



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 12712/02  
by Ruslan Usmanovich UMAROV  
against Russia

The European Court of Human Rights (First Section), sitting on 8 February 2007 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 15 February 2002,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ruslan Usmanovich Umarov, is a Russian national who was born in 1942 and lives in the City of Grozny, Chechnya. He is represented before the Court by lawyers of the Memorial Human Rights Centre (Moscow) and the European Human Rights Advocacy Centre (London). The Russian Government ("the Government") are represented by

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

### **A. The circumstances of the case**

The facts of the case, as submitted by the parties, may be summarised as follows.

At the material time the applicant lived with his family in his own house at 148 Klyuchevaya Street in the Staropromyslovskiy District of Grozny, in the residential quarter referred to by the local residents as Ivanovo. The applicant has two sons and two daughters. The oldest son, Magomed Umarov, born in 1975, was a four-year student at the Grozny Oil Institute. In November 1999 the applicant with his family left Grozny because of the shelling and lived in railway cars in a camp for internally displaced persons in Ingushetia. In February 2000 the applicant's mother died and he and his family came back to Chechnya to bury her. They then remained in Grozny.

#### *1. Events of 27 May 2000*

On 27 May 2000 at around 6 a.m., when the applicant and his family members were asleep at home, a group of men in camouflage uniforms arrived in a military Ural vehicle at 148 Klyuchevaya Street. The men were armed with automatic firearms and some of them were masked. According to the applicant, those were federal servicemen, whilst the Government claimed that those had been "unidentified persons".

The men entered the applicants' house, having broken down the door. According to the applicant, the first man, who entered the house was tall and had bright complexion and blue eyes. The applicant found out later that the man's name was Yuriy. The men spoke Russian without accent. They threatened the applicant's wife and daughters with firearms, swore at them and beat the applicant. They also searched the house.

The men then dragged the applicant out to the courtyard, kicked him and beat him with rifle butts. According to the applicant, there were about 30 masked men in the courtyard.

Magomed Umarov slept in an extension to the house located in the same courtyard. He rushed out into the courtyard, screaming "Why are you beating him?" The men seized him, beat him and threw him into an Ural truck in which they had arrived. The vehicle had no registration plates. The applicant also referred to statements of his neighbour to the effect that there had been another car in the street – an UAZ vehicle with the number 469. The men then left. Magomed Umarov was not allowed to dress or to put on shoes.

According to the applicant, later that day the men returned and collected his son's passport and student identity card of the Grozny Oil Institute. The applicant has had no news of his son after that.

The applicant's brother immediately took him to hospital no. 3 of Grozny where he underwent a medical examination and was diagnosed with concussions on his face, chest and feet and fracture of two ribs. The applicant received first aid at the hospital and was then released.

In the meantime the applicant's neighbours noted that the Ural truck in which Magomed Umarov had been taken away had an inscription "Maestro". According to the applicant, the inscription indicated that the vehicle belonged to the Temporary Department of the Interior of the Staropromyslovskiy District (*временный отдел внутренних дел Старопромывсловского района* – "the Staropromyslovskiy VOVD"). The Government claimed that the vehicle referred to by the applicant had not been listed among those belonging to the federal forces.

The applicant's relatives and neighbours went to the Staropromyslovskiy VOVD and to the local military commander's office, which were only 100 metres away from the applicant's house. The officials there did not tell them anything and advised them to apply to the Grozny prosecutor's office (*прокуратура г. Грозного*).

## *2. The applicant's search for his son and the authorities' replies*

On the same day at about 9 a.m. the applicant and his brother went to the Grozny prosecutor's office. He met the Grozny prosecutor, Mr Blyumskiy, and submitted a written complaint about the attack on his house, his beatings and his son's detention. He requested that those responsible be identified and prosecuted and that his son's whereabouts be established.

