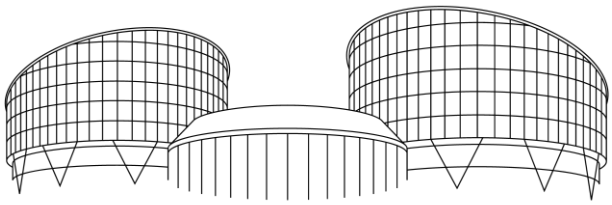

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ALPATU ISRAILOVA v. RUSSIA

(Application no. 15438/05)

JUDGMENT

STRASBOURG

14 March 2013

FINAL

08/07/2013

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

In the case of Alpatu Israilova v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 19 February 2013,

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

PROCEDURE

1. The case originated in an application (no. 15438/05) 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 Alpatu Israilova ("the applicant"), on 19 April 2005.

2. The applicant was represented by Ms K.A. Moskalenko and Ms M. Arutyunyan, lawyers practising, respectively, in Moscow and in Rostov, Russia. 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 in October 2004 her husband had been unlawfully detained in Dagestan and had then disappeared.

4. On 1 October 2009 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).

5. On 18 March 2010 the Court requested further factual information from the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in Khasavyurt, Dagestan. She is the wife of Yeraly Israilov, born in 1953. Her family, including her

two sons A.I. and M.I., lives in the settlement of Novye Plany, the village of Khasavyurt, which is situated on the administrative border with Chechnya.

A. Arrest of Yeraly Israilov and his three relatives on 19 October 2004

7. The description of the events of 19-23 October 2004 set out below is based on the written statements given by the applicant, her sons A.I. and M.I., her nephew R.I., and by ten of their relatives and neighbours. Some of the statements were collected by the applicant's lawyer in May 2005, while others were undated.

8. On 19 October 2004 at about 2 p.m. a special operation was carried out in Novye Plany, during which the neighbourhood was searched. The applicant believed that the operation had targeted a wounded member of an illegal armed group who had been in hiding there. The operation was apparently unsuccessful.

9. Later on the same day, at around 7 p.m., a group of servicemen of the Khasavyurt district department of the interior ("the Khasavyurt ROVD") and servicemen of the Gudermes (Chechnya) ROVD arrived at the applicant's house in three vehicles – two Zhiguli cars and one UAZ all-terrain vehicle. At that time the applicant, her husband Yeraly Israilov, their two sons A.I. and M.I., M.I.'s wife Kheda and Yeraly Israilov's nephew R.I. were at home.

10. A group of men in military camouflage uniforms formed a circle around the house, while others entered the house and spread out through the rooms. They ordered everyone inside to lie on the floor. Among the intruders Yeraly Israilov recognised a tall grey-haired man aged about forty-five to fifty, who originated from Gudermes, Chechnya. The man also recognised the applicant's husband, who had lived in Gudermes between 1979 and 1994. Then Yeraly Israilov was allowed to get up from the floor and dress himself.

11. The applicant's two sons and nephew were ordered to stand against the wall and were searched. The servicemen searched the house, including the cellar and the roof space. They collected the passports of the four men and a mobile phone.

12. Yeraly Israilov, his two sons and nephew were then ordered to get into a UAZ vehicle parked outside of the house. The vehicles went to the premises of the Khasavyurt ROVD, where three or four men in uniforms got out. About five or ten minutes later the UAZ with the four detainees, together with other cars, went on further towards Chechnya.

13. In the meantime, the applicant and her relatives and neighbours went to the Khasavyurt ROVD's premises. They submitted that up to 200 people had gathered there and demanded that the detainees be released. They were assured by the ROVD servicemen that the four men had been taken to the

Gudermes ROVD's premises in Chechnya for questioning and that they would be released without delay. After that the crowd dispersed.

B. Detention at the Gudermes ROVD's premises on 19-23 October 2004

14. According to the statements given by A.I., M.I. and R.I., after about forty minutes' drive the cars arrived at the Gudermes ROVD's premises, where the four men were ordered to get out. Without any registration in the custody log having been made, each was taken to a separate room and questioned. A.I. submitted that he had been questioned by an investigator named "Aleksey", who had asked him about the whereabouts of some men he did not know. He spent the rest of the night sitting on a chair in a room on the third floor.

