



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

FIRST SECTION

CASE OF ASKHABOVA v. RUSSIA

(Application no. 54765/09)

JUDGMENT

STRASBOURG

18 April 2013

FINAL

09/09/2013

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

In the case of Askhabova v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 54765/09) 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 Tamara Askhabova (“the applicant”), on 14 October 2009.

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

3. The applicant alleged, in particular, that her son had been abducted by State agents and that the authorities had failed to investigate the matter effectively. She cited Articles 2, 3, 5 and 13 of the Convention.

4. On 2 December 2009 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application. On 8 July 2010 it decided to give notice of the application to the Government. On 17 September 2012, under the provisions of Article 29 § 1 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

5. The applicant, Ms Tamara Askhabova, was born in 1951 and lives in Shali, Chechnya. She is the mother of Abdul-Yazit Askhabov, who was born in 1983.

A. Abduction of the applicant's son

1. Information submitted by the applicant

(a) Background information

6. At the material time the applicant's family was living at 64, Ivanovskaya Street, Shali, Chechnya. The household occupied several dwellings. The applicant and her husband had five sons and two daughters. One of their children, Mr D.A., had been killed by the police in 2000 in the town of Aktyubinsk in the Astrakhan Region, Russia, as a result of a counter-terrorist operation. Another son, Mr Yu.A., was wanted by the authorities as the alleged leader of an illegal armed group. On 28 May 2009 he was killed in the centre of Shali by officers of the Shali district department of the interior ("the ROVD"). About three or four days after the shooting, the head of the ROVD went to the applicant's house and summoned her other three sons to the police station as they were suspected of participating in illegal activities.

7. On 30 June 2009 the applicant and her husband took their three sons, including Abdul-Yazit Askhabov, to the ROVD where the young men were ordered to report to the police station on the 30th of each month.

8. On 30 July 2009 the applicant's sons were again taken to the ROVD and fingerprinted.

9. Late in the morning on 4 August 2009, Shali ROVD officer I.K. went to the applicant's house to check whether her sons were at home. He asked the applicant a number of questions relating to Abdul-Yazit Askhabov's activities and lifestyle, and left.

(b) The events of the night of 4-5 August 2009

10. At about 3 a.m. on 5 August 2009, three armed Chechen men in masks and military camouflage uniforms arrived at the applicant's home in three VAZ-Priora cars and broke in. The applicant and her relatives thought that the men were police officers from the ROVD.

11. The men dragged Abdul-Yazit Askhabov out of his bed and took him away without giving any explanations. One of them just said: “the FSB” (the Federal Security Service). The abduction happened quickly: it took between three and five minutes. The abductors drove away in the direction of the village of Noviye Atagi; a military checkpoint was located on that road at the material time.

12. Immediately after the abductors had gone, the applicant and her relatives called the ROVD and the head of the Shali district administration and complained about the incident.

(c) Subsequent events

13. On the mornings of 5, 6 and 7 August 2009, the applicant and her relatives waited at the entrance to the ROVD. On 7 August 2009 they were dispersed by the police. On the same day the applicant and her relative, Mr M.A., went to Grozny where she visited the Chechnya prosecutor and the Envoy for Human Rights and Freedoms in Chechnya (“the Envoy”).

14. The applicant and Mr M.A. spoke with the Envoy, Mr O. Kh., in his office. The latter called someone in their presence and requested that the detainee, Abdul-Yazit Askhabov, be released. He said: “Even if he is the brother of the leader of an illegal armed group, you have no right to detain him for a period longer than the one prescribed by the law”. From this conversation the applicant understood that her son had been detained in the ROVD.

15. At about 11 p.m. on 16 August 2009 a group of armed men in military camouflage uniforms arrived at the applicant’s house in a Mercedes car, the registration number of which contained the digits A511. Three or four of the men entered the house while the rest remained in the yard and the street. The men were Chechens. They told the applicant that they had come from Khankala (where the main military base was located). However, the applicant and her relatives felt that the men were lying and that in fact they were police officers. One of the applicant’s daughters-in-law recognised one of them as an officer from the 8th police regiment stationed in the building of a former tailor’s shop in Shali.

16. The officers demanded that the applicant show them the bathroom, which used to serve as the hiding place of her deceased son, Mr Yu.A. According to the applicant, the men could have learnt about the hideout only by obtaining that information from Abdul-Yazit Askhabov.

17. Subsequently, none of the local law-enforcement agencies accepted responsibility for arresting or detaining the applicant’s son, who has not been seen since 5 August 2009.

18. On 7 November 2009 the local human rights lawyers from the United Mobile Group (“the UMG”) took a statement from Abdul-Yazit Askhabov’s wife, Ms El.Yu. She stated that at first the abductors had asked for Abdul-Yazit’s passport, then had forcibly taken him outside. On the way

to the gate the abductors threatened Abdul-Yazit's father with a pistol; they drove away in a black VAZ-Priora car without a registration number. Immediately thereafter, the applicant told her that according to the abductors, they were from the FSB.

19. On the same date, 7 November 2009, the UMG lawyers took a statement from the applicant's daughter, Ms A.A. She stated, amongst other things, that on 4 August 2009 a Russian police officer had arrived at their house and inquired as to whether all her brothers were at home. When the brothers appeared, he asked which one was Abdul-Yazit and then left. Her statement concerning the circumstances of the abduction was similar to the one given by Abdul-Yazit's wife, Ms El.Yu.

20. On 12 November 2009 the UMG lawyers took a statement from the applicant's husband, Mr D.A., who described the circumstances of the abduction. He added that the abductors had spoken Russian and that the applicant and his brother, Mr M.A., had gone to see the Envoy. The latter called the Shali ROVD and was informed that Abdul-Yazit had been detained as the brother of a criminal.

21. On 13 November 2009 the UMG lawyers took the applicant's statement about the abduction, which was similar to the ones given by her relatives, Ms El.Yu., Ms A.A. and Mr D.A. She added that on 6 or 7 August 2009 she had gone with her relative, Mr M.A., to see the Envoy, Mr O.Kh. In their presence the latter had called the Shali ROVD and asked whether they had information about her son's whereabouts. Towards the end of the phone conversation with the police, the Envoy said: "You do not have the right to detain him for longer than prescribed by the law, even if he is the brother of Emir [the leader of an illegal armed group]". Subsequently, the Envoy promised to assist the applicant in the search for her son. The applicant further stated that on 16 or 17 August 2009 a group of five or six armed Chechen men in camouflage uniforms had arrived at her house in a Mercedes car with a registration number containing the digits A511. Three or four of them entered her house while two of them remained outside. They told the applicant that they were from Khankala and were working "with the Russians". Those inside went to the hideout in the bathroom where the applicant's son Yusup (sought as the leader of an illegal armed group) used to hide. Only the applicant, Yusup and Abdul-Yazit had known about the hide-out and its location; therefore, the police officers could have learnt about it only from Abdul-Yazit.

22. On 13 November 2009 the UMG lawyers also took a statement from the applicant's neighbour, Mr S.M. He stated that on the night of 4-5 August 2009, immediately after the abduction, he had gone with the applicant's relatives to the Shali ROVD, where they had been told that no vehicles had passed through their premises during the night. They then went to another police station and the FSB, but to no avail.

23. The statements given by the applicant and her relatives and neighbours to the UMG lawyers were subsequently included into the investigation file (see paragraph 61 below).