According to the applicant, the prosecutor immediately summoned the head and senior officers of the Staropromyslovskiy VOVD and berated them in his presence for "dirty work in masks" and that during that meeting the deputy head of the Staropromyslovskiy VOVD warned the personnel of the VOVD about the events by telephone. After the meeting the prosecutor, a senior investigator from his office, the applicant and the others went to the Staropromyslovskiy VOVD and to the military commander's office of the Staropromyslovskiy District.

At the Staropromyslovskiy VOVD the applicant identified one of the servicemen who had beaten him that morning at his house. The officers of the Staropromyslovskiy VOVD explained to the prosecutor that they had conducted two "special operations" in the Ivanovo quarter that morning, but that they knew nothing about the Ural truck with an inscription "Maestro". According to the applicant, the deputy military commander of the Staropromyslovskiy District who introduced himself as Vareriy invited the prosecutor, investigators and the identified officers from the Staropromyslovskiy VOVD for a separate talk, first on the spot and then at the location of the nearest military unit in the building of a local concert hall. They questioned the officers about what they had seen or heard that

morning. Thereafter the prosecutor and the investigator assured the applicant that everything would be “sorted out” and left.

The applicant returned home and learnt that on the same morning two other men had been detained in their quarter, the Magomedov brothers. They were released four days later, apparently for a ransom, and told the applicant that they had been detained in a ground pit together with the applicant’s son. The Magomedov brothers told him that they had been brought there with bags over their heads, but believed that it was at the Khankala military base, the headquarters of the Russian military in Chechnya, because they could hear helicopters landing and taking off, and because they had crossed some railway lines on the way. Twelve days later another young man who had been detained in a Grozny suburb on 25 May 2000 and then released met with the applicant and told him that he had been detained with his son in a pit in terrible conditions and that his son had asked him to do everything possible for his release.

The applicant continued the search for his son. On numerous occasions, both in person and in writing, he applied to prosecutors at various levels, to the Ministry of the Interior, to courts and the administrative authorities in Chechnya and beyond. In dozens of letters addressed to the authorities the applicant stated the facts of his son’s detention and asked for assistance and details on the investigation. He also wrote about his son’s alleged detention at the Khankala military base, referring to the witnesses who had been released, allegedly, for a ransom. Most of the letters were submitted by the applicant during his visits to officials in an attempt to find out Magomed Umarov’s whereabouts. The applicant has submitted copies of some of those letters to the Court. The applicant was given hardly any substantive information concerning his son’s disappearance and the investigation into these events. On several occasions he received copies of letters by which his requests had been forwarded to the different prosecutors’ services.

According to the applicant, during his visits to the prosecutors’ offices he had received hints on several occasions that he should not complain about his son’s abduction, but should rather, like the relatives of those who had been released, seek “middlemen” who could help him find his son, and that otherwise his son could “disappear”. The applicant allegedly tried to act through “middlemen” but failed.

On 28 May 2000 a number of residents of the Staropromyslovskiy District signed a petition to the military commander of the Staropromyslovskiy District and that of Chechnya, with a copy to the Russian President. They complained of “bullying attitude” on the part of the military stationed in the Staropromyslovskiy District, which included systematic and open extortion of money, cigarettes and alcohol at check-points, disregard of traffic regulations by the drivers of large military vehicles, random shooting and shelling during day and night and robbery and beatings during so called “sweeping” operations. They referred, in

particular, to the beating of the applicant and his son on 27 May 2000 and the absence of information about the latter's whereabouts since his apprehension.

In a letter of 16 June 2000 the applicant requested the military commander of Chechnya to assist him in locating his son. The commander replied that the Grozny prosecutor's office (*прокуратура г. Грозного*) and the Staropromyslovskiy VOVD were responsible for investigating the applicant's allegations. He further informed the applicant that following the residents' petition of 28 May 2000 the superiors of the local detachments of the Ministry of the Interior had discussed the issues raised and strengthened control over their staff at check-points.

On 9 September 2000 the prosecutor's office of the Chechen Republic (*прокуратура Чеченской Республики* – "the republican prosecutor's office") informed the applicant that on 30 May 2000 the Grozny prosecutor's office had opened a criminal investigation into his son's kidnapping and that the criminal case file had been assigned the number 12050.

