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. 7615/02
by Marzet IMAKAYEVA
against Russia

The European Court of Human Rights (First Section), sitting on 20 January 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. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 12 February 2002,

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, Mrs Marzet Imakayeva, is a Russian national, who was born in 1951 and lived in the village of Novye Atagi, Shali district, Chechnya until she left for the United States of America, apparently in early 2004. She is represented before the Court by the Stichting Chechnya Justice

Initiative, an NGO based in the Netherlands with offices in Moscow and in Ingushetia, Russia. The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation before 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. Disappearance of the applicant's son

The applicant lived in the village of Novye Atagi in the District of Shali, Chechnya. Her husband, Said-Magomed Imakayev, was born in 1955, and they have three children: Said-Khuseyn, born in 1977, Magomed-Emir and Sedo. The applicant is a school teacher by profession. The applicant's son Said-Khuseyn graduated from medical school in 1999 as a dentist and continued his studies in the Grozny Oil Institute.

In the morning of 17 December 2000 Said-Khuseyn travelled to the village of Starye Atagi to buy a jacket in the market. As usual, he drove a VAZ-21060 ("*Zhiguli*") car with the written permission of the owner.

About 6 pm on the same day neighbours came and told the applicant that they had seen her son, detained by Russian servicemen at a roadblock between the villages of Starye and Novye Atagi. The applicant and her relatives immediately started looking for him, and collected several statements by witnesses who had seen her son. They agreed to testify on condition that their names and addresses were not disclosed.

One witness, identified by the applicant as A., comes from Novye Atagi and knew Said-Khuseyn Imakayev from school. On 17 December he was at the market in Starye Atagi. At about 2 pm he met Said-Khuseyn there, who said he had wanted to buy a jacket but had not found anything. He offered A. a lift back to their village, but A. was driving himself and declined. He later learnt that Said-Khuseyn had been detained by Russian soldiers on the road near the Argun river.

Witnesses identified by the applicants as B. and C. are women from the Novye Atagi village who were returning home in a bus from the market in Starye Atagi. At about 3 pm they saw through the bus window a group of military personnel wearing masks and standing around a white Zhiguli car. A young man came out of the Zhiguli. The women went out of the bus and wanted to help him, but the military started shooting in the air and at the ground, and shouted at them not to approach. They saw the young man thrown into the military UAZ car ("*tabletka*"), and one of the servicemen drove the white Zhiguli. They left very quickly, and the witnesses did not

note the UAZ number plates. The cars went towards Novye Atagi. Later that day they learnt that the man detained was Said-Khuseyn Imakayev.

A witness identified as D. testified that in the afternoon of 17 December 2000 in the Lenin Street of Novye Atagi he saw a military UAZ and Said-Khuseyn Imakayev's Zhiguli car, driven by an unknown man aged 30-35. The car was driving at very high speed. He thought that Said-Khuseyn had lent the car to someone, as he sometimes did. Later that day he learnt that Said-Khuseyn had been detained by the military that day and his car had been taken as well. A witness identified as E. orally stated to the applicant's representatives that on 17 December at about 3 pm he saw Said-Khuseyn's car in the Nagornaya street in Novye Atagi, followed by a UAZ and an armoured personnel carrier (APC).

The applicant has had no news of her son ever since.

From 18 December 2000, the applicant and her husband applied on numerous occasions to prosecutors of various levels, to the Ministry of Interior, to the administrative authorities in Chechnya, and to the Special Representative of the Russian President in the Chechen Republic for rights and freedoms. The applicant submitted several copies of standard letters stating that her son had disappeared and asking for assistance and details for the investigation, submitted by her to various authorities. On her request similar letters were signed by the village council of elders and the head of administration. On 5 January 2001 upon her request a letter was sent from the office of the Head of Administration of Chechnya to the prosecutor of the Shali district, the prosecutor of the Chechen Republic and the President's representative in the Southern Federal circuit. With her husband she also personally visited detention centres and prisons in Chechnya and further afield in the Northern Caucasus - in the Stavropol Region, Kabardino-Balkaria and Ingushetia.

The applicant received very little substantive information from the official bodies about the investigation into her son's disappearance. On several occasions she received copies of letters by various authorities directing her complaints to the prosecutor of the Shali district and the prosecutor of the Chechen Republic.

On 5 January 2001 the applicant was informed by an investigator of the Shali district prosecutor's office that on 4 January 2001 the prosecutor of the Shali district had initiated criminal proceedings in respect of kidnapping, under Article 126 § 2 (a) of the Criminal Code. The file was given number 23001.