2. Information submitted by the Government

24. The Government did not challenge the matter as presented by the applicant. At the same time, they denied that State agents had been involved in the incident and stated that there was no proof that Abdul-Yazit Askhabov was dead.

B. Official investigation of the abduction

1. Information submitted by the applicant

25. On 5 August 2009 the applicant and her relatives complained about Abdul-Yazit Askhabov's abduction to the ROVD, the Shali investigations department and the Shali department of the Federal Security Service ("the Shali FSB").

26. On 19 August 2009 the Shali investigations department opened criminal case no. 72028 under Article 126 § 2 of the Criminal Code (aggravated kidnapping).

27. On 1 September 2009 the investigators granted the applicant victim status in the criminal case.

28. At the beginning of September 2009 the investigators went to the applicant's house and conducted a crime scene examination.

29. At some point between August and the middle of October 2009 the investigator in charge of the criminal case, Mr A.-Kh.B., told the applicant and her relative, Mr M.A., that after the abduction police officers from the ROVD had once taken Abdul-Yazit Askhabov out of the police station and fed him in a café.

30. On 16 November 2009 the applicant asked the investigators to take a number of investigative steps and to allow her lawyer to access the case file. In particular, she requested that additional witnesses be questioned about the circumstances of her conversation with the Envoy on 7 August 2009 and the visit on 16 August 2009 of the group of men whom she thought to be police officers (see paragraphs 14-16 above).

31. On 16 November 2009 the applicant's husband asked the investigators to grant him victim status in the criminal case.

32. According to the applicant, the investigators failed to write down in full the information given by her and the other witnesses in their statements for the criminal investigation.

2. Information submitted by the Government

(a) Investigative steps taken by the Shali Investigations Department

33. As indicated above (see paragraph 25), the applicant complained about the abduction to the Shali investigations department on 5 August 2009.

34. On the same date the investigators examined the crime scene, collected the door lock as evidence and submitted it for a preliminary expert examination. According to the experts' report of 18 August 2009, the lock bore traces of the application of physical force.

35. On 9 August 2009 the investigators questioned the applicant. She stated that she had several sons; one of them, Yusup, had been suspected of being the leader of an illegal armed group and had been killed by members of law-enforcement agencies at the end of May 2009. Another son, Abdul-Yazit, had a second-degree disability owing to problems with his eyesight. On the night of 4-5 August 2009 she and her family were sleeping at home; their household occupied several dwellings. At about 3 a.m. she heard her husband and Abdul-Yazit's wife, Ms El.Yu, screaming and then saw two armed men in dark uniforms taking Abdul-Yazit outside. They twisted his arms behind his back, pressed a gun against his head and dragged him to the gate, where a third man was waiting for them. The abductors then went out to the street. The applicant tried to open the gate, but was unsuccessful as one of the abductors was holding it from the other side. When the applicant managed to open the gate, she saw a Lada-Priora car without a registration number driving quickly away. It was dark outside as the dwellings had no electric light. The abduction had taken only a few minutes. The applicant further stated that Abdul-Yazit had no enemies or financial debts.

36. On 10 August 2009 the investigators questioned Abdul-Yazit Askhabov's wife, Ms El. Yu., whose statement concerning her husband's abduction was similar to the one given by the applicant. In addition, the witness stated that the abductors had been dressed in black, masked and that at first one of them had asked for Abdul-Yazit's passport. While she had turned away to look for the document, the men had twisted her husband's arms behind his back and dragged him outside.

37. On 14 August 2009 the investigators questioned the applicant's relatives, Ms T.A. and Ms Am.A., whose statements about the abduction were also similar to the one given by the applicant.

38. On 28 August 2009 the investigators again questioned the applicant, who described the circumstances of her son's abduction by men armed with pistols. She also stated that she suspected that the visit of Shali ROVD officer I.K. on 4 August 2009 had been connected to the abduction.

39. On 28 or 31 August 2009 the investigators again questioned Abdul-Yazit's wife, Ms El.Yu., who stated that her husband had been abducted by three men armed with Stechkin pistols, who had arrived in a VAZ-Priora car. She also stated that on 5 August 2009 the applicant had complained about the abduction to the ROVD and that her relatives had been told by the ROVD officers that Abdul-Yazit Askhabov had not been detained in the police station.

40. In August and September 2009 the investigators asked various departments of the FSB and departments of the interior whether they had detained Abdul-Yazit Askhabov. The departments all replied in the negative.

41. On 1 September 2009 the investigators granted the applicant victim status in the criminal case and questioned her on the following day. Her statement was identical to the one given on 28 August 2009. She reiterated that the visit on 4 August 2009 of ROVD officer I.K. must have had something to do with the subsequent abduction. According to the applicant, the police officer had just asked whether Abdul-Yazit had been at home, looked at the household and left.

42. On 2 September 2009 the investigators questioned the applicant's son, Mr Ab.A., who stated that his brother Abdul-Yazit Askhabov had been abducted by three men in dark or camouflage uniforms, who had been armed with pistols and had arrived in a car without a registration number. According to the witness, the abduction had been carried out very quickly, within three to five minutes.

43. On 4 and 14 September 2009 the investigators questioned the applicant's relatives, Ms Kh.A. and Mr A.M., who stated that they had learnt about the abduction from the applicant. The witnesses added that a few days after the abduction, members of law-enforcement agencies had arrived at their home and taken photographs of the place which the applicant's son Yu.A. had used to hide from the authorities.

44. On 5 September 2009 the investigators decided to conduct another expert examination of the lock taken from the crime scene (see paragraph 28 above). The examination established that the lock had been opened by the application of physical force. The applicant was familiarised with the experts' report on 22 September 2009.

45. On 7, 9 and 16 September and 16, 17 and 19 October 2009 the investigators questioned the applicant's neighbours, Ms L.A., Mr Kh.S., Mr S.M., Mr Sh.A., Ms Kh. R., Ms T.A., Ms A.B. and Mr A.B., all of whom gave similar statements to the effect that they had learnt about the abduction and its circumstances from the applicant and her relatives.

46. On 18 September 2009 the investigators questioned the applicant's relative, Ms T.A., who stated that Abdul-Yazit Askhabov had been abducted by armed men and that about ten days after the abduction police officers had arrived at their home at 64 Ivanovskaya Street, carried out a search and

taken photographs of the house. The officers arrived in a Mercedes car with a registration number containing the digits A511; the witness had been unable to see the colour of the vehicle as it was dark outside. According to the witness, one of the police officers had told her that they were from Khankala, Chechnya.

47. On 25 September 2009 the investigators from the Shali investigations department questioned ROVD officer A.K., who stated that the applicant's son, Mr Yu.A., had been known to the authorities as the leader of an illegal armed group. At some point in 2009 the head of the ROVD ordered him and his colleague, officer I.K., to visit the applicant's household to find out whether her sons were at home, as one of them was suspected of joining an illegal armed group. At about 11 a.m. on 4 August 2009 the witness went to the applicant's house in a VAZ-Priora car with registration number E 424 VH 05. He asked his colleague I.K. to enter the applicant's house, but he himself had waited in the car.

48. On the same date, 25 September 2009, the investigators questioned ROVD officer I.K., who stated that on 4 August 2009 he and his colleague, officer A.K., had gone to the applicant's house. He entered the house while A.K. remained in the car. He asked the applicant whether all her sons were at home and asked her son, Mr A.-Kh.A., to accompany him and his colleague A.K. to the police station.

