



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

FORMER FIRST SECTION

**CASE OF GAYSANOVA v. RUSSIA**

*(Application no. 62235/09)*

JUDGMENT

STRASBOURG

12 May 2016

**FINAL**

**17/10/2016**

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



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

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

Mirjana Lazarova Trajkovska, *President*,  
Khanlar Hajiyev,  
Julia Laffranque,  
Linos-Alexandre Sicilianos,  
Erik Møse,  
Ksenija Turković,  
Dmitry Dedov, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 19 April 2016,

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

**PROCEDURE**

1. The case originated in an application (no. 62235/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Lida Gaysanova (“the applicant”), on 25 November 2009.

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

3. The applicant alleged that her daughter had disappeared as a result of a special operation carried out by State agents in October 2009 in Chechnya, and that the authorities had failed to carry out an effective investigation into the matter.

4. By a decision of 27 August 2013 the Court declared the application admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1) on the merits. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1946 and lives in Nazran, the Republic of Ingushetia. She is the mother of Ms Zarema Gaysanova, who was born in 1969.

#### **A. Disappearance of Ms Zarema Gaysanova and surrounding events**

##### *1. Background information*

7. The applicant's property at 7 Second Darvina Lane in Kalinin, a village in the Leninskiy district of Grozny in the Chechen Republic, comprised a house, shed and courtyard. At the material time, it was under reconstruction after being heavily damaged during one of the Chechen military campaigns. Her daughter Zarema, who worked for the Grozny office of the Refugees' Council, a Dutch NGO, regularly stayed at the property for various periods.

##### *2. Disappearance*

###### **(a) The applicant's account**

8. The applicant did not witness her daughter's abduction. Her account of the events is based on information obtained from her neighbours in Kalinin.

9. On 31 October 2009, while Ms Zarema Gaysanova was at the applicant's property on Second Darvina Lane, the law-enforcement authorities launched a special operation in the village, aimed at eliminating members of illegal armed groups. During the operation a man hid in the applicant's property, which was blocked and shelled until it caught fire. As the house was burning down, Ms Gaysanova was pushed into a UAZ vehicle and taken away. After the house burnt to the ground, law-enforcement officers recovered a man's body. Shortly thereafter the Chechen President, Mr Ramzan Kadyrov, and the Chechen Minister of the Interior, Mr Ruslan Alkhanov, arrived at the property. Mr Kadyrov, among other things, gave an interview to the local media, saying that a member of illegal armed groups had been "liquidated" in the applicant's house.

10. The applicant has had no news of her daughter since her disappearance.

###### **(b) Information submitted by the Government**

11. In reply to the Court's request for information of 27 November 2009, the Government stated that the criminal case file concerning Ms Zarema

Gaysanova's disappearance (see paragraph 19 et seq. below) contained information suggesting that on 31 October 2009 a special operation had been conducted in Kalinin. However, there was no indication that the applicant's daughter had been arrested in the course of that operation.

12. In observations of 16 September 2010, the Government also submitted that the operation carried out on 31 October 2009 by the law-enforcement authorities was also called "operational-search activities" (*оперативно-розыскные мероприятия*). In conducting them, they had blocked Mr A.Kh., a member of illegal armed groups, into 7 Second Darvina Lane and had "eliminated" him. Ms Zarema Gaysanova had not been seen or arrested during these events and her body had never been found.

### *3. Press coverage of the special operation in Kalinin*

13. On 31 October 2009 the press office of the Ministry of the Interior of the Chechen Republic (*Министерство внутренних дел Чеченской республики*) (hereinafter "the Chechen MVD") published information on its official website concerning the special operation conducted in Kalinin. The relevant part of the press release reads as follows:

"Today, in the course of a special operation in a house in the Leninskiy district of Grozny, [MVD] officers located and liquidated a member of illegal armed groups. [In response to] the officers' request to surrender his weapons the criminal offered armed resistance. The criminal was hiding in a house which, in the ensuing fight, was set on fire ... The criminal was liquidated.

According to the Minister of the Interior, Ruslan Alkhanov, the fighting continued for fifteen minutes ...

...

The special operation aimed at liquidating the member of illegal armed groups was conducted under the command of the President of the Chechen Republic, Ramzan Kadyrov ... At the moment a group of investigators is working at the crime scene ..."

14. The online press release was accompanied by a video. It showed, from different angles, a redbrick house under reconstruction burning down with several dozen armed men wearing khaki green and black and blue camouflage uniforms surrounding it, pointing their guns and moving around. It also showed some firemen extinguishing the fire, a fire engine and several other vehicles parked nearby and a number of armed men in camouflage uniforms and plain-clothed men gathered in the vicinity. The applicant furnished the Court with a recording of the video. She identified the burning building as her house at 7 Second Darvina Lane in Kalinin.

### *4. Proceedings concerning Mr A.Kh.*

15. On 31 October 2009 an investigator from the Leninskiy inter-district investigation department of the investigation committee at the prosecutor's

office of the Russian Federation in the Chechen Republic (*Ленинский межрайонный отдел следственного комитета по Чеченской Республике*) (hereinafter “the Leninskiy investigation department” or “the investigation department”) reported to his superiors that at 3.30 p.m. he had been informed about the “liquidation” of Mr A.Kh., a member of illegal armed groups, at 7 Second Darvina Lane in the Leninskiy district of Grozny. Mr A.Kh. had been surrounded at the address at about 3 p.m.

16. Between 4 p.m. and 6.45 p.m. the investigator, with the assistance of an expert and in the presence of three attesting witnesses, examined the crime scene.

17. On 7 November 2009 the investigation department informed the Minister of the Interior that at about 3 p.m. on 31 October 2009 the law-enforcement authorities had surrounded Mr A.Kh. at 7 Second Darvina Lane in the Leninskiy district of Grozny. He had offered armed resistance to the law-enforcement officers and had been “liquidated” as a result of the ensuing fight. The Minister was asked to examine the circumstances of Mr A.Kh.’s “liquidation” and to inform the investigators of any decisions taken.

18. On 10 November 2009 the investigation department refused to institute criminal proceedings into Mr A.Kh.’s death, on the grounds that he had resisted arrest and the law-enforcement officers had acted in self-defence. The decision referred to statements by five residents of Second Darvina Lane, including the applicant. They stated, among other things, that Ms Zarema Gaysanova and her brother Ibragim had lived at 7 Second Darvina Lane and that the house had been under reconstruction. At about 3 p.m. on 31 October 2009 police officers had sealed off the area, including the applicant’s house. They had opened fire and the house had burnt down. The applicant submitted that at about 6 p.m. that evening she had received a call from her neighbour, Mr R.M. He had told her that a special operation had been carried out in the village, during which a man had entered her property. Her house had been burnt down and her daughter had been pushed into a UAZ vehicle and taken to an unknown destination. The decision did not specify which law-enforcement agencies had carried out the operation.

## **B. Investigation into Ms Zarema Gaysanova’s disappearance**

### *1. Information and documents submitted by the Government*

19. At the Court’s request, on 10 and 21 December 2009 the Government submitted information and 160 pages of documents from case file no. 66094 opened into Ms Zarema Gaysanova’s disappearance and containing details of the proceedings between 1 November and 5 December 2009.

20. Following the Court's subsequent request to submit an entire copy of case file no. 66094 at the communication stage, the Government furnished a further 608 pages of documents containing details of the proceedings between 1 November 2009 and 11 May 2010. The documents were unnumbered and contained new documents relating to the period 1 November to 5 December 2009, which had not been submitted in December 2009. A significant number of documents, including witness statements such as those by the applicant's neighbours from Second Darvina Lane, were only partially submitted, in that only the pages containing their names and addresses were provided. Some of the documents were illegible.

21. On 17 December 2013 the Government submitted additional observations on the merits of the case along with an 1872-page "... copy of the criminal case-file not including the questioning records of several [police] servicemen containing classified personal data. However, these servicemen did not provide any information of importance to the investigation ..."

**(a) Opening of the investigation**

22. On 1 November 2009 the applicant provided a statement to police captain Mr A.D. at the Leninskiy district department of the interior (*Ленинский районный отдел внутренних дел*) (hereinafter "the Leninskiy ROVD"). She stated that on 31 October 2009 she had received a telephone call from her neighbour Mr R.M., who had told her that as a result of a special operation conducted on Second Darvina Lane, her house had been burnt down and her daughter had been taken away in a UAZ vehicle. There had been no news of her daughter since.

23. On 3 November 2009 the acting Leninskiy district prosecutor forwarded the applicant's abduction complaint of 1 November 2009 to the investigation department, instructing it to examine it.

24. In observations of 17 December 2013 the Government stated that "the authorities became aware of Ms Zarema Gaysanova's disappearance on 5 November 2009".