On 19 September 2000 the head of the criminal investigation service of the Chechen Department of the Interior informed the applicant that his letter of 27 June 2000 had been forwarded to the Staropromyslovskiy VOVD for organisation of his son's search.

By letter of 25 October 2000 the republican prosecutor's office forwarded the applicant's complaint to the Grozny prosecutor's office "for examination".

On 14 November 2000 the Supreme Court of the Chechen Republic forwarded the applicant's complaint concerning the inefficiency of the investigation into his son's disappearance to the republican prosecutor's office.

On 15 November 2000 and 12 February 2001 the applicant complained to the military prosecutor of the Chechen Republic (*военный прокурор Чеченской Республики*) about the attack on his house, his beatings and his son's detention as well as of inefficiency of the investigation and asked for help in finding his son.

On 27 November 2000 the republican prosecutor's office informed the applicant that following his complaint "the decision to suspend investigation was quashed and the case file had been remitted for a further investigation with instructions to take more active steps". The letter did not indicate the date on which the decision to suspend the investigation had been taken or the date on which the proceedings had been resumed and contained no other details.

By letter of 30 November 2000 the republican prosecutor's office referred the applicant's complaint concerning his son's detention and disappearance to the Grozny prosecutor's office.

On 19 December 2000 the military prosecutor's office of military unit no. 20102 (*военная прокуратура – войсковая часть 20102*) referred the applicant's complaint to the Grozny Temporary Office of the Interior (*временный отдел внутренних дел г. Грозного*). The letter stated that there had been no grounds to send the applicant's complaint to the military prosecutor's office of military unit no. 20102 since it had not been established that the military personnel had been involved in the abduction of the applicant's son.

On 21 December 2000 the applicant wrote to the Memorial Human Rights Centre and to the Russian Commissioner for Human Rights.

According to the applicant, in late February 2001 he found out that there were a number of unidentified corpses in the premises of a nearby railway station. The applicant went there and saw around 60 bodies that had been taken from the mass grave near the village of Dachnoye. Some of them showed signs of tortures, their legs and hands were tied with iron wire. One of the corpses resembled that of the applicant's son, as it had clothes similar to those Magomed Umarov had been wearing on the day of his detention. The applicant, however, was unable to identify the body, as its head was missing. He felt unwell and left. The next day the applicant returned with his wife to study the body, but was unable to find it. He was told that the corpses had been taken to another village, situated 15-20 km way from Grozny. The applicant went there and was informed that the remains had been photographed and then buried. The applicant looked through the photographs but did not find the headless body.

By letter of 1 April 2001 the Grozny prosecutor's office informed the applicant that they had studied his complaint, quashed the decision to suspend the criminal investigation and remitted the case for a further investigation. The letter did not indicate the date on which the decision to suspend the investigation had been taken or the date on which the proceedings had been resumed and contained no other details.

On 29 May 2001 the republican prosecutor's office replied to the applicant's complaint, stating that the decision to suspend the investigation had been quashed and the case had been remitted for a further investigation. The investigation was being supervised by the republican prosecutor's office. The letter did not indicate the date on which the decision to suspend the investigation had been taken or the date on which the proceedings had been resumed and contained no other details.

In a letter of 19 June 2001 the applicant requested the republican prosecutor's office to question the investigator from the Grozny prosecutor's office, who had been present on 27 May 2000 during the questioning at the Staropromyslovskiy VOVD and the military commander's office of the Staropromyslovskiy District, about the identity of the servicemen and the contents of their statements made on that day.

In letters of 24 August and 13 September 2001 the republican prosecutor's office instructed the Grozny prosecutor's office to take more active steps in investigating Magomed Umarov's disappearance.

On 9 October 2001 the applicant wrote to the republican prosecutor's office, with a copy to the Special Representative of the Russian President for Rights and Freedoms in the Chechen Republic. The applicant complained that the investigation into his son's abduction was inadequate and plagued with shortcomings, that those responsible had not been identified so far despite compelling evidence exposing them and that he had never been notified of any steps taken during the investigation or of its progress.