49. On 9 October 2009 the applicant's husband requested that the investigators grant him access to the investigation file. The investigators replied that he did not have the right to access the file as he had not been granted victim status in the criminal case and that therefore, he was supposed to submit the relevant request to the investigating authorities.

50. On 18 October 2009 the investigators requested that the mobile telephone service provider, Megafon, provide them with a list of phone calls made between 1 a.m. and 5 a.m. on 5 August 2009 in Shali. In their reply dated 22 December 2009, the company informed the investigators that the requested information could be provided only with court permission.

(b) Investigative steps taken by the Chechnya Investigations Department

51. On 26 October 2009 the investigation of the criminal case was transferred from the Shali investigations department to the Chechnya investigations department.

52. On 29 October 2009 the investigators questioned the Envoy, Mr O.Kh., who stated that on 6 August 2009 the applicant had arrived at his office and told him about the abduction. He then called the Shali ROVD and inquired as to whether they had arrested her son. He was told that according to the registration log of their detainees, Abdul-Yazit Askhabov had not been taken to the ROVD. He subsequently suggested to the applicant that she complain about the abduction to the law-enforcement authorities.

53. On 30 October 2009 the investigators questioned a Mercedes car owner Mr A.Ya., whose statement was not furnished by the Government.

54. On the same date, 30 October 2009, the investigators asked the Chechnya traffic police to inform them about the owners of the Mercedes car with a registration number containing the digits A511. As a result, on 11 November 2009 it was established that the vehicle belonged to Mr M.-E.M. in Urus-Martan. On 11 December 2009 it was established that he did not live there.

55. On the same date, 30 October 2009, the investigators also requested that the Shali ROVD and Operational Search Bureau no. 2 of the Chechnya Ministry of the Interior (“the ORB-2”) identify the owners of the silver VAZ-21073 (Priora) car used by the abductors and inform them whether officers of the Shali ROVD owned that type of vehicle. In their replies of 19 and 23 November 2009 the law-enforcement agencies informed the investigators that no pertinent information had been obtained and that the ORB-2 had not arrested or detained the applicant’s son.

56. On 5 November 2009 the investigators drew up a plan of steps to be taken in the criminal investigation. The document stated, amongst other things:

“... the following hypotheses concerning the abduction are in the process of being checked out:

1. The disappearance of A.-Ya. Askhabov is related to his arrest as a result of a special operation conducted by representatives of federal power structures;
2. The victim [Abdul-Yazit Askhabov] was the target of a crime committed by other persons for other motives.

In connection with the above, it is necessary to do the following:

1. take measures to identify the owner of the grey VAZ-21073 (Priora model) car which was used by the abductors; ...
2. examine the registration log of detainees in the temporary detention unit (the IVS) of the Shali ROVD, identify and question the IVS officers who were on duty on the night of 4-5 August 2009 and question the head of the IVS about the possible detention of Abdul-Yazit Askhabov on their premises;
3. verify whether local power structures conducted special operations in Shali between 4 and 5 August 2009; ...
5. identify and question the owner of the Mercedes car with registration number A511 ...”

57. On 5 November 2009 the investigators questioned the head of the temporary detention unit of the Shali ROVD (“the IVS”), officer S.E., and his colleague, officer Kh.Um., both of whom stated that Abdul-Yazit Askhabov had not been detained on their premises and that the registration

log of the IVS contained no entries to the effect that he had ever been taken there.

58. On the same date, 5 November 2009, the investigators seized and examined the registration log of persons detained at the Shali ROVD between 3 and 10 August 2009. No entries concerning Abdul-Yazit Askhabov were found.

59. On 10 November 2009 the investigators questioned the applicant's relative, Mr M.A., who stated that he had witnessed the abduction. His statement concerning its circumstances was similar to the one given by the applicant and Abdul-Yazit's wife, Ms El.Yu. In addition, he stated that the abductors had told the applicant that they were from the FSB and that the abductors had driven three Priora cars with tinted windows and without registration numbers. The witness and his relatives thought that Abdul-Yazit Askhabov had been arrested by ROVD officers and, therefore, immediately went to the Shali ROVD premises. They were told to come back in the morning. At about 9 a.m. on 5 August 2009 M.A. and the applicant returned to the ROVD, where they were told that Abdul-Yazit Askhabov had been neither arrested by their officers nor detained on their premises. The witness and the applicant subsequently went to the prosecutor's office and the FSB, and lodged complaints about the abduction.

60. On 10 November 2009 the investigators questioned the applicant's relative, Ms T.A., who had previously been questioned by the Shali investigations department (see paragraphs 37 and 46 above). Her statement concerning the abduction was similar to the ones given by her relatives. In addition, she reiterated that about ten days after the events, a group of five or six members of law-enforcement agencies from Khankala had arrived at their house in a Mercedes car with a registration number containing the digits A511 and had taken photographs of the applicant's bathroom. The witness recognised one of the visitors as she had seen him before on several occasions at the entrance to the premises of the 8th unit of the special police battalion named after A. Kadyrov ("the A. Kadyrov police battalion"). The officer was 165 cm tall, about forty years old, grey-haired, a little bald and of a strong build; she would be able to recognise him from a photograph.

61. On 16 November 2009 the applicant asked the investigators to take, amongst other things, the following steps:

"...

2. include... the statements... given to the human rights lawyers of the United Mobile Group (the UMG) into the investigation file;

3. question myself and other witnesses, including Mr M.A., in more detail about the circumstances of our visit to the office of the Envoy and about the visit on 16 or 17 August 2009 by the police officers who demanded to be shown the hideout in our house;

4. identify and question the Envoy, Mr O.Kh., who called the Shali ROVD in connection with Abdul-Yazit's abduction, about the content of his phone conversation on the matter; ...

7. identify and question the officers of the Shali ROVD... about their phone conversation with the Envoy...;

8. identify the police officers who arrived at our house between 16 and 17 August 2009 in a Mercedes car with the registration number A511 in order to find out their source of information about the hideout in our house... ”

On 18 November 2009 the investigators granted the request, stating that the measures the applicant had requested would be taken by the authorities.

62. On 16 November 2009 the investigators questioned the applicant's neighbour, Mr S.M., whose statement about the abduction and subsequent events was similar to the ones given by the applicant and her relatives.

63. On 18 November 2009 the investigators again questioned the applicant, who added to her previous statement that after the abduction, on 5 and 6 August 2009, when she and her family had been waiting at the gates to the ROVD, she had seen a group of police officers leaving the premises. She asked one of them, who introduced himself by his surname, 'Grachyov', about her son. He told her that Abdul-Yazit was still alive and that nothing had happened to him yet. On 7 August 2009 she went to the office of the Envoy together with Mr M.A. In their presence the Envoy telephoned the ROVD and from the contents of the ensuing conversation she understood that Abdul-Yazit had been detained in the ROVD. On 16 or 17 August 2009 a group of five or six men arrived at her house, told her that they were from Khankala and asked her to show them the hideout which had been used by her son Yusup. The men, who had arrived in a Mercedes car with a registration number containing the digits A511, took photographs of the hideout and left. Her relative, Mr M.A., told her that the investigator from the Shali investigations department, Mr A.-Kh.B., had told him that at some point he had seen Abdul-Yazit being taken out from the building of the Shali ROVD.

