



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

FIRST SECTION

CASE OF ILYASOVA v. RUSSIA

(Application no. 26966/06)

JUDGMENT

STRASBOURG

10 June 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 Ilyasova v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 26966/06) 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 Ms Dugurkhan Ilyasova, a Russian national, (“the applicant”) on 12 May 2006.

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

3. On 4 July 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.

4. The Government objected to the joint examination of the admissibility and merits of the application and 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 1944. She lives in the village of Katyr-Yurt, in the Chechen Republic. The applicant is the mother of Magomed-Salekh Ilyasov, born in 1979, and Magomed-Ali Ilyasov, born in 1981.

A. Disappearance of Magomed-Salekh and Magomed-Ali Ilyasov

1. The applicant's account

6. At the material time the applicant lived with her sons Magomed-Salekh and Magomed-Ali Ilyasov and other relatives at 25 Sadovaya Street, Katyr-Yurt, in the Achkhoy-Martanovskiy District in the Chechen Republic. The authorities maintained manned checkpoints at the entry and exit points to and from the village, which was under curfew at the material time.

7. On the night of 12 November 2002 the applicant and her family were sleeping in their house at the above address. At about 4 a.m. two APCs (armoured personnel carriers) and a UAZ vehicle without registration numbers arrived in the applicant's street. One of the APCs pulled over by the applicant's gate and the other one by her neighbour's house. A group of armed men in camouflage uniforms emerged from the vehicles and walked to the applicant's house. Another group consisting of several armed men blocked the perimeter of the applicant's house. They took up their positions at intervals, preventing the applicant's neighbours from getting into the street.

8. At about 4 a.m. the applicant and L.Sh., her daughter-in-law, got up and went into the kitchen to prepare a meal. They had to cook at night because it was Ramadan. The women were in the kitchen when an armed masked man in a camouflage uniform broke into the room. He neither identified himself nor produced any documents. Pointing his assault rifle at the applicant, he asked in unaccented Russian: "Is anybody here?" and without even listening to the applicant's reply he went back outside.

9. The applicant rushed to the room of her son Magomed-Ali. She saw him on the floor, with his hands bound behind his back. He was surrounded by a group of armed masked men in camouflage uniforms. The men spoke Russian without an accent and behaved aggressively. The applicant and her relatives thought that they were Russian servicemen.

10. At about the same moment five or six servicemen burst into the room where the applicant's other son, A.I., was sleeping. They pushed him into another room and ordered to furnish his identity papers. When he asked his relatives in Chechen to fetch those documents, the servicemen ordered him in Russian to remain silent and to lie down. The servicemen spoke unaccented Russian.

11. Shortly thereafter the servicemen took Magomed-Ali to the yard and put him into a shed. The applicant and her daughter-in-law ran outside and started screaming. One of the armed men ordered the applicant to stay quiet and hit her with his rifle butt. The applicant fell to the ground. The applicant's daughter-in-law asked the servicemen if she could help the applicant to get up. In response one of the officers threatened to shoot the applicant's daughter-in-law if she did not get back into the house.

12. The applicant remained in the yard. She got up and saw her second son, Magomed-Salekh, in the yard, surrounded by a large group of the servicemen. His hands were bound behind his back; his head was covered with his T-shirt. The applicant saw an APC parked next to her gate and the other one parked nearby, next to her neighbours' house. The applicant ran up to Magomed-Salekh and stood up next to him. At this moment she saw the servicemen taking her fourth son, M.I., from the house into the yard. The applicant fainted.

13. Meanwhile the servicemen took Magomed-Salekh and Magomed-Ali into the street and put them into the APC at the gate. They let the applicant's fourth son, M.I., go and told him to calm his mother down. The vehicles drove away towards the centre of Katyr-Yurt. A number of the applicant's neighbours witnessed the abduction of the applicant's sons.

14. After the APCs had driven away, relatives carried the applicant from the yard into the house. On the way there she regained consciousness and saw two servicemen taking away her chainsaw, a bucket of garlic and Magomed-Salekh's training shoes. The men got into the remaining vehicle and drove away towards the village centre.

15. The description of the events of the night of 12 November 2002 is based on the following accounts provided to the applicant's representatives: the applicant's account, given on 20 August 2007; an account by witness A.I., given on 22 August 2007; an account by witness N.A., given on 20 August 2007, and an account by witness A.P., given on 22 August 2007.

16. The applicant has had no news of Magomed-Salekh and Magomed-Ali Ilyasov since 12 November 2002.

2. Information submitted by the Government

17. The Government submitted that Magomed-Salekh and Magomed-Ali Ilyasov had been abducted on 12 November 2002 by unidentified persons.

B. The search for Magomed-Salekh and Magomed-Ali Ilyasov and the investigation

1. The applicant's account

(a) The applicant's search for Magomed-Salekh and Magomed-Ali Ilyasov

18. Early in the morning of 12 November 2002 the applicant's relatives complained about the abduction of Magomed-Salekh and Magomed-Ali Ilyasov to E., the head of the village administration.

19. On the same date the applicant was informed that on the night of 12 November 2002 another resident of Katyr-Yurt had been abducted by the servicemen. She did not remember his name.

