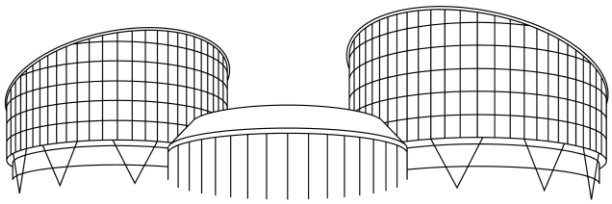

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TOVSULTANOVA v. RUSSIA

(Application no. 26974/06)

JUDGMENT

STRASBOURG

17 June 2010

FINAL

04/10/2010

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

In the case of Tovsultanova v. Russia,

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 26974/06) 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 Liza Tovsultanova ("the applicant"), on 21 May 2006.

2. The applicant was represented by Mr D. Itslayev, a lawyer practising in Nazran. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 2 March 2009 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951. She is the mother of Said-Magamed (also spelled as Said-Magomed) Tovsultanov, who was born in 1970. At the

material time she lived in Sleptsovskaya (also known as Ordzhenikidzovskaya), Ingushetia. Currently she lives in Katar-Yurt (also spelled as Katyr-Yurt), Chechnya.

A. Disappearance of the applicant's son

1. The applicant's account

6. The applicant did not witness the disappearance of Said-Magamed Tovsultanov. The account below is based on the anonymous statements of third persons summarised by the applicant and submitted by her to the Court.

7. In September 1999, before the beginning of the large-scale military operations in Chechnya, the applicant and Said-Magamed Tovsultanov moved from Katar-Yurt, Chechnya, to the village of Sleptsovskaya in Ingushetia. The applicant and her son, who were registered as forced migrants in the village, stayed with their relatives, the family of Ms Zh.S. In 2002 the applicant returned to Katar-Yurt, whereas her son Said-Magamed Tovsultanov stayed on in Sleptsovskaya with their relatives.

8. On 14 June 2004 (in the submitted documents the date was also referred to as 13 June 2004) the applicant was at home in Katar-Yurt. At about 3 p.m. a woman came to her house and told her that her son had been abducted in Sleptsovskaya. The applicant immediately went to her relative's home in that village. The applicant and Mrs Zh.S. were in the yard when a woman named Roza, who was from Roshni-Chu in Chechnya, stopped by. She told the women that on 14 June 2004 she had been in the forced migrants' tent camp when one of her female acquaintances had told her that at about 1 p.m. on the same day a group of armed masked men in camouflage uniforms in five VAZ and UAZ cars had apprehended a young Chechen man in a white VAZ-2107 car with registration number C897 ME. The incident had taken place in the centre of Sleptsovskaya, on the corner of Pobeda and Rabochaya Streets. During the apprehension, right before he had been put in one of the cars, the man, who had been dressed in a white shirt, had managed to shout out to the bystanders that his name was Said-Magamed Tovsultanov and that he was from Katar-Yurt. After that the group of armed men had driven away with him and his car.

9. The applicant immediately went to the centre of Sleptsovskaya to obtain information about her son, but to no avail. On the following day she left for Katar-Yurt. A day later she went to Sleptsovskaya again. On the way there she got out of the vehicle at the crossroads in the vicinity of the village of Assinovskaya in Chechnya, next to the “Kavkaz” motorway. The applicant was standing there when she saw a convoy of five VAZ cars of different colours driving quickly on the motorway from the direction of the

"Kavkaz" checkpoint located on the border of Chechnya and Ingushetia. A white VAZ-2107 car without a registration number was in the middle of it.

10. When the convoy was passing by the applicant, she saw that in one of the cars a man in white shirt moved towards the car window. The applicant recognised the man as her son Said-Magamed Tovsultanov.

11. Immediately after that the applicant boarded a bus and went to Sleptsovskaya through the "Kavkaz" checkpoint. On her way there, before the checkpoint, she saw a black velvet pillow on the ground. The applicant recognised it at once as the pillow that had belonged to her son Said-Magamed Tovsultanov, who had used it as a seat cushion in his car. The applicant thought that the men who had driven by her in the convoy must have thrown the cushion out of her son's car.

2. Information submitted by the Government

12. The Government did not challenge the facts as presented by the applicant. At the same time they submitted that she had not witnessed the events and had obtained the information from third persons, that the body of Said-Magamed Tovsultanov had not been found and that the involvement of State representatives in his abduction and death had not been established.

B. The search for Said-Magamed Tovsultanov and the investigation

1. The applicant's account

13. With the help of her relatives, the applicant contacted, both in person and in writing, various official bodies, such as the Russian President, the Chechen administration, departments of the interior and prosecutors' offices at different levels, asking for help in establishing the whereabouts of Said-Magamed Tovsultanov. She retained copies of a number of those complaints and submitted them to the Court. An official investigation was opened by the local prosecutor's office. The relevant information is summarised below.

