



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

FIRST SECTION

**CASE OF SHAFIYEVA v. RUSSIA**

*(Application no. 49379/09)*

JUDGMENT

STRASBOURG

3 May 2012

**FINAL**

**24/09/2012**

*This judgment has become final under Article 44 § 2 (c) of the Convention.  
It may be subject to editorial revision.*



**In the case of Shafiyeva v. Russia,**

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

Nina Vajić, *President*,  
Anatoly Kovler,  
Peer Lorenzen,  
Elisabeth Steiner,  
Khanlar Hajiyev,  
Mirjana Lazarova Trajkovska,  
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 10 April 2012,

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

**PROCEDURE**

1. The case originated in an application (no. 49379/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Khadizhat Shafiyeva (“the applicant”), on 14 September 2009.

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, Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 December 2009 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and on 27 May 2010 it decided to give notice of the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1978. She is the wife of Mr Sirazhudin (also spelt as Sirazhutdin) Shafiyev, who was born in 1971. At the material time the applicant, her husband and their three children lived at no. 15 Mira Street, Derbent, the Republic of Dagestan.

## **A. Abduction of Sirazhudin Shafiyev and subsequent events**

### *1. Information submitted by the applicant*

#### **(a) Background information**

5. Sirazhudin Shafiyev was a follower of Islam. The law-enforcement authorities suspected him of participating in illegal activities as in 2006, during his *Hajj* to Saudi Arabia, he had had his photograph taken with the spiritual leader of illegal armed groups, a Mr Said Buraytskiy, who was subsequently killed in March 2010.

6. According to the applicant, in August or September 2009 a number of followers of Islam were abducted in broad daylight by men in camouflage uniforms. The abductions took place in Derbent and the nearby area.

#### **(b) Abduction of the applicant's husband**

7. At about 8 a.m. on 8 September 2009 Sirazhudin Shafiyev took his children to their kindergarten and was driving back home in his VAZ-Priora car with registration number E417- OY when his vehicle was blocked by a red-coloured VAZ-2107 and a silver-coloured VAZ-21014, both of which did not have official registration numbers. A group of masked men in camouflage uniforms got out of the vehicles, dragged Sirazhudin Shafiyev from his car, hit him on the head with a bludgeon, threw him in the back of his own car and took him away in it.

8. The abductors drove away in the direction of Makhachkala, Dagestan, passing by the Road Police station (*носм ГИБДД*), which was located about six hundred metres from the place of the abduction. According to the applicant, the police officers who worked at the station personally knew her husband and his car, but, nonetheless, they did not stop the abductors when they drove by in Sirazhudin Shafiyev's car and the latter was not the one driving. In addition, the police did not stop the abductors' vehicles, in spite of the absence of official registration numbers on them.

9. The abduction was witnessed by a number of local residents, one of whom took a photograph of the incident with his mobile phone.

#### **(c) Subsequent events**

10. At about 4 p.m. on the same day, 8 September 2009, a group of about one hundred and fifty local residents attempted to block the road in one of Derbent's districts, protesting against Sirazhudin Shafiyev's abduction. The rally was violently dispersed by the OMON (the special police task force unit).

11. According to Mr R.Sh. (from the documents submitted it follows that he was also referred to as Imam Rasul), on 9 September 2009 he was

ordered to come to the police station in the town of Izberbash in Dagestan. At the police station an officer who introduced himself as Magomed asked him about the passports which Mr R.Sh. had received from Sirazhudin Shafiyev. According to Mr R.Sh., he explained to the officer that on 7 September 2009 he had received four passports and 240,000 Russian roubles (RUB) from Sirazhudin Shafiyev for the processing of documents for a visa application to go abroad for *Hajj*.

12. In or about the middle of September 2009 the President of Dagestan stated on public television that Sirazhudin Shafiyev's abduction had been staged and that he had actually 'gone to the forest'. The applicant did not include a copy of this statement with her application to the Court.

13. In support of her statements, the applicant submitted two statements by Sirazhudin Shafiyev's brother, Mr Ta.Sh., one dated 9 September 2009 and another 26 March 2010; a statement by Mr R.Sh. dated 11 September 2009; an information statement by Memorial Human Rights Centre concerning abductions perpetrated in Dagestan in September 2009; and copies of documents received from the authorities.

## *2. Information submitted by the Government*

14. The Government did not challenge the matter as presented by the applicant. At the same time they submitted that she had not witnessed the events and that her submissions to the Court had been based on information from third persons. They also added that the body of Sirazhudin Shafiyev had not been found, that the involvement of State representatives in his abduction had not been established and that the disappearance had, most probably, been staged to '...destabilise the religious situation in the Republic of Dagestan, to assist Sirazhudin Shafiyev in fleeing from possible prosecution and to allow his relatives to avoid public humiliation...'

