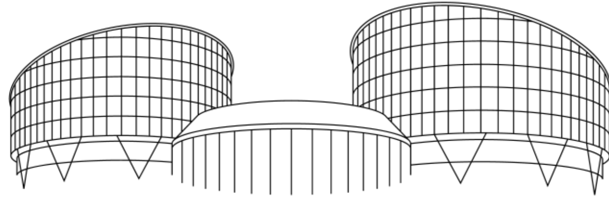

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF SAIDOVA v. RUSSIA**

*(Application no. 51432/09)*

JUDGMENT

STRASBOURG

1 August 2013

**FINAL**

09/12/2013

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

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

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 9 July 2013,

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

# PROCEDURE

1. The case originated in an application (no. 51432/09) 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 Tumisha Saidova ("the applicant"), on 5 September 2009.

2. The applicant was represented by Mr R. Khusnutdinov, a resident of Grozny. 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 that her son had been unlawfully detained and disappeared. She invoked Articles 2, 3, 5 and 13 of the Convention.

4. On 22 March 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1938 and lives in Novy Tsentoroy, Chechnya.

### A. Abduction of Ramzan Saidov

6. On 18 January 2002 Ramzan Saidov voluntarily surrendered to the Russian authorities and handed over his weapons. Pursuant to the State Duma decree of 13 December 1999 granting an amnesty for crimes committed by members of armed groups during the counter-terrorist operations in the Northern Caucasus, he was absolved of any crimes and issued with a certificate to that end by the Federal Security service (FSB) office of the Gudermes District.

7. In 2002 the applicant, her mother and Ramzan Saidov were living at 1/20 Kolkhoznaya Street, in Novy Tsentoroy, Grozny District.

8. According to the applicant, between 4 p.m. and 5 p.m. on 10 August 2002 a group of fifteen to twenty men arrived at her house in a UAZ-459 vehicle with the registration number 31-42 CHI. The men were armed with automatic weapons and wore masks and camouflage uniforms. Some of them spoke Russian and others Chechen. They checked the family members' identity papers and examined the amnesty certificate. Then they locked the applicant and her mother in the house, forced Ramzan Saidov into the car and drove away. The applicant has had no news of her son since that date.

9. The applicant referred to the following documents in support of her submissions: her eye-witness statement; her complaint to the authorities dated 1 November 2007 containing a description of the events; and the decision to adjourn the investigation dated 21 August 2008, containing a summary of her account of the circumstances of the abduction.

10. The applicant submitted before the Court that her son had been abducted on 10 August 2002, but she had told the investigative authorities that he had been abducted on 8 October 2002 together with I.S. and A.G. (see below). In her further observations before the Court the applicant insisted that the actual date of her son's abduction was 10 August 2002 and not 8 October 2002, as the national authorities had erroneously stated.

### B. Official investigation

11. The Government submitted a copy of the entire criminal file no. 56159 on the abduction of Ramzan Saidov, I.S. and A.G. (1,038 pages). The relevant information may be summarised as follows.

#### *1. The applicant's attempts to initiate a criminal investigation*

12. It is not clear when the applicant first reported her son's abduction. However, on 1 November 2002 the Chechnya prosecutor's office forwarded the applicant's complaint to the Grozny district prosecutor's office for the opening of a criminal investigation. It does not appear that following that the applicant had pursued this investigation.

13. The applicant in her observations argued that the criminal investigation into her son's abduction had been initiated in August 2002, but that file no. 56723 had apparently been lost in the archives. She submitted the following documents in support of her submissions.

14. A letter from the Special Envoy of the Russian President in the Chechen Republic for rights and freedoms ("the Special Envoy") to the prosecutor's office of the Chechen Republic, dated 28 October 2002, reads as follows:

> "[The Special Envoy] has received the [applicant's] complaint about the abduction of her son, [Ramzan Saidov], born in 1976, by unknown armed men in camouflage uniforms at 5 p.m. on 10 August 2002.
>
> There has been no news ever since; the search for him has not produced any results.
>
> You are asked to inform us and [the applicant] about the measures taken in order to identify the abductors and establish [Ramzan Saidov's] whereabouts."

15. A certificate issued by the Grozny District department of the interior dated 12 November 2005 reads in the relevant parts as follows:

> "[This is] to certify that criminal case no. 56723 has been opened into the kidnapping of [Ramzan Saidov] ... [abducted] on 10 August 2002 ... At present operative search measures are being carried out in order to establish the abducted man's whereabouts and find the culprits."

