The six-month time-limit set forth in Article 35 paragraph 1 of the Convention serves to prevent the compatibility of a national decision, action or omission with the Convention being questioned after a considerable lapse of time by the submission of an application to the Court. It reflects the whish of the Contracting Parties to prevent past decisions being called into question after a long period of time, therefore serving the interest of legal certainty as a value in itself.

Recently, these principles were reaffirmed by the Brighton Declaration where the Conference reiterated the importance of the Court applying fully, consistently and foreseeable all the admissibility criteria including the rules regarding the scope of the Court's jurisdiction, both to ensure the efficient application of justice and to safeguard the respective roles of the Court and national authorities. Furthermore, the strict and consistent application of the admissibility criteria contributes to the strength of the Convention system by ensuring that unnecessary pressure is not placed on the Court's workload.

The Government of Macedonia embraces the consistent and foreseeable approach taken by the Court so far in applying the six month rule to cases relating to alleged "instantaneous" acts or events violating Articles 2, 3 or 5 taken alone or in conjunction with Article 13 of the Convention. In this respect, the Court in a number of cases concerning ongoing investigations has examined the period of time from which the applicant can or should start doubting the effectiveness of a remedy and its bearing on the six-month limit provided for in Article 35 paragraph 1 of the Convention.

The determination of such a period by the Court depends on the circumstances of each case and factors such as the diligence and the

interest displayed by the applicants in pursuing the avenues of redress and in informing themselves about the progress made in the investigation, as well as the adequacy of the investigation in question. **According to the well established case law of this Court, the diligence in this regard, must be seen as demonstrating active stance on the part of the applicants towards the investigation by perceiving the investigation as effective.**

Taking into account the above mentioned principles, the Government respectfully submits that due to the applicant's lack of diligence, which consisted in his own negligence, the application in question has been introduced out of the Court's temporal jurisdiction within the meaning of the six month rule. Therefore the application in question should be declared as inadmissible under Article 35 par. 1 of the Convention.

The Government invites the Court to conclude that the applicant must have become aware of the ineffectiveness of the investigation long before he lodged the criminal complaint and more than six months before he lodged the application with the Court.

The applicant alleges that he was abducted by the Macedonian forces on 31 December 2003 in contravention of Articles 3, 5 and 8 of the Convention.

The applicant further alleges that he was ultimately released on 28 May 2004.

The Government notes that since 2004 until the end of 2008 when the applicant filed a criminal complaint, the applicant remained totally passive and displayed no initiative in informing the law-enforcement authorities in Macedonia that a crime had been committed against him.

Instead, throughout this period, the applicant pursued remedies in other jurisdictions.

Namely, in May 2004, the applicant initiated criminal proceedings in Germany on charges of kidnapping. The proceedings ultimately resulted in issuing arrest warrants against 13 presumed CIA agents in January 2007.

In December 2005 the applicant filed a civil claim in the US Courts alleging that the he had been deprived of liberty in absence of legal process. The claim was finally dismissed in October 2007 by a decision of the US Supreme Court not to review the case. According to the applicant, the choice to initiate proceedings in the US instead of Macedonia was that he viewed the US Government as the party primarily responsible for his unjust suffering.

The applicant's allegations were also subject to several international inquires during 2006 and 2007. Those inquires were conducted by the Council of Europe and the European Parliament and were political in nature. The Macedonian Government took active participation into those inquires. It is worth noting, however, that according to this Court international inquires as such, cannot be regarded as part of the process of exhaustion of domestic remedies. The inquires conducted in 2006 and 2007 were not able to award compensation or make any findings of violations of the Convention.

It is striking that the applicant did not make recourse to even one remedy in the respondent State in respect for his allegations for almost five years since the alleged incident occurred.

Even if the applicant relied on the obligation on the part of the Macedonian authorities to investigate his allegations on their own motion, the ineffectiveness of this avenue must have become clear to the applicant long before 06 October 2008 the date when he lodged the criminal complaint.

First, due to the absence of any contact between him and the law-enforcement authorities for almost five years.

*S*econd due to the fact that the Macedonian public prosecutor did not instigate ex officio investigation despite information becoming available to him from his German counterpart.

Namely, in the course of the German investigation, the competent Public Prosecutor requested with a letter rogatory from the Macedonian Public Prosecutor to take investigative steps regarding the applicant's allegations and to provide answers to the specific questions . This was done on two occasions in May 2005 and in November 2007.Acting under Article 152 par 2 of the Criminal procedure code, the Macedonian prosecutor replied, providing information based on the inquiries conducted by the Macedonian MOI.

Should the Court accept the applicant's claim that he did not pursue the remedies in respect of his grievances in due time because he considered that those remedies were ineffective, than the Government is on the opinion that the applicant must be considered to have been aware of this situation long before October 2008. If, as he alleges, he did not become aware of this situation until January 2009, the Court should consider that that was due to his lack of diligence, which consisted in his own negligence. The Government sees no reason which could have forced the

applicant to choose to wait so long before lodging the criminal complaint, save for his own belief that such an action would be meaningless.