## **B. The search for Sirazhudin Shafiyev and the investigation**

### *Information submitted by the parties*

15. On 8 September 2009 Mr T. Sh. complained to the authorities about the alleged abduction of his brother Sirazhudin Shafiyev by armed men in camouflage uniforms who had taken him away in his own car - registration number 417. The complaint also stated that the abduction had taken place in the presence of numerous passersby and taxi drivers.

16. On 8 September 2009 investigators from the investigative department of the Derbent Prosecutor's Office (the Investigative Department) questioned Mr S.Sh., Sirazhudin Shafiyev's cousin, who stated that he had spoken with the applicant, who had informed him that

Sirazhudin had left the house in the morning and had subsequently disappeared.

17. On 8 September 2009 the investigators examined the crime scene at the place of the abduction. No evidence was collected.

18. On 8 September 2009 the investigators requested that the Town Department of the Interior (the OVD) in the town of Dagestanskiye Ogni, the Derbent OVD and the Derbent Department of the Federal Security Service (the Derbent FSB) inform them whether any special operations had been conducted against Sirazhudin Shafiyev by their agencies. On an unspecified date a reply in the negative was received from the Dagestanskiye Ogni OVD. No reply was received either from the Derbent OVD or the Derbent FSB.

19. On 8 September 2009 the investigators requested the Derbent morgue to inform them whether Sirazhudin Shafiyev's body had been kept on their premises. On 11 September 2009 the morgue replied in the negative and stated that between 8 and 11 September 2009 they had not received any unidentified corpses.

20. On the same date, 8 September 2009, the investigators requested that remand prison no. 2 in Derbent (*CH3O-2*) inform them whether Sirazhudin Shafiyev had been detained on their premises. On 29 September 2009 a negative reply was received.

21. Between 8 and 10 September 2009 five operational search officers from the Derbent OVD informed their supervisors that in spite of the steps taken, they had been unable to identify the eye-witnesses of Sirazhudin Shafiyev's abduction.

22. On 9 September 2009 the investigators questioned Mr Ta.Sh., the brother of Sirazhudin Shafiyev. He had not witnessed the abduction, but described its circumstances and stated that he had a video recording of it which had been taken by someone with a mobile phone's camera. He further added that, in his opinion, his brother Sirazhudin had been abducted by representatives of special services who had suspected him of religious extremism and illegal activities, as his brother's house had been under the surveillance of the FSB and the anti-terrorism committee. Lastly, Mr Ta.Sh. stated that abduction by State agents was the only plausible theory as Sirazhudin Shafiyev had not been involved in any dangerous business, had no enemies and had not participated in any activities which could imply hostile relationships with other people.

23. On the same date, 9 September 2009, the investigators questioned Mr Te.Sh., another brother of Sirazhudin Shafiyev, who had not witnessed the abduction, but stated that he and Mr Ta.Sh. had a video recording of it taken with someone's mobile phone. He further stated that Sirazhudin Shafiyev had been under the authorities' surveillance and that a number of people, including taxi drivers, had witnessed the abduction, but that they had been afraid to give their statements to the police out of fear for their

personal safety. Mr Te.Sh. further stated that from the video recording it was clearly visible that the abduction had been perpetrated by armed men who had arrived in a white VAZ-2105 (*Иадә*) car with registration number J1558XT 05 RUS.

24. On 10 September 2009 the Investigative Department instituted a criminal investigation into the disappearance of Sirazhudin Shafiyev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 904323.

25. On 11 September 2009 Mr R.Sh. (also known as Imam Rasul) stated to the investigators that on 9 September 2009 a certain Mr Magomed, an officer of the 6<sup>th</sup> Department (the Department on the Fight against Organised Crime) had asked him to come to the Izberbash (also spelt as Izberbasha) OVD, Dagestan. At the police station Mr Magomed had asked him about four passports and RUB 240,000 received from Sirazhudin Shafiyev on 7 September 2009. Mr R.Sh. had explained to the officer that he had received the four passports and the money for the processing of visas to go abroad for *Hajj*.

26. On 12 September 2009 the investigators again questioned Mr Ta.Sh., who reiterated his statement of 9 September 2009 and stressed that even though he had not witnessed the abduction of Sirazhudin Shafiyev, who had been under the authorities' surveillance, he and his brother had a video recording of the incident.

27. On 14 September 2009 the applicant was granted victim status in the criminal case and questioned. She stated that at about 8 a.m. on 8 September 2009 her husband Sirazhudin Shafiyev had taken their children to kindergarten in their car. Later in the morning her husband's brother, Mr S.Sh., had arrived at her house and told her that Sirazhudin had been abducted by armed masked men in camouflage uniforms who had driven around in two cars. The applicant and her relatives had immediately complained about the abduction to the law-enforcement authorities.