On 21 January 2001 the traffic police division of the Ministry of Interior department for the Chechen Republic notified the applicant that the details of the car had been entered on the search database, and the servicemen were instructed to look for it.

On 21 April 2001 the Shali district department of the interior informed the applicant that criminal investigation no. 23001 had been opened at her request. She would be informed of further developments.

On 16 June 2001 the Shali district prosecutor informed the applicant that the investigation had been adjourned under Article 195 § 3 of the Code of Criminal Procedure.

On 26 February 2002 an investigator of the Shali district prosecutor's office issued a "progress note" (*справка*). It stated that on 17 December 2000 on the road towards Novye Atagi Said-Khuseyn Said-Magomedovich Imakayev, born in 1977, a resident of Novye Atagi, travelling in his own car, had been detained and taken away by unknown persons wearing camouflage and masks. His location remained unknown. The note continued that on 4 January 2001 the Shali district prosecutor had opened criminal investigation no. 23001 under Article 126 § 2 (a) of the Penal Code (kidnapping) and that the investigation had been adjourned under Article 195 § 3 of the Code of Criminal Procedure, because it had been impossible to identify the culprits. Investigative measures to locate Imakayev were continuing.

On 16 July 2002, in connection with the disappearance of the applicant's husband (see below), the office of the prosecutor of the Chechen Republic informed the applicant that criminal investigation no. 23001 had failed to establish her son's whereabouts. The letter stated that following a review of the case-file, the order of the district prosecutor of 11 March 2001 to adjourn the investigation had been quashed. The investigator had been instructed to conduct certain actions, including a through check of the possibility of his abduction by "servicemen of the power structures" (*«сотрудниками силовых структур»*).

On 20 December 2002 the respondent Government submitted to the Court further information about the investigation. They submitted that two identified witnesses had testified that Said-Khuseyn had been kidnapped by a group of persons armed with automatic fire-arms, dressed in camouflage uniforms and using a UAZ-452 vehicle. Neither the vehicle the applicant's son had been driving nor had he himself been found. The criminal investigation no. 23001 had been suspended on 4 March 2001 due to a failure to identify the culprits, but on 5 July 2002 the investigation had been resumed by an order of the first deputy prosecutor of the Chechen Republic. The new investigation was to aim "at a complete and thorough examination of all the circumstances of the committed crime, including checking the version that Imakayev S.-Kh. had been kidnapped by persons - members of illegal armed units - for the purpose of discrediting the federal forces".

On 19 March 2003 the applicant was informed by a letter of the office of the prosecutor of the Chechen Republic that the investigation had been reopened on 26 February 2003. On 15 April 2003 the Shali district

prosecutor informed the applicant that the case had been adjourned and that she had been given victim status in the proceedings.

On 26 September 2003 the respondent Government informed the Court that the acting public prosecutor of the Chechen Republic had reversed a decision to suspend the investigation, and had ordered a number of measures.

The applicant refers to the Human Rights Watch report of March 2001 "The 'Dirty War' in Chechnya: Forced Disappearances, Torture and Summary Executions" which lists Said-Khuseyn Imakayev as one of the victims of "forced disappearances" after detention by Russian servicemen.

2. Disappearance of the applicant's husband

The applicant and her husband, Said-Magomed Imakayev, introduced a complaint with the European Court of Human Rights on 12 February 2002 concerning the disappearance of their son, Said-Khuseyn Imakayev. It was given the above number on 21 February 2002. The applicant's representatives submitted forms of authority from both Mr and Mrs Imakayev[1].

According to the applicant, on 2 June 2002 she and her husband were in their house in Novye Atagi. At 6.20 am they were awakened by loud noise in their courtyard. They saw several APCs and a UAZ car. The Imakayevs' neighbours later noted down the numbers of the four APCs out of six involved in the operation. They did not note the number plates of the UAZ.

About 20 servicemen in military camouflage uniforms came into the house, some of them were wearing masks. The servicemen spoke Russian between themselves and to the applicant, without any accent. They searched the house, without showing any warrants or giving explanations. During the search the applicant managed to talk to the senior officer in the group. He was wearing camouflage uniform and had no mask, and the applicant described him as being about 40 years old, about 180 cm tall with a beard. The officer told her that his name was "Boomerang Aleksandr Grigoryevich". The applicant understood that "Boomerang" was his nickname. She also managed to talk to another officer who refused to introduce himself, but whose appearance the applicant describes as about 40 years old, with fair hair and slightly shorter than "Boomerang".