25. On 8 November 2009 the Leninskiy investigation department extended the time-limit for examining the applicant's complaint to 15 November 2009. The decision stated that the investigators had interviewed the applicant and sent various queries to the Leninskiy ROVD, and that further steps were to be taken such as a crime scene examination and witness identification and questioning, including of the applicant's neighbour Mr R.M. and the officers who had conducted the special operation on 31 October 2009.

26. On 10 November 2009 the Leninskiy ROVD forwarded the applicant's abduction complaint to the Leninskiy investigation department. According to the applicant, in the complaint to the ROVD and explanatory

letter, both of which were dated 1 November 2009, the date had been subsequently changed to 9 November 2009.

27. On 16 November 2009 the Leninskiy investigation department opened a criminal investigation into Ms Zarema Gaysanova's abduction under Article 126 § 2 of the Criminal Code (aggravated abduction). The case file was given the number 66094. The decision stated that from the applicant's complaint lodged on 5 November 2009 it appeared that at about 5.30 p.m. on 31 October 2009 unidentified persons in camouflage uniforms driving a UAZ vehicle had abducted Ms Zarema Gaysanova from 7 Second Darvina Lane in the Leninskiy district of Grozny and had taken her to an unknown destination. Later that day (in the documents submitted the date was also referred to as 10 December 2010) the applicant was granted victim status in the proceedings.

**(b) Main witness statements taken by the authorities**

28. The authorities questioned a significant number of witnesses after the investigation was opened. These included the applicant's neighbours, the workers who had carried out the reconstruction work on the applicant's house, several police officers from the Argun department of the interior (*Аргунский отдел внутренних дел*) (hereinafter "the Argun OVD"), who had participated in the special operation, the firemen who had put out the house fire, Ms Gaysanova's colleagues and the applicant's relatives in Nazran.

29. On 9 November 2009 the investigators questioned the applicant, who stated that before being abducted her daughter had lived at 7 Second Darvina Lane, which had been under reconstruction. She had worked for the Grozny office of the Dutch Refugees' Council. The applicant's son Ibragim had stayed with Zarema on several occasions. Between 6 p.m. and 7 p.m. on 31 October 2009 the applicant's neighbour, Mr R.M., had told her over the telephone that at about 3.30 p.m. that day the law-enforcement authorities had conducted a special operation in the village. In the course of the operation a man had rushed into the applicant's courtyard, her house had been burnt to the ground and her daughter had been forced into a UAZ vehicle and taken to an unknown destination.

30. On 10 December 2009 the investigators again questioned the applicant, who stated, among other things, that between 10 p.m. and 11 a.m. on 31 October 2009 she had spoken to her daughter on the telephone about the reroofing of the house, which was being done by workers that day. She had tried to call her after lunch, but there had been no answer. At about 6.40 p.m. her neighbour Mr R.M. had told her over the telephone that officers of the police or the military forces had carried out a special operation in the village, during which her house had been burnt down and a man's body had been recovered from the ruins. During the operation the officers had stopped residents from leaving their houses. Mr R.M. had seen



through a window several officers in camouflage uniforms armed with assault rifles pushing a woman wearing a well-worn pink dressing gown into a UAZ vehicle and driving away. He had recognised the woman as Ms Zarema Gaysanova by what she had been wearing. The applicant said that another neighbour, Ms Z.S., had told her that one of the men in camouflage uniform who had been in her house during the operation had asked over his portable radio “whether the others had shown the body to the woman”. At that very moment she had heard a woman scream. The man had asked his colleagues if they had put the woman into the car, which they had confirmed. After that, the man had told Ms Z.S. that “they had killed the devil”, that she could now relax and that they were leaving. While at Ms Z.S.’ house, the man in camouflage had asked her numerous questions about the Gaysanov family and their connections and occupations. The applicant also submitted that Mr R.M. lived in Moscow and on 31 October 2009 he had come to Kalinin to visit his brother, Mr A.M.

31. Between February and May 2010 the investigators also questioned construction workers Mr A.Yu.Zh., Mr A.A.D., Mr A.V.L., Mr B.I.B and Mr A.Yu.A., all of whom confirmed that since the end of 2009 they had been doing repair work on the applicant’s house where Ms Zarema Gaysanova, and occasionally her brother Ibragim, had lived. All of the workers stated that the last time they had seen Ms Gaysanova was on 31 October 2009 and that they had learnt of the special operation that evening. When they had arrived at the applicant’s house at about 11 a.m. on 1 November 2009, there had been a large group of law-enforcement officers inspecting the property and the surrounding area. The officers had asked them questions about the owners of the house and whether they knew anything about their connections and habits. According to the workers, they had learnt of Ms Zarema Gaysanova’s abduction from the police officers. When questioned again by the investigators, some of the workers changed their initial statements and told them that they had learnt of the abduction from the applicant.

32. Between February and May 2010 the investigators also questioned seven police officers from the Argun OVD, all of whom stated that at about 4.30 p.m. on 31 October 2009 ten officers from their police station had been sent to 7 Second Darvina Lane following a tip-off that Mr A.Kh., a member of illegal armed groups, had been hiding there. On arrival, some of them had surrounded the house while others had waited in a neighbouring courtyard. Officers of other law-enforcement agencies had also participated in the operation. Mr A.Kh. had been asked to surrender; in response he had opened fire. A grenade had exploded in the yard and there had then been intensive gunfire and the house had been stormed. The building had caught fire and firemen had subsequently put it out. The burnt remains of a man had been found among the ruins. All of the police officers denied having seen Ms Zarema Gaysanova or having any knowledge of her abduction.

33. On 27 April 2010 the investigators questioned taxi driver Mr Yu.A.B. He stated that at about 12 noon on 31 October 2009 he had picked up Ms Zarema Gaysanova to take her shopping and had seen some workers, including Mr A.M.D., repairing the roof. He had taken her back home at around 1 p.m. That evening he had met Mr A.M.B., who had told him about the special operation on Second Darvina Lane. At about 8.30 p.m. Mr Yu.A.B. had called Ms Zarema Gaysanova, but her mobile telephone had been switched off.

34. On 28 April 2010 the investigators questioned another construction worker, Mr A.M.B., who stated that after lunch on 31 October 2009 Ms Zarema Gaysanova had returned home with a taxi driver, Mr Yu.A.B. After he had left, they had talked in the shed over a cup of tea, and at about 3.10 p.m. she had gone in the house and he had carried on working. About ten minutes later he had heard heavy footsteps in the courtyard and had seen seven unmasked men in camouflage uniforms, all armed with assault rifles. One of them had asked him in Chechen “Where has he gone?” to which the witness had replied “Who are you talking about? I am working here”. Shortly thereafter something had exploded inside the house and there had then been intensive gunfire. The witness had heard someone shout in Chechen “Throw grenades, protect our men!” The officers had been shooting at the house and the witness had shouted “Why are you shooting at the house? There is a woman inside!”, but no one had paid any attention. After the shooting had stopped, the witness had managed to make his way outside the courtyard, where he had seen officers sealing off the area, ready for a further shootout. An officer at the gate had ordered him to leave. Several moments later the witness had called Ms Gaysanova on her mobile telephone, but there had been no answer.

35. On various dates between November 2009 and May 2010 the investigators questioned a number of the applicant’s neighbours. Most of them confirmed that a special operation had taken place on Second Darvina Lane on 31 October 2009 and that the area had been sealed off by the security forces, but denied having seen Ms Zarema Gaysanova being taken away. Ms T.Kh.A., who lived at 12 Second Darvina Lane, was questioned on 11 May 2010. She stated that at about 3.30 p.m. on 31 October 2009 she had seen a large group of men on the street armed with assault rifles and wearing camouflage uniforms, and a UAZ vehicle. One of the officers had ordered her to get back inside the house and close the door. Shortly thereafter she had heard intensive gunfire and had seen number 7 burning down. Sometime later, police officers had come to her house to ask, among other things, whether she had known Ms Gaysanova.

36. On 1 December 2010 (the date on the document appears to be incorrect, see paragraphs 59, 64 and 94) the investigators questioned the Chechen President Mr Kadyrov, who stated that “many” special operations had been conducted in the Chechen Republic around that time and that the

heads of the law-enforcement agencies reported the results to him. As to the special operation conducted on 31 October 2009 to eliminate a member of illegal armed groups, Mr A.Kh., he had arrived at the scene at the end of the operation and had seen a burning house and firemen trying to put out the fire. The Minister of the Interior Mr Alkhanov had reported the results of the operation to him. Mr Kadyrov said he had not seen anyone at the scene and had no information about Ms Zarema Gaysanova being detained or abducted.

37. On various dates in February 2011 the investigators questioned four of the applicant's neighbours, whose statements did not provide any new information.