14. The applicant did not retain copies of her written complaints lodged with various State authorities from the middle of June 2004 to the beginning of April 2005.

15. On 22, 25 April 2005 and 27 January 2007 the Chechnya prosecutor's office forwarded the applicant's complaints about her son's abduction to the Ingushetia prosecutor's office for examination.

16. On 2 June 2005 the Sunzhenskiy district prosecutor's office (the district prosecutor's office) instituted an investigation into the disappearance of Said-Magamed Tovsultanov under Article 126 § 1 of the Criminal Code (kidnapping). The case file was assigned the number 05600034.

17. On 27 June 2005 the district prosecutor's office granted the applicant victim status in the criminal case.

18. On 2 November 2005 the district prosecutor's office suspended the investigation in the criminal case for failure to identify the perpetrators. The decision stated that the investigators had: questioned three neighbours of Said-Magamed Tovsultanov, as well as several salespersons from the kiosks located next to the place of his abduction; put Said-Magamed Tovsultanov's VAZ-2107 car on the search list; checked the registration log of the "Volga-20" border police checkpoint concerning the passage of vehicles on the day of the abduction; and forwarded information requests to various law-enforcement agencies in various regions of the Northern Caucasus. The applicant was informed about the suspension of the investigation on the same date.

19. On 29 January 2007 the Chechnya prosecutor's office informed the applicant that they had forwarded her complaint about the abduction to the Ingushetia prosecutor's office for examination.

20. On 7 February 2007 the Ingushetia prosecutor's office forwarded the applicant's complaint about her son's abduction to the district prosecutor's office.

21. On 14 February 2007 the district prosecutor's office informed the applicant that on 2 November 2005 they had suspended the investigation of her son's abduction.

22. On 12 February 2008 the applicant complained to the district prosecutor's office about the ineffectiveness of the investigation of the abduction and requested to be provided with access to the investigation file.

23. On 28 February 2008 the district prosecutor's office rejected the applicant's complaint, stating that under Articles 215 and 217 of the Criminal Procedure Code a victim in a criminal case could be provided with access to an investigation file only upon completion of the investigation.

24. On 15 April 2008 the applicant complained to the district prosecutor's office about the ineffectiveness of the investigation into her son's abduction and requested to be provided with access to the investigation file. She received no reply.

2. Information submitted by the Government

25. The Government submitted that on 14 February 2005 the applicant had complained about the abduction to the Russian President and not the competent law-enforcement authorities.

26. On 6 May 2005 the district prosecutor's office requested the Sunzhenskiy district department of the Federal Security Service (the FSB) and the Ingushetia FSB to inform them whether they had arrested or detained the applicant's son. According to their replies of 16 and 18 May 2005 no special operations in respect of Said-Magamed Tovsultanov had been conducted and no criminal proceedings had been pending against him.

27. On the same date the district prosecutor's office requested the Information Centre of the Ministry of the Interior (the MVD) to inform them whether Said-Magamed Tovsultanov was on the authorities' search list and whether they had information concerning his whereabouts.

28. On 1 June 2005 the applicant complained about her son's abduction to the district prosecutor's office.

29. On 2 June 2005 the district prosecutor's office initiated a criminal investigation of the abduction.

30. On 27 June 2005 the applicant was granted victim status in the criminal case and questioned. She stated that on 14 June 2004 a boy had come by her house in Katar-Yurt and handed her a note. According to the boy, this note had been given to him by someone from a passing bus who had asked him to pass it on to the relatives of Said-Magamed Tovsultanov. The applicant had gone straight to her son's flat in Sleptsovskaya and then to the scene of the incident, where she had learnt from eyewitnesses, who had been primarily teenagers and salespersons from the nearby kiosks, that her son, who had been driving a VAZ-2107 car, had been blocked by two UAZ vehicles and a VAZ-21099 car and been taken away by armed men in camouflage uniforms and masks. During the abduction he had managed to shout out his name, asking the onlookers to inform his family about the abduction. The applicant further stated that at the time she had not thought of writing down the names and addresses of the eyewitnesses, as she was illiterate. She had informed her relatives about the events and it appears that they complained to various law-enforcement bodies in Chechnya in their search for Said-Magamed Tovsultanov.

31. The Government pointed out that the applicant had not mentioned to the investigators any of the events which had taken place after her son's abduction in the vicinity of the "Kavkaz" checkpoint (see paragraphs 9-11 above).

32. On 15 June 2005 the investigators requested the Northern Ossetia FSB and the Chechnya FSB to inform them whether these agencies had arrested the applicant's son or opened criminal proceedings against him. On 28 June the Chechnya FSB replied that they had neither detained the applicant's son nor initiated criminal proceedings against him.