After the search the military took with them some papers and floppy disks. The applicant asked for some sort of receipt for the seized items, of which they left her the following hand-written note: "Receipt. I, Boomerang A.G. seized in the Imakayevs' house a bag of documents of the Republic of Ichkeria and a box of floppy disks. 2.06.02".

[1] The application was subsequently dealt with in the name of Mrs Imakayeva.

In return, “Boomerang” asked the applicant to sign a receipt that she had no claims to the servicemen in connection to the search. The applicant agreed to sign the slip acknowledging that no force was used, but added that she objected to her husband being detained without any grounds. She also added that the floppy disks and papers did not belong to her husband, since they were taken from a place where they stored belongings of their relatives, who fled from Grozny in 1999. She gave this signed receipt to “Boomerang”.

The applicant's husband, Said-Magomed Imakayev, was held against the wall during the search, and after it was over he was forced into the UAZ vehicle. He was allowed to dress up, as it was raining heavily, and to take 50 roubles “for the road back”. When the applicant asked where he was taken, “Boomerang” told her they would take him to Shali, the district centre.

After the visit to the Imakayevs' house, the APCs went to other places in the village and detained four other men. They then departed.

Since 2 June 2002 the applicant has continued to search for her husband. She has had no news of him. There has been no news of the other four men detained on the same night in the village.

The applicant submits 30 witnesses' statements collected by her and relating to the events of 2 June 2002.

On 2 June the applicant travelled to Shali, to the military commandatura office and talked to the military commandant, who told her not to worry and reassured her that all would be fine with her husband. On the same day she also travelled to Grozny and to Novye Atagi, where she complained in person and in writing to the Chechnya administration and the military commendatura. On 4 June 2002 an unnamed officer of the Shali local FSB department told her that her husband had probably been taken to Mesker-Yurt.

The applicant attempted to find out if an officer by the name of “Boomerang” served in the military units in the vicinity, and she was led to understand by some unnamed military personnel in the commandatura in Starye Atagi that they knew him. The applicant has on many occasions attempted to meet him, but has always been told that he was away on “mopping up” operations.

On 4 June 2002 the applicant informed the Chechnya Justice Initiative, her representative in the case concerning her son, about her husband's detention. On 4 June 2002 the Moscow offices of the Chechnya Justice Initiative and of Human Rights Watch intervened on the applicant's behalf by writing letters to the deputy Representative of the Russian President on Human Rights in the Chechen Republic and to the prosecutor of the Chechen Republic. They informed them about the known circumstances of the detention of Said-Magomed Imakayev and four other men in Novye Atagi and asked for urgent measures to be taken to find the detainees. On

6 June 2002 they send additional information to those offices submitting the numbers of the APCs noted by the neighbours, details of the officer in charge of the detention who had introduced himself as "Aleksandr Grigoryevich Boomerang" and the applicant's description of the second officer.

On 2 July 2002 the applicant was visited at her home by a Senior Investigator from the Ministry of Interior, Department for the Southern Federal Circuit. He questioned her about the circumstances of her husband's detention and confirmed that the investigation was linked to her application to the European Court of Human Rights.

On 16 July the office of the prosecutor of the Chechen Republic informed the applicant that pursuant to her applications, on 28 June 2002 the Shali district prosecutor had opened criminal proceedings no. 59140 under Article 126 § 2 (a) of the Penal Code. The investigation established that the applicant's husband had not been detained by the law-enforcement agencies, and that there were no grounds for such detention.

On 24 July 2002 the Russian Government submitted information to the Court, pursuant to a request under Rule 49 of the Rules of Court. They cited a report by the Directorate of the General Prosecutor Office for the Southern Federal Circuit, according to which on 17 June 2002 the applicant had filed a report with the Shali district prosecutor's office stating that "a group of unidentified armed men" forcibly took her husband away on 2 June. On 28 June 2002 criminal proceedings were started by the district prosecutor under Article 126 § 2 (a) of the Penal Code. At the same time, the Government denied that the applicant's husband was detained by the authorities. The Government submitted:

> "Before the initiation of this criminal case, in the course of examination and initial investigative actions no facts that Mr Said-Magomed Imakayev was detained by servicemen of Federal Forces were obtained. Mr Said-Magomed Imakayev was not conveyed to law machinery bodies or institutions of Penalty Execution System and he is not being kept there now. Moreover, law machinery bodies do not have grounds for his detention. ...
>
> Shalinskiy district of Chechen Republic (and the village of Novye Atagi in particular) is an area of active criminal activities of terrorist and extremist organisations that commit crimes with a view to discredit Federal Forces in Chechen Republic using camouflage uniforms and motor vehicles that are similar to uniforms and vehicles used by servicemen and employees of law machinery bodies in Chechen Republic. Along with other crimes, illegal armed formations perpetrate abduction and kidnapping of persons who live or stay in Chechen Republic. In this connection the main version as regards this criminal case is kidnapping of Mr Said-Magomed Imakayev by members of one of the terrorist organisations acting in Chechen Republic and using an outfit of servicemen of Federal Forces with a view to disguise".

