



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

FIRST SECTION

CASE OF AKHMATKHANOVY v. RUSSIA

(Application no. 20147/07)

JUDGMENT

STRASBOURG

22 July 2010

FINAL

22/11/2010

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

In the case of Akhmatkhanovy v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 1 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 20147/07) 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 four Russian nationals listed below.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 9 March 2009 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of Article 29 § 1 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants are:

- 1) Ms Bilat Akhmatkhanova, who was born in 1956,
- 2) Mr Sharpudi Akhmatkhanov, who was born in 1952,
- 3) Ms Toita Akhmatkhanova, who was born in 1989, and
- 4) Ms Taisa Akhmatova, who was born in 1986.

The applicants live in Shali, Chechnya. The first and the second applicants are the parents of Artur Akhmatkhanov (also spelled Akhmetkhanov), who was born in 1980. The third applicant is his sister and the fourth applicant is his wife.

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

A. Disappearance of Artur Akhmatkhanov

1. The applicants' account

6. At the material time Artur Akhmatkhanov was a third-year student at the Grozny Oil Institute; he received positive character references from his neighbours, the head of the Shali district department of the interior (the ROVD) and the imam of the Shali district.

7. At about 9 a.m. on 2 April 2003 the first applicant went with Artur Akhmatkhanov to the Shali town centre to run errands. In the centre the first applicant realised that she had left a document at home. She returned to the family house, situated at 86 Melnichnaya Street in Shali, whereas her son remained in the town centre as he was going to talk to his cousin Mr A.A., who worked in the ROVD.

8. About ten minutes after the applicant returned home she heard shooting coming from the former medical storehouse located about 250 metres from her house. The first applicant thought the Russian military were conducting a special operation to catch one of their neighbours, Mr R.Ch., who was an active member of illegal armed groups.

9. Having fetched the document, the applicant walked back to the town centre. On her way there she approached the storehouse and saw that the area was cordoned off by Russian military servicemen, who were not letting people in or out of the cordon. About half an hour later the applicant saw the military leaving in four APCs (armoured personnel carriers). About ten masked soldiers in new camouflage uniforms with white stripes on their sleeves were on each vehicle. One of the APCs was painted in camouflage colours.

10. As soon as the military left, the applicant and other locals went to the site. There the applicant found a white bandage with traces of blood on it and blood spattered around it on the ground.

11. After that the first applicant went to the town centre where she was supposed to meet her son. She did not find him there and decided to ask their relative Mr A.A. whether Artur Akhmatkhanov had called in at his office. She went to the ROVD, where she was told that her son had stopped off, looking for Mr A.A., but the latter had not been in the office and the applicant's son had left.

12. Meanwhile, the second applicant informed the ROVD that his son's yellow cap had been found at the site of the shooting. When the first applicant returned home, she was told that her son's cap had been found on the site of the medical storehouse.

13. After that one of the applicants' neighbours, Mr A.Sh., told the applicants that at about 10.30 a.m. he had been walking through the yard of the medical storehouse when he had met Artur Akhmatkhanov and had a brief conversation with him. According to Mr A.Sh., after that he had continued walking to the town centre when, about a minute later, he had heard shooting coming from the direction in which Artur Akhmatkhanov had gone.

14. According to the applicant's neighbour, Ms L.Yu., at about 10 a.m. on 2 April 2003 she was walking home when she saw a group of masked armed men in camouflage uniforms surrounding the medical storehouse. These men were in four APCs; they were shooting and not letting anybody on to the site. From a distance she saw that the armed men were dragging a young man in black clothing with a sack over his head. They forced the man into one of the APCs and drove away.

15. According to another resident of Shali, Ms R.Kh., at about 10.30 a.m. on 2 April 2003 she was walking down the applicants' street when she saw military servicemen in four APCs. The servicemen were surrounding the former medical storehouse and were shooting. Then the witness had seen the servicemen putting a young man with a plastic bag over his head into one of the APCs; after that they had driven away in the direction of the town centre.

16. According to the applicants' neighbours, the family L., on the day of Artur Akhmatkhanov's abduction they were driving home in a tractor when they saw the military servicemen who had surrounded the former medical storehouse. The servicemen were taking one young man to an APC and dragging another one. They put both men into the APC and drove away.

17. In support of their statements the applicants submitted the following documents: a statement by the first applicant dated 21 February 2007; a statement by Mr A.Sh. dated 21 February 2007; a statement by Ms L.Yu. dated 13 December 2006; a statement by Ms R.Kh. dated 13 December 2006; a statement by Ms T.M. dated 6 September 2006, and a statement by Mr D.A. dated 6 September 2006.