33. On 30 June 2005 the Sunzhenskiy district department of the interior (the ROVD) informed the investigators that they had not arrested or detained the applicant's son.

34. On an unspecified date in July 2005 the deputy Ingushetia prosecutor issued orders for the investigators in the criminal case. The relevant part of the document stated:

> "... No investigation plan was prepared by the investigators who, in addition, also failed to examine a number of factual circumstances of the crime.

In order to conduct a full investigation of the criminal case I order the investigators to take the following measures:

– identify the woman who, according to L. Tovsultanova [the applicant], had eye witnessed the abduction and had told the boy about it ... and question her about the events;

– identify and question the employees of the nearby kiosks who, according to the applicant, had witnessed the unidentified men in two UAZ cars and a VAZ-21099 detain S.-M. Tovsultanov, who had been driving a VAZ-2107, and take him away to an unknown destination;

– establish the registration numbers of the VAZ-2107 which had belonged to the abducted man and put this information on the search list;

– identify those who had been on duty on 14 June 2004 at the 'Volga-20' checkpoint located on the border with Chechnya and question them about the circumstances of the case. In particular, it is necessary to find out whether a UAZ and VAZ-2107 carrying State officials had passed through the checkpoint on that date;

– examine the registration log of vehicles passing through the 'Volga-20'checkpoint;

– inspect the household ... where the abducted man had lived;

– in order to establish the whereabouts of S.-M. Tovsultanov, ... forward requests to various prosecutors' offices in [various regions] in the Northern Caucasus;

– forward information requests to [various...] detention centres in the Northern Caucasus and the military prosecutor's office of military unit no. 04062;

– forward information requests to various medical institutions in order to find out whether S.-M. Tovsultanov had applied for medical help and/or whether his body had been discovered;

– establish whether S.-M. Tovsultanov had purchased train or airplane tickets;

– receive replies from [various departments of the interior and the FSB];

– reply to the applicant's complaint of 5 June 2005;

– take other investigative measures, when necessary ...”

35. On 7 July 2005 the investigators requested the Ingushetia Ministry of the Interior (the MVD) to provide them with the names, addresses and telephone numbers of the officers who had been on duty at the “Volga-20” checkpoint on 13 and 14 June 2004.

36. On various dates in July and August 2005 the investigators requested that various prosecutors' offices in the Northern Caucasus provide them with information as to whether the applicant's son had been arrested,

detained or taken to hospital or had obtained temporary residential registration in their regions and whether his car had been registered or confiscated by local law-enforcement agencies.

37. On 12 July 2005 the investigators questioned Ms L.Kh., a neighbour of S.-M. Tovsultanov, who stated that on 13 June 2004 she had been at home when at about 1 p.m. a Chechen woman had arrived at her house looking for the relatives of Said-Magamed Tovsultanov. She had explained that Said-Magamed had been apprehended and taken away by men in masks and camouflage uniforms and that the abduction had taken place on the corner of Pobeda and Rabochaya Streets, not far away from the district hospital. Then both women had gone to the house where Said-Magamed Tovsultanov had lived with his relatives. In the house the women had found a boy who was at home alone and asked him to inform his relatives about the abduction of S.-M. Tovsultanov. The boy had immediately gone to the local bus station and through passengers of a bus going from Sleptsovskaya to Katar-Yurt had passed on a note to his relatives in the village informing them about the abduction.

38. On 13 July 2005 the investigators forwarded a number of information requests to various airports and train stations in the Northern Caucasus asking whether Said-Magamed Tovsultanov had purchased airplane or train tickets. In August 2005 three regional airplane companies replied in the negative.

39. On 14 July 2005 the investigators requested that the ROVD establish the identity of the Chechen woman who had informed Ms L.Kh. about the abduction and the identities of the teenagers and the kiosk employees who had witnessed the abduction, as well as of the driver of the bus/taxi by which the note about the abduction had been delivered to Katar-Yurt.

40. On the same date the investigators forwarded information requests to a number of detention centres in the Northern Caucasus asking whether Said-Magamed Tovsultanov was detained on their premises and whether criminal proceedings had been brought against him. On the same date the investigators forwarded requests to a number of Information Centres of the MVD in the Northern Caucasus asking whether they had any information as to whether Said-Magamed Tovsultanov's body had been found. On various dates in August 2005 the Dagestan MVD, the UVD of the Stavropol region, and the Kabardino-Balkaria MVD replied that they had no information concerning Said-Magamed Tovsultanov.