15. M.I. was also taken to a room on the second floor and questioned by a man wearing uniform who presented himself as "Lieutenant-Colonel Sanya". The latter had noted down M.I.'s "explanations" and had left him to sleep in the same room.

16. Similarly, R.I. described how he had been questioned during the night by two men who had asked him questions about his uncle, Yeraly Israilov, and what had happened in their settlement in the past two weeks.

17. During the evening on 20 October 2004 the four detainees were brought together in one room and given food delivered by their relatives. After that, Yeraly Israilov was taken away, while his two sons and nephew were brought to an administrative detention cell, where they spent the night. That was the last time Yeraly Israilov was seen by his relatives.

18. On 21 October 2004 A.I., M.I. and R.I. were again taken to separate rooms and questioned. They understood from the questions that Yeraly Israilov had been suspected of aiding a distant relative who had been a member of illegal armed groups. The young men denied either knowing that relative or anything about his whereabouts. M.I. and R.I. claimed that on 21 October 2004 they each had been beaten and threatened in order to extract information about their relative. Later that day they encountered a serviceman named Said, who had known their family. In the evening on 21 October 2004 the three young men were brought together in one of the rooms of the ROVD's building. They spent the following day there, while Said brought them food delivered by their relatives.

19. At about noon on 23 October 2004 the head of the Gudermes ROVD, Arslan D., called A.I., M.I. and R.I. into his office and told them that they would be released. He returned their passports and the mobile phone to them. He also instructed them not to tell anyone about their detention. They were escorted outside of the building, where their relatives, including the applicant, had been waiting. From Arslan D. and from Said

they understood that Yeraly Israilov had been taken to the village of Khosin-Yurt for further questioning and would be released later.

C. Search for Yeraly Israilov and the ensuing investigation

20. The applicant and other relatives continued to look for Yeraly Israilov. They applied to various official bodies, including the local prosecutor's office, the offices of the Ministry of the Interior, public authorities and related the story of Yeraly Israilov's arrest and disappearance. However, they received very little information about his whereabouts. Mostly their letters were forwarded to various prosecutors. The applicant stated that she had not kept track of her initial applications to the authorities, as she had still been hopeful that her husband would soon be released. A summary of the relevant information is set out below.

21. On 8 February 2005 the applicant and several neighbours signed a letter to the President's Envoy for the Southern Federal Circuit. In it they referred to their previous applications to that office, as well as to the Chechnya and Dagestan Prosecutor's Offices and to the Gudermes ROVD. They submitted that Mr Israilov had been detained in relation to the activities of his relative who had been a member of an illegal armed group and stressed that Yeraly Israilov had maintained no contacts with that man and could not be charged with an offence.

22. On 16 March 2005 the Khasavyurt Town Prosecutor's Office ("the town prosecutor's office") informed the applicant that they had investigated her complaint and found out that on 19 October 2004 A.I., M.I. and R.I., as well as Yeraly Israilov, had been brought to the Gudermes ROVD in order for that authority to check whether they were involved in illegal armed groups. On 23 October 2004 A.I., M.I. and R.I. had been released after questioning, while Yeraly Israilov had not been released to date. The prosecutor's office referred to the statements given by the applicant and her sons and to explanations produced by the staff of the Khasavyurt ROVD. It informed the applicant that the law-enforcement authorities for the Gudermes district had not yet replied to the requests concerning the whereabouts of Yeraly Israilov and that she should herself enquire with the law-enforcement authorities in Chechnya where he had been detained.

23. On 14 June 2005 the applicant applied to the Khasavyurt Town Court ("the town court"), seeking an order obliging the town prosecutor's office to open a criminal investigation into the unlawful detention and subsequent disappearance of her husband. She referred to her futile attempts to obtain information about him and to the authorities' inactivity.

24. On 27 July 2005 the town court rejected the applicant's complaint. It found that the applicant's husband had been detained by the Gudermes ROVD and that all complaints arising in this respect should be directed to the Gudermes District Prosecutor's Office in Chechnya. The applicant

appealed against this decision, and on 1 November 2005 the Dagestan Supreme Court quashed the trial court decision. On 14 December 2005 the town court again rejected the applicant's complaint.

25. In July 2008 the applicant's daughter asked the Ombudsman of Chechnya to assist her in finding her father. She complained about the failure to act by the Gudermes ROVD.