2. Information submitted by the Government

18. The Government did not dispute the matter as presented by the applicants.

B. The search for Artur Akhmatkhanov and the investigation

1. Information submitted by the applicants

19. At about 3 p.m. on the same date, 2 April 2003, representatives of the ROVD and the Shali district prosecutor's office (the district prosecutor's office) visited the applicants' house. In the documents submitted the date was also referred to as 3 April 2003.

20. After that the investigators went to the former medical storehouse with the applicants and other local residents. There they collected cartridge cases left by the servicemen after the shooting and found two spots of blood, one of them containing just a few drops of blood and the other looking like a puddle of blood. The investigators from the district prosecutor's office collected the blood for forensic examination. A child from Shali also found a service identification document which he handed over to the investigators.

21. On the following day, 3 April 2003, two investigators from the district prosecutor's office, Mr Ka. and Mr Bu., returned to the medical storehouse and examined it again together with the applicants and other local residents. According to the first and second applicants investigator Ka. told them that the cartridge cases collected by the investigators from the scene of the shooting would assist the authorities in identifying the weapon and the officer to whom it belonged.

22. On 4 April 2003 the district prosecutor's office initiated an investigation into the disappearance of Artur Akhmatkhanov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 22054 (in the submitted documents it was referred to as 22055).

23. On 6 April 2003 the second applicant was granted victim status in the criminal case.

24. On 15 May 2003 the Chechnya Ministry of the Interior (the Chechnya MVD) forwarded the applicants' complaint about the abduction of Artur Akhmatkhanov to the ROVD for examination. In response, on 29 January 2004 the ROVD informed the applicants that they were "taking measures to establish his whereabouts".

25. On 22 December 2003 and 3 February 2004 the Chechnya prosecutor's office forwarded the applicants' requests for assistance in the search for Artur Akhmatkhanov to the district prosecutor's office for examination. In response, on 16 January and 2 April 2004 the investigators informed the applicants that the operational-search measures aimed at establishing Artur Akhmatkhanov's whereabouts were under way.

26. On 14 January 2004 the military prosecutor's office of the United Group Alignment (the UGA) forwarded the applicants' complaint about the abduction to the military prosecutor's office of military unit no. 20116. In

response, on 20 February 2004 the latter informed the applicants that military unit no. 20116 had not participated in a special operation on 2 April 2003 and had not detained Artur Akhmatkhanov. On 11 March 2004 the military prosecutor's office of the UGA confirmed this information.

27. On 3 June 2004 the Chechnya prosecutor's office informed the applicants that the operational-search measures aimed at establishing Artur Akhmatkhanov's whereabouts and identifying the culprits were under way.

28. On 4 June 2004 the Main Department of the Ministry of Justice in the Rostov Region informed the applicants that Artur Akhmatkhanov was not being held in their detention centres.

29. On 26 July 2004 the Chechnya prosecutor's office forwarded the applicants' request for assistance in the search for Artur Akhmatkhanov to the district prosecutor's office for examination. In response, on 10 August 2004 the district prosecutor's office informed the applicants that on 10 July 2004 they had suspended the investigation in the criminal case.

30. On 15 August 2004 the Shali district military commander's office (the district military commander's office) informed the applicants that they, with the ROVD and the district prosecutor's office, were searching for Artur Akhmatkhanov.

31. On 17 May 2005 the Chechnya prosecutor's office again forwarded the applicants' request for assistance in the search for Artur Akhmatkhanov to the district prosecutor's office for examination. In response, on 3 July 2005 the district prosecutor's office informed the applicants that on 3 July 2004 they had suspended the investigation in the criminal case.

32. On 19 October 2005 the district prosecutor's office informed the applicants that their complaint had been examined and included in the investigation file.

33. On 20 March 2006 the Chechnya prosecutor's office again forwarded the applicants' request for assistance to the district prosecutor's office for examination.

34. On 5 May 2006 the Russian Federal Service of the Execution of Punishment informed the applicants that Artur Akhmatkhanov was not being held in their detention centres.

35. In December 2006 the first applicant visited the district prosecutor's office to request information about the progress of the investigation. The investigator, who was in charge of the case at the time, Mr R.Ya., told her that the investigation file did not contain any information about the collection of the blood samples and the cartridge cases from the crime scene.

36. On 10 January 2007 the second applicant wrote to the district prosecutor. He described in detail the circumstances of his son's abduction and stated that during the crime scene examination the investigators had collected cartridge cases and blood samples; that the investigator, Mr Ka., had told him that this collected evidence had been forwarded to the expert

evaluation centre in Rostov-on-Don and that the results were supposed to be received in forty-five days; that the investigator had explained to him that the cartridge cases would allow the experts to identify the weapons used during the shooting, as the latter were supposed to be individually registered. The applicant requested the district prosecutor to provide him with a copy of the crime scene examination report of 3 April 2003 and a copy of the decisions ordering the expert evaluation of the evidence collected at the crime scene.