### 2. *Opening of a criminal investigation*

16. It follows from the case file that on 8 October 2002 the Grozny district prosecutor's office opened an investigation into the abduction of I.S. and A.G., who had lived in the same village as Ramzan Saidov. The case file was assigned no. 56159.

17. On 15 August 2006 the applicant complained to the NGO Memorial Human Rights Centre ("Memorial") that at about 12 p.m. on 10 August 2002 her son had been abducted by Russian servicemen.

18. On 30 January 2007 Memorial forwarded the applicant's complaint to the prosecutor's office of the Chechen Republic.

19. On 5 March 2007 the applicant was questioned by an officer of the department of the interior of the Grozny District. She stated that she did not remember the exact date, but that at about 7.30 a.m. in early October 2002 armed men in camouflage uniforms had burst into their house and taken Ramzan Saidov away. She subsequently learnt that on the same day local residents, I.S. and A.G., had also been abducted.

20. On 4 April 2007 the district prosecutor's office opened an investigation into the disappearance of Ramzan Saidov under Article 126 § 1 of the Criminal Code (kidnapping). The case file was assigned no. 14021.

21. On the same date, that case was joined with case no. 56159.

*3. Main witness statements*

22. On 26 and 27 March 2007 the investigator questioned the applicant and several other witnesses.

23. The applicant stated that in early October 2002 armed masked men in camouflage uniforms had arrived at their house and taken her son away. After they left, she went out and learnt that two other residents of the village, I.S. and A.G., had also been taken away.

24. A.B. stated that she had learnt from the applicant that Ramzan Saidov, who was her spouse's brother, had been abducted at about 7 a.m. in October 2002. She later found out that on the same day I.S. and A.G. had been also taken away.

25. The applicant's neighbours, Z.A. and Ya.U., were questioned. They stated that in October 2002 they had heard cries for help and had seen UAZ and URAL vehicles and a large number of armed servicemen in camouflage uniforms in the yard of the applicant's house. The servicemen stayed there for about an hour and then drove away. Z.A. and Ya.U. later learnt from the applicant that the servicemen had abducted her son. On the same day I.S. and A.G. had been abducted, but were released two weeks later. However, there was no news about Ramzan Saidov.

26. A.G. stated that in October 2002 armed masked men in camouflage uniforms had arrived at his house, put a bag over his head and taken him away. He was detained at an unknown place, beaten and questioned about his involvement in illegal armed units. Two weeks later the abductors released him in the vicinity of Novy Tsentoroy. After release, he learnt from local residents that on the day of his abduction I.S. and Ramzan Saidov had also been abducted. I.S. was later released, but there was no news about Ramzan.

27. I.S. gave similar statements about his abduction, questioning and release.

28. On 9 April 2007 the investigator again questioned the applicant. She stated that her son had been abducted early in the morning of 8 October 2002. The investigator asked the applicant to explain the contradiction that in her previous complaint to Memorial she had noted that her son had been abducted on 10 August 2002. The applicant replied that it was possible that she had made a mistake and that her son had been abducted on 8 October 2002 on the same day as I.S. and A.G.

*4. Main investigative steps*

29. On 9 April 2007 the applicant was granted victim status.

30. In April and May 2007 the investigator forwarded inquiries to various departments of the interior and the FSB informing them that Ramzan Saidov and two others had been kidnapped by armed men in a UAZ car with registration number 31-42 CHI and asking them to provide

information on whether special operations had been conducted by their units on that day. The investigator also asked various law-enforcement agencies to inform him whether the abducted men had been detained on their premises. Negative replies were given to those inquiries. The investigator questioned the applicant, her relatives and local residents. Those investigative steps were repeated at certain intervals, and the investigation was suspended and resumed on several occasions.

31. On 27 September 2007 the investigator examined the applicant's house. No evidence was collected.

32. The investigator further attempted to identify the owner of the UAZ car with registration number 31-42 CHI. On 29 November 2007 the traffic police department informed the investigator that no information about the current ownership of the registration number could be provided since the archives dated up to 2000 had been destroyed during the military operations.

33. At some time in 2008 the applicant lodged a complaint with the Grozny District Court ("the District Court") under Article 125 of the Code of Criminal Procedure requesting that the inaction of the prosecutor's office be declared unlawful and that the latest decision suspending the investigation be quashed. She also claimed non-pecuniary damage.