26. It appears that this request was forwarded to the Chechnya Prosecutor, following which a criminal investigation was opened. In October 2008 the applicant and other relatives were summoned to the Gudermes department of the Investigative Committee of the Chechnya Prosecutor's Office for questioning (hereinafter "the Gudermes department"). They related the details of their relative's disappearance. On 6 October 2008, and then on 6 November 2008, the Gudermes department ruled not to open criminal proceedings upon the applicant's and her relatives' complaints, in view of the absence of a criminal event. Both decisions were then quashed by a supervising investigator.

27. On 15 December 2008 the Gudermes department opened criminal investigation file no. 44060. On 26 December 2008 and on 4 February 2009 the applicant, A.I. and M.I. were granted the status of victims. The decisions stated:

> "On 19 October 2004 at about 6-7 p.m. servicemen of the Khasavyurt (Dagestan) ROVD and of the Gudermes (Chechnya) ROVD carried out search and operational actions in the Khutor settlement of Khasavyurt in Dagestan. During this operation Yeraly Israilov, [A.I., M.I. and R.I.] were detained. On the same date the detainees were brought to the [premises of the] Gudermes [R]OVD in Chechnya.
>
> On 23 October 2004 all the detainees were released from the Gudermes [R]OVD; following which [A.I., M.I. and R.I.] returned to their place of residence; while there has been no news of Yeraly Israilov, born on 16 November 1953."

In January 2009 investigators of the same department examined and made photographs of the applicant's house in Khasavyurt.

28. In reply to the Court's request, the Government submitted two volumes of documents – copies of criminal investigation file no. 44060, comprising 422 pages.

29. In addition to the applicant's and her relatives' statements, summarised above, the file contained several statements by the servicemen of the Gudermes ROVD, including the head of the ROVD's criminal investigations department. They confirmed that in October 2004 the four Israilov family members had been detained in Khasavyurt in Dagestan, during a search for their relative A.A., an active member of an illegal armed group. In particular, Mr D., the then head of the ROVD's criminal investigations department, stated that the four men had been brought to the Gudermes ROVD and questioned, but no entries of their detention had been made. They had been released several hours later. The investigation also

collected and examined, in January 2009, the ROVD's detention entry log for 2004; it contained no entries in respect of the Israilovs.

30. In February 2009 the head of the Gudermes department asked the Chechnya Minister of the Interior to carry out an internal investigation in view of the suspicion that the servicemen of the Gudermes ROVD had committed criminal offences (unlawful deprivation of liberty and abuse of authority).

31. In February 2009 the head of the Khasavyurt ROVD denied, in writing, that their servicemen had taken part in a joint operation with the Gudermes ROVD on the date in question.

32. On 21 March 2009 an investigator from the Gudermes department drew up an "overview report" of the investigation. He concluded that the statements of the servicemen of the Gudermes ROVD to the effect that Yeraly Israilov had been released were not corroborated by the case materials. This report, as well as two reports of 24 and 27 March 2009 produced by investigators from the same department, noted that the four men had been detained by the ROVD for three days without registration.

33. In April 2009 the Chechnya Department of the Investigative Committee ("the Chechnya department") took charge of the investigation, in order to ensure impartiality and to avoid possible conflicts of interest arising from the involvement of the Gudermes department, as there was sufficient information to suspect that the servicemen of the Gudermes ROVD had been implicated in the crime.

34. In April 2009 the Chechnya Ministry of the Interior submitted their internal report to the Chechnya department. It found out that four servicemen who had taken part in the operation in Khasavyurt in October 2004 had died on various dates. The statements of the other servicemen and the examination of the documents had disclosed "irreconcilable differences in the statements", which could only be resolved within the criminal investigation. Thus, the internal inquiry was closed and the documents collected were forwarded to the Investigative Committee.