20. On the afternoon of 12 November 2002 E. told the applicant that representatives of a federal agency from Khankala (the main base of the Russian military forces in Chechnya) would visit her house. On the evening of 12 November 2002, a group of Russians and Chechens in civilian clothing arrived at the applicant's gate in two cars. Without providing any documents or explaining reasons for their actions they conducted a search of the applicant's house. They did not find anything of interest to them and left.

21. In the mid-November 2002 the applicant's relatives were informed that Magomed-Salekh and Magomed-Ali Ilyasov were detained at the Achkhoy-Martanovskiy District Department of the Interior (the ROVD). When at some point later the applicant's relatives arrived at the ROVD to pass on some food and clothing to the brothers, they were told by the officers that Magomed-Salekh and Magomed-Ali Ilyasov were not detained there.

22. In the end of November 2002 G., a resident of Achkhoy-Martan who allegedly had some connections in the Federal Security Service ("the FSB"), told the applicant that her sons had been detained in the basement of the ROVD. According to G., the brothers had confessed to unlawful possession of arms. A couple of days later G. informed the applicant that her sons had been transferred to another detention centre and that no information was available about their whereabouts.

23. In the middle of December 2002 representatives of the prosecutor's office of the Achkhoy-Martanovskiy district ("the district prosecutor's office") arrived at the applicant's house. They interviewed the applicant, her family members and neighbours and left.

24. Approximately in the end of January 2003 Ye., an operational-search officer of the ROVD, informed E., the head of the village administration, that after being detained for some time in Khankala, at the main military base of the Russian federal forces in Chechnya, the applicant's sons had been transferred to the department of the interior of the Staropromyslovskiy

district of Grozny (the Staropromyslovskiy ROVD). According to Ye., Magomed-Salekh and Magomed-Ali Ilyasov had been charged with unlawful possession of firearms. Thereafter Ye. told the applicant that she would be able to visit her sons if she managed to obtain a special permit from the military commander of Grozny. The applicant was unable to obtain the permit.

25. About a week later, in the beginning of February 2003, Ye. informed one of the applicant's relatives that Magomed-Salekh and Magomed-Ali Ilyasov had been transferred from the Staropromyslovskiy ROVD to a detention centre in Pyatigorsk, in the Stavropol region. No information has been available concerning the whereabouts of the applicant's sons ever since.

26. The applicant also contacted, both in person and in writing, various official bodies, such as the Russian President, the Chechen administration, military commanders' offices and prosecutors' offices at different levels, describing in detail the circumstances of her sons' abduction and asking for help in establishing their whereabouts. The applicant retained copies of a number of those letters and submitted them to the Court. An official investigation was opened by the local prosecutor's office. The relevant information is summarised below.

(b) The official investigation

27. On 29 January 2003 the district prosecutor's office opened an investigation into the abduction of Magomed-Salekh Ilyasov and Magomed-Ali Ilyasov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The criminal case file was given number 44016. The decision stated that at about 4 a.m. on 12 November 2002 a group of unidentified masked individuals in camouflage uniforms, who had arrived in two APCs and a grey UAZ vehicle without registration plates, had abducted Magomed-Salekh and Magomed-Ali Ilyasov and taken them to an unknown destination.

28. On 29 January 2003 the district prosecutor's office forwarded a copy of the decision concerning the opening of the criminal proceedings to the prosecutor's office of the Chechen Republic ("the republican prosecutor's office").

29. On 1 February 2003 the department of the Prosecutor General's office in the Southern Federal Circuit informed the applicant that her request for assistance in the search for her sons had been forwarded to the republican prosecutor's office for examination.

30. On 12 February 2003 the district prosecutor's office informed the applicant that on 29 January 2003 they had opened criminal case no. 44016; operational-search measures aimed at solving the crime were under way.

31. On 5 March 2003 the Chechen department of the Federal Security Service (the Chechen department of the FSB) informed the applicant that

they had no information concerning the whereabouts of her sons. The letter stated that Magomed-Salekh Ilyasov and Magomed-Ali Ilyasov were not on the authorities' wanted list.

32. On 19 March 2003 the district prosecutor's office informed the applicant that they had been taking measures aimed at establishing her sons' whereabouts.

33. On 29 March 2003 the district prosecutor's office informed the applicant that on 29 March 2003 they had suspended the investigation in criminal case no. 44016 owing to the failure to establish the identity of the perpetrators.

34. On 3 October 2003 the national public commission on investigation of human rights violations in the Northern Caucasus informed the applicant that they had forwarded her complaint about her sons' abduction to the military prosecutor's office of military unit no. 20102.

35. On 29 March 2004 the republican prosecutor's office informed the applicant that her complaint about her sons' abduction had been examined; the investigation in criminal case concerning the abduction of Magomed-Salekh and Magomed-Ali Ilyasov was under way.

36. On 12 September 2004 the ROVD informed the applicant that the investigation in criminal case no. 44016 had failed to produce any results. The operational-search measures aimed at solving the crime were under way.

37. On 20 May 2005 the military commander of the Chechen Republic forwarded the applicant's complaint concerning the abduction of her sons by armed men in camouflage uniforms to the military commander's office of the Achkhoy-Martanovskiy district and directed the latter body to organise a search for the missing persons.

38. On 14 June 2005 the district prosecutor's office informed the applicant that on 29 March 2003 they had suspended the investigation in criminal case no. 44016. Operational-search measures aimed at solving the crime were under way.

