CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 68007/01
by Zura ALIKHADZHIYEVA
against Russia

The European Court of Human Rights (First Section), sitting on 8 December 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 23 March 2001,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Zura Alikhadzhiyeva, is a Russian national who was born in 1941 and lives in Shali, Chechnya, Russia. She is represented before the Court by lawyers practicing with the European Human Rights Advocacy Centre (EHRAC)/Memorial in Moscow and in London. The respondent

Government are represented by Mr P.A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. The circumstances of the applicant's son detention

The applicant lives in Shali, a town about 40 km to the south-east of Grozny, in her own house at 97 Suvorova Street. The applicant's son Ruslan Alikhadziyev, born in 1961, lived at the same address, together with his wife and four minor children. Their other relatives also lived in the same household.

In 1997 – 1999 the applicant's son Ruslan Alikhadzhiyev was the Chairman of the Chechnya Parliament ("the Parliament of the Chechen Republic of Ichkeria"). The applicant submits that in 1999, following the resumption of hostilities, her son did not take part in them and tried to organize peace talks between Aslan Maskhadov, elected President of Chechnya in 1997, and Akhmad Kadyrov, appointed as the temporary head of Administration of the Chechen Republic by the Russian President.

On 17 May 2000 Ruslan Alikhadzhiyev was at home with the applicant, who had been sick. At about 11.15 a.m. several armoured personnel carriers (APCs) of the Russian forces arrived at the house. About 20 armed servicemen in camouflaged uniform surrounded the house and neighbouring households, while two helicopters were hovering above the district. The men in camouflage entered the applicant's house and ordered all present to lie face down on the floor. After that they put handcuffs on the applicant's son and forced him into an APC. During the arrest no documents were produced and no reasons for the arrest were explained.

Together with Ruslan Alikhadzhiyev, five of their neighbours were detained at their homes – three men from the D. family, who lived at 88 Suvorova Street, B., who came to repair a car at the D.'s house and M., who lived at 98 Suvorova Street. Those five were released the following day and gave statements about what happened after their arrest.

They testified that initially four of them were placed in one APC, together with Ruslan Alikhadzhiyev, while M. was in the second APC. They were blindfolded, and a black bag was placed on Ruslan Alikhadzhiyev's head. The APCs moved in the direction of Grozny.

Once they passed the village of Germenchuk, they stopped and M. was transferred to the same APC as the other five men. The detainees were forbidden to talk. After a while Ruslan Alikhadzhiyev asked the officer in a balaclava mask to loosen his handcuffs because his hands had gone numb, but was refused. After a while he asked for a second time, then the officer

checked his hands and took his watch, documents and money from a pocket. After an hour or two of travel they arrived to a place where they were ordered to descend.

The detainees remained blindfolded and were led into some underground premises. There they were ordered to squat along the walls, each one was hit on the head with an iron rod and told to keep silent. Three of the detainees, but not Alikhadzhiev, were called one by one for questioning, which took place outside the cellar, in a sort of a barn. The investigation was carried out by several servicemen in camouflage and masks who did not identify themselves. The detainees were asked similar questions about their identity, if they took part in the hostilities and what they knew about Ruslan Alikhadzhiyev.

After the questioning they were taken to another cellar where they were permitted to take off the blindfolds. The five neighbours were all brought to that cellar, but not Ruslan Alikhadzhiyev. They spent the night in the cellar and in the morning they were blindfolded again, taken out and put into an APC. After about one and a half hour's ride they were ordered to descend and to lie on the ground. The military told them to remain motionless for another 20 minutes, otherwise they would be shot. They heard the noise of the APC departing and after a while lifted their blindfolds. They found themselves not far from the road leading from Shali to a neighbouring village of Avtury. They were picked up by passing transport and brought to Shali.

2. Subsequent investigation

The applicant and other members of the family have had no news of Ruslan Alikhadzhiyev after 17 May 2000.