64. On 18 November 2009 the investigators granted the applicant's husband, Mr D.A., victim status in the criminal case and questioned him once again. His statement was similar to the one given by the applicant on the same date.

65. On 20 and 21 November 2009 the investigators again questioned Abdul-Yazit's wife, Ms El.Yu., and his sister, Ms A.A. Their statements were similar to the one given by the applicant on 18 November 2009.

66. On 22 November 2009 the investigators questioned the investigator from the Shali investigations department, Mr A.-Kh.B., who stated that he had been on duty and had therefore taken the applicant's complaint about the abduction. He denied that he had seen Abdul-Yazit either being taken by

police officers from the Shali ROVD to be fed in a café or leaving the police station premises.

67. On 23 December 2009 the investigators conducted a witness confrontation between the applicant and the investigator from the Shali investigations department, Mr A.-Kh.B. The applicant stated that she had learnt from her relative Mr M.A. that Mr A.-Kh.B. had told him that he had seen her son after the abduction at the Shali ROVD. Mr A.-Kh.B. denied ever having seen Abdul-Yazit Askhabov.

68. On 17 January 2010 the investigators again questioned the applicant's husband, Mr D.A., who stated that during the abduction the perpetrators had hit him in the mouth with a pistol, but that he had not sought medical help afterwards.

69. On 20 January 2010 the investigators questioned Mr A.Gr., the deputy head of the criminal search division at the Shali ROVD, who stated that after the elimination of the leader of an illegal armed group, Yu. Askhabov, his brothers had been registered at their ROVD as persons of interest. He further stated that in August 2009 he had spoken with the applicant and her husband, both of whom had suspected that the head of the Shali ROVD had been responsible for the abduction of their son Abdul-Yazit. According to the officer, this theory had been examined and their suspicion had not been confirmed, nor had the hypothesis that Abdul-Yazit had disappeared in order to join illegal armed groups or that local power structures had been responsible for the abduction. The witness further stated that he had indeed promised the applicant that her son Abdul-Yazit would be released, but had done so only out of compassion for her suffering in connection with her son's disappearance.

70. On 27 January 2010 the investigators conducted a witness confrontation between the applicant and the Envoy, Mr O.Kh. The latter confirmed that after the abduction the applicant and her relative had arrived at his office and complained about the incident, and that he had immediately called the ROVD to follow up on the information. At the same time the witness denied that he had said, in the presence of the applicant and her relative, "You have no right to detain him [Abdul-Yazit] for longer than prescribed by the law". The applicant insisted that the Envoy had uttered those words.

71. On 28 January 2010 the investigators requested the permission of the Staropromyslovskiy District Court to obtain detailed information from the mobile telephone service provider regarding the calls made in Shali on the night of the abduction. On 29 January 2010 the District Court granted the permission.

72. On 30 January 2010 the investigators again questioned the applicant's relative Mr M.A., who stated that in his presence the Envoy had called the police to inquire about Abdul-Yazit, but that he had not used the

exact phrase, “You have no right to detain him [Abdul-Yazit] for longer than prescribed by the law”.

73. On 30 January 2010 the investigators also questioned officer S-Kh.B., who stated that on the night of 4-5 August 2009 he had been on duty at the Shali ROVD and that he did not recall whether anyone had been brought to the ROVD that night.

74. On 4 February 2010 the investigators seized the information concerning the phone calls and text messages made from mobile phones in Shali on the night of the abduction. As a result, on 22 February 2010 the investigators asked the company to provide detailed information concerning twelve phone numbers; the relevant information was given on 3 March 2010. Then on 7 April 2010 the investigators asked the Shali ROVD to check whether the owners of the mobile phone numbers could have been involved in the abduction. On 5 May 2010 the investigators reiterated their request to the police. In the end of May 2010 the ROVD replied stating that they were taking measures to verify the information (see paragraph 100 below).

75. In the meantime, on 9 and 17 February 2010 the Shali ROVD informed the investigators that they had no information concerning the involvement of Abdul-Yazit Askhabov in illegal activities. At the same time they pointed out that he was the brother of Yu. Askhabov, the leader of an illegal armed group, who had been eliminated as a result of a special operation conducted on 28 May 2009.

76. On 17 February 2010 the investigators again examined the crime scene at the applicant’s house. No evidence was collected.

77. On 20 February, 7 and 12 March 2010 the investigators questioned officers A.N., A.Dzh., K.A., Dzh.A. and S.M., all of whom stated that they had been on duty at the ROVD on the night of the abduction. Their statements were similar to the one given by their colleague, officer S.-Kh.B.

78. On 10 March 2010 the applicant’s husband requested that the investigators take the following steps:

“... identify the military regiment known as ‘the 8th unit’ stationed in Ivanovskaya Street in Shali on the premises of the former tailor’s shop and identify the servicemen who searched the [applicant’s] house after the abduction of Abdul-Yazit Askhabov by obtaining photographs of the staff of ‘the 8th unit’ ... and showing them to the relatives of the abducted man for identification.”

79. On 11 March 2010 the investigators questioned five witnesses: Mr B.B., Mr S.S., Mr Zh.B., Mr A.T. and Mr A.I., all of whom confirmed that they had received or made phone calls on the night of the abduction, but that they had no information concerning the incident.

80. On 12 March 2010 the investigators replied to the request of 10 March 2010, stating, amongst other things, the following:

“...

1. ... it is established that 'the 8th unit' stationed in Shali is a part of the patrolling battalion of the Chechnya Ministry of the Interior;

2. On 26 January, 28 February and 9 March 2010 the commander of the battalion was requested to provide the investigation with photographs of his staff aged between 35 and 40 years old for a subsequent identification parade; however, as of this date, no replies have been received ...”

81. On 12 March 2010 the investigators questioned Mr A.U., deputy head of the criminal search division of the Shali ROVD, who confirmed that he had had a telephone conversation with the Envoy, Mr O.Kh., after the abduction and that he had mentioned to the latter that Abdul-Yazit was the brother of the leader of an illegal armed group, Mr Yu. Askhabov, who had been eliminated in May 2009 by the ROVD, but that Abdul-Yazit had not been arrested or detained by their officers.

82. On 16 March 2010 the investigators questioned Mr M.B., the head of the criminal search division of the Shali ROVD, who confirmed that at the beginning of August 2009 he had ordered officer A.K. to visit the applicant's house and check whether all of the Askhabov brothers were at home. This check had been necessitated by the fact that their brother, Yu. Askhabov, had been the leader of an illegal armed group who had participated in terrorist activities and therefore his brothers might also have joined illegal groups. Prior to that, on several occasions, the witness had given similar instructions to other officers.

83. On 19 March 2010 the investigation of the criminal case was suspended for failure to identify the perpetrators. The applicant was informed thereof.

84. On 27 March 2010 the ORB-2 informed the investigators that it had been impossible to identify the owners of the mobile phone numbers used on the night of the abduction.