The Government further submitted that the authorities whose forces are present in Chechnya - the Federal Security Service and the Ministry of Interior - did not conduct any special operations in the village of Novye

Atagi on 2 June, and that the applicant's husband was not listed among the detainees held by those agencies.

On 31 July 2002 the Government made further submissions in relation to the application. They described certain procedural steps related to the opening, adjournment and re-opening of the criminal proceedings in relation to the applicant's son's and husband's disappearances. They also referred to requests made by the investigators to the law-enforcement authorities for information related to their whereabouts. Despite the measures taken, their whereabouts were not known and the investigations in both cases were pending.

In the beginning of August the applicant, together with relatives of the other four men who had disappeared on 2 June, visited the military commandant of Shali, General Nakhayev. In the courtyard of the commandatura they spotted one of the APCs that took part in the detention of their relatives. A crewmember of the APC was brought to the General's office, where he was asked if he was in Novye Atagi on 2 June. The servicemen accepted that he had been there, but did not recall the exact date. The General then asked him if he "drove away people", and he said that two persons were taken away in his APC, but that they were taken out at the first military roadblock and that he did not know what happened to them. The applicant submits that during the same conversation, in the presence of other relatives of the "disappeared" men, General Nakhayev told them that 27 people had been detained in June and 15 of them were "eliminated" (see also below).

In late August 2002 the applicant visited the office of the prosecutor of the Chechen Republic, who informed her that the criminal proceedings in relation to her husband's disappearance had been transferred to the military prosecutor's office, which under the national law is responsible for investigation of crimes committed by military servicemen.

On 5 September 2002 the applicant submitted an unofficial composite sketch of "Boomerang", along with other additional information collected by her, to the Shali district prosecutor. To date no receipt of that letter has been acknowledged and the applicant believes that the actions requested by her were not carried out. There is no indication that anything has been done to establish the location of the APCs whose numbers were noted. The applicant's neighbours, who witnessed the events of 2 June, were not questioned.

On 20 December 2002 the Government submitted that the criminal proceedings were pending with an investigator of the military prosecutor of military unit no. 20116 in Shali. No further information was available about the "traceless disappearance" of the applicant's husband.

On 19 August 2004 the applicant submitted a copy of a letter of 10 July 2004 from the Main Military Prosecutor's office. In the letter, the applicant was informed that the criminal investigation into her husband's abduction

had been closed because no criminal offence had been established. The letter informs the applicant that her husband had been detained by soldiers in accordance with the law, and that he had later been handed over by the head of the Federal Security Services Administration of the Shali District to the head of the administration of Shali, Mr Dakaev.

3. Questioning of the applicant

The applicant submits that she was twice questioned by the Russian authorities in connection with her application to the Court. On 24 July 2002 the applicant was questioned by an investigator of the Shali district prosecutor's office. The investigator asked the applicant how much money she had paid to get her case to the Court. The applicant stated that she had not paid any legal fees yet, but the investigator expressed his disbelief.

In early August 2002 the applicant visited the Shali military commandant General Nakhayev, seeking information about her husband (see also above). He questioned her about her application to the European Court and suggested that "a Russian citizen needs 15,000 dollars or more to get to the European Court." He went on to ask her how much she had paid. When the applicant denied paying any fees, the commandant apparently stated that her husband had been detained because of his involvement with financing the rebel activities. The applicant concluded from the conversation that the question of her husband's detention was in some way linked with her application to the Court, because both had financial implications.

COMPLAINTS

1. The applicant submits that Article 2 was violated in respect of her son, Said-Khuseyn Imakayev. She submits that the circumstances of his detention and the long period during which his whereabouts have not been established indicate that her son has been killed by the federal forces. She further submits that there was a violation of the procedural aspect of Article 2 in respect of carrying out an efficient investigation into the circumstances of his "disappearance".

2. The applicant complains under Article 3 of the Convention that as a result of the anguish and emotional distress she suffered in connection with the detention and disappearance of her son, Said-Khuseyn Imakayev, and the subsequent detention and disappearance of her husband, Said-Magomed Imakayev, she was subjected to treatment falling within the scope of Article 3 of the Convention.