28. On 14 September 2009 the investigators again questioned Mr Ta.Sh., who reiterated his previously given statements of 9 and 12 September 2009. He added that Sirazhudin Shafiyev had promised to assist several people in obtaining visas for *Hajj* in Saudi Arabia, and that on 7 September 2009 Sirazhudin had gone to Imam Rasul in Izberbash and had given him the documents and the money for the processing of the documents for *Hajj*. On 9 September 2009 officers from the 6<sup>th</sup> Department had questioned the imam (see paragraph 25 above) about the documents, as one set of them belonged to a man suspected of terrorism. Mr Ta.Sh. further asserted that his brother Sirazhudin Shafiyev had been abducted by representatives of special forces who had suspected him of terrorist activities; that the visit of the officer from the 6th Department to Imam Rasul was indirect proof that on 8 September 2009 the authorities had arrested Sirazhudin Shafiyev and

had learnt from him about the transfer of the documents on 7 September 2009.

29. On 14 September 2009 the investigators questioned Mr K.M., who stated that on 7 September 2009 he had given Sirazhudin Shafiyev his passport and 60,000 RUB for the visa application for *Hajj*. On 8 September 2009 Mr K.M. had discovered that Sirazhudin Shafiyev had been abducted and on 10 September 2009 he had been informed by an unidentified person that his passport and money had been passed on to Imam Rasul in Izberbash. Mr K.M. and three other men (Mr A.D., Mr S.M. and a certain Mr Artur) who had given passports and money to Sirazhudin Shafiyev for visas had gone to Imam Rasul. The latter had told them about the visit of the officer from the 6<sup>th</sup> Department, according to whom one of the four men had been on the wanted list.

30. On 15 September 2009 the investigators questioned Mr A.D., who stated that on 7 September 2009 he had given Sirazhudin Shafiyev his passport and 60,000 RUB for the visa application for *Hajj*. His statement was similar to the one given by Mr K.M. on 14 September 2009.

31. On 16 September 2009 the investigators questioned S.M., who stated that on 7 September 2009 he had given Sirazhudin Shafiyev his passport and 60,000 RUB for the visa application for *Hajj*. His statement was similar to the ones given by Mr K.M. on 14 September 2009 and Mr A.D. on 15 September 2009.

32. On 18 September 2009 the investigators questioned Mr R.A., who had witnessed Sirazhudin Shafiyev's abduction on his way to work. Mr R.A. stated that Sirazhudin Shafiyev had been abducted by masked men who had driven one silver-coloured VAZ-21014 and one red-coloured VAZ-2107 car without registration numbers. The abductors were tall, well-built and were wearing black T-shirts. The abduction had taken place in the presence of many witnesses; a number of them had video recorded it on their mobile phones. A number of taxi drivers had seen the abduction as it had taken place next to the taxi stand.

33. On 18 September 2009 the investigators questioned Mr Z.G., who had witnessed Sirazhudin Shafiyev's abduction and whose statement was similar to the one given by Mr R.A. on the same date.

34. On 18 September 2009 the Derbent medical emergency unit informed the investigators that between 7 and 15 September 2009 Sirazhudin Shafiyev had not applied for medical help.

35. On 14 October 2009 the investigators again questioned Mr R.Sh. (Imam Rasul) who reiterated his previously given statement of 11 September 2009 and added that in the evening of 7 September 2009 Sirazhudin Shafiyev had given him the money and the passports and left. On 9 September 2009 the officer Magomed had told him that one of the four persons applying for visas for *Hajj* had been on the authorities' wanted list. According to Mr R.Sh., the officer had also told him that the FSB had



bugged Sirazhudin Shafiyev's mobile phone, and that was how they had learnt about the transfer of the money and the documents on 7 September 2009.

36. On 16 October 2009 the investigators again questioned the applicant, who stated that Mr T.M., whom she had pointed out to the investigators as a witness to the abduction, had not actually witnessed the abduction himself but had learnt about it and its circumstances from others.

37. On 10 December 2009 the investigation into the abduction was suspended for failure to identify the perpetrators. The applicant was not informed about this decision.

38. On 19 March 2010 the supervising prosecutor from the Investigations Department at the Dagestan Prosecutor's Office overruled the decision to suspend the investigation as unlawful and unsubstantiated, and ordered that the proceedings be resumed. The decision criticised the investigators' failure to take basic steps and pointed out the following:

“...from the witness statements... it follows that the abduction took place in the presence of numerous witnesses, next to the taxi stand. However, the investigators failed to identify and question all eye-witnesses to the abduction;

- from the case file it transpires that the abduction was recorded on a mobile phone. However, the investigators failed to take any steps to obtain this evidence and analyse it. They also failed to establish either Sirazhudin Shafiyev's mobile phone number or the information from the phone service provider concerning the calls he had made.

- the investigators failed to take steps to identify the officer from the 6<sup>th</sup> Department who had visited Mr R.Sh. after the abduction ...”.

39. On 29 March 2010 the investigation was resumed.

40. On 30 March 2010 the investigators requested the Dagestan Centre on Terrorism Counteraction to provide them with a list of their servicemen who could have participated in the abduction.

41. On 2 April 2010 the investigators again questioned Sirazhudin Shafiyev's brother, Mr Ta.Sh., who stated that he had already given the investigators his statement concerning the circumstances of the abduction, and added that his brother Sirazhudin Shafiyev had had two mobile numbers and provided those numbers to the investigators. At the same time he stated that neither he, nor his relatives had video footage of the abduction taken by a mobile phone.