41. On various dates in August 2005 the investigators requested a number of departments of the interior in the Northern Caucasus, including the Northern Ossetia MVD, the UVD of the Rostov Region and the Kabardino-Balkaria MVD, to take operational-search measures aimed at establishing the whereabouts of the applicant's son, his car and the perpetrators of his abduction. They also asked to be informed whether the corpse of a man with features similar to Said-Magamed Tovsultanov had

been found, whether his car had been registered in their regions or had been involved in any road accidents, whether he had applied for medical assistance; whether he had stayed in local hotels as of 14 June 2004, whether he had been arrested by the local law-enforcement bodies and whether any charges had been brought against him. Between July and September 2005 a number of law-enforcement agencies replied that they had no information concerning either the applicant's son or his car.

42. On 8 August 2005 the investigators conducted a crime scene examination at the place of the abduction. No evidence was collected from the scene.

43. On 8 August 2005 the investigators questioned Ms P.M. who stated that at the material time she had been working in a kiosk located on the corner of Pobeda and Rabochaya Streets. However, she had not witnessed the abduction, but from her customers she had learnt that on 14 June 2004 a Chechen man, Tovsultanov, who had been an alleged member of illegal armed groups, had been arrested and taken away either by representatives of the ROVD or the representatives of the Security Service of the Chechen President and that the abductors had been wearing camouflage uniforms and had been driving two VAZ cars and a UAZ car.

44. On the same date the investigators questioned Ms A.A. and Mr I.A, employees from kiosks on the corner Pobeda and Rabochaya Streets, who stated that they had not witnessed the events.

45. On 10 August 2005 the ROVD informed the investigators that they had established that between 14 June 2004 and the present Said-Magamed Tovsultanov had not applied for medical help in the area and that his car had not been stopped at the local traffic police stations, and also that they had summoned the employees of the kiosks located in the vicinity of the place of the incident to be questioned by the investigators.

46. On 15 August 2005 the investigators requested the Achkhoy-Martan district prosecutor's office in Chechnya to take investigative steps to question relatives and neighbours of Said-Magamed Tovsultanov about the following: the reasons for his move from Chechnya to Ingushetia, how often he had visited Katar-Yurt, how he had earned his living, who his friends and enemies had been, whether his relatives had any theories concerning the reasons for his abduction and his possible whereabouts, whether they had been asked to pay a ransom for his release and what the results of their search for him had been.

47. On 16 August 2005 the investigators requested that the Ingushetia MVD inform them whether on 14 June 2004 a white VAZ car with registration number C897 ME06, or VAZ-21099 and UAZ cars carrying representatives of law-enforcement bodies had been registered in the registration logs as having passed through the “Volga-20” police checkpoint or any traffic police stations in Ingushetia. They also requested that the

officers who had been on duty at the checkpoint on that date report to the district prosecutor's office for questioning.

48. On the same date the investigators examined the registration log of the vehicles passing through the "Volga-20" police checkpoint. The document was dated "from 4 June to 18 June 2004" and comprised 99 pages. As a result of the examination it was established that pages 70 to 74 contained information concerning the passage of cars through the checkpoint on 14 June 2004:

> "... page 70 contains a handwritten note about the passage of a UAZ car with registration number A717 BK95, whose driver, Mr V.K., had produced his service identity document no. 121884 ... the note concerning this car is linked with a [note recording the] passage of a VAZ-21099 vehicle ... no information about the latter car was recorded. This link provides grounds to presume that the two vehicles had moved through the checkpoint as a convoy and that therefore only the UAZ driver's name was noted ..."

49. On 9 September 2005 the investigators wrote to the Achkhoy-Martan district prosecutor's office stating the following:

> "... the preliminary investigation established that the abductors of S.-M. Tovsultanov had been driving a UAZ and a VAZ-21099 car.
>
> During the examination of the registration log of the 'Volga-20' checkpoint it was established that on 14 June 2004 at 7.16 two cars – a VAZ-21099 and a UAZ with registration number A717 B.../95 had passed through the checkpoint; the driver had been captain V.K., who had produced service identification document no. 121884; the cars had been travelling in the direction of Achkhoy-Martan-Nazran ...
>
> [in the light of this information] we ask you [to take the following measures]:
>
> 1. Establish whether Mr V.K. is an employee of a law-enforcement agency in the Achkhoy-Martan district and whether he has service identification document no. 121884.
>
> 2. Question Mr V.K. as a witness about the following:
>
> – the purpose of his trip to Ingushetia on 14 June 2004;
>
> – who accompanied him on this trip and their names;
>
> – whether he knows S.-M. Tovsultanov;
>
> – whether he participated in operational-search measures against S.-M. Tovsultanov and if so, what the reasons for S.-M. Tovsultanov's arrest were and what his current whereabouts are.
>
> 3. Question the persons who accompanied Mr V.K. on his trip [on 14 June 2004] and ask them the same questions ..."

It is unclear whether any reply was given to this request.