37. On 16 January 2007 the Chechnya prosecutor's office informed the applicants that on the same date they had resumed the investigation in the criminal case.

38. On 25 January 2007 the ROVD informed the applicants that on 13 April 2002 (it appears that the date is incorrect) they had opened search file no. 71442 to establish the whereabouts of Artur Akhmatkhanov and that a search for the applicants' relative was under way.

39. On 26 February 2007 the second applicant again wrote to the district prosecutor. He stated that in spite of the numerous pieces of evidence, such as the cartridge cases left by the perpetrators, the APCs and the fact that on 2 April 2003 the Shali law enforcement agencies had conducted a special operation to find a leader of illegal armed groups, Mr R.Ch., the investigators had failed to identify the servicemen who had conducted this operation and abducted Artur Akhmatkhanov. He further stated that his son's whereabouts had not been established for several years and that the investigation file in the criminal case did not contain the evidence collected from the crime scene on 3 April 2003. The applicant requested the prosecutor to provide him with access to the investigation file, to allow him to make a copy of its contents and to resume the investigation in the criminal case. No reply was received from the authorities.

2. Information submitted by the Government

40. On 2 April 2003 the second applicant complained to the district prosecutor's office that his son had been abducted "by military servicemen in four APCs". He wrote that the servicemen had been masked, armed and that they had had white strips on the sleeves of their uniforms. He further stated that his son's cap, with bloodstains next to it, had been found at the scene after the abductors had driven away.

41. On 4 April 2003 the district prosecutor's office initiated an investigation into the disappearance of Artur Akhmatkhanov under Article 126 § 2 of the Criminal Code (aggravated kidnapping).

42. On 6 April 2003 the second applicant was granted victim status in the criminal case and questioned. He stated that his son had been abducted by servicemen who had been masked, armed with automatic weapons, had white strips on the sleeves of their uniforms and had been driving around in APCs.

43. On 4 June 2003 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators. The applicants were not informed about this decision.

44. On 3 May 2004 the investigation in the criminal case was resumed and the decision concerning the suspension of the criminal proceedings was overruled by the supervising prosecutor as unlawful for the following reasons:

“...The examination of the investigation file demonstrated that the investigation in the criminal case had not been actually conducted at all as the investigator had taken only two investigating steps: he granted the father of the disappeared man victim status in the criminal case and questioned him.

No witnesses had been identified and questioned, the crime scene had not been examined, no replies had been received to the requests forwarded to various law-enforcement bodies and a number of other investigating steps had not been taken...”

45. On the same date the supervising prosecutor issued orders for the investigators of the criminal case who were to take, *inter alia*, the following steps:

“1. Make a plan of investigating steps to be taken...

2. Examine the crime scene...

3. From the witness statement of A. Akhmatkhanov [the second applicant] it follows that he learnt from his acquaintance named Ali that his son [Artur Akhmatkhanov] had been detained by military servicemen who had arrived in four APCs. In connection with this, it is necessary to identify the man named Ali and question him about the circumstances of the abduction.

4. Identify other witnesses of the crime, including the woman (the father of the abducted man knows her) who had also seen the military servicemen detaining and taking away Artur Akhmatkhanov and another man...it is necessary to question her about the events.

5. Take measures to identify where the APCs were from...

6. If the involvement of military servicemen in the abduction is established, it is necessary to forward the criminal case to the military prosecutor's office for further investigation...”

46. On 10 July 2004 (in the submitted documents the date was also referred to as 10 July 2005) the investigation in the criminal case was suspended for failure to identify the perpetrators.

47. On 20 July 2004 the investigators conducted the crime scene examination. Nothing was collected from the scene.

48. On 25 July 2004 the investigators questioned Mr A.M., who stated that in the morning of 2 April 2003 he had seen a group of armed men in camouflage uniforms and masks in four APCs. The men had dragged Artur Akhmatkhanov into one of the vehicles and had then driven away.

49. On 28 July 2004 the investigators questioned Ms Z.P., who stated that in the morning of 2 April 2003 several military APCs had arrived in her street with men who were armed, masked and in camouflage uniforms. They had put Artur Akhmatkhanov and another man into one of the APCs and taken them away.

50. On 26 May 2005 the supervising prosecutor overruled the decision to suspend the investigation of 10 July 2004 as premature and unsubstantiated. The investigation was resumed owing to the need to take additional investigative measures. The prosecutor criticised the investigation and ordered the following measures to be taken:

“...the examination of the investigation file demonstrates that the investigation is being conducted passively and that investigating and operational-search measures are of a formal nature. There is no control over the execution of the investigators' requests and orders. The decision to suspend the investigation was taken prematurely, without the necessary steps having been taken...