42. On 5 April 2010 the investigators questioned the applicant's relative, Ms Kh.R., who stated that she worked next to the place of the abduction and had witnessed the events. Her statement concerning the details was similar to the one given by Mr R.A. on 18 September 2009 (see paragraph 32 above).

43. On 6 April 2010 the applicant requested the investigators to allow her to review the investigation file and to make copies of its contents. On 7 April 2010 the investigators granted her request.

44. On 8 April 2010 the investigators forwarded requests for assistance to fifteen various district departments of the interior (the ROVD) in Dagestan, asking for information as to whether Sirazhudin Shafiyev had applied for medical help, complained of a crime committed against him or had been arrested on the suspicion of having committed one. They also requested to be informed whether Sirazhudin Shafiyev had purchased plane or train tickets and whether his body had been brought to a local morgue. Replies in the negative were received.

45. On 14 April 2010 the investigators again questioned Sirazhudin Shafiyev's brother, Mr Ta.Sh., who had provided them with a photo of the abduction taken by a mobile phone. As appeared in the photo, the red abductors' vehicle did not have a registration number, whereas the white one, VAZ-2102, had the registration number A558KT.

46. On the same date, 14 April 2010, the investigators requested that the Derbent OVD assist them with the identification of the white vehicle with registration number A558KT. The outcome of this request is unknown.

47. On various dates in April 2010 the investigators questioned the applicant's relatives and neighbours, including Ms Kh.R., Ms N.M., Ms F.N., Mr A.D., Mr S.Sh., Mr Kh.B. and Mr K.B. - all of whom stated that they had learnt about the abduction from their relatives. According to the witnesses, numerous passersby had witnessed and even recorded the abduction on their mobile phones, but were afraid to provide statements to the authorities out of fear for their personal safety.

48. On 29 April 2010 the investigation into the abduction was again suspended for failure to identify the perpetrators. The applicant was not informed about this decision.

49. On 11 June 2010 the supervising prosecutor from the Investigations Department at the Dagestan Prosecutor's Office again overruled the decision to suspend the investigation as unlawful and unsubstantiated and ordered that the proceedings be resumed. The decision criticised the investigators' failure to take basic steps and to carry out the detailed orders given on 19 March 2010 (see paragraph 38 above).

50. On 29 June 2010 the investigation was resumed and the applicant was informed accordingly.

51. On 30 June 2010 the investigators requested that the Derbent OVD assist them in carrying out the prosecutor's orders of 19 March and 11 June 2010.

52. On 25 July 2010 the Derbent OVD replied to the investigators, stating that on 14 September 2009 in order to establish the whereabouts of Sirazhudin Shafiyev they had opened criminal search file no. 90430, and that it had been impossible to identify the witnesses to the abduction.

53. On 28 July 2010 the investigation into the abduction was again suspended for failure to identify the perpetrators and the applicant was informed accordingly.

54. On 4 August 2010 the investigation in the criminal case was again resumed in compliance with the prosecutor's orders of 19 March 2010.

55. On 4 September 2010 the investigation into the abduction was again suspended for failure to identify the perpetrators and the applicant was informed accordingly.

56. The Government further stated that, although the whereabouts of Sirazhudin Shafiyev had not been established, the investigation was in progress. The applicant had been informed of the developments in the criminal proceedings.

57. According to the applicant, the investigative authorities failed to provide her with timely updates on the progress of the investigation.

58. Upon specific request by the Court, the Government furnished the relevant parts of criminal case file no. 904323, which amounted to 190 pages.

## II. RELEVANT DOMESTIC LAW

59. 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. ISSUE CONCERNING THE EXHAUSTION OF DOMESTIC REMEDIES

#### A. The parties' submissions

60. The Government submitted that the investigation into the disappearance of Sirazhudin Shafiyev had not yet been completed. They further argued, in relation to the complaint under Article 13 of the Convention, that it had been open to the applicant to lodge court complaints concerning any alleged acts or omissions on the part of the investigating authorities.

61. The applicant contested the Government's submission. She stated that the only effective remedy, the criminal investigation, had proved to be ineffective.

## **B. The Court's assessment**

62. As regards criminal-law remedies provided under the Russian legal system, the Court observes that the applicant and her relatives complained to the law-enforcement authorities after the abduction of Sirazhudin Shafiyev, and that an investigation has been pending since 10 September 2009. The applicant and the Government dispute the effectiveness of the investigation into the abduction.

