14 February 2003. The applicant and the Government dispute the effectiveness of the investigation of the kidnapping.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

81. The applicant complained under Article 2 of the Convention that her son had disappeared after being detained by State agents and that the investigation into his disappearance had not been effective. 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. Submissions by the parties

82. The Government submitted that the investigation was pending and that it had obtained no evidence that Adam Khurayev had been abducted by State agents or that any State authorities had conducted a special operation in Urus-Martan on the night of his abduction. Furthermore, there was no evidence that Adam Khurayev was dead. The investigation had failed to identify any eyewitnesses to the abduction. In particular, whilst the applicant had named M.M. as a witness, the latter had confirmed to the investigators that she had not witnessed the abduction. None of the persons interviewed by the investigators had seen the APC or UAZ vehicles mentioned by the applicant in her application form; they had only heard about them from neighbours. When interviewed by the investigators, M.M. had failed to give the addresses of her neighbours “Zulay” and “Tamusa”, who had allegedly seen the military vehicles. Furthermore, Zara S., who was allegedly known as “Tamusa”, stated that she had not seen any military vehicles. Only M.Ch. claimed to have seen several vehicles, but she had been unable to provide any particular details. Although A.M. claimed to have seen an APC and two UAZ vehicles, she had not witnessed the abduction of the applicant's son. Furthermore, there were inconsistencies in the applicant's and M.M.'s submissions concerning the abduction. In particular, whilst in the application form the applicant stated that she had learnt about the abduction from her son Arbi while she was in Nazran, she had told the investigators that she had been in Urus-Martan on the night of the abduction. In a statement appended to the application form M.M. submitted that she had been in Urus-Martan on 23 November 2002. At the same time, when interviewed by the investigators, she submitted that she had come to Urus-Martan together with Adam Khurayev.

83. The Government further argued that the investigation into the abduction of the applicant's son met the Convention requirement of effectiveness. It was being conducted by an independent authority, which

had examined various theories of the abduction, had sent requests for information to numerous State bodies and had checked several detention centres. The investigators had interviewed numerous witnesses, inspected the crime scene and examined detention logs of the ROVD. The applicant had been duly notified of the progress in the investigation. Although the investigation had been suspended and resumed on numerous occasions, this fact did not detract from its effectiveness.

84. The applicant submitted that there existed a bulk of evidence proving beyond reasonable doubt that her son had been abducted by State agents and was to be presumed dead following his abduction. She considered that she had laid down a *prima facie* case that Adam Khurayev had been abducted by State agents. The applicant's son had been detained by a large group of armed individuals wearing camouflage uniforms, acting under one command and using military equipment, such as portable radios. Those individuals had driven military vehicles freely through the town at night, during curfew hours. The fact of the use of military vehicles had been proved by the statements of M.Ch., who had seen the abductors drive away, M.M.'s reference to the noise of military vehicles, A.M.'s statement that she had seen an APC and two military UAZ vehicles and the Town Court's findings concerning the APCs. It transpired from the Government's submissions that the theory of Adam Khurayev's abduction by State servicemen had been the only possibility examined by the domestic investigating authorities and the former had failed to provide any other explanation for what had happened to him. The applicant also invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file.

85. The applicant disputed the Government's argument that the investigation into the abduction of her son had met the effectiveness and adequacy requirements laid down by the Court's case-law. In particular, the authorities had failed to promptly open a criminal case into Adam Khurayev's abduction. Only two witnesses had been interviewed in 2003. The majority of witnesses had been questioned in 2004 and their interviews had been superficial. Although the abduction had occurred in a densely populated area, no attempts had been made to identify other witnesses who might have provided information on the vehicles and the direction they had taken. Despite the Town Court's guidelines, the investigation had failed to take the investigative steps enumerated in its decision. The investigation had been ongoing for more than five years and had failed to produce any results.

B. The Court's assessment

1. Admissibility

86. 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 80 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 Adam Khurayev

(i) General principles

87. 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 under their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

(ii) Establishment of the facts

88. 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).

89. The applicant alleged that on the night of 23 November 2002 her son, Adam Khurayev, had been abducted by Russian servicemen and had then disappeared. She did not witness her son's abduction but enclosed statements by witnesses collected after his apprehension. She also 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.

90. The Government conceded that Adam Khurayev had been abducted by unknown armed men on the night of 23 November 2002. However, they denied that the abductors had been State servicemen, referring to the absence of evidence to that effect from the ongoing investigation.

91. The Court notes that despite its request for a copy of the investigation file into the abduction of Adam Khurayev, the Government refused to produce most of the documents from the case file, providing only copies of several interview records (see paragraph 69 above). They relied on 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-XIII (extracts)).

92. 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.