35. In June 2009 the Chechnya department forwarded the case to the Gudermes department for further investigation. In response, a senior investigator of the Gudermes department again asked for the case to be transferred to the Chechnya department for the following reasons:

> "The preliminary investigation has obtained sufficient evidence to implicate the head of the criminal police and the head of the criminal investigations departments of the Gudermes ROVD in the illegal detention of Israilov Ye., [A.I., M.I. and R.I.], and the disappearance of Israilov Ye. However, no decision in respect of the head of the criminal police department [Mr M.] and the former head of the criminal investigations department [Mr D.] have been taken, under Article 286 part 3 of the Criminal Code. ... The abuse of authority by the [R]OVD servicemen, entailing serious consequences, is confirmed not only by the evidence collected, but also by the reports of the head of the criminal investigations department [Mr D.], [and] senior police investigator [M.] of 12 April 2005, whereby they had informed the head of the ROVD that upon the

> release of Ye. Israilov, in the courtyard of the ROVD's premises, servicemen of regiment no. 2 of the Ministry of the Interior's patrol service [сотрудники полка ППСМ №2 МВД по ЧР] suggested that the released man should come with them. Having seen this, the head of the criminal investigations department of the ROVD suggested to the patrol servicemen that they should record this with the ROVD's duty officer of the ROVD [ОДЧ РОВД]. The foregoing proves, without any doubt, the implication of the above-named officers in the disappearance of Ye. Israilov."

The report proceeded to request, once again, that the investigation be transferred from the Gudermes department in view of the close relationship between the local police and the investigators, which it stated could have a bearing on the objectivity of the results of the investigation.

36. The investigation has been adjourned and reopened on several occasions for failure to identify the culprits. The Government referred to the latest decision to reopen the proceedings of 10 November 2009.

D. Questioning of the applicant

37. The applicant submitted that since 2009 she and her relatives had been regularly summoned to Gudermes in Chechnya for questioning. These questioning sessions, although formally related to the investigation of her husband's disappearance, had involved statements and questions being made by the officers which had concerned the applicant's complaint lodged with the Court and her relationship with the lawyer representing her. The applicant stated, in particular, that she had been told that Mrs Moskalenko had received a significant sum of money for her legal representation in the matter which would not be shared with her and that she had been advised to cancel the legal services agreement she had entered into with that lawyer. On 30 March 2009 the applicant signed a written statement addressed to a lawyer representing her in the domestic proceedings describing these events.

38. In response to the Court's request, the Government produced copies of the statements and records of the investigative measures taken involving the applicant and her two sons that were drawn up in 2009 and 2010 by the officers of the Gudermes department. Thus, the applicant was questioned on 12 May and 8 December 2009. Her son M.I. was questioned on 4 February 2009 and 14 January 2010, and her son A.I. was questioned on 14 January 2010. On 3 December 2009 and 25 February 2010 the applicant and her two sons took part in confrontations with three officers of the Gudermes ROVD implicated in the events. Her sons had also identified the rooms and premises of the ROVD where they had been detained. The records, co-signed by the applicant and her family members, were confined to the events of October 2004 and to a detailed description of Yeraly Israilov, such as the clothes he had been wearing on the day of his abduction. They did not mention the applicant's complaint to the Court or the question of her representation.

II. RELEVANT DOMESTIC LAW

39. For a summary of the relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

40. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance had not yet been completed. They further argued that it had been open to the applicant to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, but that she had not availed herself of any such remedy. They also argued that it had been open to the applicant to pursue civil complaints.

41. The applicant contested that objection. With reference to the Court's practice, she argued that she had not been obliged to apply to the civil courts and that the criminal investigation had proved to be ineffective.

B. The Court's assessment

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

43. As regards a civil action to obtain redress for damage sustained as a result of the alleged illegal acts or unlawful conduct 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, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies. The preliminary objection in this regard is thus dismissed.

44. As regards criminal-law remedies, the Court observes that the criminal investigation is currently pending. The parties disagreed as to its effectiveness.

45. 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 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. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

46. The applicant complained of a violation of the right to life of her husband, Yeraly Israilov, protected by Article 2 of the Convention, which reads as follows in the relevant part:

> "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. ..."

A. Admissibility

47. 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.

B. Merits

1. Alleged violation of the right to life

48. The applicant maintained that it had been established beyond reasonable doubt that her husband had been detained and then killed by State agents. In support of her complaint, she referred to the fact that the Government had not disputed her account of the circumstances of Yeraly Israilov's detention at the Gudermes ROVD, nor did the documents from the unfinished domestic investigation suggest any other possibility.

49. The Government stressed the incomplete nature of the domestic investigation, which had not resolved Mr Israilov's fate. In their view, it was still premature to make conclusions about the responsibility for his abduction or whether he could be presumed dead.

50. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of matters in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006).