34. On 26 September 2008 the district prosecutor's office resumed the investigation.

35. On the same date the District Court rejected the applicant's complaint, holding that it had already been granted by the district prosecutor's office, that the investigation had been conducted in accordance with the law and that her claim for non-pecuniary damage had been lodged in breach of the procedural rules.

36. On 19 November 2008 the Supreme Court of the Chechen Republic upheld the decision on appeal.

### C. Civil proceedings

37. On 16 November 2010 the applicant brought civil proceedings against the Government claiming non-pecuniary damage caused by the inaction of the investigative authorities.

38. On 18 March 2011 the District Court dismissed the applicant's claims as unsubstantiated. The court noted that it could not assess the materials of the criminal proceedings instituted into the disappearance, since the investigation was still pending.

39. On 10 May 2011 the Supreme Court of the Chechen Republic upheld the decision on appeal. The court held that the applicant had failed to prove that her son had been abducted by State agents and that the actions or inaction of the investigative authorities had been unlawful.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

40. For a recent summary, see *Aslakhanova and Others v. Russia* (nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, §§ 43-59, 18 December 2012).

# THE LAW

## I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

### A. Compliance with the six-month rule

#### *1. The parties' submissions*

41. In their observations the Government submitted that the applicant had not complied with the six-month rule. They noted, in particular, that the applicant had failed to appeal against the investigators' decisions by way of judicial review, and the application of the six-month rule was triggered by the appeal decision, which had not been given in the applicants' cases.

42. The applicant was of the opinion that she had complied with the six-month rule.

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

43. The Court first notes that the Government failed to indicate a particular date or decision which could serve as a trigger for the calculation of the six-month time-limit. Moreover, it appears from the Government's argument on exhaustion of domestic remedies (below) that they consider the pending criminal investigation to be effective. Thus, their argument in this respect appears to be inconsistent with their position on the exhaustion of domestic remedies.

44. Nevertheless, the Court reiterates that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. It ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, for example, *Worm v. Austria*, 29 August 1997, §§ 32 and 33, *Reports of Judgments and Decisions* 1997-V). The rule should ensure that it is possible to ascertain the facts of the case before that possibility fades away, making a

fair examination of the question at issue next to impossible (see *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002, and *Abuyeva and Others v. Russia*, no. 27065/05, § 175, 2 December 2010).

45. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy was available to the applicant, the period runs from the date of the acts or measures complained of. Article 35 § 1 cannot be interpreted, however, in a manner which would require an applicant to bring a complaint before the Court before his position in connection with the matter has been finally determined at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to calculate the six-month time-limit from the date when the applicant first became, or ought to have become, aware of those circumstances (see, among others, *Zenin v. Russia* (dec.), no. 15413/03, 24 September 2009).

46. In a number of cases concerning ongoing investigations into the deaths of applicants' relatives the Court has examined the period of time from which the applicant could or should start doubting the effectiveness of a remedy and its bearing on the six-month time-limit provided for in Article 35 § 1 of the Convention (see *Şükran Aydın and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005; *Elsanova v. Russia* (dec.) no. 57952/00, 15 November 2005, and *Narin v. Turkey*, no. 18907/02, § 50, 15 December 2009). The determination of whether the applicant in a given case has complied with this admissibility criteria will depend on the circumstances of the case and other factors, such as the diligence and interest displayed by the applicants as well as the adequacy of the investigation in question (see *Narin*, cited above, § 43, and *Abuyeva and Others*, cited above, § 174).

47. In cases concerning disappearances, the Court has held that allowances must be made for the uncertainty and confusion that frequently mark the aftermath of a disappearance (see *Varnava*, cited above, §§ 162-63). The nature of the investigations into disappearances is such that the relatives of a disappeared person may be justified in waiting lengthy periods of time for the national authorities to conclude their investigations.

48. However, as explained in the above-cited *Varnava* judgment:

> "165. ... the Court considers that applications can be rejected as out of time in disappearance cases where there has been excessive or unexplained delay on the part of applicants once they have, or should have, become aware that no investigation has been instigated or that the investigation has lapsed into inaction or become ineffective and, in any of those eventualities, there is no immediate, realistic prospect of an effective investigation being provided in the future. Where there are initiatives being pursued in regard to a disappearance situation, applicants may reasonably await developments which could resolve crucial factual or legal issues. Indeed, as long as there is some meaningful contact between families and authorities concerning

complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay will not generally arise. However, where there has been a considerable lapse of time, and there have been significant delays and lulls in investigative activity, there will come a moment when the relatives must realise that no effective investigation has been, or will be provided. When this stage is reached will depend, unavoidably, on the circumstances of the particular case.