It is necessary that the investigation take the following steps:

-... request information concerning the vehicles which left the premises of the Shali military commander's office on 2 April 2003;

- identify witnesses to the abduction from among the residents living near the place of the events;

...

- establish the identity of the second man who had been abducted with Artur Akhmatkhanov...”

51. On 18 June 2005 the Shali department of the Federal Security Service (the FSB) informed the investigators that they did not have any information concerning Artur Akhmatkhanov's involvement in illegal armed groups and that they had not conducted any special operations in the town on 2 April 2003.

52. On 28 June 2005 the investigators again questioned the second applicant, who stated that his acquaintance Mr Ali had told him that he had clearly seen military servicemen placing Artur Akhmatkhanov in an APC and that Mr Ali had already provided this information to the investigators. Then the applicant provided the investigators with detailed information about Ms R.L., who had witnessed the abduction of his son by military servicemen in APCs.

53. On 28 June 2005 the investigators also questioned the first applicant, who stated that her son had been abducted on 2 April 2003 by armed men in camouflage uniforms; that she had learnt from the witnesses that he had been taken away in an APC. The applicant described the events of the day of the abduction; her description was the same as the one provided to the Court (see paragraphs 7-15 above).

54. On the same date the investigators also questioned Mr Kh.I. who stated that late in the morning of 2 April 2003 he had been at home when his wife had told him that military servicemen had been conducting a special operation in their street. He had gone out on the street where in about 300 metres on the premises of the former medical storehouse he had seen a military APC with groups of armed servicemen in camouflage uniforms. A number of local residents had gone outside of their houses and witnessed the events. After that he had gone back in the house. Later, after the military had left, he had learnt that the servicemen had taken away Artur Akhmatkhanov and that his cap had been found afterwards in the storehouse area.

55. On the same date the investigators also questioned Mr S.A., who stated that at about 11.30 a.m. on 2 April 2003 he had been outside his house when he had seen a group of about thirty masked men in military camouflage uniforms surrounding the site of the former medical storehouse. The men had been armed with automatic weapons; they had had white stripes on the left sleeves of their uniforms. The men had arrived in two or three APCs and one other armoured military vehicle of a khaki colour. None of the vehicles had had registration or hull numbers. Then the men had opened fire on the storehouse. The witness had heard the men speaking among themselves in unaccented Russian. From their conversations he had understood that they were servicemen working in the police and that they were taking part in a special operation. The operation lasted for about two hours; local residents had not been allowed to access the cordoned-off area. The servicemen had detained Artur Akhmatkhanov on the site of the storehouse and taken him away.

56. On 29 June 2005 the investigators questioned the applicant's neighbour Mr R.A., who stated that on the morning of 2 April 2003 he had been at work in the ROVD when Artur Akhmatkhanov had dropped by, looking for his relative Mr A.A. The latter had not been in the office and Artur had left. In the evening the witness had learnt that military servicemen had abducted Artur Akhmatkhanov.

57. On the same date the investigators questioned Ms R.G., who stated that at about 10 a.m. on 2 April 2003 she had seen a group of armed men in camouflage uniforms; the men had been of Slavic appearance and had been in APCs. They cordoned off her street along the perimeter of the former medical storehouse. Then she had seen the men beating and forcing her neighbour Artur Akhmatkhanov into one of the APCs. It appeared that Artur had been wounded in the leg.

58. On 3 July 2005 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators.

59. On 12 April 2006 the supervisory prosecutor overruled the decision to suspend the investigation as premature and unsubstantiated. He pointed

out that the investigators had failed to take a number of investigative steps and ordered that the investigation be resumed.

60. On 14 May 2006 the investigators again suspended the investigation in the criminal case for failure to identify the perpetrators.

61. On 16 January 2007 the supervisory prosecutor overruled the decision to suspend the investigation as premature and unsubstantiated. He pointed out that the investigators had failed to take a number of investigating steps, such as:

“... The investigation file contains information concerning the use of automatic weapons by the abductors. However, the investigation did not take measures to establish whether any of the cartridge cases had been found [at the scene] by the relatives and the neighbours of the disappeared man;

The investigators failed to request and include in the file information concerning the possible conduct of a special operation in Shali on 2 April 2003 by military units stationed in Chechnya.

The investigators did not take steps to establish the identity of the man who had been abducted with Artur Akhmatkhanov...”

62. On 10 January 2007 the second applicant complained to the Shali prosecutor and requested to be granted access to the investigation file (see paragraph 36 above).

63. On 19 January 2007 the investigators rejected his request, stating that the applicant was entitled to have access to the file only on completion of the investigation.