51. Turning to the circumstances of the present case, the Court finds it sufficiently established, on the basis of numerous documents submitted to it, that Mr Israilov was detained on 19 October 2004 at his home, along with his three relatives, and taken to the premises of the Gudermes ROVD in Chechnya. His detention was based on the suspicion that he had committed a criminal offence – namely, aiding A.A., an alleged member of a criminal

group – although no formal charges had been laid against him. During his detention he was questioned on the ROVD premises, presumably about his suspected association with A.A. It does not appear that formal records were drawn up in respect of his detention or questioning. Although some ROVD officers alleged that he had been released, either on the same day or after three days (see paragraphs 29 and 32 above), he has never been seen again and his family have had no news of him. The investigation did not establish the exact circumstances, or even the timing, of his alleged release. There is no plausible explanation as to what happened to him after his detention.

52. The Court reiterates that in situations such as the one at hand, the onus is on the Government to provide a plausible explanation as to what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005–VIII). The Government referred to the unfinished nature of the criminal investigation and to the lack of evidence of the applicant's husband's death. However, the Court considers that the fact that the investigation has failed to progress beyond establishment of the basic facts communicated by the applicant should not be detrimental to her arguments of State responsibility for Mr Israilov's detention. It concludes that the Government have failed to provide a plausible explanation as to Mr Israilov's fate following his detention at the Gudermes ROVD, or to show, convincingly, that he has been released.

53. It remains to be seen whether Yeraly Israilov can be presumed dead following his unacknowledged detention. The Court reiterates that in a number of cases concerning disappearance in the Russia's Northern Caucasus it has repeatedly held that when a person is detained by unidentified State agents without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. Those considerations were reiterated in situations where, as in the present case, persons disappeared from places and premises under the authorities' full control (see, for example, *Yusupova and Zaurbekov v. Russia*, no. 22057/02, § 55, 9 October 2008; *Magomadov v. Russia*, no. 68004/01, § 98, 12 July 2007; and *Asadulayeva and Others v. Russia*, no. 15569/06, § 94, 17 September 2009). The absence of Yeraly Israilov or of any news from him for over eight years supports the assumption of death.

54. For the above reasons, the Court considers that it has been established beyond reasonable doubt that Yeraly Israilov must be presumed dead following his unacknowledged detention by State servicemen. Consequently, the responsibility of the respondent State is engaged. Noting that the authorities have not relied on any exceptions to the right to life listed in Article 2 § 2, it follows that liability for his presumed death is attributable to the respondent Government.

55. Accordingly, there has been a violation of Article 2 in its substantive aspect in respect of Yeraly Israilov.

2. The alleged inadequacy of the investigation into the abduction

56. The applicant pointed to a number of serious deficiencies in the investigation into her husband's abduction, which she considered incompatible with the requirements of the Convention. She noted, in particular, a significant delay before the opening of the investigation, its repeated adjournment and reopening, resulting in serious delays in taking the most essential procedural steps, and a failure to take a number of crucial measures.

57. The Government argued that the investigation had been in line with domestic legal requirements and with the Convention standards. They stressed that the applicant had failed to rely on the domestic remedies available to her as a victim in the proceedings.

58. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, among many authorities, *Kaya v. Turkey*, 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I). It has developed a number of guiding principles to be followed for an investigation to comply with the Convention requirements (for a summary of these, see *Bazorkina*, cited above, §§ 117-119).

59. As to the case at hand, the investigation has been pending for many years without any significant developments, such as establishing the identities of the perpetrators or the fate of the applicant's missing husband. While the obligation to investigate effectively is one of means and not of results, the Court notes that the criminal proceedings opened by the district investigative committee have been plagued by a combination of the serious defects it has already enumerated in many previous judgments concerning disappearances in the region (see, for example, *Magomadov*, cited above, §§ 105-09; *Shakhgiriyeva and Others v. Russia*, no. 27251/03, §§ 168-173, 8 January 2009; and *Sasita Israilova and Others v. Russia*, no. 35079/04, §§ 113-117, 28 October 2010). Most notably, the investigation was instituted with a delay of over four years; it has been repeatedly adjourned and reopened, thus protracting the taking of the most essential procedural steps and increasing the risk of irreversibly losing valuable evidence and witnesses' memories fading; by 2010 it had failed to establish the basic facts concerning the detention and disappearance or to collect evidence relevant to Yeraly Israilov's detention, for example, through obtaining the records of his questioning at the premises of the ROVD or identifying the persons who had questioned him. No one has been identified as a suspect or charged with his unlawful detention or disappearance.