Immediately after the detention of Ruslan Alikhadzhiyev the applicant, along with her other son and Ruslan Alikhadzhiyev's wife, started to search for him. On numerous occasions, both in person and in writing, they applied to the prosecutors of various levels, to the Ministry of the Interior, to the administrative authorities in Chechnya, to the Special Representative of the Russian President in the Chechen Republic for rights and freedoms, to media and to public figures. In their efforts they were supported by several NGOs and public figures.

In their letters addressed to the authorities the family stated the facts of Ruslan Alikhadzhiyev's detention and asked for assistance and details on the investigation. They also personally visited detention centres and prisons in Chechnya as well as further in the Northern Caucasus.

The applicant received hardly any substantive information from the official bodies about the investigation into Alikhadzhiyev's disappearance. On several occasions they were sent copies of letters by which their requests had been forwarded to different prosecutors' services. At first officials confirmed the detention of Alikhadzhiyev, but following publicized

rumours in August 2000 about his death in a detention centre denied any involvement in his arrest and detention.

On 25 May 2000 General-Lieutenant Manilov, first deputy to the Chief of Staff of the Russian Armed Forces, announced at a press-conference that a number of commanders of illegal armed groups have been detained or destroyed. Listing the names, he said that on 20 May 2000 Ruslan Alikhadzhiyev had been captured.

On 1 June 2000 state news agency RIA Novosti reported that "as a result of a special operation agents of the Federal Security Service (FSB) have captured one of the closest allies of Maskhadov, Ruslan Alikhadzhiyev." Referring to unnamed sources, the agency reported that Alikhadzhiyev was detained at the FSB detention centre in Chechnya, that he was being questioned and gave statements about Maskhadov's further plans.

On 8 September 2000 the Moscow-based pre-trial detention centre of the FSB replied to a lawyer invited by the applicant that Ruslan Alikhadzhiyev has never been detained there.

On 21 September 2000 during parliamentary hearings in the State Duma on the situation in Chechnya, Deputy General Prosecutor Mr Biryukov was asked a question about the whereabouts of Ruslan Alikhadzhiyev. He replied that in May 2000 the latter had been kidnapped from his home in Shali by a group of unknown armed people. According to operative information, these were fighters who had killed him in August 2000.

On 8 December 2000 the Prosecutor of Chechnya replied to an inquiry by the Special Representative of the Russian President in the Chechen Republic for rights and freedoms concerning a number of complaints about disappearance. The letter stated that on 7 July 2000 the Shali District Prosecutor's Office opened a criminal investigation no. 22025 into detention by unidentified persons in camouflage of the former Chairman of the Chechnya Parliament R. Alikhadzhiyev. The investigation was opened under Article 126 of the Criminal Code (kidnapping). The whereabouts of Alikhadzhiyev have not been established. The letter stated that the investigation was under special control of the Prosecutor.

Attached to the letter of 8 December 2000 was a one-page information note concerning the criminal case no. 22025. This note stated that the criminal case had been opened on 7 July 2000 under Article 126 of the Criminal Code. The investigation established that on 17 May 2000 a group of unidentified men in camouflage had arrived in several APCs to the Alikhadzhiyevs' house, broke into it and took away Ruslan Alikhadzhiyev and several other persons who had been in the house. On the following day other persons were released, but they could not give any information concerning the place of their detention and about Alikhadzhiyev's whereabouts. The investigators sent requests for information to the FSB and the Ministry of the Interior, in reply to which the Shali District Temporary

Department of the Interior (VOVD) denied that Alikhadzhiyev has ever been arrested or detained by their agents.

On 24 February 2001 the Chechnya Prosecutor's Office replied to an inquiry from NGO Memorial concerning investigation into several cases of disappearances. In relation to Alikhadzhiyev, the Deputy Prosecutor wrote that in the process of investigation of the criminal case no. 22025 requests for information had been forwarded to the FSB, the Ministry of the Interior and the Ministry of Defence. None of these agencies detained Alikhadzhiyev, and the investigation continued.

On 26 June 2002 the Chechnya Prosecutor's Office stated in a letter to Memorial that the investigation in the criminal case no. 22025 concerning Mr Alikhadzhiyev's kidnapping had been adjourned on 15 November 2001.