64. On 12 February 2007 the investigators granted the first applicant victim status in the criminal case and questioned her. She stated that on 2 April 2003 her son Artur Akhmatkhanov had been abducted from the former medical storehouse by armed men in APCs; that she and her relatives had complained about it to the prosecutor's office and that the investigators had arrived at the scene on the same date. She further stated that in her presence and that of a number of her neighbours the investigators had collected from the scene a number of cartridge cases and that at some point later the investigator Ka. had told her that the collected evidence would enable the authorities to identify the firearms used by the abductors and would assist in establishing their identities. The applicant stated that her son had most probably been abducted as a result of a special operation conducted against Mr R.Ch., a leader of illegal armed groups, who lived near the storehouse.

65. On 27 February 2007 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators.

66. On 13 March 2007 the supervisory prosecutor overruled the decision to suspend the investigation as premature and unsubstantiated. He pointed out that the investigators had failed to verify whether the evidence had been collected from the crime scene and that they had not complied with the

orders of the supervisory prosecutor of 16 January 2007 (see paragraph 61 above).

67. On 19 March 2007 the investigators collected from the first applicant Artur Akhmatkhanov's cap, found at the crime scene by his relatives, for inclusion in the investigation file as evidence.

68. On 20 March 2007 the investigators questioned Mr M.A., who stated that on the morning of 2 April 2003 military servicemen had conducted a special operation in a nearby street; that they had cordoned off the area and that local residents had not been allowed to move within its perimeter. Later on the same date he had learnt that his neighbour Artur Akhmatkhanov had been taken away by armed men in military uniforms in APCs. He further stated that a group of investigators had arrived at the scene and that they had collected cartridge cases and pieces of bloody bandage for the expert evaluation.

69. On 26 February 2007 the second applicant again complained to the Shali prosecutor and requested to be allowed access to the investigation file (see paragraph 39 above).

70. On 21 March 2007 the investigators refused the request, stating that the applicant was entitled to have access to the file only on completion of the investigation. The applicant was not informed about the refusal.

71. On 19 April 2007 the supervisory prosecutor overruled the decision of 21 March 2007 and partially allowed the applicant's complaint, stating that the applicant was entitled to familiarise himself with the transcripts of the investigative actions taken with his participation.

72. On 26 March 2007 the investigators questioned the applicant's neighbour Mr A.Ch., who stated that on 2 April 2003 he had learnt that armed men in military uniforms who had arrived in APCs had abducted his neighbour Artur Akhmatkhanov. He further stated that on the same date the investigators had arrived at the scene, found a pool of blood there and collected a number of cartridge cases left by the abductors.

73. On 30 March and 3 April 2007 the investigators questioned the applicant's neighbours Ms L.A. and Mr S.Yu., whose statements about the events were similar to the one given by Mr A.Ch.

74. On 5 April 2007 the investigators questioned the applicant's relative Mr S.Sh., whose statement concerning the events was similar to the one given by Mr A.Ch. In addition, the witness stated that he had seen the cartridge cases which had been collected from the scene by the investigators. According to the witness, the cartridge cases were black, of 5.54 mm. calibre and numbered. He thought that they probably belonged to a special type of weapon. The investigators had also collected a white sleeve stripe from the scene. The crime scene examination had been conducted in the presence of a number of local residents and that the investigators had been taken there by Mr A.-S.P., who worked in the ROVD.

75. On 14 April 2007 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators.

76. On 17 April 2007 the supervisory prosecutor overruled the decision to suspend the investigation as premature and unsubstantiated. He pointed out that the investigators had failed to comply with the orders of the supervisory prosecutor of 16 January 2007 (see paragraph 61 above), as well as to question former investigator Ka. about the circumstances of the collection of the evidence from the crime scene on 2 April 2003.

77. On 18 April 2007 the investigators questioned Mr S.M., an expert from the Chechnya Expert Evaluation Centre. He stated that on 2 April 2003 he had arrived at the crime scene in Shali with the investigators from the district prosecutor's office and the ROVD and that cartridge cases had been left by the abductors, as well as a cap with traces of blood next to it. The witness did not remember whether the investigators had collected the evidence from the scene, but he had personally taken photographs. He did not know whether the expert evaluation of the collected evidence had been carried out at all, but stated that no such evaluation had been carried out by the Shali expert evaluation centre, where he worked at the time.

78. On 18 and 19 April 2007 the investigators questioned the applicants' relatives, Ms Z.A. and Ms T.M., whose statements concerning the events were similar to the ones given by Mr A.Ch. and Mr S.Sh. (see paragraphs 72 and 74 above).

79. On 17 April 2007 the investigators collected from the first applicant a photograph of Artur Akhmatkhanov for inclusion in the investigation file.

80. On 13 June 2007 the MVD of the Russian Federation informed the investigators that no special operations had been conducted by their branches in Shali on 2 April 2003.

81. On 11 May 2007 the investigators questioned the applicants' relative Ms B.Sh. whose statement concerning the events was similar to the one given by Mr S.Sh.