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

## **II. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS**

### **A. The parties' arguments**

64. The applicant maintained that it was beyond reasonable doubt that the men who had abducted Sirazhudin Shafiyev had been State agents. In support of her complaint, she referred to the following facts. The abduction of Sirazhudin Shafiyev had taken place in a settlement which was under the total control of the authorities. The abductors, who had been armed, masked and in camouflage uniforms, had driven around in two cars without registration numbers in the centre of Derbent in broad daylight. Having abducted the applicant's husband, they had passed by the Road Police station situated about six hundred metres from the place of the abduction without being stopped. The fact that Sirazhudin Shafiyev had been given the passports and the money for the visa processing could have been learnt only by State agents and only directly from him after his abduction. The authorities had suspected Sirazhudin Shafiyev of terrorist activities. The applicant further stated that since her husband had been missing for more than one year, he could be presumed dead. That presumption was further supported by the circumstances in which he had been abducted, which should be recognised as life-threatening.

65. The Government submitted that the applicant's husband might have disappeared on his own initiative or as a result of the actions of third persons. They stressed that the abduction had most probably been staged to assist Sirazhudin Shafiyev in absconding from the authorities and possible prosecution by shifting the responsibility for his disappearance to the State. The Government further contended that the investigation into the abduction

was pending, and that there was no evidence either that State agents had been involved in the disappearance or that Sirazhudin Shafiyev was dead.

### **B. The Court's evaluation of the facts**

66. The Court points out that a number of principles have been developed in its case-law as regards applications in which it is faced with the task of establishing facts on which the parties disagree. As to the facts that are in dispute, the Court reiterates its jurisprudence requiring the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

67. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

68. The Court reiterates that it has noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, 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).

69. The Court notes that in reply to its request for a copy of the investigation file into the abduction of Sirazhudin Shafiyev the Government produced the relevant documents from the file, running up to 190 pages.

70. The Court has found the Russian State authorities responsible for a number of extra-judicial executions or disappearances of civilians perpetrated in the Chechen Republic at the end of the 1990s and the

beginning of the 2000s, even in the absence of final conclusions from the domestic investigation (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, 24 February 2005; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII; *Estamirov and Others v. Russia*, no. 60272/00, 12 October 2006; and *Baysayeva v. Russia*, no. 74237/01, 5 April 2007). It has done so taking into account the length of time during which the applicants had not had any news of their missing relatives and on the basis of witness statements and other documents attesting to the presence of military or security personnel in the area concerned at the relevant time. It has relied on references to military vehicles and equipment, on witness accounts, on other information on security operations and on the undisputed effective control of the areas in question by the Russian military. On that basis, it has concluded that the areas in question were “within the exclusive control of the authorities of the State” in view of the military or security operations being conducted there and the presence of servicemen (see, *mutatis mutandis*, *Akkum v. Turkey*, cited above, § 211, and *Zubayrayev v. Russia*, no. 67797/01, § 82, 10 January 2008).

71. However, in the present case the circumstances in which the events occurred cannot warrant an unequivocal conclusion that State agents were responsible for the abduction of the applicant’s husband for the following reasons. As regards the general background, the events complained of took place not in Chechnya, but in Dagestan, in September 2009, and there was neither a curfew in place nor any restrictions on driving around in civilian vehicles. Furthermore, from the documents submitted it follows that the applicant’s version of the events was based on the statements of her relatives who had not witnessed the abduction themselves (see paragraphs 22, 23, 26 and 27 above) and that there were discrepancies between their statements and the statements given to the investigative authorities by the actual eye-witnesses (see paragraphs 32, 33 and 42 above). For instance, it is unclear whether the abductors had been in camouflage uniforms or black T-shirts (see paragraphs 32 and 33 above), whether or not their vehicles had official registration numbers (see paragraphs 7, 23, 32 and 45 above) or whether the applicant’s relatives had video footage of the abduction (see paragraphs 22-23 and 41 and 45 above). Furthermore, as to the applicant’s argument that the authorities could have learnt about the money and the documents handed over by Sirazhudin Shafiyev to Mr R.Sh. only from the former and only after his abduction, the Court is not persuaded that this could have been the only way for the representatives of the law-enforcement authorities to obtain this information (see paragraph 35 above).

72. Accordingly, the information in the Court’s possession does not suffice to establish that the perpetrators belonged to the security forces or that a security operation had been carried out in respect of Sirazhudin Shafiyev.

73. To sum up, it has not been established to the required standard of proof – “beyond reasonable doubt” – that State agents were implicated in the disappearance of Sirazhudin Shafiyev; nor does the Court consider that the burden of proof can be entirely shifted to the Government, having regard, in particular, to the fact that they submitted a copy of the relevant documents from the investigation file as requested by the Court.

### III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

74. The applicant complained under Article 2 of the Convention that her husband had disappeared after having been detained by State agents and that the domestic authorities had failed to carry out an effective investigation into the matter. Article 2 reads as follows:

“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

75. The Government contended that the domestic investigation had obtained no evidence that Sirazhudin Shafiyev was dead or that any servicemen from federal law-enforcement agencies had been involved in his disappearance. The Government claimed that the investigation into the abduction met the Convention requirement of effectiveness, as all measures available in national law were being taken to identify the perpetrators.

76. The applicant alleged that Sirazhudin Shafiyev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for more than a year. She also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court’s case-law on Article 2.