On 27 September 2002 the Chechnya Prosecutor's Office again replied to Memorial. According to the letter, the investigation in the criminal case no. 22025 concerning Alikhadzhiyev's disappearance had been adjourned on 12 December 2000 due to failure to identify culprits. The letter further stated that measures aimed at establishing the whereabouts of the disappeared and of the circumstances of the kidnapping would continue to be taken and that further information could be obtained from the Shali District Prosecutor's Office.

The Government do not dispute the applicant's submisisons concerning the investigation into the abduction of Ruslan Alikhadzhiyev. They refer to a number of other procedural steps taken by the investigation which are not mentioned by the applicant. Relying on the information obtained from the General Prosecutor's Office, the Government state that more than eight witnesses were questioned, including the applicant and the men who had been detained along with Alikhadzhiyev. The applicant was granted victim status in the proceedings. The investigation reviewed a large amount of documents related to the conduct of special operations by the federal authorities and verified the information that Alikhadzhiyev could have been detained at pre-trial detention centres or cells for administrative detention. The investigation did not obtain information about the identity of the perpetrators or about the involvement of the servicemen in the kidnapping. On 29 April 2004 the investigation was adjourned for failure to identify the culprits, but actions aimed at solving the crime continued.

Despite the Court's specific requests made on two occasions, the Government did not submit a copy of the procedural documents to which they refer and did not specify the dates when most of the investigative actions had taken place. Relying on the information obtained from the General Prosecutor's Office, the Government state that the investigation is pending and the disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure because the file contains information of military nature and personal data of the witnesses. At the same time, the Government suggested that a Court delegation could access

the file at the place of the preliminary investigation with the exception of "the documents [disclosing military information and personal data of the witnesses], and without the right of making copies of the case-file and its transmission to the others".

B. Relevant domestic law

Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic. From 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (CCP).

Article 161 of the new CCP establishes the rule of impermissibility of disclosure of the data of the preliminary investigation. Under part 3 of the said Article, the information from the investigation file may be divulged upon permission of a prosecutor or investigator and only so far as it does not infringe the rights and lawful interests of the participants of the criminal proceedings and does not prejudice the investigation. Divulging information about private life of the participants of the criminal proceedings without their permission is prohibited.

COMPLAINTS

1. The applicant complains under Article 2 of the Convention of her son's disappearance. She submits that the circumstances of Ruslan Alikhadzhiyev's arrest and detention strongly suggest that he is dead. She also submits that the Russian authorities failed to conduct a proper investigation into her son's disappearance and possible killing.

2. The applicant complains that there are serious grounds to believe that Ruslan Alikhadzhiyev has been subjected to torture or other treatment prohibited by Article 3 of the Convention.

3. The applicant also submits that as a result of the anguish and emotional distress she has suffered in connection with the detention of her son she is subjected to ill-treatment falling within the scope of Article 3 of the Convention.

4. The applicant submits that her son has been detained in violation of the guarantees of Article 5.

5. The applicant submits that she has no effective remedies against the above violations, contrary to Article 13 of the Convention.

THE LAW

The applicant complains about the disappearance of Ruslan Alikhadzhiyev and about the absence of an effective investigation, in violation of Articles 2 and 3 of the Convention. She submits that her own suffering in the circumstances has reached the threshold of Article 3. She complains that Ruslan Alikhadzhiyev detention was in violation of Article 5. She also submits that she has no effective remedies in respect of the above violations, contrary to Article 13.

1. Exhaustion of domestic remedies

The Government request the Court to declare the case inadmissible as the applicant has failed to exhaust the domestic remedies. They submit that the investigation into the abduction is continuing, in accordance with the domestic legislation. The applicant did not apply to a court with a complaint against the actions of the investigating authorities or against her son's illegal detention. The Government also refer to the Constitution and other legal acts which permit individuals to appeal to the courts actions of the administrative bodies which infringe upon the citizens' rights. The applicant did not apply to a court in Chechnya or further in the Northern Caucasus with any complaints, and therefore failed to use the domestic remedies available.