50. On 17 August 2005 the investigators questioned Ms P.T. who stated that she owned a kiosk located on the corner of Pobeda and Rabochaya Streets, that she had not witnessed the abduction and that at some point in the summer of 2004 a Chechen woman had arrived at her kiosk and asked her for help in establishing the circumstances of the abduction.

51. On 19 August 2005 the investigators forwarded a number of additional information requests concerning the possible detention of Said-Magamed Tovsultanov, discovery of his body or registration of his car to various law-enforcement agencies in Kabardino-Balkaria.

52. On 8 September 2005 the investigators again questioned the applicant, who provided a statement similar to the one given on 27 June 2005 and added that Said-Magamed Tovsultanov had not been a member of illegal armed groups, that he had not had enemies and that she had not been asked to pay a ransom.

53. On various dates in September and October 2005 the investigators questioned four neighbours of Said-Magamed Tovsultanov, Ms Kh.D., Mr. S.Kh., Mr Z.A. and Mr I.Dzh., who gave positive character references for the applicant's son and stated that they had no knowledge pertaining to the circumstances of his abduction.

54. On 2 November 2005 the investigation in the criminal case was suspended for failure to identify the perpetrators. The applicant was informed about it on the same date.

55. On 28 April 2009 the investigation in the criminal case was resumed by a decision of the head of the investigations department. The document stated:

> "... on 2 November 2005 the investigation in the criminal case was suspended for failure to identify the perpetrators.
>
> As it follows from the investigation file, the above decision was taken prematurely and should be overruled for the following reasons.
>
> For instance, the investigation failed to establish [the identity of] the person who had informed S.-M. Tovsultanov's neighbours about his abduction and the person who had informed his relatives in Katar-Yurt about it;
>
> In addition, the investigators failed to question the aunt of S.-M. Tovsultanov and her husband [in whose house he had lived] about the abduction ...
>
> ... it is necessary to request information from military units in Chechnya and Ingushetia asking them whether they had arrested or detained S.-M. Tovsultanov ..."

56. The Government submitted that even though the investigation failed to establish the whereabouts of Said-Magamed Tovsultanov, it was still in progress and all measures envisaged under the domestic law were being taken. The investigation had not established the involvement of law-enforcement agencies in the abduction; no special operations had been

carried out against the applicant's son. The law enforcement authorities had never arrested or detained Said-Magamed Tovsultanov on criminal or administrative charges and had not carried out a criminal investigation in connection with him.

57. Despite specific requests by the Court for a copy of the entire contents of the investigation file in criminal case no. 05600034, the Government disclosed only part of the documents from the file, running up to 170 pages.

C. Proceedings against law-enforcement officials

58. On 11 March 2008 the applicant complained to the Sunzhenskiy district court of Ingushetia (the district court) about the ineffectiveness of the investigation in the criminal case. She stated that her son had been abducted by representatives of the Russian federal forces and pointed out that the lack of information about the investigation precluded her from appealing against the investigators' actions.

59. On 28 March 2008 the applicant visited the district prosecutor's office where she was provided with copies of a number of procedural decisions. According to the applicant, upon receipt of these documents, she was asked to sign a document the contents of which she did not understand owing to her illiteracy.

60. On 28 March 2008 the district court rejected the applicant's complaint. The court stated that the applicant "had lodged a written request to have the examination of her complaint discontinued ..." According to the applicant, she did not lodge such a request. However, the Government furnished the Court with a copy of the applicant's handwritten receipt to this effect.

II. RELEVANT DOMESTIC LAW

61. 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 OBJECTION REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

62. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Said-Magamed Tovsultanov had not yet been completed. They further argued that it had been open to the applicant to challenge in court any acts or omissions on the part of the investigating or other law-enforcement authorities, but that she had not availed herself of that remedy. They also submitted that it had been open to her to file civil claims for damages but she had failed to do so.

63. The applicant contested that objection and stated that the criminal investigation had proved to be ineffective.

B. The Court's assessment

64. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

65. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of

providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

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

67. As regards a civil action to obtain redress for damage sustained through 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. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies.

68. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that the applicant complained to the law-enforcement authorities after the disappearance of her son and that an investigation has been pending since 2 June 2005. The applicant and the Government disagreed about the effectiveness of the investigation of the disappearance.

69. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant's complaints and that therefore this objection should be joined to the merits and examined below.

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

A. The parties' arguments

70. The applicant maintained that it was beyond reasonable doubt that the men who had abducted Said-Magamed Tovsultanov had been State agents. In support of her complaint she referred to the following facts. The abduction of Said-Magamed Tovsultanov had taken place in the settlement which was under the total control of the authorities. The abductors, who had been armed, masked and in camouflage uniforms, had driven around in five cars in the centre of Sleptsovskaya in broad daylight. Having abducted the applicant's son, they had been able to cross the checkpoint at the border of

Ingushetia and Chechnya. She further stated that since her son has been missing for a very lengthy period, he could be presumed dead. That presumption was further supported by the circumstances in which he had been arrested, which should be recognised as life-threatening.