On 22 October 2001 the Special Representative of the Russian President for Rights and Freedoms in the Chechen Republic informed the applicant that his letter of 9 October 2001 had been forwarded to the Prosecutor General's Office.

In November 2001 the republican prosecutor's office informed the applicant that the decision to suspend investigation of the criminal case into his son's abduction had been quashed and that the ongoing investigation was supervised by them. The letter contained no further details.

On 18 December 2001 the Grozny prosecutor's office replied to the Special Representative of the Russian President for Rights and Freedoms in the Chechen Republic, with a copy to the applicant, that on 30 May 2000 the Grozny prosecutor's office had opened criminal investigation into the abduction of Magomed Umarov and infliction of injuries on the applicant. On 30 July 2001 the investigation had been suspended due to failure to identify the alleged perpetrators. The letter further stated that on 14 December 2001 the republican prosecutor's office had quashed that decision and remitted the file for a further investigation and that measures aiming at establishing Magomed Umarov's whereabouts and identifying those responsible were being taken.

In a letter of 25 December 2001 the republican prosecutor's office informed the applicant that the investigation into his son's disappearance was currently underway.

On 19 March 2002 the Southern Federal Circuit Department of the Prosecutor General's Office (*Управление Генеральной прокуратуры РФ в Южном федеральном округе*) forwarded the applicant's complaint against the inadequate investigation into his son's disappearance to the republican prosecutor's office and ordered them to submit before 1 April 2002 information regarding the investigation.

On 23 May 2002 the republican prosecutor's office informed the applicant that the decision of 28 January 2001 to suspend proceedings in criminal case no. 12050 had been quashed and the investigation re-opened.

By letter of 6 June 2002 the Southern Federal Circuit Department of the Prosecutor General's Office transmitted the applicant's complaint to the republican prosecutor's office.

In a letter of 10 June 2002 the republican prosecutor's office stated that the applicant's complaint of 29 May 2000 had been left without examination, as it had contained no new arguments other than those which had previously been examined and replied to.

On 25 June 2002 the republican prosecutor's office informed the applicant that they had taken up the case opened in connection with inflicting injuries on him and disappearance of his son.

By letter of 21 October 2002 the Chechen Department of the Interior informed the applicant's wife that all necessary measures aiming at establishing Magomed Umarov's whereabouts and identifying those involved in his abduction were being taken.

On 21 August 2003 the prosecutor's office of the Staropromyslovskiy District (*прокуратура Старопромывловского района г. Грозного* – "the Staropromyslovskiy prosecutor's office") notified the applicant that the proceedings in criminal case no. 12050 had been suspended on 30 August 2002 and then resumed on 18 August 2003. In a letter of 27 January 2004 they further informed the applicant that the proceedings had been adjourned on 3 September 2003 in view of the failure to establish the alleged perpetrators.

### 3. Official investigation

The Government submitted, with reference to the information provided by the Prosecutor General's Office, the following information concerning the investigation into the events of 27 May 2000.

On 30 May 2000 the Grozny prosecutor's office instituted criminal proceedings in connection with the infliction of bodily injuries on the applicant and abduction of his son under Articles 126 (2) (aggravated kidnapping) and 286 (3) (aggravated abuse of power) of the Russian Criminal Code. The case file was assigned the number 12050.

The investigating authorities took a number of steps during the investigation. In particular, on 23 June 2000 the applicant underwent a forensic medical examination which established abrasions and bruises on the applicant's face, chest and left foot. In the Government's submission, those injuries "caused no harm to the applicant's health".

The applicant was granted the status of victim of a crime on 30 May 2000 and questioned on that date and on 27 February 2001. His numerous requests were included in the case file. The applicant's wife was interrogated on 21 June 2001.