39. On 21 June 2005 the military commander of the Chechen Republic forwarded the applicant's complaint about abduction of her sons by armed men in camouflage uniforms to the military commander's office of the Achkhoy-Martan district for organisation of a search.

40. On 27 June 2005 the republican prosecutor's office informed the applicant that in connection with the abduction of Magomed-Salekh and Magomed-Ali Ilyasov criminal case no. 44016 had been opened; operational-search measures aimed at solving the crime were under way.

41. On 1 July 2005 the republican prosecutor's office forwarded the applicant's request for assistance in the search for her sons to the district prosecutor's office for examination.

42. On 5 July 2005 the military commander of the Achkhoy-Martanovskiy district informed the applicant that law-enforcement

agencies had been conducting a search for Magomed-Salekh and Magomed-Ali Ilyasov; however, the whereabouts of the applicant's sons had not been established.

43. On 12 July 2005 the ROVD informed the applicant that her complaint to the President of the Chechen Republic had been examined by the authorities. According to the letter, in addition to the opening of criminal case no. 44016 by the district prosecutor's office, the ROVD had opened operational-search file no. 91479 (in the submitted documents the number is also referred to as 091479). However, the operational-search measures undertaken by the ROVD had failed to produce any results.

44. On 25 July 2005 the district prosecutor's office informed the applicant that on 29 March 2003 the investigation in criminal case no. 44016 had been suspended for failure to establish the identity of the perpetrators. On an unspecified date this decision had been overruled by the supervising prosecutor, who had given the investigator in charge unspecified instructions aimed at solving the crime.

45. On 5 August 2005 the republican prosecutor's office forwarded the applicant's request for assistance in the search for her sons to the district prosecutor's office for examination.

46. On 25 August 2005 the investigation in criminal case no. 44016 was suspended for failure to establish the perpetrators. It does not appear that the applicant was informed about the decision.

47. On 30 August 2005 the military prosecutor's office of the United Group Alignment (the UGA military prosecutor's office) forwarded the applicant's request for assistance in the search for her sons to the district prosecutor's office for examination.

48. On 18 November 2005, in response to the applicant's request, the district prosecutor's office informed her that on 25 August 2005 they had suspended the investigation in criminal case no. 44016, after complying with unspecified instructions.

49. On 1 December 2005 the ROVD informed the applicant that they had been carrying out operational-search measures aimed at establishing the whereabouts of Magomed-Salekh and Magomed-Ali Ilyasov. However, these measures had failed to produce any results.

50. On 15 December 2005 the applicant wrote to the prosecutor of the Chechen Republic. She described the circumstances of her sons' abduction by armed masked men in camouflage uniforms and pointed out that the abductors had used APCs and military UAZ vehicles. The applicant requested assistance in her search for her sons.

51. On 24 December 2005 the republican prosecutor's office forwarded the applicant's request for assistance in her search for her sons to the district prosecutor's office for examination.

52. On 17 February 2006 the Ministry of the Interior of the Chechen Republic issued an information statement. According to the document,

Magomed-Salekh and Magomed-Ali Ilyasov were not on the authorities' wanted list, nor were they wanted on suspicion of committing a crime.

53. By a letter of 22 February 2006 the republican prosecutor's office forwarded the applicant's request for assistance in her search for her sons to the district prosecutor's office for examination.

54. On 28 February 2006 the district prosecutor's office informed the applicant that the investigation in criminal case no. 44016 had been suspended; however, the authorities were taking measures aimed at solving the crime.

55. On 20 April 2006 the military prosecutor's office of the UGA forwarded the applicant's request for assistance in her search for her sons to the military prosecutor's office of military unit no. 20102.

56. By a letter of 13 May 2006 the military prosecutor's office of military unit no. 20102 informed the applicant that the examination of her complaint had not established the involvement of Russian servicemen in the abduction of Magomed-Salekh and Magomed-Ali Ilyasov.

57. On 10 April 2007 the Ministry of the Interior of the Chechen Republic forwarded the applicant's request for information about the search measures taken by the investigation in criminal case no. 44016 to the ROVD for examination.

58. On 11 April 2007 the district prosecutor's office informed the applicant that on 11 April 2007 they had resumed the investigation in criminal case no. 44016.

59. On 11 April 2007 the republican prosecutor's office informed the applicant that her request for information concerning the investigation in criminal case no. 44016 had been forwarded to the district prosecutor's office for examination.

60. On 20 April 2007 the district prosecutor's office replied to the applicant's request for information on the progress in the investigation. He informed her that the investigation in criminal case no. 44016 had taken the following measures: inspection of the crime scene; drafting a plan of the investigative actions; interviewing more than fifty individuals familiar with Magomed-Salekh and Magomed-Ali Ilyasov; forwarding information requests concerning the whereabouts of the applicant's sons to law-enforcement agencies and carrying out some other unspecified operational-search measures. According to the document, the supervising prosecutor had issued instructions aimed at solving the crime. The letter stated that on 25 August 2005 the investigation in the criminal case had been suspended; on 11 April 2007 it had been resumed.

61. On 11 May 2007 the republican prosecutor's office informed the applicant that her request for information concerning the investigation in criminal case no. 44016 had been forwarded to the district prosecutor's office for examination.