The applicant disagrees with the Government's objection. First, she relies on the Court's judgment in the case of Akdivar and others v. Turkey and argues that the Russian Federation has failed to satisfy the requirement that the remedy was "an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaint and offered reasonable prospects of success" (see the Akdivar and Others v. Turkey judgment of 30 August 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 68). She states that there is no suggestion that any remedy is available to her which could satisfy these criteria.

She further argues that the civil remedies referred to by the Government can not establish the perpetrators of the crime in the absence of conclusions from the criminal investigation. She dismisses other references by the Government as manifestly implausible and asks the Court to dismiss the Government's preliminary objection.

The Court considers that the question of exhaustion of domestic remedies is so closely linked to the merits of the case that it is inappropriate to determine it at the present stage of the proceedings.

The Court therefore decides to join this objection to the merits.

2. As to the merits of the applicant's complaints

a. The Government

The Government submit that there is no conclusive evidence to support the applicant's allegations that the authorities are responsible for the detention of Ruslan Alikhadzhiyev or that he is dead. The identity of the persons who had detained him remains unknown. Nor has the investigation obtained information to support the applicant's allegation that her son had been subjected to treatment in violation of Article 3. The investigation is being carried out in accordance with the domestic legislation, the applicant has been granted victim status, she is represented by a lawyer and has every possibility to participate effectively in the proceedings. The state authorities gave detailed answers to all her letters and there is nothing to support the applicant's allegations about an alleged violation of Article 3 in respect of herself, or of Article 13.

b. The applicant

The applicant maintains her complaints. Under Article 2 she argues that there can be no reasonable doubt that the Russian servicemen detained Ruslan Alikhadzhiyev on 17 May 2000 and then deprived him of his life. In support of her complaint she refers to the following evidence that was not challenged by the Government: the eye-witness statements about the applicant's son's detention by uniformed servicemen who used APCs and helicopters, the statements by the men who had been detained along with Alikhadzhiyev that they were detained by servicemen, the statement by Colonel-General Manilov on 25 May 2000 about capture of Alikhadzhiyev by the federal forces. More than four and a half years later no information has been obtained about his whereabouts. She submits that her son must be presumed dead in circumstances entailing the responsibility of the Russian authorities. She argues that the situation of unacknowledged detention in Chechnya should be regarded as life-threatening, seen within the context of the armed conflict in Chechnya which has already claimed thousands of lives. She also refers to the unconfirmed statements that her son had been either killed by the rebels or died in custody.

The applicant alleges that the authorities failed to conduct an effective investigation into the circumstances of Ruslan Alikhadzhiyev's detention and disappearance, in violation of the procedural obligations under Articles 2 and 3 of the Convention. She argues that the investigation fell short of the standards of the European Convention and of the national legislation. She contends that the investigation was not prompt because of the delay in opening and in taking important steps. Relying on the Government's submissions she argues that it appears that certain important steps were never taken, such as reviewing of custody records and the operational plans, identification and questioning of the responsible for the

arrest of Ruslan Alikhadzhiyev, examination of the site etc. The authorities systematically failed to inform the applicant of the proceedings and she has had no information about important procedural steps. The Government's failure to disclose any details about the investigation to her or to the European Court serves, in the applicant's view, as a further proof of the ineffectiveness of the investigation.

The applicant contends that her son has been subjected to treatment in violation of Article 3, in view of the known circumstances of his apprehension and detention.

Referring to the established Court's practice, the applicant claims that she is a victim of treatment falling within the scope of Article 3 of the Convention, as a result of anguish and emotional distress she has suffered in connection with the disappearance of her son and the response of the authorities to her complaints.

Under Article 5 the applicant submits that Ruslan Alikhadzhiyev has been subjected to unacknowledged detention, in violation of the principles defined by Article 5.

She also argues that she has no recourse to effective remedies against the said violations, contrary to Article 13.

c. The Court's assessment

The Court considers, in the light of the parties' submissions, that the complaints under Articles 2, 3, 5 and 13 of the Convention raise complex issues of law and fact, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that these complaints cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Court unanimously

Joins to the merits the Government's objection concerning non-exhaustion of domestic remedies;

Declares the application admissible, without prejudicing the merits of the case.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President