82. On 9 and 15 May 2007 the investigators questioned police officers Mr A.M., Mr S.Sh. and Mr V.S., who stated that in April 2003 they had worked in the Shali ROVD, but they did not remember whether they had participated in the crime scene examination on 2 April 2003.

83. On 7 August 2007 the investigators questioned the former investigator of the district prosecutor's office Mr Ka., who stated that due to the passage of time he did not remember the details of the crime scene examination of the place where Artur Akhmatkhanov was abducted, and that he did not remember the conversation with the applicants concerning the collected evidence.

84. On 17 May 2007 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators.

85. On 2 November 2007 the supervisory prosecutor issued a decision "On remedial actions to be taken in connection with violations of the federal

criminal procedure regulations during the investigation of the criminal case”. He criticised the investigation of the abduction and ordered the investigators to take the following measures:

“... the investigation of the criminal case has been conducted superficially, without taking all necessary steps... in violation of Article 208 § 5 of the Code of Criminal Procedure.

... it has not been established for what reasons the investigator Ka., who had visited the crime scene on 3 April 2003, had subsequently conducted a crime scene examination only on 22 July 2004...

... the investigators still have not questioned the officers of the ROVD who had gone to the crime scene [on 2 April 2003] , that is Mr R.Kh., Mr T. and Mr R.M.

...from the witnesses' statements it is clear that there had been gunfire during the special operation of the military servicemen and the abduction of Artur Akhmatkhanov... a large number of local residents had witnessed the military servicemen cordoning off the area around the former medical storehouse. However, the investigators did not take any steps to identify additional witnesses and obtain information about special operations conducted by the military units...

...no instructions were issued for Mr D.Sh., the member of the investigators' team from the military prosecutor's office of military unit no. 20116, in order to check the theory of the involvement of military servicemen [in the abduction]...”

86. On 22 November 2007 the supervisory prosecutor overruled the decision to suspend the investigation as premature and unsubstantiated. He pointed out that the investigators had failed to take a number of investigative actions and ordered the steps be taken (see the above paragraph) and that the investigators found and included in the investigation file the cartridge cases collected from the crime scene.

87. On 23 December 2007 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators.

88. On 6 February 2008 the supervisory prosecutor overruled the decision to suspend the investigation as premature and unsubstantiated. He pointed out that the investigators had failed to take a number of investigative actions and ordered that those actions be taken (see paragraph 85 above).

89. On 18 February and 1 June 2008 the investigators questioned Mr R.Kh. and Mr N.T., officers of the ROVD, who stated that due to the passage of time they did not remember the details of the crime scene examination of the place where Artur Akhmatkhanov was abducted.

90. On 29 February 2008 the investigators again questioned the second applicant, who provided them with the names of Artur Akhmatkhanov's closest friends.

91. On 1 March 2008 the investigators questioned the applicants' neighbours Mr A.T. and Mr A.Ch. Both of them stated that they had learnt

from their neighbours about Artur Akhmatkhanov's abduction by military servicemen.

92. On 7 March 2008 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators.

93. On 21 March 2008 the supervisory prosecutor again issued a decision “On remedial actions to be taken in connection with violations of the federal criminal procedure regulations during the investigation of the criminal case”. He criticised the investigation of the abduction and ordered the investigators to take a number of investigative actions.

94. On 13 April 2008 the investigators resumed the investigation in the criminal case.

95. On 24 April 2008 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators.

96. The investigating authorities sent numerous requests for information to the relevant State agencies and took other steps to have the crime resolved. The investigation found no evidence to support the involvement of Russian servicemen in the crime. The law-enforcement authorities had never arrested or detained Artur Akhmatkhanov on criminal or administrative charges; no criminal proceedings had been initiated against him. No special operations had been carried out in respect of the applicants' relative.

97. The Government further stated that even though the investigation had failed to establish the whereabouts of Artur Akhmatkhanov, it was still in progress.

98. Despite specific requests by the Court the Government did not disclose the full contents of criminal case no. 22054, providing only “the main documents” from the investigation file, running to up to 222 pages. They stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained personal data concerning witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

100. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies, as the investigation into the abduction of Artur Akhmatkhanov had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints about any acts or omissions of the investigating authorities or pursue civil remedies.

101. The applicants contested that objection stating that the only effective remedy, the criminal investigation, had proved to be ineffective.