93. It is undisputed by the parties that at the material time Urus-Martan was under curfew and that the authorities maintained manned checkpoints at the entry and exit points to the town (see also the Town Court's findings described in paragraph 71 above). It further emerges from the copies of witness testimonies furnished by the Government that on the night of 23 November 2002 a group of armed men in camouflage uniforms, equipped with portable radios and driving several vehicles, proceeded to check identity documents in several households in Urus-Martan (see paragraphs 57-60 above).

94. The Government did not dispute the veracity of the statement by M.M.'s neighbour A.M., who claimed to have seen an APC and two UAZ vehicles in the vicinity of M.M.'s house on the night of the abduction. Furthermore, from M.M.'s statements it follows that, although she had not seen the intruders' vehicles, she had heard the noise of military vehicles immediately after the intrusion. Lastly and more importantly, it transpires from the decision of 30 March 2006 that the Town Court, which had had access to case file no. 34022, did not doubt the presence of military vehicles and, in particular, an APC, at the crime scene (see paragraph 71 above).

95. In the Court's view, the fact that a group of armed men in uniform in several military vehicles and equipped with portable radios was able to pass freely through checkpoints during curfew hours and proceeded to check identity documents in several households in a manner similar to that of State

agents strongly supports the applicant's allegation that those were State servicemen and that they were conducting a special operation in Urus-Martan on the night of Adam Khurayev's abduction.

96. Contrary to the Government's assertion, the Court has not found any major inconsistencies in the applicant's and M.M.'s accounts of events in the course of both the domestic and Strasbourg proceedings. As to their submission that there had been no witnesses to the abduction, it is noted that the Government did not dispute that Adam Khurayev was present in M.M.'s household when a group of armed men had burst into her household at about 10 p.m. on 23 November 2002. Having regard to the materials available to it, the Court considers that the applicant and M.M. had reasonable grounds to assume that the armed men who had broken into M.M.'s house had taken away Adam Khurayev and had driven away in the vehicles whose noise M.M. had heard and which had been described to her by A.M. as an APC and two UAZ vehicles (see, *mutatis mutandis*, *Abdurzakova and Abdurzakov v. Russia*, no. 35080/04, § 91, 15 January 2009). In any event, the Government offered no explanation whatsoever as to what had happened to Adam Khurayev after the armed men had broken into M.M.'s house.

97. The Court also notes that in her applications to the authorities the applicant consistently maintained that Adam Khurayev had been detained by unidentified servicemen, and requested the investigating authorities to look into that possibility. It further notes that after more than five years the domestic investigation has produced no tangible results.

98. The Court reiterates that where an applicant makes out a prima facie case and the Court is prevented from reaching factual conclusions owing to a lack of documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government, and if they fail in their arguments issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

99. Taking into account the above elements, the Court is satisfied that the applicant has made out a prima facie case that her son was detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the theory that the special forces were involved 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 Adam Khurayev was abducted on 23 November 2002 at

M.M.'s home in Urus-Martan by State servicemen during an unacknowledged security operation.

100. The Court further notes that there has been no reliable news of Adam Khurayev since November 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.

101. 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-XIII (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 Adam Khurayev or of any news of him for over five years supports this assumption.

102. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Adam Khurayev was abducted on 23 November 2002 by State servicemen and that he must be presumed dead following his unacknowledged detention.

(iii) The State's compliance with Article 2

103. 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*, 27 September 1995, §§ 146-147, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

104. The Court has already found it established that the applicant's son 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.

105. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Adam Khurayev.

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

106. 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*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 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).

107. The Court notes at the outset that very few documents from the investigation file were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of very scarce information submitted by the Government and the few documents available to the applicant, which she provided to the Court.

108. Turning to the facts of the present case, the Court observes that, according to the applicant, on 24 November 2002 she notified a number of law-enforcement agencies in Urus-Martan, including the ROVD and the district prosecutor's office, about the abduction of Adam Khurayev. The Government did not dispute that assertion. They also failed to produce any documents from the case file, such as a copy of the applicant's stamped complaint to the authorities or the decision to launch the investigation, which could have cast doubt on it. The investigation was launched on 14 February 2003. Bearing this in mind, the Court cannot but conclude that the two-month delay in opening the investigation was attributable to the domestic authorities. Such a postponement *per se* was liable to affect the investigation of a kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

109. The Court also has to assess the scope of the investigative measures taken. In this connection it is noted that the Government submitted only copies of several records of witness interviews. It emerges from those documents that the investigating authority interviewed M.M. and the applicant in February and March 2003, while the remaining witnesses were questioned only a year later. In the Court's view, this delay in questioning witnesses, for which no explanation has been offered by the Government, must have had a negative effect on the ability of the investigation to

establish the relevant facts since, with the passage of time, important details concerning the events of 23 November 2002 might have faded from the witness' memories. As regards the other investigative measures enumerated by the Government, in the absence of the related documents the Court is unable not only to assess how promptly those steps were taken but whether they were taken at all.