On 24 March 2001 and 18 January 2002 the investigators questioned one of the Magomedov brothers, who had also been detained on 27 May 2000. Mr Magomedov stated that at around 5 a.m. on the date in question he had



been kidnapped from his house in the Klyuchevaya Street by unidentified masked men in camouflage uniforms armed with automatic firearms, taken outside Grozny and put in a pit measuring approximately 2 metres deep. In the pit he had seen Magomed Umarov who had then been taken away.

On 28 March 2001 the Grozny prosecutor's office received information to the effect that the personnel of the Staropromyslovskiy VOVD had not carried out any operations in the vicinity of the Klyuchevaya Street on 27 May 2000.

On 6 November 2001 the investigators questioned the military commander of the Staropromyslovskiy District, who stated that his office had been organised on 22 June 2000 and had replaced the temporary military commander's office and that he had no information regarding documents of the temporary commander's office.

On 23 September 2003, 19 and 29 January and 18, 20 and 24 June 2005 the investigating authorities also questioned ten other witnesses, who "gave no information relevant for establishing the circumstances of Magomed Umarov's abduction".

According to the Government, in the context of the investigation into the applicant's beatings and his son's disappearance, the investigators inspected the scene of the incident at 148 Klyuchevaya Street on 14 October 2004 and 27 June 2005, but these inspections "brought no positive results".

During the investigation the Chechen Department of the Federal Security Service of Russia (*Управление Федеральной службы безопасности РФ по Чеченской Республике*) submitted information to the effect that Magomed Umarov had never participated in illegal armed formations.

The investigating authorities sent a number of queries regarding the operation of 27 May 2000, those responsible for the abduction of the applicant's son, or those who had information about the events of 27 May 2000 to various official bodies and sought lists of persons who had been serving in the Staropromyslovskiy VOVD in May 2000. They also checked registers of unidentified corpses, medical establishments and detention centres so as to establish whether Magomed Umarov was listed or kept there, but to no avail.

In the Government's submission, the investigation was suspended and resumed on 14 occasions, but failed to date to identify the alleged perpetrators or to establish Magomed Umarov's whereabouts. Most recently it was re-opened on 14 June 2005. At present the investigation was being carried out by the Staropromyslovskiy prosecutor's office and supervised by the Prosecutor General's Office.

Despite specific requests made by the Court on two occasions, the Government did not submit a copy of any of the documents to which they referred. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the

Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants of criminal proceedings. At the same time, the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted, with the exception of “the documents [disclosing military information and personal data of the witnesses], and without the right to make copies of the case file and to transmit it to others”.

#### *4. The applicant's complaint to a court*

In June 2001 the applicant lodged a complaint against the inactivity of the military and law-enforcement authorities during the investigation of his son's abduction and his beatings with the Staropromyslovskiy District Court of Grozny. In August 2001 the applicant was summoned to that court, which at the time was situated in the village of Beno-Yurt in the Nadterechny District of Chechnya, about 100 kilometres from Grozny. According to the applicant, during a meeting a judge asked him to withdraw his complaint, and then promised to help him obtain free legal aid in the proceedings. The judge allegedly explained to him that his complaint could not be examined because he had not indicated the names and positions of the officials against whom he complained. She also told him that the court would issue a procedural decision rejecting his complaint.

On 18 September 2001 the applicant wrote to the Staropromyslovskiy District Court. He enquired whether he could benefit from legal aid in his case and whether the aforementioned procedural decision had been issued and requested the court to furnish him with a copy of it. He received no reply to that letter.

On 1 November 2001 the applicant wrote to the President of the Supreme Court of the Chechen Republic, complaining about the lack of progress in his case lodged in June 2001 with the Staropromyslovskiy District Court.

On 5 December 2001 the applicant received a letter from the Staropromyslovskiy District Court, in which the judge informed him that, upon his request, his submissions to that court had been forwarded to the “Novaya Gazeta” newspaper and suggested that he contacted a journalist from that newspaper. According to the applicant, he had never given his consent to the transfer of his submissions to the said newspaper.