38. On 28 February 2011 the investigators questioned forensic expert Mr Ma.Ma., who stated that he had participated in the crime scene examination shortly after the special operation on 31 October 2009 but had not seen any senior law-enforcement officials or Ms Gaysanova there, and was unable to name any of the other people who had participated in the crime scene examination that day.

39. On 6 March 2011 the investigators again questioned the applicant, who reiterated her previous statements (see paragraphs 29 and 30 above). She added that on 9 November 2009 at the premises of the Chechen investigation department she had spoken to investigator Mr Tam., who had been in charge of the investigation into her daughter's disappearance and had told her "your daughter Ms Zarema Gaysanova is alive but we have no access to her".

40. On various dates in March 2011 the investigators questioned three ambulance workers who had arrived at the scene on 31 October 2009. Their statements did not provide any new information.

41. On 23 and 28 April 2011 the investigators questioned the deputy chief of the Argun OVD, Mr M.Dzh. and one of his officers, Mr L.Ba. They both stated that Special Task Unit "Terek" of the Argun OVD (*отряд милиции специального назначения*) had participated in the operation on 31 October 2009.

42. On 13 June 2011 the investigators again questioned the applicant, who stated that her daughter had been unmarried at the time of her abduction and that at some point in 1986 she had married someone called Mr Yandiyev but had divorced him six months later.

43. On 14 June 2011 the investigators again questioned Mr A.M.B., who reiterated his previous statement (see paragraph 34 above).

44. On 14 June 2011 the investigators questioned the investigator Mr Tam., who stated that in November 2009 he had told the applicant that her daughter had been alive just to calm her down (see paragraph 39 above).

45. On 3 August 2011 the investigators again questioned the applicant, who stated that her daughter had not fallen out with anyone or received any threats and had not been involved in a blood feud.

46. On 29 June 2012 the investigators questioned the head of the Argun town administration, Mr I.T., who stated that he had not participated in the special operation on 31 October 2009 and nor had his security service or guards.

47. On 28 June 2013 the investigators again questioned the Chechen President Mr Kadyrov, who reiterated his previous statement (see paragraph 36 above).

**(c) Main investigative steps taken by the authorities**

48. In the course of the investigation, the authorities primarily took the following steps. They (i) carried out an examination of the crime scene on several occasions, (ii) made requests for information to various law-enforcement agencies and detention centres concerning Ms Zarema Gaysanova's possible arrest or detention in the Chechen Republic and neighbouring regions, and the existence of pending criminal proceedings against her or her possible involvement with members of illegal armed groups, (iii) verified whether she had left the Chechen Republic by plane or train, (iv) published a search announcement in the regional media, and (v) traced the location of her mobile telephone between 21 and 31 October 2009.

49. On 4 December 2009 the deputy head of the Chechen investigation department issued orders for the investigators in criminal case no. 66094 instructing them to, amongst other things, verify the law-enforcement agencies' conduct of the special operation on 31 October 2009 and question its participants concerning the details.

50. On 5 December 2009 the investigators wrote to the chief of the Leninskiy ROVD, asking him to take disciplinary measures against the officers who had failed to comply with the investigators' instructions and take the steps requested in criminal case no. 66094.

51. On 11 December 2009 the investigators obtained a joint operational report (*оперативная сводка*) from the Chechen MVD concerning the events of 31 October 2009. The relevant part of the document reads as follows:

“ ...

**Leninskiy District. Military clash.**

At 6.15 p.m. on 31 October 2009 the [MVD] front desk was informed ... that at 3.30 p.m. on 31 October 2009 in a deserted half-ruined house at 7 Second Darvina Lane, Grozny ... officers from the Argun [OVD], Leninskiy [ROVD], 8th company of the 2nd regiment of the [MVD] traffic police and the head of the Argun town administration's security service had blocked a member of illegal armed groups, who had offered armed resistance during his apprehension and had been liquidated ...

Present [during the operation were]: Minister of the Interior Mr R. Alkhanov and deputy Minister of the Interior Mr R.L.E, chief of Grozny criminal police Mr Sh., chief of the department of the interior Mr Ir., chief of criminal police at the

department of the interior Mr Is., chief of public security police at the department of the interior Mr Ba. and his deputy Mr Bu., acting chief of the criminal investigation directorate at the department of the interior Mr M., an investigator from the Leninskiy investigation department Mr A., the [entire] operational investigation group of the [MVD], the operational investigation group of the department of the interior, the Leninskiy district [of Grozny] operational investigation group of the Temporary Alignment of Departments at the Ministry of the Interior of the Russian Federation in the North Caucasus Region ...”

52. On 11 January 2010 the applicant’s lawyer requested that the investigators take a number of steps. These included obtaining copies of the video footage of the special operation and questioning the officials who had been in charge and its participants, the applicant’s neighbours Mr R.M., Ms Z.G and Ms Zh.S, and the construction workers who had carried out the work on the applicant’s house on Second Darvina Lane. On 12 January 2010 the investigators granted the request.

53. On 27 January 2010 the head of the Chechen investigation department wrote to the Chechen Minister of the Interior stating, amongst other things:

“... [within the framework of the investigation of criminal case no. 66094], on 24 December 2009 the Chechen prosecutor organised a meeting on officers from the Leninskiy ROVD in Grozny and servicemen from operational-search unit no. 2 of the Ministry of the Interior in the Southern Federal Circuit (the ORB-2) collaborating with the investigation to solve the crime and prosecute the perpetrators.

However, officers from the Leninskiy ROVD in Grozny have not been providing operational support ... repeated requests for information to the chief of the Leninskiy ROVD [have met with] formal and incomplete replies ... [even though] in reply to the repeated request of 6 December 2009 it was stated that the police officers had examined the crime scene again and had found burnt passports, one for use in Russia (internal) and another (foreign) one for use abroad. However, at the time of writing this evidence and the relevant documents have not been provided to the investigators of the criminal case ...

[As] to our request of 9 December 2009 concerning the identities of the servicemen who participated in the special operation and the conclusions of the internal inquiry, on 18 December 2009 a formal reply was given ... which did not contain any meaningful information; the information and documents requested were not submitted.

On 23 December 2009 we sent another request for information concerning the officers who participated in the special operation and the conclusions of the internal inquiry. To the present date no reply has been given.

[As] to our repeated requests of 11 and 28 December 2009 concerning the identities of the officers who participated in the special operation ... no reply has been given. Officers from the Argun OVD Mr M.B., Mr D.V., Mr I.G and Mr R.Akh, who participated in the operation and whose identities were established by the investigators, refused to give statements to the investigation ...

Thus, at the time of writing the investigation either does not have information concerning the persons who participated in the special operation (their names, service positions and ranks) or documents confirming its lawfulness.

In connection with the above, you are requested to personally supervise execution of the requests in the criminal case and provide full and timely replies to the requests for information and operational steps. You are also requested to order an internal inquiry in connection with the violations of criminal procedure law by your subordinates in the [relevant] police departments ...”

54. On 28 January 2010 the investigators requested the chief of the Argun OVD to provide, amongst other things, the following information:

“... according to the reply received by the investigation in criminal case no. 66094 to its request for information of 15 December 2009, the following [eleven] officers from the criminal search division of the Argun OVD participated in the special operation on 31 October 2009: Mr Sh.Ya., Mr K.S., Mr M.B., Mr A.P., Mr D.V., Mr Dz.M., Mr E.A., Mr R.A., Mr R.Akh., Mr Kh.O. and Mr A.Ma.

Based on this information, you are requested to ensure these officers [attend] the Chechen investigation committee at 9 Garazhnaya Street, Grozny to be questioned as witnesses. You are also requested to forward me documents confirming the lawfulness of the special operation ... the order to conduct the operation and a copy of the results of the internal inquiry carried out into the matter ...”

55. On 2 February 2010 the acting chief of the Argun OVD replied to the investigators that they had no information concerning Ms Zarema Gaysanova’s abduction and that the officers mentioned in the request of 28 January 2010 had been instructed to give statements to the investigators. In an additional letter of the same date, the Argun OVD informed the investigators that no internal inquiries had been carried out in connection with the special operation conducted on 31 October 2009 as “there were no violations of the law and no officers from the Argun OVD had been injured”.

56. On 14 February 2010 the applicant repeated the request for the officials in charge of the special operation on 31 October 2009 to be questioned. On 18 February 2010 the investigators replied that they would question them as soon as they had established their identities.

57. On 24 February 2010 the applicant requested that the investigators question, amongst others, Chechen President Mr Kadyrov, as he had information on the special operation. On 26 February 2010 the investigators granted the request.

58. On 5 April 2010 the investigators reported to their superiors that they had been unable to interview Mr Kadyrov, who had been in charge of the special operation on 31 October 2009.