62. By a letter of 21 May 2007, in response to the applicant's request for information about the criminal investigation into her sons' abduction, the district prosecutor's office provided her with a response similar to the one of 20 April 2007. In addition, the document stated that the investigation was examining the theory of the possible involvement of those serving in law-enforcement agencies and/or special forces in the abduction of the applicant's sons, and the theory that the applicant's sons had been kidnapped for ransom. According to the document, the authorities had no information concerning the possible involvement of the applicant's sons in any kind of criminal activity.

63. On an unspecified date the applicant complained to the prosecutor of the Chechen Republic that the investigation in criminal case no. 44016 was ineffective. She requested the authorities to conduct an effective and thorough investigation into her sons' abduction. In her letter she provided a detailed description of the circumstances in which her sons had been taken away and pointed out that after their abduction Magomed-Salekh and Magomed-Ali Ilyasov had been detained in Khankala and in the Staropromyslovskiy ROVD. It is unclear whether the applicant received any response to this complaint.

2. Information submitted by the Government

64. The information and documents submitted by the Government may be summarised as follows.

65. On 25 January 2003 the head of the ROVD replied to the district prosecutor's office that it had received their letter of 19 January 2003 concerning the disappearance of Magomed-Salekh and Magomed-Ali Ilyasov. The letter of the head of the ROVD further stated that on 25 January 2003 the ROVD had opened an operational-search file no. 000006, in connection with the disappearance of the Ilyasov brothers and that they were forwarding the file to the district prosecutor's office.

66. On 29 January 2003 the district prosecutor's office instituted an investigation into the abduction of Magomed-Salekh and Magomed-Ali Ilyasov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The decision stated that the applicant's complaints and the materials in operational-search file no. 000006 contained information that at about 4 a.m. on 12 November 2002 unidentified masked and armed persons in camouflage uniforms, who were driving two APCs and a grey UAZ vehicle, had abducted Magomed-Salekh and Magomed-Ali Ilyasov and taken them to an unknown destination. The case file was given the number 44016.

67. On 29 January 2003 an investigator of the district prosecutor's office inspected the crime scene. No information relevant to the investigation was discovered and no items were seized.

68. On 30 January 2003 an investigator of the district prosecutor's office granted the applicant victim status in the proceedings in case no. 44016 and interviewed her. The applicant stated that at about 4 a.m. on 12 November 2002, while she and her daughter-in-law were cooking a meal for the Ramadan holiday, a group of armed masked men in camouflage uniforms had broken into the applicant's house. When the applicant went into the yard, she saw Magomed-Salekh and Magomed-Ali Ilyasov standing under the shed, handcuffed and surrounded by armed men. The servicemen had put Magomed-Salekh and Magomed-Ali Ilyasov into two APCs and a grey UAZ vehicle without registration plates, which were parked at the gate, and taken them away. The applicant confirmed her statement at an interview on 12 April 2007.

69. On 1 February 2003 the investigator interviewed as a witness L.Sh., the applicant's daughter-in-law. She stated that at about 4 a.m. on 12 November 2002, while she was in the kitchen with the applicant, a group of armed masked men in camouflage uniforms burst into the house, pointing their guns at them. When the armed men went out into the yard, L.Sh. and the applicant followed them and saw Magomed-Ali Ilyasov standing by a shed with his hands tied behind his back. Shortly thereafter the armed men took Magomed-Salekh, handcuffed, into the shed. The armed men then put the brothers into two APCs and a UAZ vehicle at the gate and drove away. They took the brothers' passports with them. The abductors had wanted to take the applicant's other son, M.I., with them but changed their minds and let him go. On the morning of 12 November 2002 the Ilyasovs had alerted the local administration to the abduction of their relatives and the administration officials had immediately put on notice the ROVD and other law-enforcement agencies. Interviewed as a victim on 7 February 2003, L.Sh. confirmed her previous statement.

70. On 1 February 2003 the investigator interviewed as a witness the applicant's other daughter-in-law, Z.I. According to her interview record, at about 4 a.m. on 12 November 2002 the applicant had woken her up to cook. Through a window Z.I. had seen two APCs and an UAZ vehicle outside the applicant's house. Suddenly a group of armed masked men burst in. They pointed their guns at her. When Z.I. went into the next room she saw the armed men handcuff Magomed-Salekh and take him outside.

71. On 3 February 2003 the investigation interviewed as a witness L.A., the deputy head of the local administration. He stated that early in the morning of 12 November 2002 relatives of the Ilyasov brothers had arrived at his office and told him that Magomed-Salekh and Magomed-Ali Ilyasov had been abducted by armed masked men in camouflage uniforms, who had arrived in two APCs and a grey UAZ vehicle. L.A. immediately alerted the ROVD and the head of the local administration to the abduction, requesting the ROVD to take all necessary steps.

72. I.Z., an officer of the ROVD, interviewed as a witness on 3 February 2003, stated that on the morning of 12 November 2002 he had learnt from his neighbours about the abduction of Magomed-Salekh and Magomed-Ali Ilyasov. I.Z. had immediately reported the incident to the ROVD and other law-enforcement authorities.