## **B. The Court's assessment**

### *1. Admissibility*

77. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the issue concerning the exhaustion of criminal domestic remedies should be joined to the merits of the complaint (see paragraph 63 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

### *2. Merits*

#### **(a) The alleged violation of the right to life of Sirazhudin Shafiyev**

78. The Court reiterates that 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, §§ 146-47, Series A no. 324, and *Avşar*, cited above, § 391).

79. As noted above, the domestic investigation failed to produce any tangible results as to the identities of the persons responsible for the alleged abduction of Sirazhudin Shafiyev. The applicant has not submitted persuasive evidence to support her allegations that State agents were the perpetrators of such a crime. The Court has already found above that, in the absence of relevant information, it is unable to find that security forces were implicated in the disappearance of the applicant's husband (see paragraph 73 above). Neither has it established "beyond reasonable doubt" that Sirazhudin Shafiyev was deprived of his life by State agents.

80. In such circumstances the Court finds no violation of the substantive limb of Article 2 of the Convention.

#### **(b) The alleged inadequacy of the investigation into the abduction**

##### *1. General principles*

81. The obligation to protect the right to life under Article 2 of the Convention requires that there should be some form of effective official investigation (see *McCann and Others*, cited above, § 161). It is necessary for the persons responsible for and carrying out the investigation to be



independent from those implicated in the events (see, for example, *Güleç v. Turkey*, cited above, §§ 81-82, and *Öğur v. Turkey* [GC], no. 21954/93, §§ 91-92, ECHR 1999-III).

82. The authorities must act of their own motion once the matter has come to their attention; they cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC] no. 22277/93, § 63, ECHR 2000-VII).

83. In this context, there must also be an implicit requirement of promptness and reasonable expedition (see *Yaşa v. Turkey*, cited above, §§ 102-104, and *Çakıcı v. Turkey*, cited above, §§ 80, 87, 106). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation of a particular situation. However, a prompt response by the authorities may generally be regarded as essential in maintaining public confidence in the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

84. The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible (*Öğur v. Turkey*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident (see, for example, *Salman v. Turkey*, cited above, § 106, and *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109). Any deficiency in the investigation which undermines its ability to establish the identity of the person responsible will risk falling below this standard.

85. In addition, there must be a sufficient element of public scrutiny of the investigation or its results to ensure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *McKerr v. the United Kingdom*, no. 28883/95, § 115, ECHR 2001-III).

*ii. Application of the above principles to the present case*

86. In the present case, the abduction of Sirazhudin Shafiyev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

87. The Court notes that the applicant's relatives immediately reported the alleged abduction to the authorities (see paragraph 15). In response to their report, the authorities promptly examined the crime scene and forwarded several information requests to a number of law-enforcement agencies. On the day following the abduction, 9 September 2009, the investigators questioned Sirazhudin Shafiyev's brothers (see paragraphs 22

and 23), who provided the investigators with detailed descriptions of the events and alleged that the abduction had most probably been perpetrated by State agents. Both brothers also stated that they had a video recording/photograph of the abductors and their vehicles. On the next day, 10 September 2009, the official criminal investigation was initiated (see paragraph 24) and on the following day, 11 September 2009, Mr R.Sh. (also known as Imam Rasul) provided the investigators with the details of his meeting with officer Magomed from the 6<sup>th</sup> Department on 9 September 2009, stating that the latter had known about the documents and money passed on by Sirazhudin Shafiyev on 7 September 2009 (see paragraph 25 above). Three days after the initiation of the criminal investigation, on 14 September 2009, the applicant was granted victim status in the criminal case (see paragraph 27 above) and within a week of the commencement of the proceedings a number of witnesses were questioned (see paragraphs 28-33 above).

88. From the documents submitted, it transpires that the domestic authorities demonstrated a prompt response to the applicant's complaint and took a number of investigative steps within the first week of the investigation. However, it appears that despite taking the above steps, from 18 September to 10 December 2009 the investigators failed to follow up on the information received from the witnesses and to either obtain the video footage/photographs of the abduction from Sirazhudin Shafiyev's brothers or to identify officer Magomed, in spite of the witnesses' allegations that their brother had been abducted by State agents. After the first week of the proceedings the investigators did not take any meaningful steps and on 10 December 2009 they suspended the proceedings. The decision to suspend the investigation of such a life-threatening crime was taken in a situation where no steps had been taken to verify the important information received at the very beginning of the criminal proceedings.