110. Furthermore, it appears that a number of crucial steps were never taken. It follows from the Town Court's decision that the investigation did not make any attempts to identify the owners of the APC, examine the relevant logbooks or detention logs and interview persons who could have provided information as to who had been permitted to pass through the town during curfew hours (see paragraph 71 above). In fact, there is no indication that the Town Court's instruction has been ever complied with.

111. It is obvious that, if they were to produce any meaningful results, those investigative measures should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. 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 matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

112. The Court also notes that even though the applicant was granted victim status in the investigation concerning the abduction of her son, she hardly received any meaningful information about the developments in the investigation, a fact which appears to be confirmed by the Town Court's findings (see paragraph 71 above). 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.

113. Lastly, it transpires that the investigation was adjourned and resumed on numerous 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.

114. 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 open for many years with 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.

115. 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 Adam Khurayev, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

116. 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

117. 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.

118. The applicant maintained her submissions.

B. The Court's assessment

1. *Admissibility*

119. The Court notes that the 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*

120. 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*, cited above, § 358, and *Imakayeva*, cited above, § 164).

121. In the present case the Court notes that the applicant is the mother of the disappeared person. For more than five years she has not had any news of her son. During this period the applicant has made enquiries to various official bodies, both in writing and in person, about Adam Khurayev. Despite her attempts, the applicant has never received any plausible explanation or information about what became of him following

his apprehension. The responses they received mostly denied State responsibility for her son's arrest or simply informed her that the investigation into the matter was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

123. The applicant further stated that Adam Khurayev 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

124. The Government asserted that no evidence had been obtained by the investigators to confirm that Adam Khurayev had been deprived of his liberty.

125. The applicant maintained her complaint.

B. The Court's assessment

1. Admissibility

126. 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

127. 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).

128. The Court has found that Adam Khurayev was apprehended by State servicemen on 23 November 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).

129. 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.

130. In view of the foregoing, the Court finds that Adam Khurayev 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

131. 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

132. 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 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.

133. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

134. 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

135. 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).

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

137. 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).

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

138. The applicant complained that she had been discriminated against in the enjoyment of her Convention rights, because the violations of which she complained had taken place as a result of her being resident in Chechnya and her ethnic background as a Chechen. This was contrary to Article 14 of the Convention, which reads as follows:

“The enjoyment of the right and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

139. The Court observes that no evidence has been submitted to it that suggests that the applicant was treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated.

140. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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

142. The applicant claimed that she had sustained damage in respect of the loss of her son's earnings following his apprehension and disappearance. She claimed a total of 429,553.36 Russian roubles (RUB) (approximately 11,928 euros (EUR)) under this head.

143. The applicant submitted that Adam Khurayev had been unemployed at the time of his arrest, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. Her calculations were also based on the actuarial tables for use in

personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 (the so-called "Ogden tables"). The applicant assumed that she would have benefitted from her son's financial support equal to 30% of his earnings.

144. The Government argued that the applicant's claims were unsubstantiated and that she had not made use of the domestic avenues for obtaining compensation for the loss of her breadwinner.

145. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. It has held that the loss of earnings also applies to dependant children and, in some instances, to elderly parents (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to its conclusions above, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicant's son and the loss to her of the financial support which he could have provided.

146. Having regard to the applicant's submissions and the fact that Adam Khurayev was not employed at the time of his apprehension, the Court awards EUR 2,000 to the applicant in respect of pecuniary damage plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

147. 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 son, the indifference shown by the authorities towards her and the failure to provide any information about his fate.

148. The Government found the amounts claimed exaggerated.

149. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicant's relative. The applicant herself has been found to have been the 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 to the applicant EUR 60,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

150. The applicant was represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff, as well as administrative expenses, translation

and courier delivery fees. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 5,634.67, to be paid into the representatives' account in the Netherlands.

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

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

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

154. 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. It notes at the same time that due to the application of Article 29 § 3 in the present case, the applicant's representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives. Furthermore, the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. Hence, it is also doubtful whether research was necessary to the extent claimed by the representatives. Lastly, the Court notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicant's representatives' accounts (see, for example, *Toğcu*, cited above, § 158; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; and *Imakayeva*, cited above).

155. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount of EUR 4,000, together with any value-added tax that may be chargeable to her, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicant.

D. Default interest

156. 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 substantive violation of Article 2 of the Convention in respect of Adam Khurayev;
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 Adam Khurayev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of applicant;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Adam Khurayev;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2;
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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the applicant;
 - (ii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (iii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President