71. The Government submitted that the fact of the abduction of the applicant's son had not been confirmed by the investigation and that he might have disappeared on his own initiative or as a result of actions of third persons. They further contended that the investigation of the incident was pending, that there was no evidence that State agents could have been involved in the alleged violation of the applicant's rights. They further submitted that the law-enforcement authorities had not conducted any special operations targeting the applicant's son and that there was no convincing evidence that he was dead.

B. The Court's evaluation of the facts

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

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

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

the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

75. The Court notes that despite its requests for a copy of the investigation file into the kidnapping of Said-Magamed Tovsultanov, the Government produced only part of the documents from the file, running up to 170 pages. They submitted that they had enclosed with their observations "the main contents of the criminal case file" but did not explain the reasons for their failure to submit the remaining documents.

76. The Court has found the Russian State authorities responsible for extra-judicial executions or disappearances of civilians in the Chechen Republic in a number of cases, even in the absence of final conclusions from the domestic investigation (see *Khashiyev and Akayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Estamirov and Others*, cited above; and *Baysayeva v. Russia*, no. 74237/01, 5 April 2007). It has done so primarily on the basis of witness statements and other documents attesting to the presence of military or security personnel in the area concerned at the relevant time. It has relied on references to military vehicles and equipment, on witness accounts, on other information on security operations and on the undisputed effective control of the areas in question by the Russian military. On that basis, it has concluded that the areas in question were "within the exclusive control of the authorities of the State" in view of military or security operations being conducted there and the presence of servicemen (see, *mutatis mutandis*, *Akkum*, cited above, § 211, and *Zubayrayev v. Russia*, no. 67797/01, § 82, 10 January 2008).

77. However, in the present case the Court has little evidence on which to draw such conclusions as the account of the events submitted by the applicant is based entirely on the summary of third persons' anonymous statements. In addition, the applicant's statements regarding certain aspects of the events which she made before the investigators and the Court differ substantially, which gives reason to doubt the coherence of her version (see paragraphs 8-11 and 30 above). In addition, from the submitted materials it follows that the applicant raised the issue of the possible involvement of State agents in her son's abduction with the domestic investigation only after she had lodged her application with the Court (see paragraph 58 above). In such circumstances the Court considers that it cannot regard the applicant's account as reliable evidence.

78. Moreover, the mere fact that the perpetrators were armed, masked and in camouflage uniforms does not necessarily mean that they were State servicemen. The anonymous evidence to which the applicant referred in her statements to the Court did not contain any indication to the effect that the camouflage uniforms worn by the armed men bore any insignia of the type

that should normally appear on the uniforms of State agents, or that the perpetrators had acted during the abduction as an organised group with a chain of command. Camouflage uniforms with no insignia could have been obtained by persons not belonging to the military via various, possibly illegal channels.

79. The information at the Court's disposal does not warrant the conclusion that the armed men had driven around in military vehicles. The applicant has never alleged, either before the domestic investigation or before the Court, that anyone saw any military vehicles in the vicinity of the crime scene with his or her own eyes. Given that the perpetrators used regular civilian vehicles, the Court considers that they could have moved around the town unbeknown to the authorities with greater ease than, for example, a group of armed men riding in an armoured personnel carrier.

80. Furthermore, it is noteworthy that the applicant did not provide information about her encounter with the abductors' convoy on the day following the abduction (see paragraphs 9-11 above) when questioned by the district prosecutor's office. The Court is not persuaded that the investigators should have asked the applicant leading questions to establish, for example, whether she had seen the abductors on the following day given that it did not occur to her to disclose to the investigation all the relevant information at her disposal of her own motion.

81. Accordingly, the information in the Court's possession does not suffice to establish that the perpetrators belonged to the security forces or that a security operation had been carried out in respect of Said-Magamed Tovsultanov.

82. To sum up, it has not been established to the required standard of proof – "beyond reasonable doubt" – that State agents were implicated in the kidnapping of Said-Magamed Tovsultanov; nor does the Court consider that the burden of proof can be entirely shifted to the Government.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

83. The applicant complained under Article 2 of the Convention that her son had disappeared after having been detained by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation into the matter. Article 2 reads:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. The parties' submissions

84. The Government contended that the domestic investigation had obtained no evidence that Said-Magamed Tovsultanov was dead or that any servicemen from federal law-enforcement agencies had been involved in his alleged kidnapping or killing. The Government claimed that the investigation of the kidnapping met the Convention requirement of effectiveness, as all measures available in national law were being taken to identify the perpetrators. The applicant herself had been responsible for the delay in the opening of the investigation as she had complained to the Russian President on 14 February 2005, that is, seven months after the events and that subsequently she had reported the crime to the district prosecutor's office only on 1 June 2005.