166. In a complex disappearance situation such as the present, arising in a situation of international conflict, where it is alleged that there is a complete absence of any investigation or meaningful contact with the authorities, it may be expected that the relatives bring the case within, at most, several years of the incident. If there is an investigation of sorts, even if sporadic and plagued by problems, the relatives may reasonably wait some years longer until hope of progress being made has effectively evaporated. Where more than ten years has elapsed, the applicants would generally have to show convincingly that there was some ongoing, and concrete, advance being achieved to justify further delay in coming to Strasbourg. Stricter expectations would apply in cases where the applicants have direct domestic access to the investigative authorities."

49. Applying the above principles, the Court recently found in the case of *Er and Others v. Turkey* (no. 23016/04, §§ 55-58, 31 July 2012) that the applicants, who had waited for a period of almost ten years after the disappearance of their relative before lodging their application, had complied with the six-month rule because an investigation, even if sporadic, was being conducted at the national level. The Court reached similar conclusions in another case, where the domestic investigation into the events had been pending for over eight years without any significant periods of inactivity by the time of the application to the Court, and where the applicants were doing all that could be expected of them to assist the authorities (see *Bozkır and Others v. Turkey*, no. 24589/04, § 49, 26 February 2013).

50. On the contrary, the Court has declared inadmissible applications where the applicants waited for more than ten years to lodge their complaints, and where there had been, for a long time, no elements allowing them to believe that the investigation would be effective (see *Yetişen and Others v. Turkey* (dec.), no. 21099/06, 10 July 2012; *Findik v. Turkey and Omer v. Turkey* (decs.), nos. 33898/11 and 35798/11, 9 October 2012; and *Taşçi and Duman v. Turkey* (dec.), no. 40787/10, 9 October 2012). In *Açış v. Turkey* (no. 7050/05, §§ 41-42, 1 February 2011) the Court rejected as out of time an Article 2 complaint which had been introduced more than twelve years after the kidnapping and disappearance of the applicants' relative, because the applicants had not shown that any concrete advance was being made in the investigation to justify the delay of more than ten years.

51. Turning to the case at hand, the Court notes that the applicant lodged her complaints seven years after the abduction, at which time the investigation was formally pending. The applicant maintained reasonable contact with the authorities, cooperated with the investigation and, where

appropriate, took steps in order to achieve a more effective outcome of the proceedings. Taking into account the above-mentioned case-law in respect of disappearance complaints, the overall duration of the proceedings as such does not justify the application of the admissibility criteria under Article 35 § 1.

52. The Court discerns certain periods of inactivity in the course of the proceedings, when it appears that no new information was communicated to or sought from the investigation authorities by the applicant. Thus, there was no direct communication between the applicant and the investigation for four years and four months (see paragraphs 12 and 19 above). Such period of inactivity could be considered significant enough to raise suspicions about the continuing effectiveness of the investigation. However, as it follows from the documents, the initial investigation file opened following a complaint by the applicant in case no. 51432/09 was lost and the applicant was not immediately made aware of that. In November 2005 the applicant was informed by the Grozny department of the interior that the case was still pending (see paragraphs 13-15 above). Furthermore, after 2007, once the applicant had obtained legal aid from an NGO, she took a more active stance in the proceedings and appealed against the investigator's decision to suspend them (see paragraphs 17-19 and 37-39 above).

53. Having examined the documents in the case at hand, the Court finds that the applicant's conduct vis-à-vis the investigation has been determined not by her perception of the remedy as ineffective, but rather by the expectation that the authorities would, of their own motion, provide her with an adequate answer in the face of her serious complaints. She timely furnished the investigating authorities with a sufficiently detailed account of the abduction and fully cooperated in other ways. She thus reasonably expected further substantive developments from the investigation. It could not be said that she failed to show the requisite diligence by waiting for the pending investigation to yield results (see, *mutatis mutandis*, *Abuyeva and Others*, cited above, § 179).