The applicant has not in any manner been "placed outside the protection of the national or international law" during the relevant period. Furthermore, he had direct domestic access to the investigative authorities, and throughout the entire period in question he was assisted by legal representatives.

The arguments of the applicant that he did not speak the local language, or that he did not have practical ability to travel to Macedonia, and was not able to afford a local lawyer for several years, should not be regarded as specific circumstances according to the case law of this Court.

The argument of the applicant that he was entitled to await the outcome of the international inquires should not be regarded as specific circumstance either, since those inquires did not lead to any finding of fact which would be of relevance as to the existence of any available remedies in domestic law.

Ultimately, the international inquiry conducted by the Council of Europe was concluded in June 2006 and that is more than two years before the applicant lodged the criminal complaint in October 2008.

The inquiry conducted by the European Parliament was concluded in January 2007 and that is almost two years before the applicant lodged the criminal complaint.

The arrest warrants in the course of the proceedings in Germany were issued in January 2007, and that is almost two years before the applicant lodged the criminal complaint.

The procedure before the US Courts was also finalized in January 2007.

The argument of the applicant that throughout the period in question he conducted his own evidence gathering is unsubstantiated. The documents submitted in support of his application, reveal that he made only one submission to the Macedonian authorities, and that is the request addressed to the Civil Aviation Authority in May 2008 after more than four years since the alleged incident occurred and after more than one year after all international inquires and investigations were concluded. The request has been promptly replied. Accordingly, this activity was neither time consuming, nor required considerable effort on the part of the applicant.

In line with the Court's practise, the Government concludes that no specific circumstances existed prior to submission of the Application to the Court, which might have prevented the applicant from observing the time-limit laid down in Article 35 par.1 of the Convention.

With the passage of time the applicant must have become aware of the lack of an effective official investigation, this becoming gradually apparent to him up until October 2008,

After almost five years since the alleged incident occurred, he decides to avail himself on a criminal complaint against unnamed personnel from the Ministry of Interior, under Article 140, paragraphs 1 and 3; and Article 142 paragraph 1 of the Macedonian Penal Code. The effectiveness or better said the ineffectiveness of this remedy pursued by the applicant derives from the legal provisions contained in the Code of Criminal Procedure.

Namely, according to the law, as long as the perpetrator remains unnamed, the complainant does not gain victim status and he may not

take over prosecution and appear as a subsidiary complainant. Thus the complainant is not entitled to challenge the dismissal decision.

Once a criminal complaint is submitted against an unnamed perpetrator, according to the Article 152 of the CPC, the public prosecutor requests the Ministry of the Interior to gather necessary information and undertake other measures aimed at identifying the criminal offence and the perpetrator. In the applicant's case the MOI has already acted twice upon request of the public prosecutor in 2006 and 2008 by virtue of Article 152 of the CPC. The applicant and his representative should have been aware that by availing to this criminal complaint as a remedy, the MOI would be again requested to act upon.

The criminal complaint was dismissed by the Principle Public Prosecutor in Skopje with Decision dated 18 December 2008 on the ground that there were no grounds for suspicion that the offences were committed by an unnamed perpetrator due to the lack of sufficient evidence supporting the allegations of the complaint.

This decision was not forwarded to the applicant in line with the established practice of the Macedonian prosecution authorities and out of the reason that the applicant did not gain the victim status; and he could not take over prosecution appearing as a subsidiary complainant. Moreover, such decision can not be challenged by an appeal, because the dismissal as such does not mean that the obligation for the prosecutor to take further measures and activities regarding the identification of the perpetrators has ceased.

However, the applicant was not discharged from the duty to display due diligence and initiative in informing him self about the progress made in the investigation. There is no information in the file to suggest that the applicant made any attempt to take part in the investigation or to obtain information about its progress. It is striking that the applicant gained knowledge of the steps taken in the course of his criminal complaint from the Written Observations of the Government submitted to this Court in January 2011. This affirms that the applicant did not undertake any initiative in informing himself about the progress made for more than two years after the complaint was lodged in October 2008. One may arguably claim that if the applicant performed the requisite initiative after petitioning the Principal Public Prosecutor, he could at least have become aware that the prosecutions for the offences allegedly committed against him were not statutory barred in Macedonia on 24 January 2009.

Namely, the applicant lodged the criminal complaint alleging offences under Articles 140 paragraph 3 in conjunction with paragraph 1 and Article 142 paragraph 1 of the Macedonian Penal Code. However, the principal public prosecutor, as obvious from the dismissal decision, qualified the alleged offences under Article 140 paragraph 3 and Article 142 paragraph 2 of the Macedonian Penal Code. According to the law in force at the relevant time, the maximum punishment under Article 142 paragraph 2 was ten years. Consequently, the prosecution becomes time-barred in ten years taken from the date of commission of the alleged offence under this article.

Finally, the applicant's negligence is also apparent from his conduct with regard to the civil procedure for damages initiated at the beginning of 2009. Despite several court requests, the applicant for more than 3 years

has not appeared before the domestic court to be examined as a party to the procedure.