59. On 22 April 2010 the applicant complained to the Chechen investigation department that Mr Kadyrov had not been questioned and that the investigators had failed to take the procedural steps ordered on 26 February 2010. On 26 April 2010 the investigators refused to allow the complaint stating, amongst other things, that according to fourteen other witnesses who had been present during the special operation, Mr Kadyrov had not been there.

60. On 22 April 2010 the applicant's lawyer reiterated his request for the investigators to take a number of steps such as obtaining copies of the video footage of the special operation, identifying and questioning all of the participants, asking the drivers of the UAZ vehicles whether they had seen Ms Zarema Gaysanova being forced into one of them, and questioning the Chechen Minister of the Interior Mr Alkhanov concerning the law-enforcement agencies who had participated in the operation and the firemen who had put out the house fire afterwards. On 26 April 2010 the investigators granted the request.

61. On an unspecified date in April 2010 senior operational-search officer Mr P.G. provided the investigators with an information statement on the operational-search measures taken in the criminal case. The relevant part reads as follows:

“... It has been established by operational-search measures that at about 3.30 p.m. on 31 October 2009 servicemen from the Argun OVD, the 8th company of the 2nd regiment of the traffic police and the head of the Argun town administration security service conducted a special operation, as a result of which an active member of illegal armed groups Mr A.Kh. was found. He resisted arrest and ... was eliminated as a result ... It has also been established that in this household Mr A.Kh. had lived with his wife, Zarema Gaysanova, whose whereabouts after the special operation remain unknown ...”

62. On 9 July 2010 the Chechen deputy prosecutor criticised the investigation into Ms Zarema Gaysanova's disappearance and ordered the investigators to take a number of remedial measures:

“... On 16 June 2010 the investigation was suspended for failure to identify the perpetrators ... An examination of the case file has demonstrated that this decision was unfounded and premature; it was taken prior to all the investigative steps being taken...

... the criminal case has been investigated by several investigators for seven months, however, an effective investigation has not been carried out, the whereabouts of the abducted Ms Z. Gaysanova have not been established, and sufficiently effective steps to identify the culprits have not been taken ...

Up to the present date the servicemen of the law-enforcement agencies who took part in the special operation ... have not all been identified and questioned.

From the operational statement of the Chechnya MVD of 31 October 2009 it appears that servicemen of the 8th company of the 2nd regiment of the traffic police and the head of the Argun town administration security service participated in the liquidation of Mr A.Kh., but [they] have not been identified and questioned.

The requests of the applicant, Ms L. Gaysanova, for access to the investigation file have been granted, but her representatives have not been provided [it] ...

In addition, the applicant's representative requested that the investigators take certain investigative steps such as seizure and examination of the video footage posted on the Chechen Ministry of the Interior's website concerning the special operation... identifying the person who filmed the operation ... those steps have not been taken.

In violation of Article 21 of the Code of Criminal Procedure, no measures have been taken to identify the perpetrators for a long time ...

... In addition, the investigation has not taken sufficient steps to identify key witness Mr R.M. who, according to the applicant, called her to say that Z. Gaysanova had been taken away by the unidentified servicemen who had participated in the special operation against A.Kh. Mr R.M. has not been questioned about those circumstances. In addition, the brother of the abducted Ms Gaysanova, Mr I. Gaysanov, has not been identified and questioned.

Based on the above, the decision to suspend the investigation in criminal case no. 66094 is unlawful and should therefore be overruled ...”

63. On 23 August 2010 the Chechen deputy prosecutor again criticised the investigation into Ms Zarema Gaysanova’s disappearance and pointed out that the steps ordered on 9 July 2010 had not been taken and the orders given had not been complied with. He ordered that the decision to suspend the investigation of 16 June 2010 be overruled as unlawful and the proceedings be resumed.

64. On 10 December 2010 the investigators granted the applicant’s request of 22 April 2010 to have Mr Kadyrov questioned (see paragraph 36 above). The applicant was informed on 13 December 2010.

65. On 28 March 2011 the investigators collected blood samples from the applicant for genetic testing with the samples in the regional DNA database. On 4 April 2011 the experts reported that there had been no matches.

66. On 7 April 2011 the applicant’s lawyer requested the investigators to join the investigation into Ms Zarema Gaysanova’s disappearance with the investigation into the disappearance of Mr Rizvan Aziyev (see *Khava Aziyeva and Others v. Russia*, no. 30237/10, 23 April 2015) for the following reasons:

“... your department investigating criminal case no. 66094 ... initiated in connection with [Ms Zarema Gaysanova’s] abduction during a special operation on Second Darvina Lane in Grozny ... presumably by representatives of the law-enforcement agencies.

On the same date, 31 October 2009, at about 5.50 p.m. by his house at 23 Mumayeva Street in the village of Staraya Sunzha, unidentified armed persons in camouflage uniforms abducted Mr Rizvan Aziyev, who was born in 1979.

In connection with this, the Leninskiy investigation department ... opened criminal case no. 66093, which is also being investigated by your department.

One of the investigation’s theories in criminal case no. 66094 is that Mr A.Kh. had lived with Zarema Gaysanova, and this served as the reason for [her] abduction and questioning by unidentified representatives of the law-enforcement agencies in order to obtain information about him and his activities.

Mr Rizvan Aziyev, who was abducted the same day, is the brother of Ms Khava Aziyeva, Mr A.Kh’s official wife.

Both abductions therefore took place on the date of the special operation on 31 October 2009 to eliminate Mr A.Kh., and both of the people abducted had obvious



connections with him. Ms Gaysanova, in whose house Mr A.Kh. had been killed, was presumably his cohabitee, and Rizvan Aziyev was the brother of Mr A.Kh.'s wife.

In connection with this, there are grounds to presume that the abductions of Ms Gaysanova and Mr Aziyev, who had been connected to Mr A.Kh., had been perpetrated by the same people ...”

67. On 8 April 2011 the investigators refused the above request as groundless.

68. On 21 and 22 April 2011 the investigators checked the detainee registration log of the Leninskiy ROVD temporary detention ward. There was no indication that Ms Zarema Gaysanova had been detained on the premises.

69. On 14 June 2011 the investigators obtained two DVDs from the Chechen MVD information centre containing the video footage of the special operation on 31 October 2009 and incorporated them into the investigation file as evidence.

70. On 3 July 2012 the investigators in charge of criminal case no. 66094 informed the head of the Chechen investigation department that they needed to question the Chechen President Mr Kadyrov again, but were unable to do so as he was too busy. They eventually questioned him on 28 June 2013 (see paragraph 47 above).

71. On 22 July 2013 an operational-search officer from the criminal search division of Grozny OVD, Mr R.D., provided the investigators with an information statement on the operational-search steps taken in the criminal case. The relevant part reads as follows:

“... It has been established by operational-search measures that at about 3.30 p.m. on 31 October 2009 servicemen from the Argun OVD, the 8th company of the 2nd regiment of the traffic police and the head of the Argun town administration security service conducted a special operation, as a result of which an active member of illegal armed groups, Mr A.Kh., was found. He resisted arrest and [was] therefore eliminated ... It has also been established that in that household Mr A.Kh. had lived with his wife, Zarema Gaysanova, whose whereabouts after the special operation remain unknown ...

Ms Zarema Gaysanova was not officially married ...

Two theories were proposed within the framework of the operational-search activities:

- Zarema Gaysanova was detained by servicemen of the law-enforcement agencies owing to her possible involvement in illegal armed groups;
- Zarema Gaysanova was hiding from the police to avoid prosecution for being a member of illegal armed groups ...”

72. On an unspecified date in 2011 the investigators established that on 31 October 2009 Ms Zarema Gaysanova had had various telephone conversations, one of which had been with Mr A.Kh., who had subsequently been killed during the special operation.

**(d) Information concerning the pace of the investigation**

73. On 5 December 2009 the Leninskiy investigation department issued a formal warning (*представление*) to the chief of the Leninskiy ROVD. It stated that the police department had not carried out any of the investigative steps ordered by the investigators, and had thereby hampered the investigation and precluded it from establishing the circumstances of Ms Zarema Gaysanova's abduction. The chief was instructed to take the necessary steps to remedy the shortcomings and to consider taking disciplinary action against those responsible for the inactivity. On 9 December 2009 the investigators issued a further order to the police department, stressing that their earlier instructions had not been complied with and urging the chief of the Leninskiy ROVD to oversee the matter.

74. On 7 December 2009 the investigation in case no. 66094 was transferred to investigation department no. 2 (Serious Crimes) of the investigation committee at the prosecutor's office of the Russian Federation in the Chechen Republic (*следственный комитет по Чеченской Республике*) (hereinafter "investigation department no. 2").