60. Moreover, the stance of the investigative authorities after the news of his detention had been communicated to them by the applicant significantly contributed to the likelihood of Mr Israilov's disappearance, as none of the necessary steps was taken in the crucial first days or weeks after his detention. The authorities' behaviour in the face of the applicant's well-substantiated complaints gives rise to a strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation. The Court notes with particular dismay the decisions taken in 2005 by the law-enforcement authorities and courts in Dagestan, where the applicant had turned for assistance after her husband's disappearance, stating that she should pursue the matter on her own with the authorities in Gudermes, despite clear indications of the commission of a serious crime (see paragraphs 22-24 above).

61. In the light of the foregoing, the Court concludes that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the disappearance of Yeraly Israilov. It accordingly dismisses the Government's objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal proceedings, and holds that there has been a violation of Article 2 of the Convention on that account.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

62. The applicant's complaint under Article 3 is three-fold. First, she complained that her husband had been ill-treated upon his detention; second, that no investigation had been carried out by the authorities into this allegation; and third, that she had suffered severe mental distress and anguish in connection with his disappearance. She relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

63. The Court notes that this complaint is linked to the one examined above under Article 2 and must therefore likewise be declared admissible.

B. Merits

1. Alleged ill-treatment of the applicant's husband and lack of investigation

64. The applicant alleged that, drawing inferences from the harsh conditions of detention of her sons and nephew at the premises of the

Gudermes ROVD, she had reasonable grounds to conclude that her husband, too, had been subjected to treatment in breach of Article 3. She further pointed out that these allegations had not been investigated properly.

65. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25, pp. 64-65, § 161 *in fine*).

66. The Court has found it established that Mr Israilov must be presumed dead following his unacknowledged detention and that the responsibility for his death lies with the State authorities. However, in the absence of any relevant information or evidence the Court is unable to establish, to the necessary degree of proof, the exact way in which he died and whether he was subjected to ill-treatment while in detention.

67. As to the applicant's complaint about failure to investigate this allegation properly, the Court notes that the substance of the applicant's complaint to the authorities concerned her husband's disappearance and that this matter has been examined by the Court above under the procedural aspect of Article 2.

68. Against this background, the Court finds no violation of Article 3 of the Convention on account of the alleged ill-treatment of Mr Yeraly Israilov and a lack of investigation by the State authorities in that regard.

2. Alleged violation of Article 3 in respect of the applicant

69. The Court has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. The essence of such a violation does not lie mainly 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)).

70. The Court reiterates its findings about the State's responsibility for the abduction and the failure to carry out a meaningful investigation into the fate of the disappeared man. It finds that the applicant, as the wife of Mr Israilov, must be considered a victim of a violation of Article 3 of the Convention on account of the distress and anguish which she suffered, and continues to suffer, as a result of her inability to ascertain the fate of her husband and on account of the manner in which her complaints have been dealt with.

71. There has accordingly been a violation of Article 3 of the Convention in respect of the applicant.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

72. The applicant complained of a violation of her husband's right to liberty and security. She relied on Article 5 of the Convention, which reads insofar as relevant as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

73. The Government contested that argument.

74. The Court notes that this complaint is linked to the ones examined above and must therefore likewise be declared admissible.

75. The Court has found on many occasions that unacknowledged detention is a complete negation of the guarantees contained in Article 5 and discloses a particularly grave violation of its provisions (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001; *Luluyev and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII (extracts); and *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 233, 13 December 2012).

76. The Court furthermore confirms that since it has been established that the applicant's husband was detained by State agents, apparently without any legal grounds or acknowledgement of such detention, this constitutes a particularly grave violation of the right to liberty and security of persons enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

77. The applicant further complained of the fact that her house had been searched, unlawfully, on 19 October 2004. She relied on Article 8 of the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

78. The Government contested the admissibility of this complaint, pointing to the absence of the applicant's submissions to the domestic authorities to that effect and the unfinished nature of the criminal investigation. The applicant, in turn, alleged that she had had no effective remedies in respect of the complaint under Article 8 and pointed to the inefficiency of the criminal investigation.