On 23 January 2002 the applicant addressed a letter to the Supreme Court of Russia. He complained about the failure to act on the part of the Staropromyslovskiy District Court and the Supreme Court of the Chechen Republic. He also complained about the inefficiency of the investigation and referred to the fact that five investigators had been in charge of the case. He stated that all his complaints had been forwarded to the Grozny prosecutor's office with the result that the criminal investigation file almost

entirely consisted of his own complaints to various authorities. It appears that the applicant received no answer to that letter.

### **B. Relevant domestic law**

Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR. On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation.

Article 161 of the new Code establishes that data from the preliminary investigation may not be disclosed. Part 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator, but only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of the participants in criminal proceedings without their permission.

## COMPLAINTS

1. The applicant complained that on 27 May 2000 federal servicemen had beaten him and his son and then taken the latter away following which he had disappeared and that the authorities failed to carry out an effective investigation into the matter. The applicant also claimed that he had endured mental suffering and that his right to respect for private and family life had been breached as a result of his son's disappearance and the State's failure to investigate those events properly. He further complained that there had been no effective remedies in respect of the above violations of his rights. The applicant referred to Articles 2, 3, 5, 8 and 13 of the Convention in connection with these complaints.

2. The applicant also relied on Article 8 of the Convention, complaining that on 27 May 2000 the federal servicemen had illegally entered his housing and searched it.

3. In his letter of 11 July 2005 the applicant claimed, in addition, that the Government's refusal to submit the file in the criminal case opened in connection with his son's disappearance was in breach of the State's obligations under Articles 34 and 38 § 1 of the Convention.

## THE LAW

1. The applicant complained that his 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. He also claimed that he had been beaten by the servicemen who raided his house on 27 May 2000 and that his credible allegation of ill-treatment had not been investigated. He further alleged that his right to respect for private and family life had been breached as a result of unlawful detention and disappearance of his son. The applicant also complained that he had been deprived of effective remedies in respect of the aforementioned violations. The applicant referred to Articles 2, 3, 5, 8 and 13 of the Convention, which, in so far as relevant, provide as follows:

#### **Article 2**

“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.”

#### **Article 3**

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

#### **Article 5**

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

...

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

...

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

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

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

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

#### Article 8

“1. Everyone has the right to respect for his private and family life, his home...

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.”

#### Article 13

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

### A. Exhaustion of domestic remedies

#### 1. Submissions by the parties

The Government argued that the aforementioned complaints should be declared inadmissible for non-exhaustion of domestic remedies, as the investigation into the abduction of the applicant’s son had not yet been completed, and the applicant had not complained to any courts in the Chechen Republic or in the neighbouring regions about his son’s allegedly unlawful detention.

The applicant argued that the fact that the investigation into the circumstances of his son’s disappearance was still pending cast doubt upon its effectiveness rather than indicating that his complaints were premature. The applicant further stressed that he had lodged a court complaint against the investigating authorities’ failure to carry out an effective investigation into the events of 27 May 2000, but to no avail, as a judge had refused to examine the merits of his complaint with reference to the absence of a list of persons who had been involved in his son’s abduction. The applicant also referred to the case of *Khashiyev and Akayeva v. Russia* (nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 119-121) stating that he was not obliged to pursue any civil remedy, as this would only lead to an award of damages and not to the identification and punishment of those responsible, as required by the Court’s settled case-law in relation to complaints under Article 2 of the Convention. The applicant further stated that he had repeatedly applied to law-enforcement bodies, including various prosecutors, and had actively participated in the investigation. This avenue, however, had proved futile, given that the criminal investigation had been

pending for several years but had failed to identify those responsible for the illegal detention and disappearance of Magomed Umarov and the beatings of the applicant.

## *2. The Court's assessment*

The Court considers that the question of exhaustion of domestic remedies is so closely linked to the merits of the case that it is inappropriate to determine it at the present stage of the proceedings.

The Court therefore decides to join this objection to the merits.

## **B. As to the merits of the applicant's complaints**

### *1. The Government*

The Government submitted that on 27 May 2000, in the morning, "unidentified masked men in camouflage uniforms armed with automatic firearms" had taken away the applicant's son and inflicted bodily injuries on the applicant. They further contended that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicant's Convention rights.