89. Furthermore, from the documents submitted it is evident that in March 2010 the supervising prosecutor criticised the investigators for failure to take the most important investigative steps (see paragraph 38) and ordered remedial measures. Those measures were either carried out with a significant delay or not at all. For instance, the investigators obtained the photograph of the abductors' vehicles from Sirazhudin Shafiyev's brother, Mr Ta.Sh., on 14 April 2010, almost seven months after the witness had provided them with this information (see paragraph 45 above). The Court observes that in such a situation the investigators should not have left the responsibility for the conduct of any investigatory procedures, such as obtaining important evidence, to the next of kin (see, for example, *mutatis mutandis*, *İlhan*, cited above, § 63). As for the supervising prosecutor's direct orders to take steps in order to identify officer Magomed, from the documents submitted it is clear that the investigators did not take any steps whatsoever to comply with those instructions. Therefore, it does

not appear that the investigators took all reasonable steps to secure the evidence and to verify the witnesses' allegations concerning the involvement of State agents in their relative's abduction (see paragraph 28 above). In the absence of any explanations for such a failure, the Court concludes that the authorities failed to demonstrate diligence and promptness in dealing with such a serious matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

90. As for the overall conduct of the proceedings, the Court notes that after having commenced on 11 September 2009, the investigation was suspended on four occasions: for the first time on 10 December 2009, subsequently being resumed on 29 March 2010; it was again suspended on 29 April and resumed on 29 June 2010; suspended for the third time on 28 July 2010 and resumed on 4 August 2010; and then suspended for the last time on 4 September 2010. Each time, the investigation was stayed without the necessary steps having been taken and each time it was resumed upon the criticism of supervising prosecutors. These premature suspensions in the situation when vital steps had not been taken by the investigators undermined the investigators' ability to identify and punish the perpetrators (see *Öğur v. Turkey*, cited above, § 88).

91. Turning to the requirement of public scrutiny, the Court notes that, shortly after the initiation of the proceedings on 14 September 2009, the applicant was granted victim status and questioned. However, she was not informed about the progress of the proceedings and their suspension on 10 December 2009. In the beginning of April 2010 she requested access to the case file and her request was granted. After that, the investigation was suspended again at the end of April 2010, but the applicant was again not informed of this decision. She was, however, informed of the two subsequent suspensions of the proceedings in July and September 2010. It remains to be decided whether the applicant's access to the case file enabled her to effectively pursue her legitimate interests in the proceedings.

92. The Government argued that the applicant had been granted victim status in the criminal case and should, therefore, have sought judicial review of the decisions of the investigating authorities as part of the exhaustion of domestic remedies. The Court accepts that, in principle, this remedy may offer a substantial safeguard against the arbitrary exercise of power by an investigating authority, given a court's power to annul a refusal to institute criminal proceedings and indicate defects to be addressed.

93. The Court, however, has strong doubts as to whether this remedy would have been effective in the circumstances of the present case for the following reasons. In the situation of the investigation of such a serious crime as abduction, it would be reasonable to presume that the authorities took all possible measures of their own motion to establish the whereabouts of the abducted man and identify the culprits. Assuming that the applicant's access to the case file in April 2010 provided her with the chance to assess

the progress of the investigation, in the light of the supervising prosecutor's orders of 19 March 2010 (see paragraph 38 above), it would have been sensible to presume that the shortcomings would be remedied and the necessary steps would be taken. However, in the end of April 2010 the investigators again suspended the proceedings without having taken the remedial measures and without informing the applicant of their decision to stay the investigation.

94. In such a situation, even if the applicant were to appeal against the investigators' actions at a later date, when she was informed of the suspension of the investigation at the end of July 2010, taking into account that the proceedings were ongoing for more than ten months, it is highly questionable whether her appeal would have been able to redress the defects in the investigation by bringing them to the attention of a domestic court. In this connection, the Court reiterates that the authorities cannot leave it to the initiative of the next-of-kin to request particular lines of inquiry or investigative procedures (see, *mutatis mutandis*, *Ilhan*, cited above, § 63): they must show their commitment to take all steps of their own motion and to demonstrate that they have taken the reasonable steps available to them to secure the evidence. Any deficiency in the investigation which undermines its ability to establish the identity of the person responsible will risk falling below this standard (see, for example, *Salman v. Turkey*, cited above, § 106, and *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109).

95. However, the materials in the Court's possession reveal that crucial investigative steps which should have been taken as soon as the relevant information had been obtained were never taken, in spite of the supervising prosecutor's direct orders to this end (see paragraphs 38, 49 and 54). This failure to act in a timely manner led to unnecessary protractions and a loss of time because steps which could have yielded results were not taken. Therefore, it is highly doubtful that any appeals by the applicant against the investigators' decisions would have had any prospects of spurring the progress of the investigation or effectively influencing its conduct. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

96. 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 Sirazhudin Shafiyev, in breach of Article 2 in its procedural aspect.

#### IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

97. The applicant relied on Article 3 of the Convention, submitting that as a result of her husband's disappearance and the State's failure to

investigate it properly, she had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads as follows:

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

#### **A. The parties’ submissions**

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

99. The applicant maintained her submissions.

#### **B. The Court’s assessment**

100. Referring to its settled case-law, the Court reiterates that, where a person has been abducted by State security forces and has subsequently disappeared, his or her relatives can claim to be victims of treatment contrary to Article 3 of the Convention on account of the mental distress caused by the “disappearance” of their family member and the authorities’ reactions and attitudes to the situation when it is brought to their attention (see *Kurt v. Turkey*, 25 May 1998, §§ 130-34, *Reports* 1998-III, and *Timurtaş v. Turkey*, no. 23531/94, §§ 96-98, ECHR 2000-VI).