85. On 31 March 2010 the supervising prosecutor criticised the investigators for the suspension of the criminal proceedings and ordered that they be resumed. In particular, the prosecutor stated that the investigators had failed to take important steps:

“... from the statement given by witness Ms T.A., it appears that ten days after the abduction of Abdul-Yazit Askhabov, unidentified servicemen of law-enforcement agencies arrived at their house and that she recognised one of them as she had seen him before at the gates of the 8th unit of the A. Kadyrov police battalion no. 2. However, during the questioning the investigator failed to find out the circumstances in which she had seen this man; when and why he had visited their house; what he had been doing at the gates of the 8th unit (whether he had been on-duty at the entrance to the base or trying to enter it; whether he had been dressed in police uniform or civilian clothing). In addition, during the questioning the investigator failed to take a full anatomic description of this man (his face in general, forehead, eyebrows, eyes, mouth, lips, etc.), based on which it would have been possible to create his portrait for further identification at the district departments of the interior. No measures to identify this man have been taken ...

... The investigator forwarded requests for photographs of the unit's servicemen ... However, no replies were received. In addition, in violation of Article 183 of the Criminal Procedure Code, photographs of the staff of the police unit have not been seized at the department of human resources and have not been shown to witness Ms T.A. for identification.

...

... The investigator did not ask the traffic police for information concerning all the Mercedes vehicles with A511 registration numbers; not all of the owners of such cars have been identified and questioned.

The head of the criminal search division of the Shali ROVD, who was questioned by the investigator as a witness, stated that he had ordered officer A.K. to check whether all the Askhabov brothers were at home, as they were related to a member of illegal armed groups, Mr Yu.A., and there were fears that they could have joined illegal armed groups as well. In addition, prior to this, he had already given orders to operational search officers to check the whereabouts of the Askhabov brothers. However, the investigator failed to find out why officers of the Shali ROVD, having information about the Askhabov brothers possibly belonging to illegal armed groups, did not arrest them on 4 August 2009 when they visited their house ...”

86. Following the prosecutor's orders, on 5 April 2010 the investigation was resumed. The applicant was informed thereof.

87. On 5 April 2010 the investigators granted the applicant's request to have five human rights lawyers represent her in the criminal case.

88. On 7 April 2010 the investigators again questioned the applicant's relative Ms T.A., who reiterated that on around 22 August 2009 a group of armed men in camouflage uniforms had arrived at their house and introduced themselves as police officers. They did not produce any identity documents or explain which department of the interior they were from. She further confirmed her previous statement that she had recognised one of the men and again provided a physical description of him, stating that she would be able to identify him from a photograph. She explained that prior to the visit, she had seen him at the gates to the A. Kadyrov police battalion in Ivanovskaya Street in Shali; he had been wearing the same camouflage military uniform.

89. On 7 April 2010 the investigators again questioned the applicant's daughter, Ms A.A., who confirmed her previous statement.

90. On 15 April 2010 the investigators again questioned ROVD officer A.K., who stated that he had no information concerning the abduction and that, to his knowledge, the ROVD did not use Lada-Priora or Mercedes cars, or registration numbers containing the digits A511.

91. On 16 April 2010 the investigators questioned the applicant's son, Mr Dzh.A., whose statement about the abduction was similar to those given by the applicant.

92. On 27 April 2010 the investigators questioned ROVD officer A.K. yet again. He confirmed that upon the order of his superior, the head of the

criminal search division of the Shali ROVD, officer M.B., he had paid a visit to the applicant's house on 4 August 2009 to check whether all of the Askhabov brothers were at home. According to the witness, he had not been aware of the reasons for obtaining that information and stated that he had gone there in his personal Lada-Priora car.

93. On 27 April 2010 the investigators questioned officer Kh.-A.S., the head of the Shali ROVD, who stated that he had no information concerning the abduction.

94. On 28 April 2010 the investigators again questioned the head of the criminal search division of the Shali ROVD, Mr M.B., who confirmed that he had instructed officer A.K. to visit the applicant's house just as a "precaution".

95. On 29 April 2010 the investigators questioned Mr M-E.A., who stated that on 3 February 2010 he had purchased a Mercedes car from an unidentified man at the Urus-Martan car market and that on the same date he had registered the vehicle with the authorities and had been given the registration number A511 EK 95.

96. On 5 May 2010 the investigators requested that the Tatarstan Ministry of the Interior ("the MVD") question officer I.K., who was working there at the time, about the following:

"... who gave him the order to go to the Askhabovs' house and why?

- what vehicle did he use to go there, its make, registration number, colour, etc?
- who did he go with?
- who did he talk to in the Askhabovs' yard and what did they speak about?
- on his return to the Shali ROVD, to whom did he report about the visit to the Askhabovs' house? Did he prepare a written report or statement about the results?
- when and under what circumstances he had learnt about the abduction?"

The officer was questioned as requested on 1 June 2010 (see paragraph 101 below).

97. On 5 May 2010 the investigators complained to the Shali district prosecutor that the Shali ROVD had failed to assist them in carrying out necessary steps to solve the abduction of the applicant's son. In particular, they stated:

"... it has been a year since the commission of the crime, however, the operational search officers of the Shali ROVD have not established the suspects in the criminal case; this fact demonstrates that the officers of the criminal search division of the Shali ROVD failed to take necessary steps to solve the crime ...

In connection with the above you are requested ... to examine the operational search file in criminal case no. 72028 [in the Shali ROVD] and to take, if necessary, measures within the prosecutor's authority [to rectify the situation] ..."

No reply was given to this complaint.

98. On the same date, 5 May 2010, the investigation of the criminal case was again suspended for failure to identify the perpetrators. Nevertheless, following this the investigators took a number of measures (see below).

99. On 11 May 2010 the investigator in charge of the criminal case wrote to the Chechnya Minister of the Interior stating that on 9 April 2010 he had gone to the human resources department of the A. Kadyrov police battalion to seize the photographs of their personnel for identification by Ms T.A., but had been refused entry. The investigator requested access to the premises in order to seize the photographs. No reply was given to his request.

100. On 18 and 22 May 2010 the Shali ROVD informed the investigators that they were taking operational search measures to identify the owners of the mobile phone numbers used on the night of the abduction (see paragraph 74 above).

101. On 1 June 2010 upon the investigators' request to this end officer I.K. was questioned (see paragraph 96 above) and confirmed that he had visited the applicant's house on 4 August 2009 to check whether all of the Askhabov brothers were at home. He also stated that he had explained to the applicant's husband that he had not been involved in his son's abduction.

102. On 15 July 2010 the investigators requested that the Chechnya traffic police inform them about all Mercedes cars with registration numbers containing the digits A511.

103. On 17 August 2010 the head of the Chechnya Investigations Department wrote to the Chechnya Minister of the Interior stating, amongst other things, the following:

"... the second unit of the Investigations Department is investigating criminal cases opened in connection with abductions of residents of the Chechen Republic ...

In the process of the investigation of these criminal cases, opened between 2009 and 2010, the department's investigators on several occasions sent requests for assistance in carrying out operational search measures, as well as requests for information concerning servicemen of the Ministry of the Interior who participated in special operations or witnessed events and whose participation was necessary for the progress of the investigation in the criminal cases.

However, the servicemen of the Chechnya Ministry of the Interior have been carrying out the operational search measures in an inappropriate manner, and the investigators' requests for assistance and information are executed past their deadlines and not in full, and the replies given are primarily of a formal nature and do not provide the requested information.

For instance, ... in criminal case no. 72028 opened in connection with the abduction of A. Askhabov it is necessary to identify servicemen of the A. Kadyrov police battalion aged between 35 and 45 years old.

On 9 March and 5 May 2010 the investigator asked ... the battalion to provide photographs of their servicemen; however, no replies to the requests have been given.