75. On 9 December 2009 it was decided that the investigation was to be conducted by a group of investigators because there was evidence to suggest that members of the security forces had been involved in Ms Zarema Gaysanova's abduction. The group was to consist of investigators from the Leninskiy investigation department, investigation department no. 2 and officers from the Leninskiy ROVD.

76. On 11 January 2010 the investigators requested that the time-limit for the investigation in case no. 66094 be extended owing to the number of investigative steps to be taken. The document stated that the investigation had been severely hampered by the persistent refusal of the law-enforcement authorities involved in the operation on 31 October 2009 to provide information about the officers who had participated.

77. On 27 January 2010 the investigators requested the Minister of the Interior to personally oversee execution of the requests they had addressed to his subordinates in connection with the investigation in case no. 66094. The letter stressed that the Leninskiy ROVD, the Argun OVD, the 8th company of the 2nd regiment of the MVD traffic police and the Minister himself had persistently disregarded the investigators' repeated requests for information concerning the officers who had participated in the special operation on 31 October 2009. Moreover, officers Mr M.A.B, Mr D.R.V, Mr I.D.G. and Mr R.Z.A. from the Argun OVD, who it had been established had taken part in the operation, had blatantly refused to be questioned. The Minister was asked to look into the matter and take disciplinary action in connection with this.

78. On 16 June 2010 the investigation was suspended. It was resumed on 31 August 2010 then suspended again on 30 September 2010. The

proceedings were resumed each time following criticism from the supervising prosecutor (see paragraphs 62 and 63 above).

79. On 11 August 2010 the applicant requested access to the investigation file. On 13 August 2010 the investigators refused her request as she was not entitled to familiarise herself with the contents of the file until completion of the investigation. The applicant appealed (see paragraph 93 below).

80. On 1 December 2010 the investigation was resumed but suspended the next day. The applicant's lawyer appealed and on 26 January 2011 the proceedings were resumed.

81. On 31 March 2011 the investigation was again suspended. It was resumed on 14 April 2011 for failure to take a number of steps.

82. On 15 July 2011 the investigation was again resumed but suspended on 15 August 2011.

83. On 31 May 2012 the investigation was again resumed owing to the need to take a number of steps such as questioning the head of the Argun town administration on his security guards' participation in the special operation on 31 October 2009 (see paragraph 45 above). On an unspecified date in June 2012 the proceedings were suspended.

84. On 20 June 2012 the investigation was resumed then suspended again on 4 July 2012.

85. On 26 June 2013 the investigation was resumed owing to the need to take a number of steps such as questioning the Chechen President Mr Kadyrov and the applicant's neighbour Mr R.M. and verifying whether Ms Zarema Gaysanova had left Russia.

86. On 10 July 2013 the investigation was suspended again. It appears from the documents submitted that it is pending.

## *2. Information submitted by the applicant*

87. On 6 November 2009 the applicant provided a statement to local human rights lawyers from the United Mobile Group (*Объединенная Мобильная Группа*) (hereinafter "the UMG"). She stated that at about 6.30 p.m. on 31 October 2009 she had received a call from her neighbour Mr R.M. who had informed her, amongst other things, that a special operation had taken place in their neighbourhood and her house had been burnt down as a result, that the armed men who had carried out the operation had taken away her daughter and that a man's body had been found among the ruins by the firemen. At about 9 p.m. that evening the applicant had gone to the Leninskiy ROVD, where investigator Mr Timur G. had taken a statement from her about the abduction. The chief of the Leninskiy ROVD, who had introduced himself as Mr Imran, had then told her that the man's body found among the ruins had belonged to Ms Zarema Gaysanova's husband and that he had no information about who had carried out the special operation. On 1 November 2009 the applicant

had lodged an official written abduction complaint with the Leninskiy ROVD. On the same date she had spoken to several of her neighbours, including Ms Z.S., all of whom had told her that on 31 October 2009 a large group of armed men had carried out a special operation in the vicinity of her house, there had been a shooting and her house had been burnt down. Afterwards, a man's body had been discovered. The Chechen President Mr Kadyrov and Minister of the Interior Mr Alkhanov had arrived at the scene and had given interviews that an illegal armed fighter had been eliminated in the applicant's house.

88. On 20 January 2010 the applicant provided another statement to the UMG lawyers. She reiterated her previous statement and added that on the morning of 1 November 2009 she had been told by two men in dark-coloured VAZ-2109 cars with blacked out windows that they had been guarding the ruins of her house for the crime scene examination. More representatives of law-enforcement agencies had then arrived at the scene. The applicant provided the lawyers with the names and telephone numbers of the workers who had worked on her house prior to the events of 31 October 2009, Mr A. Y. Zh., Mr A.Dzh, Mr I.Dzh, Mr B.B. and brothers Mr Al.A. and Mr Ar.A.

89. On 27 March 2010 the applicant provided another statement to the UMG lawyers. She stressed that on the evening of 31 October 2009 she had complained about her daughter's abduction in person at the Leninskiy ROVD and on 1 November 2009 had lodged a written complaint with the police department, having gone there with three of her relatives, Mr N.G., Ms Zh.G and Mr A.G. The following day she had lodged abduction complaints with the Leninskiy district and Chechen investigation departments, as well as the Leninskiy district prosecutor's office and Chechen prosecutor's office. On 9 November 2009 she had given a statement concerning the abduction to Mr Magomed T., an investigator from the Leninskiy district investigation department.

90. On 26 May 2010 the UMG lawyers took a statement from one of Ms Gaysanova's colleagues from the Dutch Refugee Council, Mr D.K., who stated that on 31 October 2009, after the events at the applicant's house, he had taken the applicant to the Leninskiy ROVD in Grozny. She had been crying, saying that her daughter had gone missing and her house had been burnt down.

91. On 25 May 2010 the UMG lawyers took a statement from the applicant's relatives, Ms Zh.G., Mr N.G. and Mr T.G., whose accounts of the events of 31 October 2009 were similar to that of the applicant. In addition, the witnesses stated that on 1 November 2009 a crime scene examination group consisting of several forensic experts had gone through the ruins of the applicant's burnt house. All of the witnesses confirmed that on 1 November 2009 they and the applicant had gone to the Leninskiy

ROVD, where the applicant had given a written statement concerning her daughter's abduction to the policeman on duty.

*3. The applicant's complaints about the investigation*

92. On 29 April 2010 the applicant requested the Leninskiy district investigation department in Grozny to initiate a criminal investigation into possible forgery, claiming that the date of her abduction complaint (see paragraph 22 above) had been unlawfully changed from 1 to 9 November 2009 (see paragraph 26 above). In reply to her request, on 7 June 2010 the department refused her request, as it was impossible to establish when the correction had been made to the document. The refusal was subsequently overruled but adopted again on four occasions. The last refusal to initiate criminal proceedings into the matter was taken on 12 December 2011.

93. On two occasions, 30 April and 30 August 2010, the applicant complained to the Leninskiy District Court of Grozny that the investigators had refused to grant her access to the case file concerning the investigation into her daughter's disappearance. On 11 May and 5 October 2010 the court allowed her complaints.

94. On 10 December 2010 the Staropromyslovskiy District Court of Grozny rejected a complaint by the applicant made on 19 November 2010 concerning the investigators' refusal to question Mr Kadyrov due to his absence from the crime scene, in spite of widespread media coverage to the contrary (see paragraph 13 above). The court held that on 9 December 2010 the refusal had already been overruled by the deputy head of the Chechen investigation department.

95. On 17 January 2011 the applicant's lawyers complained to the head of the Chechen investigation department that the investigation into Ms Zarema Gaysanova's abduction had been suspended unlawfully, requesting that the proceedings be resumed and a number of steps be taken. In particular, they pointed out the following:

"... according to the criminal case file, the investigators have been verifying the theory that representatives of power structures were involved in Zarema Gaysanova's abduction. The investigation established that the following servicemen had participated in the special operation (according to the operational information note of 31 October 2009, volume 2, page 49 of the case file):

- the Argun department of the interior (OVD)
- the Leninskiy district department of the interior in Grozny (ROVD)
- the 8th regiment of the 2nd Regiment of the Chechen traffic police
- the head of the Argun town administration security service

Also, from the same document it follows that the crime scene had been visited by senior officials of the Chechen law-enforcement agencies and operational investigation groups:

- Chechen Minister of the Interior, Mr A.;

- Chechen deputy Minister of the Interior, Mr E;
- chief of the Grozny department of the interior (the Grozny OVD), Mr T.;
- chief of the criminal search division of the Grozny OVD, Mr Sh.;
- ...
- [the entire] operational investigation group of the Chechen Ministry of the Interior;
- operational investigation group of the Grozny OVD; and
- operational investigation group of the Leninskiy ROVD.