54. The Court thus considers that an investigation, albeit a sporadic one, was being conducted during the period in question in this case, and that the applicant did all that could be expected of her to assist the authorities (see *Varnava and Others*, cited above, § 166, and *Er and Others*, cited above, § 60). In view of these circumstances, and bearing in mind the specific context of disappearance cases, the Court is unable to conclude that the periods of inactivity in this case were such that the application should be rejected for failure to comply with the six-month rule. In the light of the foregoing, the Court dismisses the Government's objection as to the admissibility of the complaint based on the six-month time-limit.

### B. Exhaustion of domestic remedies

#### 1. *The parties' submissions*

##### (a) The Government

55. The Government argued that the application should be dismissed due to the applicant's failure to exhaust domestic remedies. They stressed that the applicant had had, and currently had, various remedies at her disposal to which she could have recourse with respect to the ongoing investigation. They further noted that the applicant had failed to appeal against the investigators' decisions by way of judicial review. They also stated that that the investigation was still pending and it was premature to conclude that the applicant had exhausted domestic remedies and that the remedies had not been effective.

##### (b) The applicant

56. The applicant argued that the investigation had been pending for a long time without producing any tangible results. This remedy had proved to be ineffective and her complaints had been futile.

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

57. In a recent judgment the Court concluded that the non-investigation of disappearances that occurred, principally, in Chechnya between 1999 and 2006 constitutes a systemic problem and that criminal investigations are not an effective remedy in this respect (see *Aslakhanova and Others*, cited above, §§ 217 and 219).

58. In such circumstances, and noting the absence of tangible progress in the criminal investigation over the years, the Court concludes that this objection should be dismissed, since the remedy relied on by the Government was ineffective in the circumstances.

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

### A. The parties' submissions

#### 1. *The applicant*

59. The applicant maintained that it was beyond reasonable doubt that the men who had taken away her son had been State agents. In support of this assertion she referred to the evidence contained in her submissions and

the criminal investigation file. She submitted that she had made a prima facie case that her son had been abducted by State agents and that the essential facts underlying the complaints had not been challenged by the Government. In view of the absence of any news of Ramzan Saidov for a long time and the life-threatening nature of unacknowledged detention in Chechnya at the relevant time, she asked the Court to consider him dead.

#### 2. *The Government*

60. The Government did not contest the essential facts as presented by the applicant. At the same time, they claimed that during the investigation no information had been obtained proving beyond reasonable doubt that State agents had been involved in the abduction. The mere fact that the abductors had been armed and had worn camouflaged uniforms without distinctions was not enough to presume so.

### A. The Court's assessment

#### 1. *General principles*

61. A number of principles have been developed in the Court when it is faced with the task of establishing facts on which the parties disagree (see *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, §§ 151-53, 13 December 2012).

62. The standard of proof is that of "beyond reasonable doubt", and 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 *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). A reasonable doubt is a doubt for which reasons can be drawn from the facts presented and not a doubt raised on the basis of a mere theoretical possibility or to avoid a disagreeable conclusion (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 338, ECHR 2005-III, with further references).

63. In the proceedings before it there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. The level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII).

64. More specifically, the Court has adjudicated a series of cases concerning allegations of disappearances in the Russian Northern Caucasus. Applying the above-mentioned principles, it has concluded that it would be

sufficient for the applicants to make a prima facie case of abduction of the missing person by servicemen, thus falling within the control of the authorities, and it would then be for the Government to discharge their burden of proof either by disclosing the documents in their exclusive possession or by providing a satisfactory and convincing explanation of how the events in question occurred (see, among many examples, *Aziyevy v. Russia*, no. 7626/01, § 74, 20 March 2008; *Utsayeva and Others v. Russia*, no. 29133/03, § 160, 29 May 2008; and *Khutsayev and Others v. Russia*, no. 16622/05, § 104, 27 May 2010). If the Government failed to rebut this presumption, this would entail a violation of Article 2 in its substantive part. Conversely, where the applicants failed to make a prima facie case, the burden of proof could not be reversed (see, for example, *Tovsultanova v. Russia*, no. 26974/06, §§ 77-81, 17 June 2010; *Movsayevy v. Russia*, no. 20303/07, § 76, 14 June 2011; and *Shafiyeva v. Russia*, no. 49379/09, § 71, 3 May 2012).

*2. Application to the present case*

65. Turning to the case at hand, the Court finds the following.

66. The applicant informed the Court that her son, Ramzan Saidov, had been detained at the family house in Novy Tsentoroy in the afternoon of 10 August 2002. The applicant produced her own statement and documents referring to the opening of the first criminal investigation file, no. 56723, which has apparently been lost (see paragraphs 8-9 and 14-15 above). In her letter to NGO Memorial which had triggered the second investigation, the applicant referred to the date of her son's abduction as midnight 10 August 2002 (see paragraph 17).