As regards Article 2 of the Convention, the Government referred to a reply from the Prosecutor General's Office stating that the investigation had obtained no evidence to the effect that Magomed Umarov was dead, or that representatives of the federal power structures had been involved in his abduction or alleged killing. They also claimed that the investigation into the disappearance of the applicant's son and the beating of the applicant met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the alleged perpetrators.

The Government further 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.

According to the Government, there was no evidence that the applicant's son had been detained in breach of the guarantees set out in Article 5 of the Convention. Magomed Umarov was not listed among the persons kept in detention centres, and there was no information that any decision ordering his remand in custody had ever been taken in his respect.

They contended that no evidence had been obtained indicating a breach of the applicant's right to respect for his private and family life, set forth in Article 8 of the Convention.

The Government also contended that the applicant had had effective domestic remedies, as required, by Article 13 of the Convention, as the Russian authorities had not prevented him from using them. They submitted

that the applicant's requests and queries had been included in the file of the criminal investigation into his son's disappearance.

## *2. The applicant*

The applicant disagreed with the Government and maintained his complaints. He argued that it was beyond reasonable doubt that Magomed Umarov had been detained by representatives of the federal forces, this fact being confirmed by numerous eyewitness statements which he had previously submitted to the Court. The applicant stressed that his son had been apprehended in life-endangering circumstances, given that he had been arrested by a group of armed men who had entered the applicant's housing having broken the door, sworn at the applicant and his family members, threatened them with death and beaten the applicant and his son, even though the latter two had not shown any resistance. In this respect he referred to documents of the Council of Europe and those of various human rights NGOs reporting on a widespread practice of forced disappearances, extrajudicial executions, tortures and ill-treatment of detainees in Chechnya by representatives of the federal forces. The applicant thus argued, relying on Article 2 of the Convention, that the fact that his son had remained missing since 27 May 2000 proved that he had been killed.

The applicant further argued that the investigation in the present case had fallen short of the requirements of domestic law and the Convention standards. He pointed out that even though he had immediately notified the authorities of Magomed Umarov's detention, no urgent measures to establish his whereabouts, or to identify those who had detained him, had followed and the investigation had not been commenced before 30 May 2000, i.e. three days after his son's detention. Since then the investigation had been pending but had not brought any tangible results so far, having been repeatedly suspended and reopened. Moreover, the investigating authorities had failed to undertake a number of essential actions, namely to verify the statements of the witnesses who had been kept in the same pit with the applicant's son, to inspect the territory of the military base of Khankala and question those in command there, to notify the applicant of the unidentified bodies at the premises of the railway station and invite him for their inspection. The applicant also pointed out that the scene of the incident at his house had not been inspected until several years later. The authorities had also failed to inform the applicant about the progress of the investigation or of the investigative measures that had been taken. On the contrary, the applicant had in fact been prompted to carry out the investigation himself and to inform the authorities of his findings, in particular, those regarding the military "Ural" vehicle in which his son had been taken away on 27 May 2000. The applicant's numerous complaint and queries had been forwarded to prosecutors without being examined on the merits.

The applicant further insisted that during and after his apprehension Magomed Umarov had been subjected to treatment contrary to Article 3 of the Convention. In particular, he had been severely beaten at the moment of his arrest and thereafter and kept in a pit without any warm clothes. The applicant maintained that during the raid of 27 May 2000 the servicemen had beaten him, with the result that several of his ribs had been broken, and then dragged him out of the house half-naked. He referred to the results of the medical examination he had submitted to the Court in support of his allegations. He and all his family members had been verbally abused and threatened with death. The applicant also submitted that the authorities had not conducted a thorough investigation into the matter, despite his credible allegations of ill-treatment.