On 11 May 2010 a letter concerning violations of Article 21 § 4 of the Criminal Procedure Code by the battalion commanders was sent to you by the interim head of the Investigations Department; however, no reaction from the Chechnya Ministry of the Interior has followed ...

... in connection with the above I ask you to ... take all measures possible to ensure that requests for assistance in these criminal cases are dealt with properly by your subordinates and within the time-frame prescribed by the law ...”

104. On 30 August 2010 the supervising prosecutor again criticised the investigators for the unlawful suspension of the investigation and ordered its resumption. He pointed out that his previous orders had not been carried out and stated that the investigation should check “... whether the abduction of Abdul-Yazit Askhabov had been perpetrated by relatives of the law-enforcement officers killed as a result of the actions of his [late] brothers, D.A. and Yu.A.” On the same date the investigation was resumed.

105. Between 9 and 20 September 2010 the investigators requested that the Shali ROVD assisted them in taking operational search measures aimed at solving the applicant’s son’s abduction. They received no replies.

106. Between September 2009 and September 2010 the investigators asked various district investigations departments, the various police departments in Chechnya, detention centres and hospitals in the North Caucasus and the nearby regions of southern Russia whether they had discovered or stored the body of Abdul-Yazit Askhabov, whether they had initiated any criminal proceedings against him and whether he had been arrested by their officers or detained on their premises. All replies were in the negative.

107. On an unspecified date in November 2010 the investigation of the criminal case was resumed.

108. On 23 November 2010 the investigators seized nine photographs of police officers aged between thirty-five and forty at the human resources department of the A. Kadyrov police battalion.

109. On 24 November 2010 the investigators again questioned ROVD officer A.K., who reiterated his previous statements. A copy of this statement was not furnished to the Court.

110. On 1 December 2010 investigators conducted a witness confrontation between the applicant and Shali ROVD officer I.K. The latter confirmed that on 4 August 2009 he had gone to the applicant’s house along with other police officers, and had inquired which of the three Askhabov brothers was Abdul-Yazit. Having identified Abdul-Yazit, he had left. A copy of this statement was not furnished to the Court.

111. On 30 December 2010 the investigation of the criminal case was again suspended for failure to identify the perpetrators.

112. On 1 February 2011 the supervising prosecutor again criticised the investigators for the suspension of the investigation and ordered that it be resumed and a number of necessary steps taken. On the same date the investigation was resumed.

113. On 6 February 2011 the investigators showed Ms T.A. the nine photographs of the police officers for identification. She did not identify anyone.

114. On several more occasions, namely 1 March, 5 April and 13 August 2011 and 20 January 2012 the investigation of the criminal case was suspended for failure to identify the perpetrators.

115. On 5 March, 7 May and 2 December 2011 and 31 May 2012 the supervising prosecutor criticised the investigators for the suspension of the investigation and ordered that it be resumed and the previous orders be executed.

116. The investigation was suspended again on 19 July 2012. Nevertheless, on 24 July 2012 the investigators examined the detainee registration log of the Shali ROVD. No relevant information was obtained.

117. The Government submitted that even though the whereabouts of Abdul-Yazit Askhabov had not been established, the investigation was still in progress.

118. In reply to the Court's request, the Government furnished most of the contents of criminal case no. 72028, which ran to 767 pages.

II. RELEVANT DOMESTIC LAW

119. For a summary of the relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007) and for the relevant reports and statements by the national authorities see *Aslakhanova and Others v. Russia* (nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, §§ 80-84, 18 December 2012).

THE LAW

I. EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

120. The Government contended that the complaint should be declared inadmissible as premature, as the investigation of the disappearance of Abdul-Yazit Askhabov 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 complaints with the courts about any acts or omissions on the part of the investigating authorities. She could also have claimed civil damages.

121. The applicant contested the Government's submission, stating that the only supposedly effective remedy, the criminal investigation, had proved to be ineffective. As for the possibility to complain to the courts about the investigators' acts or omissions, the applicant stated that the effectiveness of the investigation should not have depended on her efforts to point out the investigation's deficiencies; the authorities should have taken all measures possible of their own motion.

B. The Court's assessment

122. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73-74, 12 October 2006).

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

124. As regards a civil action to obtain redress for damage sustained as a result of illegal acts or unlawful conduct on the part of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

125. As regards criminal remedies provided for by the Russian legal system, the Court observes that the applicant complained to the law-enforcement authorities after the abduction of Abdul-Yazit Askhabov and that an investigation has been pending since 19 August 2009; within its time-frame the proceedings have been suspended and resumed on several occasions. The applicant and the Government dispute the effectiveness of the investigation.

126. 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' submissions

127. The applicant maintained that it was beyond reasonable doubt that State agents had taken away Abdul-Yazit Askhabov and subsequently killed him. In support of her complaint she referred to the following facts. The abductors had arrived in the exact type of civilian vehicles which were used by the Shali ROVD; the abductors had driven unhindered through a military checkpoint located nearby; the police officers had obstructed the investigation of the criminal case because they had been involved in the abduction; and that the police officers had suspected Abdul-Yazit Askhabov of belonging to illegal armed groups and therefore had motives for his arrest. The subsequent visit of the servicemen concerning the hideout in the applicant's house confirmed that her son had been detained by the police, as did the fact that one of the suspects had been seen on the premises of the police battalion in Shali. The applicant submitted that she had made a *prima facie* case that her son had been abducted by State agents and that the essential facts underlying her complaints had not been challenged by the Government. She stressed that her son had disappeared in life-threatening circumstances, that he had been missing for a long period of time and that therefore, he must be presumed dead.

128. The applicant further argued that the investigation of the abduction had been ineffective. In particular, she alleged that the investigators had either failed to take a number of crucial investigative steps or they had taken important steps with major deficiencies. For instance, the investigators had failed to examine the crime scene with forensic and other experts. That had led to the loss of such evidence as the culprits' fingerprints, and the tracks of their boots and the vehicles' tires. The witnesses to the events had been questioned belatedly and in a superficial manner. Despite having obtained information concerning the identity of one of the perpetrators, the investigators had failed to carry out the identification procedure properly. The applicant pointed out that the local police had failed to cooperate with the investigators owing to their involvement in the abduction. Given that the investigators had been unable actively to pursue the investigation without the police force, the investigation had not been sufficiently independent.

129. The Government contended that the domestic investigation had obtained no evidence to the effect that Abdul-Yazit Askhabov was dead or that any State agents had been involved in his abduction. They further claimed that the investigation of the incident had met the Convention requirement of effectiveness, as all possible measures available under national law were being taken to have the crime solved.

B. The Court's assessment of the facts

130. 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).

131. 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.

132. The period of time that has elapsed since the person disappeared, although not decisive in itself, is a relevant factor to be taken into account. It must be accepted that the more time that goes by without any news of the disappeared person, the greater the likelihood that he or she has died. The passage of time may therefore to some extent affect the weight to be attached to other elements of circumstantial evidence before it can be concluded that the person concerned is to be presumed dead. Such an interpretation is in keeping with the effective protection of the right to life as afforded by Article 2 (see, among other authorities, *Timurtaş*, cited above, § 83).

133. The Court reiterates that where the applicant makes out a *prima facie* case, it is for the Government 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).

134. The Court notes that in reply to its request for a copy of the investigation file into the abduction of Abdul-Yazit Askhabov, the Government furnished most of its contents.