The Court can nevertheless consider and pass judgment on any alleged investigative failures by the authorities to pursue new leads.

In the applicants view there are two issues which can be perceived by the Court as new leads triggering the respondent's State duty to investigate:

First, the criminal complaint against the unknown perpetrator of October 2008 and,

Second the written statement of the witness deposited in March 2010 and submitted to this Court a year later.

The government respectfully disagrees with this view.

The applicant submits that should the Court find the application out of time at any point before October 2008, than, in alternative, his criminal complaint should be considered as revival of the Macedonia's duty to investigate restarting the six-month clock under the Brecknell and Gasyak holding.

However, the evidence presented in support of the criminal complaint of 2008 did not cast new light on the circumstances complained of, and consequently, did not lead to significant new developments which were not already brought into the public domain prior to that date.

On the contrary.

The alleged new "compelling and comprehensive" evidence accompanying the criminal complaint of October 2008 consisted of:

First, the "Marty Report" which was published and publicly available already in 2006,

Second, "the Fava Report" published and publicly available already in 2007,

Third, the declarations of the applicant himself and his lawyer which were publicly known as early as 2004.
Forth, the isotopic appraisal of the applicant's hair conducted in 2005 and explained in details in the Marty Report and
Fifth, the flight logs for flight N313P which were placed in public domain as early as January 2005 when the than leading audio-visual provider in Macedonia- reported, *inter alia*, that on 23 January 2004 an American Boeing 737 landed in Skopje from Palma de Majorca, and two hours later, at 2am, left for Kabul Afghanistan, with only one passenger on board. The flight logs for flight N313P were also explained in details in the Marty Report.

The Government states that even if the Court considers, by any reason, that the applicant submitted new information which cast new light on the circumstances, than, it should take into account that according to its established case law, not every assertion or allegation can trigger a fresh investigative obligation. Only plausible, or credible, allegation, piece of evidence or item of information relevant to the identification, and eventual prosecution or punishment of the perpetrator, may revive the obligation. Such is not the case here.

In this respect, the Government argues that the only plausible explanation for resorting to the criminal complaint by the applicant in October 2008, after almost five years since the alleged incident occurred, was the intention and interest of the applicant to try to satisfy the admissibility criteria of the Court.

I would now turn to the issue as to weather the written statement of the witness in this case could be perceived as a new lead capable of triggering fresh investigation.

The Court is confronted with a rather unusual challenge to decide on the duty of the respondent Government to pursue further investigations in situation where the purported new written evidence is submitted exclusively to the Court, with strong conditions underlying it. The witness puts under condition the use of his written Statement in a sense that it can only be used for the purposes of this Courts deliberations and may not be used in the pursuit of any investigations against him or other individuals. Furthermore, the applicant and his representatives requested the Government to oblige not to pursue any legal action, or other retaliatory measures of any kind, against this witness in respect or as a result of his statement; thus preventing the prosecution and judiciary from acting upon it.

The issue that arises in front of this Court is to whether, and in what form, the procedural obligation to investigate is revived, and that is, whether and in what form the information provided by the witness in his Statement submitted exclusively to this Court amounted to new evidence..

In this connection, first and foremost, the Government invites the Court to take into account that the Government is effectively under obligation by virtue of Article 34 of the Convention not to interfere in any way with the Applicant's right to petition the Court, including in relation to the statement, by refraining from harassment in any fashion;

On the other hand this Court's practice has established that it can not be accepted that positive obligation should arise each time an item of new evidence comes into play. The Court applies a particular thorough scrutiny when assessing the supposed quality of any further item of information received *vis-à-vis* the information which was already in public domain and presumably within applicant's knowledge.

It is clear from the Court's case law that the new credible allegation, piece of evidence or item of information must be relevant to the identification, prosecution or punishment of the perpetrator of an unlawful act. In the present case, it can not be established that those requirements are met, without assessment of the credibility of the source and the evidence in question.
This in particular due to the fact that the statement was presented in written form.

The Government acknowledges that any investigative measures will be perceived by the applicant on one hand, and by the witness on the other, as harassment in contravention to his conditions expressly underlined in the Statement, thus underpinning the principles established by Article 34 of the Convention.

In conclusion, taking into account Article 34, and, especially the circumstances surrounding the written statement, which cumulatively create obstacles of law and facts, the authorities of the respondent State were not in position to take any preliminary steps into assessment of the credibility of witness's allegations, nor to take any further investigative steps.

We believe that we have demonstrated that the application in front of us today is to be declared inadmissible according to Article 35 paragraph 1 of the Convention.

It has been submitted outside of the six month time limit, due to the applicant's own negligence.

In addition we believe that we have established that there are no new leads capable of reviving the investigation into the applicant's allegations. Therefore, the Court is unable to take cognisance of the merits of the present case by the fact that the complaints under the Articles 3, 5 and 8 are outside its temporal jurisdiction. Since, the Court is not in position "ratione temporis" to examine whether the applicant had an "arguable claim", there being no arguable claim in such circumstances, the applicant's submissions in respect of Article 13 also fall outside the Court's competence.