From the video footage made by the press office of the Chechen MVD, which has been incorporated into the case file, it is noticeable that a large number of representatives of the law-enforcement agencies participated in the special operation. However, as at today's date, not all of the servicemen from the Argun OVD who participated in the special operation have been identified and questioned. At the same time, the statements given by the servicemen who had been questioned by the investigation, are very alike, almost copies of, the reports given by these servicemen to the chief of the Argun OVD. In addition, the servicemen from the other regiments have not been identified and questioned by the investigation. The persons in charge of the operation have not been questioned either, even though from the video of the special operation it appears that next to the applicant's house were the Minister of the Interior and a group of officers from the Chechen MVD.

...

In addition, the supervising prosecutor's orders (of 9 July and 23 August 2010) have not been complied with ...

... according to the evidence examination report of 28 September 2010 (pages 248 and 249 of the file) ... the video footage of the special operation on 31 October 2009 cannot be found on the Chechen MVD website. However, the investigators could examine the video footage presented by the applicant's lawyers (see ... request of 22 April 2010, volume 5, pages 40-41) which was made from the video posted on the MVD website. This examination has not been carried out. It is necessary to examine this footage with the assistance of the police in order to identify the participants of the special operation on 31 October 2009 ..."

96. On 24 January 2011 the investigators refused to grant the request, but on 26 January 2011 the deputy head of the Chechen investigation department overruled that refusal and ordered that the request be granted.

97. On 19 April 2011 the applicant's lawyers requested that the investigators take a number of steps including questioning the head of the Argun town administration, an examination of the video footage of the special operation of 31 October 2009, establishing which vehicles had been used during the operation and questioning the senior police officials and other officers who had participated. The applicant's request also contained the following:

"... from the replies of the acting head of the Chechen MVD headquarters to the investigators' requests it appears that ... the applicant's complaint concerning her daughter's abduction, which was received by the police department on 9 November

2009 at 7.10 p.m., stated that Zarema Gaysanova had left herself in an unknown destination and that the police had not received any complaints about her being abducted by unidentified persons in camouflage uniforms driving around in UAZ vehicles. At the same time, in [the actual] complaint lodged by the applicant with the police department stated that Zarema Gaysanova had been abducted by unidentified men in camouflage uniforms right after the special operation conducted on 31 October 2009 (see volume 1, page 26 of the investigation file). In connection with this it is necessary to question the acting head of the Chechen MVD headquarters to find out why he had provided false information to the investigators and what information they have concerning Zarema Gaysanova's departure on her own to an unknown destination...

... It is also necessary to find out ... whether Zarema Gaysanova was the wife of [the man eliminated during the special operation] Mr A.Kh. and to question officer G., who had prepared a report to this end (no. 4912) concerning the sources of that information ...”

On 25 April 2011 the investigators granted the request in part, but did not specify which steps would be taken.

98. On 23 May 2011 the applicant's lawyers requested that the investigators examine the video footage of the special operation which could be found in the archives section of the Chechen MVD official website and question the persons who had filmed the events. The lawyers provided the link to the footage and stated that the video contained clear images of the participants in the special operation. On 26 May 2011 the investigators informed the applicant that they would grant this request but did not specify when and to what extent.

99. On 25 May 2011 the applicant's lawyers requested that the investigators question the Chechen Minister of the Interior Mr Alkhanov, as video footage of the special operation attested to his presence during the events, and ask him about the other participants in the operation. On 3 June 2011 the applicant was informed that the request had been granted.

100. On 24 August 2011 the applicant's lawyers wrote to the investigators to say that Ms Zarema Gaysanova had been a user of an online social networking site, Odnoklassniki («Одноклассники»). The last visit to her account had been on 3 November 2009, after her abduction. In this connection, the lawyers requested that the investigators find out, amongst other things, the account activity since 31 October 2009. On 26 August 2011 the investigators informed the applicant that they had granted her request. It appears from the documents submitted that the requested action was not taken.

101. On 29 July 2011 the investigators refused to grant the applicant's request of 28 July 2011 for access to the case file, stating that it had been lodged by her lawyer and not by the applicant herself.

102. On 27 April 2012 the applicant's lawyer again requested the investigators to grant him permission to access the investigation file, stressing that he had been representing the applicant in accordance with the

criminal procedure law and forms of authority. His request was granted the same day.

## II. RELEVANT DOMESTIC LAW

103. For a summary of the relevant domestic law see *Turluyeva v. Russia*, no. 63638/09, §§ 56-64, 20 June 2013.

## III. INTERNATIONAL AND DOMESTIC REPORTS ON DISAPPEARANCES IN CHECHNYA AND INGUSHETIA

104. For a summary of the relevant international and domestic reports see *Makayeva v. Russia*, no. 37287/09, §§ 67-77, 18 September 2014.

## THE LAW

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

105. The applicant complained that her daughter's right to life had been violated, and that the authorities had failed to investigate her complaint in this regard, in breach of the requirements of Article 2 of the Convention, which 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.”

106. The Government contested that argument. They stressed that the investigation was still pending and that no information had been obtained about Ms Zarema Gaysanova's death. In these circumstances, the complaint should be dismissed as manifestly ill-founded.



## A. Alleged violation of the substantive aspect of the right to life

### 1. *The parties' submissions*

107. The Government emphasised that on 31 October 2009 the law-enforcement authorities had not conducted a “special operation” (*специальная операция*), but rather “operational-search activities” (*оперативно-розыскные мероприятия*) at 7 Second Darvina Lane. They submitted that none of the Argun OVD officers or neighbours had seen Ms Zarema Gaysanova being arrested by the authorities or detained at the premises of any law-enforcement agencies. Her body had not been found and there was no evidence to suggest that she was dead. The applicant had reported the abduction on 5 November 2009 (see paragraph 24 above). The preliminary inquiry into the allegations had been carried out within the prescribed period and the investigation had been initiated on 16 November 2009 (see paragraphs 25-27 above). It was premature to make any conclusions concerning Ms Zarema Gaysanova’s fate as the investigation was still in progress.

108. According to the Government, the numerous steps taken by the authorities indicated that the investigation into the disappearance satisfied the Convention requirement of effectiveness. With reference to the case of *Szula v. the United Kingdom* ((dec.), no. 18727/06, 4 January 2007), they submitted that the applicant did not enjoy an absolute right to have the perpetrators of the crime prosecuted or convicted. She had been granted victim status in connection with the investigation into her daughter’s disappearance and the domestic authorities had properly secured her effective participation in those proceedings. Contrary to what had been suggested by her, she had effective domestic remedies at her disposal.

109. Referring to various statements by witnesses, in particular, those of the officers who had participated in the special operation on 31 October 2009, the applicant stressed that her daughter had disappeared from an area sealed off by the law-enforcement authorities. She argued that there existed evidence “beyond reasonable doubt” that her daughter’s disappearance was attributable to the actions of State agents and that she was to be presumed dead. Referring to the case of *Turluyeva*, cited above, she submitted that the problem of enforced disappearances and its life-threatening implications for detained individuals must have been known to the region’s law-enforcement authorities. Nevertheless, despite being informed of the abduction on 1 November 2009 (see paragraphs 22 and 23 above), they had failed to take steps to prevent her disappearance and had therefore failed to comply with the positive obligation under Article 2 of the Convention.

110. The applicant further submitted that there had been unjustified delays in the opening of criminal case no. 66094 and that the investigators had not been “practically independent”. For instance, by September 2010 they had neither identified nor interviewed all of the law-enforcement

officers involved in the special operation and the police had, in essence, sabotaged the investigation. She had been obliged to request the authorities to take basic investigative steps to expedite the proceedings. Contrary to what had been suggested by the Government, she had not been provided with sufficient information on the investigation and had to raise the matter with the domestic courts (see paragraphs 92-102 above). There had been a systemic failure on the part of the authorities to investigate disappearances in Chechnya.

## 2. *The Court's assessment*

### (a) **Whether Ms Zarema Gaysanova may be presumed dead, and the establishment of responsibility for her presumed death**

111. The Court observes that in its extensive case-law it has developed a number of general principles relating to the establishment of matters in dispute, in particular when faced with allegations of violations of fundamental rights (for a summary, see *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, §§ 151-53, 13 December 2012).