85. The applicant argued that Said-Magamed Tovsultanov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for more than five years. She also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court's case-law on Article 2. The applicant invited the Court to draw conclusions from the Government's unjustified failure to submit the entire contents of the investigation file to the Court.

B. The Court's assessment

1. Admissibility

86. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of criminal domestic remedies should be joined to the merits of the complaint (see paragraph 69 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

a) The alleged violation of the right to life of Said-Magamed Tovsultanov

87. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified,

ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar*, cited above, § 391).

88. As noted above, the domestic investigation failed to produce any tangible results as to the identities of the persons responsible for the alleged kidnapping of Said-Magamed Tovsultanov. The applicant has not submitted persuasive evidence to support her allegations that State agents were the perpetrators of such a crime. The Court has already found above that, in the absence of relevant information, it is unable to find that security forces were implicated in the disappearance of the applicant's son (see paragraph 82 above). Neither has it established "beyond reasonable doubt" that Said-Magamed Tovsultanov was deprived of his life by State agents.

89. In such circumstances the Court finds no State responsibility, and thus no violation of the substantive limb of Article 2 of the Convention.

(b) The alleged inadequacy of the investigation of the kidnapping

90. 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. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina v. Russia*, no. 69481/01, §§ 117-119, 27 July 2006).

91. In the present case, the kidnapping of Said-Magamed Tovsultanov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

92. The Court notes at the outset that the documents from the investigation file were disclosed by the Government only partially. It therefore has to assess the effectiveness of the investigation on the basis of the documents submitted by the parties and the information about its progress presented by the Government.

93. The Court notes that the authorities were made aware of the crime by the applicant's submission on 14 February 2005, that is, seven months after the events in question and that the official criminal investigation was instituted on 2 June 2005, that is, almost a year after Said-Magamed Tovsultanov's abduction. It is clear that the applicant herself contributed to the belated initiation of the investigation, having officially informed the authorities about the abduction with a significant delay.

94. The Court notes that within the first several months of the investigation a number of steps had been taken by the prosecutor's office. Several witnesses were questioned, the crime scene was inspected, and numerous requests were forwarded to various law-enforcement authorities in different regions of the Northern Caucasus. However, after having taken the initial necessary measures to solve the crime, the investigators became inactive and failed to follow up on important investigating leads by questioning the officers who had been on duty at the "Volga-20" checkpoint on 14 June 2004 (see paragraph 47 above) or requesting the Chechen law-enforcement authorities to confirm the identity and the service documents of captain V.K., who had crossed the checkpoint on that day and had been driving a vehicle matching the description of the abductors' cars (see paragraph 49 above). In addition, without having taken a number of other investigating measures (see paragraph 55 above) the prosecutor's office suspended the investigation for almost 3 years and 6 months (see paragraphs 54-55 above) and resumed it only after the communication of the application by the Court. It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

95. The Court also notes that even though the applicant was granted victim status in the investigation concerning the abduction of her son, she was only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

96. The Government argued that the applicant could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies but she had failed to do so (see paragraph 60 above). The applicant contended that she had in fact applied to the domestic courts, but this remedy had been ineffective (see paragraph 58 above). Without deciding on the credibility of either version, the Court notes the effectiveness of the criminal investigation had already been undermined in its early stages by the authorities' failure to take the necessary and urgent investigative measures. Moreover, even assuming that the examination of the applicant's complaint by the district court would have led to the resumption of the investigation, this procedural measure would not have produced any tangible results for the applicant, taking into account that by then the investigation had been pending for almost three years.

Further, it is clear that the investigation was repeatedly suspended and resumed, in spite of the fact that not all of the possible investigative measures had been taken to identify the perpetrators. In such circumstances, the Court considers that the applicant could not be required to challenge in court every single decision of the district prosecutor's office. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

97. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Said-Magamed Tovsultanov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. The parties' submissions

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

100. The applicant maintained her submissions.

B. The Court's assessment

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

102. Turning to the circumstances of the present case, the Court notes that the applicant is the mother of Said-Magamed Tovsultanov.

Accordingly, it has no doubt that she has indeed suffered from serious emotional distress following the disappearance of her son.

103. The Court notes that it has already found violations of Article 3 of the Convention in respect of relatives of missing persons in a series of cases concerning the phenomenon of "disappearances" in the Chechen Republic (see, for example, *Luluyev and Others*, cited above, §§ 117-18, *Khamila Isayeva v. Russia*, no. 6846/02, §§ 143-45, 15 November 2007, and *Kukayev v. Russia*, no. 29361/02, §§ 107-10, 15 November 2007). It is noteworthy, however, that in those cases the State was found to be responsible for the disappearance of the applicants' relatives. In the present case, by contrast, it has not been established to the required standard of proof "beyond reasonable doubt" that the Russian authorities were implicated in Said-Magamed Tovsultanov's disappearance (see paragraph 82 above). In these circumstances the Court considers that the case is clearly distinguishable from those mentioned above and therefore concludes that the State cannot be held responsible for the applicant's mental distress caused by the commission of the crime itself.