67. However, in March 2007 the applicant stated to the investigator in charge of the case of two other abducted men from Novy Tsentorory, A.G. and I.S., that her son had been detained early in the morning during the first days of October 2002, together with A.G. and I.S. It appears that no other direct witnesses of Ramzan Saidov's detention have been identified, although several local residents, including A.G. and I.S., heard that Ramzan Saidov had been detained on the same night. When, in April 2007, the investigator pointed out the discrepancy in the date of abduction to the applicant, she explained that her son had indeed been detained on 8 October 2002, and that her previous reference to 10 August 2002 had been a mistake (see paragraphs 19, 23-28 above).

68. Lastly, in her observations before the Court in August 2011, the applicant insisted that her son had been detained on 10 August 2002 and that the blame for the failure to record the date correctly should be attributed to the investigating authorities (see paragraph 10 above).

69. The Court notes that the applicant's allegation that her son was detained by State agents rests principally on her own eye-witness account. Unlike the other similar cases, she could not refer to other testimonies to

corroborate her statements, and the investigation did not come across such proof either. For want of supplementary evidence, the Court and the national authorities must rely on her recollections in order to establish the principal facts of the case. However, the applicant's statements regarding one of the central aspects of the case - the time of abduction - are at variance by two months. The applicant has not explained that discrepancy, as she told both the investigator and the Court that the other version had been a mistake. This appears unpersuasive and cannot but raise serious doubts about the overall coherence and credibility of her statements.

70. Lastly, the Court notes the gap in criminal proceedings between November 2002 and March 2007. This delay has further hampered the chances of the investigation to establish even the basic facts of the disappearance, and is attributable, at least partially, to the applicant (see *Nakayev v. Russia*, no. 29846/05, § 69, 21 June 2011).

71. To sum up the above, the only direct evidence is contradictory in the most essential aspects. The investigation's failure to obtain any other evidence is partially attributed to the applicant, who gave incoherent statements and has not maintained any contact with the investigating authorities for more than four years. The information in the Court's possession thus does not suffice to establish that the presumed perpetrators belonged to the security forces or that a security operation was carried out in respect of Ramzan Saidov (see *Zubayrayev v. Russia*, no. 67797/01, § 73, 10 January 2008, and *Tovsultanova*, cited above, § 88). Accordingly, the Court finds that the applicant has not made a prima facie claim regarding the State's responsibility for the abduction of Ramzan Saidov. In such circumstances, it is unable to shift the burden of proof to the respondent Government. Accordingly, the Court cannot establish to the requisite standard of proof that Ramzan Saidov has been detained by State agents or that his presumed death is attributable to the respondent State.

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

72. The applicants complained under Article 2 of the Convention that her son 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

73. The Government contended that the domestic investigations had obtained no evidence that the detainee had been held under State control or that he was dead. They further noted that the mere fact that the investigative measures had not produced any specific results, or had given only limited ones, did not mean that there were any omissions on the part of the investigative authorities. They claimed that all necessary measures were being taken to comply with the obligation to conduct an effective investigation.

74. The applicant reiterated her complaints.

## B. The Court's assessment

### *1. Admissibility*

75. The Court considers, in the light of the parties' submissions, that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. 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 Ramzan Saidov

76. The Court has found that, in the absence of relevant information, it is unable to find that security forces were implicated in his disappearance. Neither has it established "beyond reasonable doubt" that Mr Saidov was deprived of his life by State agents. 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

77. The Court notes that it has not found that the State was responsible for the abduction of Ramzan Saidov, or that he has been killed. However, it reiterates that the obligation to investigate under Article 2 also applies to cases where a person has disappeared in circumstances which may be regarded as life-threatening. Accordingly, having received information about a disappearance in life-threatening circumstances, the State authorities

were under a positive obligation to investigate the crime in question (see *Shaipova and Others v. Russia*, no. 10796/04, § 96, 6 November 2008).

78. The Court has already found that a criminal investigation does not constitute an effective remedy in respect of disappearances which have occurred, in particular, in Chechnya between 1999 and 2006 and that such a situation constitutes a systemic problem under the Convention (see *Aslakhanova and Others*, cited above, §§ 217 and 219).