73. Between 5 and 27 February 2003 the investigation interviewed as witnesses the applicant's neighbours A.M., M.U., R.M., Kh.Kh., M.T., B.I. and G.B., residing at Sadovaya Street, Katyr-Yurt. Those persons stated that at about 4 a.m. on 12 November 2002 they had been woken up by the noise of several vehicles moving on the street. Having looked outside, they had seen two APCs and a grey UAZ vehicle without registration numbers, parked at the applicant's house. A group of armed men in camouflage uniforms and masks stayed with the APCs and another group moved to the applicant's yard. In total there were about fifteen to twenty armed men. After a while shouting was heard from the applicant's house and the witnesses saw the armed men take the Ilyasov brothers outside, put them into the vehicles and leave with them to an unknown destination.

74. On 12 February 2003 the district prosecutor's office requested the heads of remand centres in Vladikavkaz, Makhachkala, Chernokozovo, Stavropol, Nalchik and Pyatigorsk to inform it whether Magomed-Salekh and Magomed-Ali Ilyasov had been held in those detention facilities as from 12 November 2002.

75. On 14 February 2003 the district prosecutor's office requested all town and district prosecutor's offices of the Chechen Republic to inform it whether law-enforcement authorities within the areas under their responsibility had arrested Magomed-Salekh and Magomed-Ali Ilyasov and if so, where the brothers had been detained. On the same date the district prosecutor's office addressed similar requests for information to the military prosecutor of military unit no. 20102, the deputy head and the military prosecutor of the United Group Alignment (UGA) and the head of the ROVD. The latter body was also instructed to inspect the checkpoint located in the vicinity of the village of Davydenko and to identify the vehicles which had passed through it. All the above-mentioned letters stated that the Ilyasov brothers had been abducted on 12 November 2002 by a group of armed masked men in camouflage uniforms, who had arrived in two APCs and a grey UAZ-452 31010 vehicle without registration numbers.

76. On 15 February 2003 the district prosecutor's office requested the military commander of the village of Bamut, the Federal Security Service ("the FSB") Department in the Achkhoy-Martanovskiy District and the head of the ROVD to inform it whether those authorities had carried out special operations in Katyr-Yurt on 12 November 2002 or whether they had compromising material ("*компрометирующий материал*") on Magomed-Salekh and Magomed-Ali Ilyasov.

77. Between 27 February and 18 April 2003 the authorities mentioned in paragraphs 74-76 above reported to the district prosecutor's office that the law-enforcement authorities had not arrested the Magomed-Salekh and Magomed-Ali Ilyasov; that the brothers had not been detained in their detention facilities and that they had no compromising material on them and no information on their whereabouts.

78. By a letter of 4 March 2003 the ROVD informed the district prosecutor's office that they had interviewed unspecified servicemen of checkpoints nos. 186 and 187, who had been on duty on the night of 12 November 2002. The letter further stated that "the check had established that no vehicles had passed".

79. On 18 April 2003 the military prosecutor's office of military unit no. 20102 informed the district prosecutor's office that in order to obtain information on special operations in Katyr-Yurt carried out on 12 November 2002 the latter body had to apply to the military prosecutor's office of Rostov-on-Don with a request to inspect their archives, because the UGA in the Chechen Republic was keeping the documentation regarding the special operations only within a month after those operations had been carried out and after the expiry of that period of time all related documentation was being sent to the archives of the relevant law-enforcement authorities (the Ministry of Defence, the Ministry of the Interior etc.) in Rostov-on-Don. There is no indication that the district prosecutor's office applied to the above-mentioned authorities with a view to obtaining that information.

80. Between 29 July and 21 August 2005 the district prosecutor's office interviewed as witnesses A.B., S.B., A.M., Ya.Kh., A.D., T.Sh., A.G., A.Ga., A.Kh., M.G., I.I., M.A. and I.G., residents of Katyr-Yurt. According to copies of their interview records and in so far as they are legible, those witnesses had learnt from their neighbours, fellow villagers or the applicant and her relatives that at about 4 a.m. on 12 November 2002 a group of armed masked men in camouflage uniforms had broken into the applicant's house and had abducted Magomed-Salekh and Magomed-Ali Ilyasov. The abductors spoke unaccented Russian and were driving two APCs and a grey UAZ vehicle without registration numbers.

81. Following the district prosecutor's office' requests for information made on unspecified dates in July and August 2005, several district departments of the interior and heads of remand centres in the Chechen Republic informed it that they had no information about any special operations conducted by law-enforcement authorities within the area of their responsibility and that the Ilyasov brothers had not been arrested or detained.

82. On 15 April 2007 the district prosecutor's office requested the temporary operational group of the Ministry of the Interior in Khankala, the Ministry of the Interior of the Chechen Republic, the operational-search bureau in Grozny and the FSB Department in the Chechen Republic to

inform it whether they had arrested the Ilyasov brothers or had incriminating material on them. According to the replies of those authorities, their officers had not arrested Magomed-Salekh and Magomed-Ali Ilyasov and had no incriminating material concerning them.

83. On 21 June 2008 investigators of the district prosecutor's office interviewed as witnesses R.Sh. and M.Ch., police officers of the ROVD. They stated that at about 4 a.m. on 12 November 2002 unidentified armed masked persons in camouflage uniforms, who spoke unaccented Russian, had arrived at the applicant's house in two APCs and a grey UAZ vehicle without registration numbers and had abducted Magomed-Salekh and Magomed-Ali Ilyasov, whose whereabouts remained unknown.

84. Despite specific requests by the Court the Government did not disclose most of the contents of criminal case no. 44016, providing only copies of the decision to institute the investigation, witness interview records and requests for information and replies to them, summarised in paragraphs 65-83 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 it would breach the rights of unspecified participants to the criminal proceedings.