112. More specifically, the Court has adjudicated a series of cases concerning allegations of disappearances in the Russian North Caucasus. Applying the above-mentioned principles, it has concluded that if applicants make a prima facie case of abduction by servicemen, this is sufficient for them to show that their relatives fell within the control of the authorities. It would then be for the Government to discharge their burden of proof, either by disclosing the documents in their exclusive possession or providing a satisfactory and convincing explanation of how the events in question occurred (see, among many other examples, *Aziyevy v. Russia*, no. 7626/01, § 74, 20 March 2008; *Utsayeva and Others v. Russia*, no. 29133/03, § 160, 29 May 2008; and *Khutsayev and Others v. Russia*, no. 16622/05, § 104, 27 May 2010). If the Government fail to rebut this presumption, this would entail a violation of Article 2 of the Convention in its substantive part. Conversely, where applicants fail to make a prima facie case, the burden of proof cannot be reversed (see, for example, *Tovsultanova v. Russia*, no. 26974/06, §§ 77-81, 17 June 2010; *Movsayevy v. Russia*, no. 20303/07, § 76, 14 June 2011; and *Shafiyeva v. Russia*, no. 49379/09, § 71, 3 May 2012).

113. Turning to the circumstances of the present case, the Court notes the following. It is not disputed by the parties that Ms Gaysanova was last seen on 31 October 2009 in the area cordoned off by the law-enforcement agencies for the special operation aimed at eliminating Mr A.Kh. This was confirmed by numerous witness statements obtained by the applicant and by the domestic investigation into her disappearance (see paragraphs 29-31, 34, 39, 43, 60-62, 66 and 71 above). This, along with the fact that the

authorities suspected Ms Gaysanova of cohabiting with the person against whom they had conducted the special operation (see paragraphs 71 and 72 above), enables the Court to find that the applicant has made an arguable claim that her daughter had last been seen in the hands of law-enforcement personnel on 31 October 2009. There is no plausible explanation as to what happened to her after that date.

114. The Government referred to the unfinished nature of the criminal investigation into the applicant's daughter's abduction and to the lack of evidence of her death. However, the Court considers that the fact that the investigation failed to progress beyond the establishment of the basic facts communicated by the applicant is not detrimental to her argument that the State was responsible for Ms Gaysanova's disappearance. It finds that the Government have failed to provide a plausible explanation for her fate following her detention on 31 October 2009.

115. It remains to be seen whether, as the applicant submitted, Ms Gaysanova can be presumed dead following her unacknowledged detention. The Court reiterates that the presumption of death is not automatic and is only reached on examination of the circumstances of the case, in which the lapse of time since the person was last seen alive or heard from is a relevant factor (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 143, ECHR 2009).

116. Having regard to the previous cases concerning disappearances in Chechnya and Ingushetia, the Court has found in the particular context of this conflict that where a person has been detained by unidentified State agents without any subsequent acknowledgment of the detention, this could be regarded as life-threatening (see *Aslakhanova and Others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, §§ 101-02, 18 December 2012, and *Turluyeva*, cited above, § 87).

117. By the time of the judgement in the present case, over six years had passed without any news of Ms Gaysanova. In the light of many similar findings in the past, the Court reiterates that there is a life-threatening context to unacknowledged detention in this region. It is precisely this context which is most relevant to the decision as to whether or not the person may be presumed dead. In such circumstances, it would be artificial to impose a particular time-limit for a claim under Article 2 of the Convention to be considered; while all elements of the case should be taken into account, there is enough evidence to suggest that victims of disappearances often do not survive for very long after their abduction (see, among the most recent authorities, *Turluyeva*, cited above, § 87, and *Makayeva*, cited above, § 92).

118. In view of the above considerations, the Court presumes Ms Zarema Gaysanova to be dead. Consequently, the responsibility of the respondent State is engaged. The liability for her presumed death is

attributable to the State and the authorities have not relied on any of the exceptions to the right to life listed in Article 2 § 2 of the Convention. Accordingly, there has been a violation of Article 2 of the Convention in this regard.

**(b) Alleged failure to take measures to protect against a risk to life**

119. The applicant stated that the State had failed in its positive obligation to protect Ms Zarema Gaysanova's life and that the time wasted in the beginning of November 2009, immediately after she had alerted the authorities to her daughter's abduction from the place the special operation was held, had resulted in a missed opportunity to immediately confront the captors and obtain her release. The Government insisted that the authorities had only learnt of the abduction on 5 November 2009 and had taken all necessary measures in due time (see paragraphs 24-27 above).

120. It is clear that Article 2 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II). The State's obligation in this regard extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. Article 2 of the Convention may also imply a positive obligation on the part of the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII, and *Makayeva*, cited above, § 95).

121. The Court reiterates that the scope of any positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For the Court to find a violation of the positive obligation to protect life, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual's life from the criminal acts of a third party, and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, § 116; *Paul and Audrey Edwards*, cited above, § 55; *Medova v. Russia*, no. 25385/04, § 96, 15 January 2009; *Rantsev v. Cyprus and*

*Russia*, no. 25965/04, § 222, ECHR 2010 (extracts); and *Tsechoyev v. Russia*, no. 39358/05, § 136, 15 March 2011). In addition, the Court has already found that negligence displayed by the investigating authorities in the face of real and imminent threats emanating from State agents, who were acting clearly outside their legal duties, might entail a violation of the positive obligation to protect life (see *Gongadze v. Ukraine*, no. 34056/02, § 170, ECHR 2005-XI and *Turluyeva*, cited above, § 100).

122. Accordingly, in the present case the Court must consider whether at the relevant time the authorities could have foreseen that there was a real and immediate risk to Ms Zarema Gaysanova's life, and whether they took measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

123. First, the Court reiterates that kidnapping and unlawful deprivation of liberty constitute serious crimes under Russian law. It has already found, recently, that the problem of enforced disappearances and its life-threatening implications for detained individuals must be known to the region's law-enforcement authorities, in view of its magnitude and relatively constrained territorial scope (see *Turluyeva*, cited above, § 93, and *Makayeva*, cited above, § 98). As is apparent from the information summarised above (see paragraphs 103 and 104 above), the Russian authorities were sufficiently aware of the problem, and had recently taken a number of specific actions to render investigations of this type of crime more efficient, including the creation of a special department within the investigation committee of the Chechen Republic. The Court also takes note of the above finding regarding the life-threatening context of unacknowledged detentions in this region, as attested to by numerous previous judgments.

124. Next, contrary to what has been suggested by the Government, it appears from the documents submitted (see, for example, paragraphs 22, 23 and 31 above) that on 1 November 2009 at the latest local law-enforcement authorities became aware that Ms Zarema Gaysanova had become the victim of an unlawful deprivation of liberty in a life-threatening situation. Despite this information, no urgent steps were taken in order to investigate the situation and obtain her release.

125. The Court will next examine whether the State took operative measures to protect the right to life of the disappeared person, as required by the positive obligation inherent in Article 2 of the Convention. In this context, upon receipt of plausible information pointing to a real and immediate danger to a person's life, this obligation requires an urgent and appropriate reaction by law-enforcement bodies. Measures that could have been taken include an immediate inspection of the premises, the employment of expert methods aimed at collecting evidence that could testify to the missing person's presence or ill-treatment, the identification and questioning of the personnel and servicemen involved, and the

collection of other “perishable” evidence such as CCTV records. These measures should have been taken as soon as the authorities became aware of the life-threatening situation in which the person had last been seen (see *Koku v. Turkey*, no. 27305/95, § 132, 31 May 2005; *Osmanoğlu v. Turkey*, no. 48804/99, § 72, 24 January 2008; *Medova*, cited above, § 99; and *Turluyeva*, cited above, § 97).

126. However, it does not appear in the present case that the authorities demonstrated an urgent and appropriate reaction with the aim of saving Ms Gaysanova’s life. In the days following the applicant’s complaint, the police contented themselves with collecting several explanations and exchanging requests for information (see paragraphs 25, 29 and 30 above). None of the key witnesses, such as Mr R.M., the construction workers or the police officers who had participated in the special operation were asked to provide detailed statements on the circumstances of the events. In fact, it was another fifteen days before a criminal investigation was instituted (see paragraph 27 above). It took the investigators months to confirm that the special operation had taken place, despite its wide publicity (see paragraph 13 above) and the service materials confirming it from the outset (see paragraphs 51 and 69 above). This does not demonstrate an adequate response to a well-founded submission about a crime that was so serious and so widespread in the region.

127. The Court is unable to speculate about the exact date of the presumed death of Ms Zarema Gaysanova. However, as noted above, the more time that goes by, the slimmer the chances the abducted person is still alive. This is true of any criminal abduction and disappearance, but is especially so in the context of relatively widespread unresolved disappearances such as those in the Chechen Republic. An effective and rapid response by the authorities is vital in such cases, and one could reasonably expect that in view of the number of previous similar crimes in the region an adequate system would have been set up by the time of the events in question. However, it appears that this was not the case. The Court finds regrettable the absence of any operative response in the present case, where the authorities were apprised of relatively precise details of unacknowledged detention. It is difficult to reconcile their more than lenient attitude with the apparent seriousness of the threat to the person’s life and with the obligation to protect it from unlawful threats.