The applicants also contended that he had endured severe mental suffering falling within the scope of Article 3 of the Convention in connection with Magomed Umarov's disappearance. He pointed out that he was Magomed Umarov's father, they had lived together and had close relationship, he had witnessed Magomed Umarov's detention and had since been trying to obtain any information about his whereabouts and about developments in the investigation. Those attempts, however, had proved unsuccessful in view of the State's indifference to the disappearance of the applicant's son and its repeated failure to inform the applicant of the progress in the investigation.

The applicant claimed that his son's detention had not satisfied any of the conditions set out in Article 5 of the Convention, had had no basis in national law and had not been in accordance with a procedure established by law or been formally registered.

The applicant maintained that the arrest and disappearance of his son had breached his right to respect for his private and family life, secured by Article 8 of the Convention.

The applicant also relied on Article 13 of the Convention, alleging that in his case the domestic remedies usually available had proved to be ineffective, given that the investigation had been pending for several years without any progress and that all his applications to public bodies, including his court complaint against the investigating authorities' inactivity, had remained unanswered or had only produced standard replies.

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

The Court considers, in the light of the parties' submissions, that the aforementioned complaints raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, it concludes that the complaints under Article 2, 3, 5 and 13 of the Convention and the complaint concerning a violation of the applicant's right to respect for his private and family life under Article 8 of the Convention cannot be declared manifestly



ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

2. The applicant further complained under Article 8 of the Convention of an infringement of his right to respect for his home on account of the intrusion of the federal servicemen into his house on 27 May 2000 and the ensuing search.

*1. Submissions by the parties*

The Government argued that this complaint should be declared inadmissible for non-exhaustion of domestic remedies and that, in any event, there was no evidence of a breach of the applicant's right to respect for his home since it had not been established that the men who had entered his house on 27 May 2000 had been representatives of the State.

The applicant disagreed with the Government and maintained his complaint. He claimed that the intrusion in his house and the ensuing search had been in breach of national law, had not pursued a legitimate aim and had not been necessary in a democratic society.

*2. The Court's assessment*

The Court does not find it necessary to examine the arguments advanced by the parties since this part of application is in any event inadmissible for the following reasons.

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 use first 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. 62566/000 et seq., 10 January 2002).

In the instant case, it does not appear that the applicant properly raised before the domestic authorities his complaint alleging a breach of his right to respect for his home. The Court notes in this connection that in his initial complaint of 27 May 2000 to the Grozny prosecutor's office as well as in his complaints of 15 November 2000 and 12 February 2001 to the military prosecutor of the Chechen Republic, the applicant mentioned the intrusion into his house and the search when describing the circumstances of Magomed Umarov's detention. However, the Court considers that, in the circumstances, the applicant did not, as such, challenge the intrusion or search but rather referred to them as a background for his complaints about his son's detention and disappearance. The Court is thus not convinced that this could be regarded as an attempt by the applicant to bring his complaint,

as raised before the Court, to the attention of the national authorities. But even assuming that in the circumstances of the present case no remedies were available to the applicant, the events complained of took place on 27 May 2000, whereas his application was lodged on 15 February 2002, more than six months later (see *Musayeva and Others v. Russia* (dec.), no. 74239/01, 1 June 2006 or *Aziyev and Aziyeva v. Russia* (dec.), no. 77626/01, 21 September 2006).

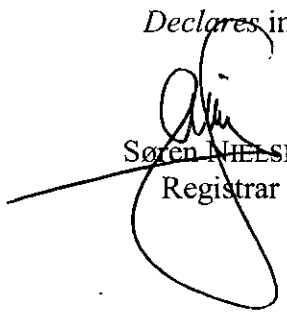
It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

*Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies in respect of the complaints submitted under Articles 2, 3, 5 and 13 of the Convention and the complaint regarding a violation of the applicant's right to respect for his private and family life under Article 8 of the Convention;

*Declares* admissible, without prejudging the merits, the applicant's complaints under Articles 2, 3, 5 and 13 of the Convention and the complaint regarding a violation of the applicant's right to respect for his private and family life under Article 8 of the Convention;

*Declares* inadmissible the remainder of the application.



Søren NIELSEN  
Registrar



Christos ROZAKIS  
President