C. Court proceedings to have Magomed-Salekh and Magomed-Ali Ilyasov declared missing persons

85. On 24 January 2006 the applicant brought an action with the Achkhoy-Martanovskiy District Court seeking to have her sons Magomed-Salekh Ilyasov and Magomed-Ali Ilyasov declared missing persons.

86. By a judgment of 31 March 2006 the court granted her claim and declared the applicant's sons missing persons as of 12 November 2002.

II. RELEVANT DOMESTIC LAW

87. 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

88. 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 Magomed-Salekh and Magomed-Ali Ilyasov 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 or other law-enforcement authorities, but that the applicant had not availed herself of that remedy. They referred in that connection to court proceedings issued by a certain T.A., I.U. and M.E., without providing copies of the related documents. They also pointed out that the applicant could have lodged a claim for non-pecuniary damages under Article 1069 of the Civil Code but that she had also failed to do so.

89. 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

90. 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).

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

92. 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.

93. As regards criminal law remedies, the Court observes that the applicant complained to the law-enforcement authorities shortly after the kidnapping of Magomed-Salekh and Magomed-Ali Ilyasov and that an investigation has been pending since 29 January 2003. The applicant and the Government dispute the effectiveness of the investigation of the kidnapping.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

95. The applicant complained under Article 2 of the Convention that her sons had been deprived of 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

96. The Government contended that the investigation into the abduction of the applicant's sons had not obtained evidence that they had been kidnapped or killed by State agents or that a special operation had been conducted on 12 November 2002 in Katyr-Yurt. The fact that the abductors wore camouflage uniforms, spoke Russian and were armed with assault rifles did not prove that they were servicemen. Neither the applicant nor other witnesses had noticed or remembered any insignia on the abductors' uniforms or any other particular features. According to the information obtained by the investigation, on 12 November 2002 no vehicles had passed

through checkpoints nos. 186 and 187 located in Katyr-Yurt. The applicant's submissions that her sons had been detained at the Achkhoy-Martanovskiy and Staropromyslovskiy ROVDs and at the military commander's office in Khankala had been checked but not confirmed.

97. The Government further pointed out that the investigation in case no. 44016 had been instituted promptly, that is five days after the operational and search measures carried out in connection with the operational-search file no. 000006, opened on 25 January 2003, had not produced any results. The applicant had not submitted any evidence to confirm that she had complained to the authorities about her sons' abduction before 25 January 2003. The investigation was being conducted by an independent authority which had promptly taken all necessary investigative steps, such as inspecting the crime scene, interviewing witnesses and addressing requests for information to various State authorities. The applicant had been granted victim status on the day following the institution of the investigation and had had access to all relevant case file materials.

98. The applicant argued that there was a bulk of evidence which proved beyond reasonable doubt that her sons had been abducted by Russian servicemen in the course of what must have been a special operation and that they should be presumed dead. She stressed that the Government had not contested that Magomed-Salekh and Magomed-Ali Ilyasov had been abducted by a large group of armed men in camouflage uniforms who spoke unaccented Russian and who were moving around in military vehicles during curfew hours. The presence of military vehicles was confirmed not only by witness statements produced by the applicant, but also by copies of witnesses' interview records provided by the Government. The fact of presence of those vehicles had been also accepted by State officials - ROVD officers M.Ch. and R.Sh. The thesis of the applicant's relatives' abduction by State agents had been the main, if not the only theory pursued by the authorities and the Government had not offered any plausible alternative explanation as to what had occurred to them on the night of the abduction. Lastly, the applicant invited the Court to draw inferences from the Government's refusal to produce the entire investigation file.

99. As regards the investigation, the applicant submitted that she had informed the authorities promptly about the abduction. She stressed that according to the record of the interview with the head of the local administration, provided by the Government, on the morning of 12 November 2002 the applicant had complained to him about the abduction and he had immediately reported that fact to the ROVD. Accordingly, that authority had been under an obligation to check the information and to either institute an investigation or to immediately forward the information to another State body entitled to do so. However, over two months had elapsed before the authorities had started to act. Contrary to the Government's assertion, the investigation had not been

carried out by an independent authority. The investigators had failed to identify the owners of the military vehicles used for the kidnapping or to interview the military commander of the Achkhoy-Martanovskiy District or other officials with a view to clarifying how a convoy of several vehicles could have been moving through the town during curfew hours. The investigation was pending for many years without producing any tangible results.

B. The Court's assessment

1. Admissibility

100. The Court reiterates, 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 criminal remedies should be joined to the merits of the complaint (see paragraph 94 above). The complaint under Article 2 must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Magomed-Salekh and Magomed-Ali Ilyasov

(i) General principles

101. 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*

102. 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).

103. The applicant alleged that at about 4 a.m. on 12 November 2002 her sons, Magomed-Salekh and Magomed-Ali Ilyasov, were abducted by Russian servicemen and had then disappeared. She submitted that she had witnessed her sons' abduction and enclosed statements by three eyewitnesses who confirmed her account of the events. 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.

104. The Government conceded that Magomed-Salekh and Magomed-Ali Ilyasov had been abducted by unidentified armed masked men in camouflage uniforms, who had been speaking Russian and driving military vehicles, including APCs. However, they denied that the abductors were servicemen, referring to the absence of the conclusions from the ongoing investigation.