B. The Court's assessment

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

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

104. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

105. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law-enforcement authorities immediately after the kidnapping of Artur Akhmatkhanov and that an investigation has been pending since 4 April 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

106. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

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

A. The parties' arguments

107. The applicants maintained that it was beyond reasonable doubt that the men who had taken Artur Akhmatkhanov away were State agents. In support of their complaint they referred to the following facts. At the material time Shali had been under the total control of federal troops. The armed men who had abducted Artur Akhmatkhanov had arrived in military APCs, cordoned off the area and acted in a manner similar to that of special forces carrying out a special operation. They were wearing a particular camouflage uniform, were armed and opened fire without fear of the law-enforcement agencies located in the town. Local residents had seen Artur Akhmatkhanov being taken into one of the abductors' APCs. All the information disclosed from the criminal investigation file supported their assertion as to the involvement of State agents in the abduction. Since their relative had been missing for a very lengthy period, he could be presumed dead. That presumption was further supported by the circumstances in which he had been arrested, which should be recognised as life-threatening. Finally, the Government had failed to provide any plausible explanation for the events.

108. The Government submitted that unidentified armed men had kidnapped Artur Akhmatkhanov. They further contended that the investigation of the incident was pending, that there was no evidence that the men were State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relative was dead. The Government raised a number of objections to the applicants' presentation of the facts. The fact that the perpetrators of the abduction were wearing camouflage uniforms did not mean that these men could not have been criminals. The Government further alleged that the applicants' description of the circumstances surrounding the abduction was inconsistent. In particular, the witnesses were unable to provide a detailed description of the uniforms worn by the abductors and they had been inconsistent in their description of the number of APCs used by the abductors.

B. The Court's evaluation of the facts

109. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of matters in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, § 161, Series A no. 25).

110. The Court notes that despite its requests for a copy of the file of the investigation into the abduction of Artur Akhmatkhanov, the Government produced only a part of the documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

111. In view of this, and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relative can be presumed dead and whether his death can be attributed to the authorities.

112. The applicants alleged that the persons who had taken Artur Akhmatkhanov away on 2 April 2003 and then killed him were State agents. The Government did not dispute any of the factual elements underlying the application and did not provide any other explanation of the events.

113. The Government suggested in their submissions that the abductors of Artur Akhmatkhanov may have been members of criminal groups. However, this allegation was not specific and the Government did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

114. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. It finds that the fact that a large group of armed men in uniform in broad daylight, equipped with military vehicles, was able to move freely in the town, cordon off an area and open intensive gunfire strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their application to the authorities the applicants from the very

beginning consistently maintained that Artur Akhmatkhanov had been detained by servicemen, and requested the investigation to look into that possibility (see paragraphs 36, 39, 40, 42, 45, 52, 53 and 64 above). The domestic investigation also accepted factual assumptions as presented by the applicants (see paragraphs 45, 50, 61, 76, 85 and 88 above) and took steps to check whether law-enforcement agencies were involved in the kidnapping (see paragraph 51 and 80 above) but it does not appear that any serious steps were taken to that end.

115. The Government questioned the credibility of the applicants' statement of the facts in view of certain discrepancies relating to the exact description of the abductors and the number of APCs involved in the abduction. The Court notes in this respect that no other elements underlying the applicants' submissions as regards the facts have been disputed by the Government. In the Court's view, the fact that over a period of several years the witnesses' recollection of the event differed in rather insignificant details does not in itself suffice to cast doubt on the overall veracity of their statements.

116. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government, and if they fail in their arguments issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

117. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was abducted by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of State servicemen in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Artur Akhmatkhanov was arrested on 2 April 2003 by State servicemen during an unacknowledged security operation.

118. There has been no reliable news of the Artur Akhmatkhanov since the date of the kidnapping. His name has not been found in any official detention facility records. Finally, the Government have not submitted any explanation as to what happened to him after his arrest.

119. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited

above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Artur Akhmatkhanov or of any news of him for more than seven years supports this assumption.

120. Accordingly, the Court finds that the evidence available permits it to establish that Artur Akhmatkhanov must be presumed dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

121. The applicants complained under Article 2 of the Convention that their relative had been deprived of his life by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. The parties' submissions

122. The Government contended that the domestic investigation had obtained no evidence to the effect that Artur Akhmatkhanov was dead or that any servicemen of the federal law-enforcement agencies had been involved in his kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants' relative met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible.

123. The applicants argued that Artur Akhmatkhanov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. The applicants also argued that the

investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law. They pointed out that the investigators from the district prosecutor's office had destroyed the evidence, namely the cartridge cases and blood samples collected from the crime scene. The investigation into Artur Akhmatkhanov's kidnapping had been suspended and resumed at least nine times – thus delaying the taking of the most basic steps – and the relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any known results was further proof of its ineffectiveness. They also invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

124. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 106 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Artur Akhmatkhanov

125. The Court has already found that the applicants' relative must be presumed dead following unacknowledged detention by State servicemen. In the absence of any justification put forward by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of Article 2 in respect of Artur Akhmatkhanov.

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

126. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

127. In the present case, the kidnapping of Artur Akhmatkhanov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

128. The Court notes at the outset that not all of the documents from the investigation file were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the documents submitted by the parties and the information about its progress presented by the Government.

129. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation in case no. 22054 was instituted on 4 April 2003, that is two days after Artur Akhmatkhanov's abduction. Further, within the first two months of the investigation, where crucial action has to be taken as soon as possible, the investigators took only two actions (see paragraphs 43 and 44 above). Such a postponement *per se* was liable to negatively affect the investigation of the kidnapping in life-threatening circumstances and negate the chances for its possible solution at a later date. From the documents submitted by the Government it is clear that a number of the most essential steps had not been taken by the investigators at all or that they had been taken with irreparable delays and only after the investigation had been criticised by the supervising prosecutors (see paragraphs 44, 45, 50, 61, 66, 76, 85, 86, 88 and 93 above). In spite of the numerous concurring witness statements to this effect (see paragraphs 40, 42, 48, 49, 52, 53, 54-57, 64, 68, 72-74 and 91 above), it does not appear that the investigators tried to question the officers of the Shali law-enforcement agencies or the military commander's office about their possible involvement in the abduction or that they took any measures to identify the APCs used by the abductors and question their drivers. It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation had begun. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

130. The Court also notes that even though the first and second applicants were granted victim status in the investigation concerning the abduction of their son, they were only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

131. Finally, the Court notes that the investigation was adjourned and resumed at least nine times and that there were lengthy periods of inactivity

on the part of the district prosecutor's office when no proceedings were pending. The supervising prosecutors criticised deficiencies in the proceedings and ordered remedial measures, but their instructions were not complied with.

132. The Government argued that the applicants could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged acts or omissions of investigating authorities before a court. Furthermore, the Court emphasises in this respect that while the adjourning or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to adjourn were made without the necessary investigative steps being taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

133. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Artur Akhmatkhanov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

134. The applicants relied on Article 3 of the Convention, submitting that as a result of their relative's disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

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

136. The applicants maintained their submission.

B. The Court's assessment

1. Admissibility

137. The Court notes that this complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

138. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

139. In the present case the Court notes that the applicants are close relatives of the disappeared person. For more than seven years they have not had any news of the missing man. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing relative. Despite their attempts, they have never received any plausible explanation or information about what became of him following his detention. The responses they received mostly denied State responsibility for their relative's arrest or simply informed them that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

140. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the applicants.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

141. The applicants further stated that Artur Akhmatkhanov had been detained in violation of the guarantees contained in Article 5 of the Convention, which reads, in so far as relevant:

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

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

...

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

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

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

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

A. The parties' submissions

142. The Government asserted that no evidence had been obtained by the investigators to confirm that Artur Akhmatkhanov had been deprived of his liberty. He was not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

143. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

144. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

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

146. The Court has found that Artur Akhmatkhanov was abducted by State servicemen on 2 April 2003 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance

with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

147. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relative had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

148. In view of the foregoing, the Court finds that Artur Akhmatkhanov was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. The parties' submissions

150. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention. The applicants had had an opportunity to challenge the acts or omissions of the investigating authorities in court. They could also claim damages in civil proceedings.

151. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

152. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

153. The Court reiterates that in circumstances where, as here, a criminal investigation into the disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

154. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention.

155. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction with Articles 3 and 5 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

156. 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. Pecuniary damage

157. The fourth applicant claimed damages in respect of loss of earnings by her husband Artur Akhmatkhanov after his arrest and subsequent disappearance. The applicant claimed a total of 683,714 Russian roubles (RUB) under this heading (17,100 euros (EUR)).

158. She claimed that her husband had been a student at the time of his abduction and that in such cases the calculation should be made on the basis of the subsistence level established by national law. She calculated his earnings for the period, taking into account an average inflation rate of 13.63 %. Her calculations were also based on the actuarial tables for use in

personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("Ogden tables").

159. The Government regarded these claims as based on suppositions and unfounded. They also pointed to the existence of domestic statutory machinery for the provision of a pension for the loss of the family breadwinner.

160. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicant's husband and the loss by her of the financial support which he could have provided. Having regard to the applicant's submissions and the fact that Artur Akhmatkhanov was not employed at the time of his abduction, the Court awards EUR 15,000 to the fourth applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

161. The applicants claimed EUR 1,000,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relative.

162. The Government found the amounts claimed excessive.

163. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicants jointly EUR 60,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

164. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,004.

165. The Government did not dispute the reasonableness of and justification for the amounts claimed under this heading.

166. The Court has to establish first whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

167. Having regard to the details of the information and legal representation contract submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

168. As to whether the costs and expenses were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives.

169. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 5,500, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Artur Akhmatkhanov;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Artur Akhmatkhanov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Artur Akhmatkhanov;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds*
 - (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles on the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the fourth applicant;
 - (ii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
 - (iii) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (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;
10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President