135. In view of the parties' submission, the Court's task is to decide whether the circumstances of the case could warrant the conclusion that

State agents were responsible for the abduction of the applicant's son. The Court notes that, even though at the material time there was no curfew and the abductors arrived at the applicant's house in civilian vehicles – unlike in numerous other cases concerning abductions perpetrated by State agents in the same district several years prior to the events in question (see, for example, *Giriyeva and Others v. Russia*, no. 17879/08, 21 June 2011; *Kosumova and Others v. Russia*, no. 27441/07, 7 June 2011; *Malika Alikhadzhiyeva v. Russia*, no. 37193/08, 24 May 2011; *Matayeva and Dadayeva v. Russia*, no. 49076/06, 19 April 2011; and *Nasukhanov v. Russia*, no. 1572/07, 10 February 2011) – the materials in its possession demonstrate the validity of the applicant's allegation for the following reasons. Firstly, the abductors arrived in several vehicles, acted as an organised group and were able to drive freely through a military checkpoint. Secondly, the servicemen who visited the applicant's house several days after the abduction knew the location of a hideout which was known only to the applicant and her son, Abdul-Yazit Askhabov. Further, the investigators took no meaningful steps to check whether the abduction could have been perpetrated for other reasons, such as a blood feud, ransom, drugs or hostility. No serious steps were taken to verify those hypotheses and no information was obtained that the abductors could have been other than State agents (see, by contrast, *Zubayrayev v. Russia*, no. 67797/01, § 81, 10 January 2008). Lastly, the reluctance of the police to actively investigate the matter, along with the applicant's consistent allegations that police officers were involved in the incident, provide the Court with the grounds to conclude that the applicant has made a *prima facie* case that her son was abducted by State agents. The Government's statement that the investigators found no evidence proving the involvement of members of law-enforcement authorities in Abdul-Yazit Askhabov's disappearance is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties and drawing inferences from the Government's failure to provide another plausible explanation for the events in question, the Court finds that Abdul-Yazit Askhabov was arrested on 5 August 2009 by State servicemen.

136. There has been no reliable news of Abdul-Yazit Askhabov since his arrest. The Government have not submitted any explanation as to what happened to him afterwards.

137. The Court finds that, in a situation where a person is detained by unidentified police officers without any subsequent acknowledgment of the detention and is then missing for several years, that situation can be regarded as life-threatening. The absence of Abdul-Yazit Askhabov or of any news of him for almost four years supports this assumption.

138. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Abdul-Yazit Askhabov

must be presumed dead following his unacknowledged detention by State agents.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

139. The applicant complained under Article 2 of the Convention that her son Abdul-Yazit Askhabov had been abducted and subsequently deprived of his life by State agents and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. The parties’ submissions

140. The Government contended that the domestic investigation had obtained no evidence to the effect that Abdul-Yazit Askhabov was dead or that any State agents had been involved in his abduction. They further claimed that the investigation of the incident had met the Convention requirement of effectiveness, as all possible measures available under national law were being taken to have the crime solved.

141. The applicant argued that Abdul-Yazit Askhabov had been abducted by State agents and subsequently killed and that the investigation of the matter had been ineffective. In particular, she alleged that the investigators had either failed to take a number of crucial investigative steps or they had taken important steps with major deficiencies. She further alleged that the local police had failed to cooperate with the investigators owing to their involvement in the abduction. Given that the investigators had been unable actively to pursue the investigation without the police force, the investigation had not been sufficiently independent.

B. The Court's assessment

1. Admissibility

142. 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 domestic remedies should be joined to the merits of the complaint (see paragraph 126 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) Alleged violation of the right to life of Abdul-Yazit Askhabov

143. The Court has already found that the applicant's son must be presumed dead following unacknowledged detention by State servicemen. In the absence of any justification put forward by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of the substantive aspect of Article 2 in respect of Abdul-Yazit Askhabov.

(b) Effectiveness of the investigation of Abdul-Yazit Askhabov's disappearance

(i) General principles

144. 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 v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324).

145. 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, *Isayeva v. Russia*, no. 57950/00, § 210, 24 February 2005).

146. In this context, there must also be an implicit requirement of promptness and reasonable expedition (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-04, *Reports of Judgments and Decisions*, 1998-VI, and *Çakici v. Turkey*, 8 July 1999, §§ 80, 87 and 106, *Reports* 1999-IV). 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.

147. The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Ögur v. Turkey* [GC], no. 21954/93, § 88, ECHR 1999-III). 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* [GC], no. 21986/93, § 106, ECHR 2000-VII, and *Tanrikulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV). Any deficiency in the investigation which undermines its ability to establish the identity of the person(s) responsible will risk falling below this standard.

148. For an investigation into allegations of unlawful killing by State agents to be effective, 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*, 27 July 1998, §§ 81-82, *Reports* 1998-IV, and *Ögur*, cited above, §§ 91-92). This means not only a lack of hierarchical or institutional connection but also practical independence (see, for example, *Shanaghan v. the United Kingdom*, no. 37715/97, § 104, 4 May 2001).

149. 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 victim's next of kin 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

150. In the present case, the abduction of Abdul-Yazit Askhabov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

151. The Court notes that the applicant reported the abduction to the authorities on 5 August 2009 (see paragraphs 25 and 33 above). The official investigation was initiated on 19 August 2009 that is almost two weeks after the receipt of the applicant's complaint. From the beginning of the investigation, the applicant alleged that police officers had been involved in the incident (see paragraphs 38 and 41 above). Despite the fact that the investigators received that information within the first weeks of the proceedings, they questioned the police officers more than a month later (see paragraphs 47 and 48 above) and in such a superficial way that it necessitated subsequent re-questioning. This was not carried out until more than six months later, along with the initial questioning of other important witnesses from the police (see paragraphs 90, 92, 96, 69, 73, 77, 81, 82 and 93, 94 and 100 above) and was criticised by the supervising prosecutor

(see paragraph 104 above). Further, in spite of the consistent allegations of the applicant and her relatives that after the abduction, Abdul-Yazit Askhabov could have been detained in the Shali ROVD (see paragraphs 39, 46, 59, 61, 63, 64, 67, 70 and 72 above), the investigators limited themselves to examining the registration log of persons detained at the police station and questioning the police officers who could have been implicated in the incident. They made no attempts to question other persons, such as those who, according to the registration log, had been detained at the police station between 5 and 19 August 2009. In addition, the investigators failed to follow up properly the information concerning the identity of one of the alleged abductors who had been seen by a witness on the premises of the police unit stationed in Ivanovskaya Street in Shali (see paragraphs 60, 78, 80, 85, 88, 99 and 108 above). The investigators limited the scope of the search to several photographs of persons of a certain age and showed them to the witness more than year and a half after the events in question. None of the unit's officers were questioned, and no measures were taken to establish whether the abductors' vehicles could have belonged to that unit.

152. Furthermore, from the documents submitted it appears that on several occasions the supervising prosecutors criticised the investigators for failing to take important investigative steps (see paragraphs 85 and 104 above) and ordered that remedial measures be taken. Those instructions were not fully complied with.