105. The Court notes that despite its requests for a copy of the investigation file on the abduction of the Ilyasov brothers, the Government refused to produce most of the documents from the case file, referring 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-XIII (extracts)).

106. 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.

107. Referring to the ROVD letter of 4 March 2003 and to replies from various State bodies, the Government submitted that the applicant's allegations concerning the passage of the abductors' vehicles through checkpoints in Katyr-Yurt and her sons' detention in several ROVDs and at the military base in Khankala had not been confirmed during the investigation. As regards the ROVD letter, the Court notes that it is very cursory and does not contain any indication that the checkpoints inspected were, indeed, located in Katyr-Yurt. Neither does the letter mention the names or ranks of the servicemen interviewed (see paragraph 78 above). Furthermore, it appears that the servicemen's oral submissions were taken at face value and were not independently checked by, for example, examining the checkpoints' logbooks. Hence, the Court finds that this document does not disprove the applicant's allegation concerning the abductors' military

vehicles' unhindered passage through checkpoints located in Katyr-Yurt. As to the Government's second argument, the Court considers that it does not refute the applicant's submission that her sons' abductors were servicemen, for the following reasons.

108. The Court notes that, apart from the applicant's account, the circumstances of the abduction of Magomed-Salekh and Magomed-Ali Ilyasov were described in an important number of concordant witness statements produced both by the applicant and by the Government (see paragraphs 15, 69 and 73 above) and that the applicant remained consistent in her description of the events both before the domestic authorities and this Court. Having regard to the material in its possession, it finds therefore that she presented a detailed, coherent and consistent picture of the circumstances of her sons' abduction.

109. In the Court's view, the fact that a large group of armed men in uniforms, moving in a convoy of several military vehicles, including APCs, was able to pass freely through checkpoints during curfew hours, proceeded to check identity documents in a manner similar to that of State agents and spoke unaccented Russian strongly supports the applicant's allegation that those persons were State servicemen.

110. It is further observed that in her applications to the authorities the applicant consistently maintained that Magomed-Salekh and Magomed-Ali Ilyasov had been detained by unknown servicemen, and requested the investigating authorities to look into that possibility. However, after more than seven years the investigation has produced no tangible results.

111. The Court notes that where an 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 (extracts)).

112. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that her relatives were abducted by State servicemen. The Government's statement that the investigation found no evidence to support the involvement of servicemen in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Magomed-Salekh and Magomed-Ali Ilyasov were taken

away on 12 November 2002 by State servicemen during an unacknowledged security operation.

113. There has been no reliable news of Magomed-Salekh and Magomed-Ali Ilyasov since the date of the kidnapping. Their names have not been found in any official detention facility records. Finally, the Government have not submitted any explanation as to what happened to them after their arrest.

114. 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 Chechen 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 Magomed-Salekh and Magomed-Ali Ilyasov or of any news of them for more than seven years supports this assumption.

115. Accordingly, the Court finds that the evidence available permits it to establish that Magomed-Salekh and Magomed-Ali Ilyasov must be presumed dead following their unacknowledged detention by State servicemen.

(iii) *The State's compliance with Article 2*

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

117. The Court has already found it established that the applicant's sons 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 their presumed death is attributable to the respondent Government.

118. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Magomed-Salekh and Magomed-Ali Ilyasov.

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

119. 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* 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).

120. The Government refused to produce most documents from criminal case file no. 44016, furnishing only some of them. The Court will thus have to assess the effectiveness of the investigation on the basis of the information submitted by the Government and a few documents available to the applicant that she provided to the Court.

121. The Government argued that the domestic authorities had promptly launched an investigation in case no. 44016 and that the applicant had not produced any evidence that she had complained about her sons' abduction before 25 January 2003. However, it transpires from witness interview records provided by the Government that early in the morning of 12 November 2002 a number of persons, including the deputy head of the local administration and an officer of the ROVD, put the local police on notice about the abduction of the Ilyasov brothers (see paragraphs 69, 71 and 72 above). The Court is thus satisfied that the police were notified of the abduction in due time. Accordingly, it was for them to report the incident to a prosecutor's office via official channels of communication that should exist between various law-enforcement agencies (see *Khalidova and Others v. Russia*, no. 22877/04, § 93, 2 October 2008). However, it was not until 25 January 2003 that the police informed the district prosecutor's office, which launched an investigation on 29 January 2003, that is more than two months after the abduction. Such a delay *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

122. The Court further has to assess the scope of the investigative measures taken. It follows from the documents submitted by the Government that in February 2003, following the opening of the investigation, the district prosecutor's office inspected the crime scene, interviewed the applicant, her relatives and several neighbours and made requests for information to a number of State bodies. In July and August 2005, April 2007 and June 2008 the district prosecutor's office interviewed as witnesses some residents of Katyr-Yurt and made several further requests for information.

123. In the Court's view, the district prosecutor's office took an important number of investigative steps. However, some of them, such as the inspection of the crime scene, which was carried out two months after the abduction, were clearly compromised by the delay in the opening of the investigation, as was stressed above. It is obvious that, if they were to produce any meaningful results, these 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).