101. Turning to the circumstances of the present case, the Court notes that the applicant is the wife of Sirazhudin Shafiyev. Accordingly, it has no doubt that she has indeed suffered from serious emotional distress following the disappearance of her husband.

102. The Court notes that it has already found violations of Article 3 of the Convention in respect of relatives of missing persons in a series of cases concerning the phenomenon of “disappearances” in the Chechen Republic (see, for example, *Luluyev and Others*, cited above, §§ 117-18; *Khamila Isayeva v. Russia*, no. 6846/02, §§ 143-45, 15 November 2007; and *Kukayev v. Russia*, no. 29361/02, §§ 10710, 15 November 2007). It is noteworthy, however, that in those cases the State was found to be responsible for the disappearance of the applicants’ relatives. In the present case, by contrast, it has not been established to the required standard of proof “beyond reasonable doubt” that the Russian authorities were implicated in Sirazhudin Shafiyev’s disappearance (see paragraph 80 above). In these circumstances the Court considers that the case is distinguishable from those mentioned above and therefore concludes that the State cannot be held responsible for the applicant’s mental distress caused by the commission of the crime itself.

103. Furthermore, in the absence of a finding of State responsibility for the disappearance of Sirazhudin Shafiyev, the Court is not persuaded that

the investigating authorities' conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity which is necessary in order to consider treatment as falling within the scope of Article 3 (see, for a similar situation, *Khumaydov and Khumaydov v. Russia*, no. 13862/05, §§ 130-31, 28 May 2009, and *Zakriyeva and Others v. Russia*, no. 20583/04, §§ 97-98, 8 January 2009).

104. It follows that this part of the application should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

105. The applicant further contended that Sirazhudin Shafiyev had been detained in violation of the guarantees contained in Article 5 of the Convention, which reads, in so far as relevant as follows:

“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

106. The Government asserted that no evidence had been obtained by the investigators to confirm that Sirazhudin Shafiyev had been deprived of

his liberty by State agents in breach of the guarantees set out in Article 5 of the Convention.

107. The applicant reiterated the complaint.

### **B. The Court's assessment**

108. 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 and Others*, cited above, § 122).

109. Nevertheless, the Court has not found it established “beyond reasonable doubt” that Sirazhudin Shafiyev was arrested by Russian servicemen (see paragraph 73 above). Nor is there any basis to presume that he was ever placed in unacknowledged detention under the control of State agents (see *Tovsultanova v. Russia*, no. 26974/06, § 111, 17 June 2010).

110. The Court therefore considers that this part of the application should be dismissed as being incompatible *ratione personae* and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

## **VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION**

111. The applicant complained that she had been deprived of effective remedies in respect of the alleged violations, contrary to Article 13 of the Convention, which provides as follows:

“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**

112. 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. She had had an opportunity to challenge any acts or omissions on the part of the investigating authorities in court or before higher prosecutors and to bring civil claims for damages. In sum, the Government submitted that there had been no violation of Article 13.

113. The applicant reiterated the complaint.

## **B. The Court's assessment**

114. The Court observes that the complaint made by the applicant under this Article has already been examined in the context of Article 2 of the Convention. Having regard to the finding of a violation of Article 2 in its procedural aspect (see paragraph 96 above), the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 2 is admissible, there is no need for a separate examination of this complaint on its merits (see, *Khumaydov and Khumaydov*, cited above, § 141; *Zakriyeva and Others*, cited above § 108; and *Shaipova and Others v. Russia*, no. 10796/04, § 124, 6 November 2008).

## **VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

115. 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. Damages**

116. The applicant did not submit any claim for pecuniary damages. She asked the Court to be granted just satisfaction for non-pecuniary damage without specifying the amount requested. The Government did not comment on the applicant's claim for just satisfaction.

117. The Court has found a violation of the procedural aspect of Article 2 on account of the authorities' failure to carry out an effective investigation into the abduction of the applicant's husband. The Court thus accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of the violation. Acting on equitable basis, it awards to the applicant EUR 30,000, plus any tax that may be chargeable thereon.

### **B. Costs and expenses**

118. The applicant requested compensation for the costs and expenses incurred in connection with her application to the Court, without specifying the amount claimed or enclosing any documents to substantiate the claim. In such circumstances the Court makes no award under this head.



### C. Default interest

119. The Court considers it appropriate that the default interest rate 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 issue concerning exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been no violation of Article 2 of the Convention in its substantive limb in respect of Sirazhudin Shafiyev;
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 Sirazhudin Shafiyev disappeared;
5. *Holds* that no separate issue arises under Article 13 of the Convention in conjunction with Article 2 of the Convention;
6. *Holds*
  - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into Russian roubles at the date of settlement:  
EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
  - (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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Nina Vajić  
President