104. Furthermore, in the absence of a finding of State responsibility for the disappearance of Said-Magamed Tovsultanov, the Court is not persuaded that the investigating authorities' conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity which is necessary in order to consider treatment as falling within the scope of Article 3 (see, for a similar situation, *Khumaydov and Khumaydov v. Russia*, no. 13862/05, §§ 130-131, 28 May 2009 and *Zakriyeva and Others v. Russia*, no. 20583/04, §§ 97-98, 8 January 2009).

105. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

106. The applicant further stated that Said-Magamed Tovsultanov had been detained in violation of the guarantees contained in Article 5 of the Convention, which reads, in so far as relevant:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...

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

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

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

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

A. The parties' submissions

107. The Government asserted that no evidence had been obtained by the investigators to confirm that Said-Magamed Tovsultanov had been deprived of his liberty by State agents in breach of the guarantees set out in Article 5 of the Convention.

108. The applicant reiterated the complaint.

B. The Court's assessment

109. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others*, cited above, § 122).

110. Nevertheless, the Court has not found it established "beyond reasonable doubt" that Said-Magamed Tovsultanov was arrested by Russian servicemen (see paragraph 82 above). Nor is there any basis to presume that the missing man was ever placed in unacknowledged detention under the control of State agents.

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

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. The parties' submissions

113. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. She had had an opportunity to challenge any acts or omissions on the part of the investigating authorities in court or before higher prosecutors and to bring civil claims for damages. In sum, the Government submitted that there had been no violation of Article 13.

114. The applicant reiterated the complaint.

B. The Court's assessment

115. The Court observes that the complaint made by the applicant under this Article has already been examined in the context of Article 2 of the Convention. Having regard to the findings of a violation of Article 2 in its procedural aspect (see paragraph 97 above), the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 2 is admissible, there is no need for a separate examination of this complaint on its merits (see, *Khumaydov and Khumaydov*, cited above, § 141; *Zakriyeva and Others*, cited above, § 108; and *Shaipova and Others v. Russia*, no. 10796/04, § 124, 6 November 2008).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. 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

117. The applicant did not submit any claims for pecuniary damage. As regards non-pecuniary damage, the applicant submitted that she had lost her son and endured stress, frustration and helplessness in relation to her son's abduction, aggravated by the authorities' inactivity in the investigation of those events for several years. She left the determination of the amount of compensation to the Court.

118. The Government submitted that finding a violation of the Convention would be adequate just satisfaction in the applicant's case.

119. The Court has found a violation of Article 2 in its procedural aspect. It thus accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It finds it appropriate to award the applicant 30,000 euros (EUR) under this heading, plus any tax that may be chargeable on that amount.

B. Costs and expenses

120. The applicant was represented by Mr D. Itslayev, a lawyer practising in Nazran. The applicant submitted the contract concluded with her representative and an itemised schedule of costs and expenses that included legal research and drafting, as well as administrative and translation expenses. The overall claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 7,718. The applicant submitted the following breakdown of costs:

(a) EUR 7,125 for 47.50 hours of interviewing and drafting of legal documents submitted to the Court and the domestic authorities, at the rate of EUR 150 per hour;

(b) EUR 145 in administrative expenses;

(c) EUR 448 in translation fees based on the rate of EUR 80 per 1000 words.

121. The Government did not dispute the reasonableness of the amounts claimed.

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

123. Having regard to the details of the information submitted by the applicant, the Court is satisfied that these rates are reasonable. The Court notes that this case was rather complex and required the amount of research and preparation claimed by the applicant. It notes at the same time, that due to the application of Article 29 § 3 in the present case, the applicant's representative submitted his observations on admissibility and merits in one set of documents. The Court thus doubts that the legal drafting was as time-consuming as the representative claimed.

124. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount of EUR 5,500 together with any value-added tax that may be chargeable to the applicant, the award to be paid into the representative's bank account, as identified by the applicant.

C. Default interest

125. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection regarding non-exhaustion of criminal domestic remedies and rejects it;

2. *Declares* the complaints under Articles 2 and 13 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been no violation of Article 2 of the Convention in its substantive limb in respect of Said-Magamed Tovsultanov;

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 Said-Magamed Tovsultanov disappeared;

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

6. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement:
      (i) EUR 30,000 (thirty thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
      (ii) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representative's bank account;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President