124. Furthermore, it transpires that a number of crucial investigative steps were never taken. In particular, despite numerous credible witness statements about the abductors' use of military vehicles, including APCs, there is no indication that any genuine attempts have been made to identify those vehicles or their owners. As it has been already pointed out, the ROVD letter concerning the inspection of unspecified checkpoints not only does not permit the Court to establish whether those checkpoints were indeed located in Katyr-Yurt but suggests that the investigators limited themselves to interviewing unspecified servicemen and taking their statements at face value, without verifying them by, for example, checking the checkpoints' logbooks. It neither transpires that the investigation made any attempts to interview persons who could have provided information as to who had been permitted to pass through the town during curfew hours.

125. Having regard to the military prosecutor's letter of 18 April 2003 saying that after December 2002 all information concerning eventual security operations in Katyr-Yurt on 12 November 2002 should have been sought from archives in Rostov-on-Don (see paragraph 79 above), the Court is struck that the district prosecutor's office never applied to that authority with a view to obtaining that information. Moreover, given the content of that letter, the Court has strong doubts that the district prosecutor's office' requests for that information addressed to various authorities in the Chechen Republic could have produced any results.

126. The Court also notes that even though the applicant was granted victim status in the investigation concerning the abduction of her sons, her repeated requests for information to the investigation authorities suggest that she was not properly informed of any significant developments in the investigation. 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.

127. Lastly, it appears that the investigation was adjourned and resumed several times. It also seems that there were lengthy periods of inactivity on the part of the prosecuting authorities, when no investigative measures were being taken.

128. 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, repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for years with no tangible results. Furthermore, the applicant, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged acts or omissions of investigating authorities before a court. Moreover, owing to the time which had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospect of success. Accordingly, the Court finds that the remedies relied on by the Government were ineffective in the circumstances and dismisses their preliminary objection.

129. 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 Magomed-Salekh and Magomed-Ali Ilyasov, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

130. The applicant relied on Article 3 of the Convention, submitting that as a result of her relatives' 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

131. The Government submitted that the applicant's allegations were unfounded.

132. The applicant maintained her submissions.

B. The Court's assessment

1. Admissibility

133. 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

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

135. In the present case the Court notes that the applicant is the mother of the disappeared persons who witnessed their abduction. For more than seven years she has not had any news of her sons. During this period of time the applicant has made enquiries of various official bodies, both in writing and in person, about Magomed-Salekh and Magomed-Ali Ilyasov. Despite her attempts, the applicant has never received any plausible explanation or information about what became of her sons following their abduction. The responses she received mostly denied State responsibility for her relatives' 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.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

137. The applicant further stated that Magomed-Salekh and Magomed-Ali Ilyasov 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

138. The Government asserted that no evidence had been obtained by the investigators to confirm that Magomed-Salekh and Magomed-Ali Ilyasov had been deprived of their liberty. They were not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about their detention.

139. The applicant reiterated the complaint.

B. The Court’s assessment

1. Admissibility

140. 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*

141. 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).

142. The Court has found that Magomed-Salekh and Magomed-Ali Ilyasov were abducted by State servicemen on 12 November 2002 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their 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).

143. 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 relatives 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 them against the risk of disappearance.

144. In view of the foregoing, the Court finds that Magomed-Salekh and Magomed-Ali Ilyasov were 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

145. 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

146. 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. 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.

147. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

148. 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

149. 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).

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

151. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. 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

153. The applicant did not submit any claims in respect of pecuniary damage. As regards non-pecuniary damage, she submitted that, as a result of the alleged violations of Articles 2, 3, 5 and 13 of the Convention, she had endured mental and emotional suffering which could not be compensated for solely by a finding of a violation of those Convention provisions. She asked the Court to award her non-pecuniary damages, leaving the determination of its amount to the Court's discretion.

154. The Government submitted that, should the Court find that the provisions of the Convention have been breached, a finding of a violation would constitute a sufficient compensation for non-pecuniary damage.

155. 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 relatives. 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 finding of violations. It awards the applicant 120,000 euros (EUR), plus any tax that may be chargeable thereon.

B. Costs and expenses

156. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to 1,110 pounds sterling (GBP), to be paid to the representatives' bank account in the United Kingdom. They submitted the following breakdown of costs:

(a) GBP 500 for reviewing and providing comments on the reply to the Government's observations by Mr W. Bowring for five hours of work at a rate of GBP 100 per hour;

(b) GBP 450 for translation costs, as certified by invoices, and

(c) GBP 160 for administrative and postal costs.

157. The Government pointed out that the applicant should be entitled to reimbursement of her costs and expenses only in so far as it has been shown that they were actually incurred and are reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They doubted that the amounts claimed by the applicant under this head were reasonable.

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

159. Having regard to the details of the information and legal representation contracts submitted by the applicants, the Court is satisfied

that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives.

160. 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. The Court notes at the same time that the applicant did not submit any documents in support of her claim for administrative and postal costs.

161. Furthermore, 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).

162. Having regard to the details of the claims submitted by the applicant, the Court awards her EUR 1,061, 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

163. 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 application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Magomed-Salekh and Magomed-Ali Ilyasov;
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 Magomed-Salekh and Magomed-Ali Ilyasov 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 Magomed-Salekh and Magomed-Ali Ilyasov;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with 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 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 on the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 120,000 (one hundred and twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (ii) EUR 1,061 (one thousand and sixty one 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;
10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President