79. In the case at hand, as in many previous similar cases reviewed by the Court, the investigation has been pending for many years without bringing about any significant developments as to the identities of the perpetrators or the fate of the applicant's missing relative. For example, no meaningful steps have been taken to identify and question the servicemen who could have witnessed or participated in the operation of 8 October 2002 see paragraphs 25-27 above). While the obligation to investigate effectively is one of means and not of results, the Court notes that the proceedings in the criminal file have been plagued by a combination of the same defects as enumerated in the *Aslakhanova and Others* judgment (cited above, §§ 123-25).

80. The Court accepts that at least some of the investigation's delays resulted from the applicant's contradictory statements and the failure to pursue her complaint in due time. However this consideration does not affect the above conclusion, since at no point have the authorities directly cited the passage of time as the reason for their subsequent inactivity, nor was the applicant reproached for this in the course of proceedings. The applicant had brought forward a serious complaint – that of abduction and disappearance in life-threatening circumstances. The failure to take the reasonable and timely steps in order to elucidate the circumstances of the events confirms the above-cited general conclusion about the ineffectiveness of criminal proceedings for this group of cases.

81. In the light of the foregoing, the Court finds that the authorities failed to carry out effective criminal investigations into the circumstances of the disappearance of the applicant's son. Accordingly, there has been a violation of Article 2 in its procedural aspect.

## IV. ALLEGED VIOLATIONS OF ARTICLES 3, 5 AND 13 OF THE CONVENTION

82. The applicant complained of a violation of Articles 3 and 5 of the Convention, as a result of the mental suffering caused by the disappearance of her son and the unlawfulness of detention. She also argued that, contrary to Article 13 of the Convention, she had no available domestic remedies against the violations claimed. Articles 3, 5 and 13 read, in so far as relevant:

**Article 3**

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

**Article 5**

"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."

**Article 13**

"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."

83. The Government contested those arguments.

84. The Court has not found that the State bore responsibility for Ramzan Saidov's abduction. Accordingly, in such circumstances, it finds that the situation does not disclose a violation of Article 3 or Article 5, as alleged by the applicant (see *Shaipova and Others*, cited above, §§ 111 and 117; *Movsayevy*, cited above, § 103; *Tovsultanova*, cited above, §§ 105 and 111, 17 June 2010; *Shafiyeva*, cited above, §§ 104 and 110; and *Medova v. Russia*, no. 5385/04, § 118, 15 January 2009). These complaints should,

therefore, be rejected as inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

85. As to the applicant's complaint under Article 13, the Court reiterates its above findings in paragraph 84 in respect of Articles 3 and 5 of the Convention. In respect of these complaints, the applicant had no arguable claim. Thus, the complaint under Article 13 is likewise manifestly ill-founded and must be rejected as inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention. As regards the reference to Article 13 in conjunction with Article 2 of the Convention, the Court observes that her complaint in this respect has already been examined in the context of Article 2. Having regard to the finding of a violation of Article 2 in its procedural aspect, the Court considers that although this complaint should be declared admissible, there is no need for a separate examination of it on its merits (see *Khumaydov and Khumaydov v. Russia*, no. 13862/05, § 141, 28 May 2009; *Zakriyeva and Others v. Russia*, no. 20583/04, § 108, 8 January 2009; and *Shaipova and Others*, cited above, § 124).

## V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

86. The applicant complained, in addition, about breach of the right to fair trial under Article 6. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

87. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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."

89. The applicant claimed an aggregate sum of 20,000,000 Russian roubles (RUB), which represents non-pecuniary and pecuniary damage for the loss of financial support by the breadwinner and legal and transport costs. The applicant did not submit a breakdown of costs and expenses.

90. The Government disputed these claims.

91. According to the Court's case-law, there must be a clear causal connection between the damages claimed by the applicants and the violation of the Convention. In the present case, regard being had to the findings of

the Court and the above criteria, the Court considers it reasonable to award the sum of 10,000 euros (EUR) as compensation of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable to the applicant on this amount.

92. 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. *Declares* the complaints concerning Articles 2 and 13 (in conjunction with Article 2) admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no substantive violation of Article 2 of the Convention in respect of Ramzan Saidov;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to investigate effectively the disappearance of the applicant's son;

4. *Holds* that no separate issue arises under Article 13 of the Convention in conjunction with Article 2 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into Russian roubles at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 August 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| Søren Nielsen<br>Registrar | Isabelle Berro-Lefèvre<br>President |
|---|---|