79. The Court reiterates that while, in accordance with Article 35 § 1 of the Convention, those seeking to bring their case against the State before the Court are required to first use the remedies provided by the national legal system, there is no obligation under the said provision to have recourse to remedies which are inadequate or ineffective. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/00 et seq., 10 January 2002).

80. The Court has already found the criminal investigation in the present case inefficient, since it has been plagued with serious delays and unable, even after many years, to establish the most basic facts about the events forming the basis of the complaint. Thus, by 2010 it had failed to identify the servicemen or agencies implicated in the events or to clarify the legal grounds for the measures taken in October 2004.

81. For the same reasons as cited above, the Court does not find that the applicant had at her disposal effective remedies which she failed to use in respect of the criminal investigation. The Government's objection should, therefore, be dismissed. The Court further finds that the complaint is not inadmissible on any other grounds and must be declared admissible.

B. Merits

82. It is true that the applicant did not submit any separate complaints about the search to the domestic law-enforcement authorities and that the criminal proceedings concerned unlawful detention and murder. However, a number of witness statements produced by the applicant (see paragraphs 10 and 11 above) attest to the carrying out of a search at her family home. In fact, the Government do not deny that the search in question took place.

83. As transpires from those statements, which are not contested by the Government, the servicemen did not show the applicant a search warrant. Neither did they indicate any reasons for their actions. Furthermore, it appears that no search warrant was drawn up at all, either before or after the events in question. In sum, the Court finds that the search in the present case was carried out without any, or any proper, authorisation or safeguards.

84. Accordingly, there was an interference with the applicant's right to respect for her home. In the absence of any reference by the Government to the lawfulness and proportionality of this measure, the Court finds that there has been a violation of the applicant's right to respect for her home guaranteed by Article 8 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

85. The applicant complained that she had been deprived of effective remedies in respect of the disappearance of her husband, 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. Admissibility

86. 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.

B. Merits

87. The Court reiterates that in circumstances where, as here, 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).

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

89. In so far as the applicant could be understood to also refer 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. ALLEGED BREACH OF ARTICLE 34 OF THE CONVENTION

90. The applicant complained that she and her relatives had been repeatedly summoned to Gudermes, Chechnya, for questioning, and that this and the statements made by the investigators there had had the aim of dissuading her from maintaining her application in Strasbourg. She relied on Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. Submissions by the parties

91. The Government admitted that the applicant and her sons had been involved in a number of investigative measures between 2009 and 2010 and supplied copies of the relevant records. They argued that this had not been connected to the applicant's complaint to this Court but rather had been aimed at establishing the facts of the case related to Mr Israilov's disappearance and at resolving contradictions between different statements previously obtained. They denied that any officials had ever put any pressure on the applicant or her relatives in connection with her application to the Court.

92. The applicant stated that, in her opinion, her and her sons being repeatedly summoned for questioning in Chechnya, to the place where her husband had disappeared, had in fact been aimed at dissuading her from continuing her complaint in Strasbourg. She insisted that all the necessary information about the circumstances in which the four men had been detained at the Gudermes ROVD had been collected during previous years and that the actions of the investigators in 2009 and 2010 had, in fact, been pointless. She reiterated that she and her relatives had been subjected to pressure aimed at getting her to dismiss her representative and to withdraw her complaint.

93. The applicant submitted an overview of several dozen individual judgments of the Court in which the question of hindrance to the right of individual petition had been discussed. She argued that her and her sons being repeatedly summoned should be regarded as interference with that right, in view of the Court's practice.

B. The Court's assessment

94. The Court reiterates that the right of individual petition under Article 34 of the Convention will only operate effectively if an applicant can interact with the Court freely, without any pressure from the authorities (see *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports* 1996−IV). The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy or having a "chilling effect" on the exercise of the right of individual petition by applicants and their representatives (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999−IV, with further references; *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002; *Fedotova v. Russia*, no. 73225/01, §§ 48-51, 13 April 2006; and *Nurmagomedov v. Russia*, no. 30138/02, § 6, 7 June 2007). At the same time, Article 34 does not prevent the State from taking measures in order to improve the applicant's situation or even from solving the problem which is at the heart of the Strasbourg proceedings (see *Vladimir Sokolov v. Russia*, no. 31242/05, § 81, 29 March 2011).