153. It also transpires that the investigators' failure to take some of the important steps had been caused by the reluctance of the local police to cooperate with the investigators (see paragraphs 85, 99 and 103 above). In this connection, the Court notes that, firstly, such discords within the law-enforcement agencies should not preclude the domestic authorities from discharging their obligation to demonstrate diligence and promptness in dealing with such a serious matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII). Secondly, the alleged failure of the police to carry out the investigators' compulsory orders (see paragraphs 99 and 103 above) raises the issue as to the practical independence of the investigators, who were precluded from taking important steps by the failure of their police counterparts to execute their orders. The police's reluctance to actively pursue the investigation led to the loss of precious time and could not but have a negative impact on the overall conduct of the criminal proceedings (see, *mutatis mutandis*, *Mikheyev v. Russia*, no. 77617/01, § 116, 26 January 2006).

154. As regards the overall conduct of the proceedings, the Court notes that having been opened on 19 August 2009, the investigation was suspended at least eight times, without the necessary steps having been taken, and each time those suspensions were criticised by the supervising prosecutors. Those premature suspensions in a situation in which vital steps

had not been taken, along with the reluctance of the local police, undermined the investigators' ability to identify and punish the perpetrators (see *Ögur*, cited above, § 88).

155. As for public scrutiny, the Court notes that shortly after the initiation of the proceedings, on 1 September 2009, the applicant was granted victim status and questioned. It appears that she was informed about the suspensions of the proceedings; on 16 November 2009 she requested that the investigators take a number of steps, and on 18 November 2009 they decided that the steps requested by her would be taken within the criminal proceedings (see paragraph 61 above). It is unclear whether the applicant asked for access to the case file. Keeping the above factors in mind, it remains to be decided whether she was able to effectively pursue her legitimate interests in the proceedings.

156. The Government argued that the applicant had been granted victim status in the criminal case and therefore could 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, that remedy may offer a substantial safeguard against the arbitrary exercise of power by an investigating authority, given a court's power to set aside the impugned decision and indicate the defects to be addressed.

157. The Court, however, has strong doubts as to whether that remedy would have been effective in the circumstances of the present case for the following reasons. In 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 to identify the culprits. Assuming that the applicant's access to the case file would have provided her with the chance to assess the progress of the investigation, in the light of the compulsory orders of the supervising prosecutors of 31 March and 30 August 2010 (see paragraphs 85 and 104 above), it could have been presumed that the shortcomings would have been remedied and the necessary steps taken. However, the investigators suspended the proceedings without complying with the orders and taking the required steps.

158. In such a situation, even if the applicant had appealed against the investigators' actions at a later date, taking into account that the proceedings were ongoing for more than six months, it is highly questionable whether her appeal could have redressed 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 v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII): they must show their commitment by taking all steps of their own motion and demonstrating 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*, cited above, § 106, and *Tanrikulu*, cited above, § 109).

159. 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 prosecutors' direct orders to this end. This failure to act in a timely manner led to unnecessary protraction 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, particularly taking into account the reluctance of the local police to actively pursue the investigation. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances of the present case and dismisses their objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

160. 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 Abdul-Yazit Askhabov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

161. The applicant relied on Article 3 of the Convention, submitting that as a result of her son's disappearance and the State's failure to investigate it properly, she had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

162. The Government disagreed with this allegation, 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.

163. The applicant maintained her submissions.

B. The Court's assessment

1. Admissibility

164. The Court notes that this complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

165. The Court has found on many occasions that in a situation of enforced disappearance, the close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva v. Russia*, no. 7615/02, § 164, ECHR 2006-XIII (extracts)).

166. In the present case the Court notes that the applicant is the mother of the disappeared person. For several years she has not had any news of her missing son. During this period she has made enquiries about him and his fate to various official bodies. Despite her attempts, she has never received any plausible explanation or information about what became of him following his arrest. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

168. The applicant submitted that Abdul-Yazit Askhabov had been detained in violation of the guarantees contained in Article 5 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. The parties’ submissions

169. The Government asserted that no evidence had been obtained by the investigators to confirm that Abdul-Yazit Askhabov had been arrested or detained by law-enforcement authorities.

170. The applicant reiterated her complaint.

B. The Court’s assessment

1. Admissibility

171. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

172. 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*, no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII (extracts)).

173. The Court has found that Abdul-Yazit Askhabov was arrested by State agents on 5 August 2009 and has not been seen since. His arrest was not acknowledged, was not logged in any custody records and no official trace of his subsequent whereabouts or fate exists. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing,

since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

174. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicant's complaints that her son had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, to the conduct of the investigation, leave no doubt that the authorities failed to take prompt and effective measures to safeguard Abdul-Yazit Askhabov against the risk of disappearance.

175. In view of the foregoing, the Court finds that Abdul-Yazit Askhabov was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties' submissions

177. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention. The applicant had the opportunity to challenge the acts or omissions of the investigating authorities in court and could also have claimed damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

178. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

179. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

180. The Court reiterates that in circumstances where, as in the present case, a criminal investigation into a disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

181. Consequently, there has been a violation of Article 13 in conjunction with Articles 2 and 3 of the Convention.

182. As regards the applicant's reference to Article 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention (see *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008, and *Alikhadzhiyeva v. Russia*, no. 68007/01, § 96, 5 July 2007).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

183. 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

184. The applicant did not claim pecuniary damages. She claimed non-pecuniary damages for the suffering she had endured as a result of the loss of her son and the State's failure to investigate the matter effectively. She submitted that the amount of compensation should be determined by the Court on an equitable basis.

185. The Government submitted that finding a violation of the Convention would in itself comprise adequate compensation in the applicant's case.

186. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicant's son. The applicant herself has been found to be the victim of a violation of Article 3 of the Convention. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations. It awards the applicant 60,000 euros (EUR), plus any tax that may be chargeable thereon.

B. Costs and expenses

187. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to her legal representation amounted to EUR 1,800 (or 1,435 pounds sterling (GBP)). The applicant requested that the award be paid into the representatives' bank account in the United Kingdom and submitted the following breakdown of costs:

(a) EUR 1,125 (GBP 900) for six hours of research and drafting legal documents submitted to the Court and the domestic authorities at a rate of GBP 150 per hour;

(b) EUR 200 (GBP 160) for administrative and postal costs;

(c) EUR 475 (GBP 375) for translation costs.

188. The Government did not dispute the details of the calculations submitted by the applicant.

189. The Court has to establish first whether the costs and expenses were actually incurred and, secondly, whether they were necessary (see *McCann and Others*, cited above, § 220).

190. Having regard to the details of the information in its possession, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives.

191. As to whether the costs and expenses were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. The Court also notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly to the lawyers upon the applicants' request to this end (see, for example, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 174-75, ECHR 2005-VII).

192. In these circumstances, and having regard to the details of the claims submitted by the applicant, the Court awards EUR 1,800 as requested, plus any tax that may be chargeable on that amount to be paid into the representatives' bank account in the United Kingdom, as identified by the applicant.

C. Default interest

193. 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 of exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Abdul-Yazit Askhabov;
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 Abdul-Yazit Askhabov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the mental suffering caused to the applicant;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Abdul-Yazit Askhabov;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Articles 2 and 3 of the Convention;
8. *Holds* that no separate issue arises under Article 13 of the Convention in conjunction with Article 5;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage to the applicant;
 - (ii) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable to the applicant, to be converted into British pounds sterling, at the rate applicable at the date of settlement in

respect of costs and expenses, to be paid into the representatives' bank account in the UK;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 18 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President