128. The Court reiterates that negligence displayed by the investigating or supervising authorities in the face of real and imminent threats to an individual’s life emanating from State agents, such as law-enforcement officers, clearly acting outside the scope of their legal duties, might entail a violation of the positive obligation to protect life (see *Gongadze*, cited above, § 170 and *Makayeva*, cited above, § 104). In the present case, the Court confirms that the fact that the suspected perpetrators were State agents does not release the competent investigating and supervising

authorities – the prosecutor’s office and the investigators – from this obligation.

129. The Court cannot but conclude that, by their failure to act rapidly and decisively, the authorities involved did not take operative measures within the scope of their powers which, judged reasonably, might have been expected to avoid the risk to the missing woman’s life.

130. There has, accordingly, also been a violation of Article 2 of the Convention on account of the authorities’ failure to protect Ms Gaysanova’s life.

### **B. Alleged inadequacy of the investigation**

131. The applicant argued that the respondent State had also failed in its procedural obligation to investigate her daughter’s presumed death. She pointed out, in particular, that the domestic investigators had not been sufficiently independent and that the reluctance of the local officials to assist the investigators had hindered the investigation. The Government disputed this allegation, pointing to the number of necessary steps taken by the investigation with the aim of solving the crime.

132. The Court has stated on many occasions 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, see *Rantsev*, cited above, §§ 232-33, and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 229-39, 30 March 2016).

133. The Court first finds that the investigation in the present case failed to comply with the requirement of promptness, having delayed taking the most important steps for weeks. The Court notes that despite the applicant’s complaint, corroborated by the witness statements, other evidence regarding the special operation and the official press release (see paragraphs 13 and 15-18), the investigation was formally opened on 16 November 2009 (see paragraph 27 above). The State servicemen who had participated in the special operation, despite being known through the official press release and operational report (see paragraphs 13 and 51 above), were not identified and questioned until February 2010 at the earliest (see paragraphs 32 and 56 above). The key witnesses to the abduction, such as Mr A.M.B., who had been present during the special operation in the applicant’s house, were not questioned until more than four months after the opening of the investigation (see paragraph 34 above). Critical evidence, such as verification of Ms Zarema Gaysanova’s possible detention after the abduction at the premises of the Leninskiy ROVD and the video footage of the special operation was not obtained by the investigators until 2011 (see

paragraphs 68 and 69 above). This, along with the supervisors' constant criticism of the investigation (see, for example, paragraphs 62 and 63 above) shows that the authorities did not demonstrate necessary diligence in collecting evidence of the crime. In view of the importance of such evidence in a case concerning a person's unlawful abduction in life-threatening circumstances and subsequent disappearance, this aspect alone justifies the finding of a violation of a procedural breach of Article 2 of the Convention. In such circumstances, the Court does not find it necessary to examine whether the investigation was sufficiently independent.

134. The Court therefore concludes that there has also been a violation of Article 2 of the Convention under its procedural limb.

## II. ALLEGED VIOLATION OF ARTICLES 3 AND 5 OF THE CONVENTION

135. The applicant complained of a violation of Articles 3 and 5 of the Convention as a result of the mental suffering caused to her by her daughter's disappearance and the unlawfulness of her daughter's detention. The relevant parts of these Articles read as follows:

### **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.

136. The Government contested these arguments.

137. The Court has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 of the Convention in



respect of close relatives of the victim. The essence of such a violation does not lie mainly in the fact of the “disappearance” of the family member, but rather concerns the authorities’ reaction and attitude to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva v. Russia*, no. 7615/02, § 164, ECHR 2006-XIII (extracts)).

138. Equally, the Court has found on several occasions that unacknowledged detention is a complete negation of the guarantees contained in Article 5 of the Convention and discloses a particularly grave violation of its provisions (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII (extracts)). It is apparent that the detention of the applicant’s daughter was likewise conducted “outside the normal legal system” and “by its deliberate circumvention of due process, is anathema to the rule of law and the values protected by the Convention” (see, *mutatis mutandis*, *Babar Ahmad and Others v. the United Kingdom* (dec.) nos. 24027/07, 11949/08 and 36742/08, §§ 113-14, 6 July 2010, and *El Masri*, cited above, § 239).

139. The Court reiterates its findings regarding the State’s responsibility for the illegal detention and the failure to carry out a meaningful investigation into Ms Gaysanova’s fate. It finds that the applicant, the mother of the disappeared woman, must be considered a victim of a violation of Article 3 of the Convention, on account of the distress and anguish which she has suffered, and continues to suffer, as a result of her inability to ascertain her daughter’s fate and the manner in which her complaints have been dealt with.

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

### III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

141. The applicant complained of a violation of Article 13 in connection with Article 2 of the Convention, which reads:

“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.”

142. The Court observes that this complaint concerns the same issues as those examined above under the procedural limb of Article 2 of the Convention. Having regard to its conclusion above under Article 2 of the Convention, the Court considers it unnecessary to examine those issues

separately under Article 13 of the Convention (see *Shumkova v. Russia*, no. 9296/06, § 123, 14 February 2012; *Perevedentsevy v. Russia*, no. 39583/05, § 126, 24 April 2014; and *Fanziyeva v. Russia*, no. 41675/08, § 85, 18 June 2015).

#### IV. ALLEGED VIOLATION OF ARTICLE 38 OF THE CONVENTION

143. The applicant submitted that the Government's refusal to disclose the entire contents of the investigation file into Ms Zarema Gaysanova's abduction would give rise to the violation of Article 38 of the Convention, which reads:

“The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.”

144. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV, and *Velikova v. Bulgaria*, no. 41488/98, § 77, ECHR 2000-VI). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention (see *Medova*, cited above, § 76, and *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI).

145. Turning to the present case, the Court notes that upon the Court's requests for the entire contents of the investigation file the Government produced a copy of its contents on 1872 pages reflecting the investigative steps taken by the domestic authorities. The Court also notes the Government's explanation concerning the lack of a number of witness statements (see paragraph 21 above). Having regard to the parties' submissions, and to the conclusions as to the State's responsibility for the abduction (see paragraphs 118 and 130 above), the Court finds that the lack of these documents did not prevent it from examining the application (see *Gakayeva and Others v. Russia*, nos. 51534/08, 4401/10, 25518/10, 28779/10, 33175/10, 47393/10, 54753/10, 58131/10, 62207/10 and 73784/10, § 388, 10 October 2013, and *Kaykharova and Others v. Russia*, nos. 11554/07, 7862/08, 56745/08 and 61274/09, § 176, 1 August 2013).

146. Having regard to the above, the Court finds that the information furnished by the Government in the present case was sufficient to examine the application. There has, accordingly, been no failure to comply with Article 38 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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

148. The applicant did not claim compensation in respect of pecuniary damage, however, in respect of non-pecuniary damage she asked the Court to award her 500,000 euros (EUR) for the distress she had suffered as a result of the alleged violations.

149. The Government submitted that the amount claimed was excessive.

150. Having regard to the violations found, the Court awards the applicant EUR 60,000 in respect of non-pecuniary damage.

### B. Costs and expenses

151. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses for legal representation amounted to 2,648 pounds sterling (GBP) (about EUR 3,400). The applicant submitted a breakdown of costs and various supporting documents including fee notes, translators' invoices and a claim for administrative and postal costs. She requested that the payment be transferred directly to the representative's UK bank account.

152. The Government claimed that the claim was unsubstantiated.

153. The Court has to first establish whether the costs and expenses indicated by the applicant's representatives were actually incurred and, secondly, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324, and *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV). Bearing the above principles in mind and the parties' submissions, the Court awards the applicant the EUR 3,400 claimed, together with any tax that may be chargeable to her, the net award to be paid into the representative's bank account, as identified by the applicant.

### C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that there has been a violation of Article 2 of the Convention on account of Ms Zarema Gaysanova's presumed death;
2. *Holds* that there has been a violation of Article 2 of the Convention on account of the State's failure to comply with its positive obligation to protect Ms Zarema Gaysanova's life;
3. *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 Ms Zarema Gaysanova disappeared;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
5. *Holds* that there has been a violation of Article 5 of the Convention on account of Ms Zarema Gaysanova's unlawful detention;
6. *Holds* that there is no need to examine Article 13 of the Convention in conjunction with Article 2 of the Convention;
7. *Holds* that there has been no failure to comply with Article 38 of the Convention;
8. *Holds*,
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
    - (i) EUR 60,000 (sixty thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
    - (ii) EUR 3,400 (three thousand four hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, the net award to be paid into the representative's bank account, as identified by the applicant;

(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.

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

Done in English, and notified in writing on 12 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos  
Section Registrar

Mirjana Lazarova Trajkovska  
President