3. The applicant complains that the provisions of Article 5 as a whole, related to the lawfulness of detention and guarantees against arbitrary detention, were violated in respect of her son and husband.

4. The applicant submits that she is deprived of access to a court, contrary to the provisions of Article 6, because any civil claim for damages would entirely depend on the outcome of the criminal investigation into the disappearances. In the absence of any findings, she can not effectively apply to a court.

5. The applicant complains that the search conducted in her house on 2 June 2002 was in violation of the provisions of Article 8.

6. The applicant complains that she had no effective remedies in respect of the above violations, as guaranteed by Article 13.

7. The applicant submits that the tone and content of the questioning of her on the details of her application to the European Court were intimidating and constituted undue pressure aimed at withdrawing or altering her petition, in violation of Article 34 of the Convention.

THE LAW

The applicant alleges violations of Articles 2, 3, 5, 8 and 13 of the Convention.

As to Article 2, the Government note that the circumstances of the applicant's son's disappearance are under investigation, and they add it is not established that he is dead. As to the complaint under Article 3, they note that the investigation has not established any acts which could have affected the applicant in a manner contrary to Article 3, and add that she has not made any relevant complaints to the investigators or in appeals. In connection with Article 5, the Government submit that any violation of the rights of the applicant's son and husband was the result of the actions of physical persons, and not of any State authority. They add that if those guilty of crimes belong to the executive bodies, their actions will additionally be classified as official malfeasance under, for example, Article 286 of the Criminal Code. As to the applicant's access to court, the Government note that it is open to the applicant, as a party to criminal proceedings, to appeal judicial decisions which could adversely affect her constitutional rights, pursuant to Article 125 of the Code of Criminal Procedure, but that she has not done so. The applicant's own Article 8 rights were not directly affected by the kidnapping of the applicant's husband,

although the Government note that the investigatory authorities accepted that the applicant suffered non-pecuniary damage in this respect. They contend that the applicant's rights under Article 13 of the Convention were respected in that it was open to her to address the competent bodies in connection with the opening of criminal proceedings, and to ask for measures to identify the culprits and establish the whereabouts of her son and husband. They add that she was questioned twice in the course of the criminal proceedings into the disappearance of her son, and that the mere fact that the criminal proceedings were suspended did not mean that the investigation had ended: the investigatory bodies continued their research work in the periods between suspension and re-opening of the proceedings.

The Government contend that there is no evidence to suggest that the applicant has been prevented by State bodies or officials from effectively exercising her right of individual petition.

The applicant maintains her complaints. She claims that she has not been given sufficient information to establish whether the investigation into her son's disappearance complied with the requirements of Article 2 of the Convention, and indeed she doubts whether the possibility of her son having been murdered was at all considered. She expresses her belief that her son was subjected to torture and degrading treatment, and also underlines her own position, namely that she has suffered mentally from the lack of co-operation and general indifference of the State authorities towards the disappearance of her relatives. She does not accept the Government's suggestion that her son and husband were not detained by State authorities, referring to the various witness statements in the case and to a conversation with an investigator who stated that a named serviceman had agreed that he took part in the search of the applicant's house and the arrest of her husband.

As to Article 6, the applicant states that it is not possible to have a hearing in a case where no one has been found responsible for a crime, and she would only have the right of appeal to a court at a stage of the proceedings which has not been reached. In support of her claims under Article 8 of the Convention, she underlines that the Government refer to the conclusion of the investigating authorities “that [she] has suffered moral damage and there has been a violation of [her] rights and freedoms”. In connection with Article 13, the applicant notes that the criminal cases concerning the detention of her son and husband were opened and closed on several occasions; that at the date of her observations (January 2004) the investigations had lasted three years in the case of the son and 18 months in the case of the father without any tangible results; that she was only given the status of a victim in the case concerning her son on 24 July 2002 (one and a half years after the investigation was opened) and that in the case concerning her husband she had not been accepted as a victim by January 2004, and that there is no suggestion that any remedy is available to her that could lead to the identification and punishment of those responsible.

The Government have not formally contended that the application should be declared inadmissible for non-exhaustion of domestic remedies or on the ground that the application is premature. They do, however, note that criminal proceedings are still pending, and they state that the Court cannot examine the merits of the kidnapping of the applicant's son and husband until “those guilty of this crime are identified”. The Court considers that these comments are to be considered as observations on the merits of the case, and not as a preliminary objection.

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

For these reasons, the Court unanimously

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

Søren NIELSEN
Registrar

Christos ROZAKIS
President