95. The Court finds that the applicant's complaint raises two separate questions: whether the State officials tried to dissuade her, directly, or acting through her relatives, to withdraw her complaint; and whether being summoned for the carrying out of investigative actions in Gudermes in itself amounted to a breach of the right of individual petition.

96. As to the first question, the records of the proceedings in question, co-signed by the applicant and her sons, relate only to the circumstances of the events under investigation, i.e. the unlawful detention and disappearance of Yeraly Israilov in October 2004. The applicant's complaint of intimidation is thus not corroborated by any evidence, except her own statement. The Court remarks in this respect that the applicant's statements about the alleged intimidation have been rather unspecific and general; she failed, for example, to point to the exact dates or circumstances when such statements were allegedly made, or to identify the persons who made them. Nor does it appear that the authorities have attempted to obtain any written statements from the applicant withdrawing her application. The Government, on the other hand, firmly denied any such actions and pointed to the undisputed records, which contained no mention of the proceedings

before this Court. In such circumstances, the Court finds that this part of the applicant's allegation is not supported by the relevant evidence and should thus be dismissed.

97. The other question is whether the applicant and her sons repeatedly being summoned could in itself be regarded as a breach of the State's obligation under Article 34 of the Convention. It is not in dispute between the parties that in the present case the applicant and her two sons had been summoned to the Gudermes Department of the Investigative Committee on a number of occasions between 2009 and 2010, where they were questioned and asked to participate in investigative measures such as site examinations and confrontations with other witnesses. As noted above, the questions posed to the applicant and her sons, as witnesses and victims of the crime under investigation, focused entirely on the events of October 2004.

98. The Court understands the applicant's doubts as to whether these steps should not have been performed earlier, or whether the discrepancies in their previous statements did indeed require additional questioning sessions. However, these considerations relate more to the efficiency of the investigation. The Court does not discern anything in the present case which could attest to the authorities' bad faith in carrying out these steps, nor does it find that these measures were calculated to pressure the applicant to withdraw or modify her complaint or otherwise interfere with the effective exercise of her right of individual petition (see *Konstantin Markin v. Russia* [GC], no. 30078/06, § 163, ECHR 2012 (extracts)). It might be understandable that the applicant perceived direct contact with the law-enforcement bodies as threatening, in view of her experience and the overall security situation in the region, but such approach leaves the State authorities without appropriate recourse if they wish to investigate the complaints and to provide relief (see *Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, § 166, 21 June 2007).

99. Accordingly, the Court does not find that the Respondent State has been in breach of their obligations under Article 34 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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. Damage

101. The applicant claimed 65,000 euros (EUR) in respect of non-pecuniary damage in relation to the suffering and mental distress caused to

her by her husband's disappearance and the violation of her right to respect for her home. In addition, in the event that the Court found a breach of the State's obligations under Article 34 of the Convention the applicant sought an award of EUR 10,000 for herself and an equal amount for each of her two sons and for her nephew.

102. The Government disputed the amounts claimed.

103. Having regard to the violations found and its relevant practice, the Court awards the applicant EUR 65,000 in respect of non-pecuniary damage.

B. Costs and expenses

104. The applicant also claimed EUR 4,740 for costs and expenses incurred before the Court. She submitted a breakdown of four lawyers' work undertaken in representing her since October 2004.

105. The Government disputed the reasonableness and justification of the amount claimed.

106. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, and, in particular, to the fact that the applicant has only granted two powers of attorney to represent her and that only the lawyers empowered by those documents have entered into correspondence with the Court, the Court considers it reasonable to award the sum of EUR 3,500 for the proceedings before the Court.

C. Default interest

107. 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. *Joins* 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 Yeraly Israilov;

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 Yeraly Israilov disappeared;

5. *Holds* that there has been no violation of Article 3 of the Convention in respect of the alleged ill-treatment of Yeraly Israilov and the failure to investigate it;

6. *Holds* there has been a violation of Article 3 of the Convention in respect of the applicant on account of her mental suffering;

7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Yeraly Israilov;

8. *Holds* that there has been a violation of Article 8 of the Convention in respect of the search carried out at the applicant's home;

9. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Articles 2 and 3 of the Convention;

10. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Article 5;

11. *Holds* that the Respondent State has not been in breach of their obligations under Article 34 of the Convention;

12. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 65,000 (sixty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 14 March 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President