



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

FIRST SECTION

CASE OF MERZHUYEVA AND OTHERS v. RUSSIA

(Applications nos. 27315/06 and 27449/06)

JUDGMENT

STRASBOURG

7 October 2010

FINAL

21/02/2011

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

In the case of Merzhuyeva and Others 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 Hajiyev,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 16 September 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 27315/06 and 27449/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Russian nationals listed below (“the applicants”), on 29 May and 21 May 2006.

2. The applicants were represented by Mr D. Itslyayev, a lawyer practising in Ingushetia, Russia. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their new representative, Mr G. Matyushkin.

3. The applicants alleged that their relatives had disappeared after their detention by the security forces in Katyr-Yurt, Chechnya, in 2003 and 2002, respectively. They complained under Articles 2, 3, 5 and 13 of the Convention.

4. On 9 July 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the applications, and to give notice of the applications to the Government. It also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3 of the Convention). The President of the Chamber acceded to the Government's request not to make publicly accessible the documents from the criminal investigation files deposited with the Registry in connection with the applications (Rule 33 of the Rules of Court).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants in application no. 27315/06 are:

1. Ms Aymani Merzhuyeva, born in 1955,
2. Ms Zarema Abdulkarimova, born in 1968,
3. Mr Rizvan Merzhoyev, born in 1990,
4. Mr Ruslan Merzhoyev, born in 1994,
5. Mr Usman Merzhoyev, born in 1996,
6. Mr Bekhan Merzhoyev, born in 1998.

The applicant in application no. 27449/06 is:

7. Ms Zaa Gastamirova, born in 1957.

7. All applicants live in the Chechen Republic (Chechnya), Russia.

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

A. The applicants' relatives' disappearance

9. The applicants belong to two families. Their two male relatives were detained in two separate incidents in 2003 and 2002 in Lenina Street in the village of Katyr-Yurt (also spelled as Katar-Yurt), in the Achkhoy-Martan district of Chechnya, and subsequently disappeared. The first six applicants were present during the abduction of their relative. The seventh applicant was not an eyewitness to the events and her account is based on testimonies collected by her in the aftermath of the disappearance.

1. Apprehension of Khamzat Merzhoyev

10. The first applicant is a sister of Khamzat Merzhoyev, who was born in 1963. The second applicant is his wife. The third to sixth applicants are the children of Khamzat Merzhoyev and the second applicant.

11. At the material time the first six applicants, Khamzat Merzhoyev and other relatives lived in two houses at no. 129 Lenina Street (in the documents submitted, the address is also stated as 167 Lenina Street or 167 Kadyrova Street) in Katyr-Yurt. The settlement was under curfew.

12. On the night of 23 November 2003 the first applicant, her mother and the second, fourth, fifth and sixth applicants were sleeping in the first house. The first applicant shared a room with her mother. The second applicant and her children were in another room. The third applicant, Khamzat Merzhoyev and his elderly father, Mr M.M., who subsequently died, were sleeping in the second house.

13. At about 3 a.m. a group of armed men in camouflage uniforms arrived at the applicants' gate in several armoured personnel carriers (APCs) and military UAZ cars. Four tall men wearing body armour emerged from the vehicles and burst into the first house. They entered the first applicant and her mother's room and told them to be quiet in unaccented Russian. The women thought that the intruders were Russian servicemen. The men then took the second applicant and her children to the first room. After a warning that a bomb was hidden under the porch, they ordered the women to remain seated and not to leave the house. Some two minutes later the men walked out.

14. In the meantime, at around 2 a.m. in the second house the third applicant had switched off the television before going to bed. He went to Mr M.M.'s bedroom. Some five minutes later three or four tall men in camouflage uniforms broke into the house. The third applicant thought that they were servicemen. One of them put his rifle barrel to the applicant's neck. The men then pulled Mr M.M. from his couch. While he was trying to get up, they flailed him with a rifle butt. The applicant begged the men to leave Mr M.M. alone. Instead, one of the men slapped the applicant on his neck and shoulders three or four times. Another man tied up the applicant's hands, legs and mouth with adhesive tape. The same was done to Mr M.M. The men ordered the applicant not to leave home and, after spending about ten minutes there, went away.

15. At the same time the third applicant heard a noise coming from Khamzat Merzhoyev's room, as if there was a fight. The applicant thought that the servicemen were trying to arrest his father. They took Khamzat Merzhoyev outside, put him in one of the vehicles and drove away in an unknown direction.

16. As soon as the men departed, the third applicant tore up the adhesive tape and rushed to the suffocating Mr M.M. to help him out. When he glimpsed inside his father's bedroom, the latter was no longer there. The third applicant looked out of the window to see one of the intruders walking through the gate and heading for the street. He was thickset.

17. The third applicant subsequently deposited his grandfather at the first house, where the other five applicants were, and rushed to see Khamzat Merzhoyev's brother, Mr A.M., who lived in the neighbourhood. Once in the street, he saw an APC that had pulled over to Mr K.'s family's gate, some 100 metres away from the first house. A large number of servicemen were walking towards the APC. Shortly afterwards they broke into Mr K.'s house. The applicant heard the women crying inside. Suddenly the noises died away. The applicant went inside Mr A.M.'s house and related the events to him.

18. In the meantime, as soon as the first and second applicants had learnt from Mr M.M. that Khamzat Merzhoyev had been apprehended and driven away by the servicemen, they rushed down Lenina Street. They saw several

military vehicles, including three APCs and some UAZ cars, about 100 metres from their first house. A number of servicemen were sitting on top of the APCs, which were driving to the east end of the village. The men were speaking Russian and Chechen. Those who were speaking Chechen were masked. As they approached the local administration office, the servicemen opened fire.

19. Thereafter the first and second applicants went to the second house. They saw blood on the floor of Khamzat Merzhoyev's room. They understood that the servicemen had beaten him up.

20. In the morning of 23 November 2003 the first six applicants found out that six other local men, Mr U.K., Mr S.-M.S., the brothers Mr A.Tul. and Mr K.Tul. and two brothers named Taz. had been apprehended in Katyr-Yurt on the same night by the same servicemen during a special operation. Mr U.K., Mr S.-M.S., one of the Tul. brothers and one of the Taz. brothers had been released that same morning on the outskirts of the village of Shaami-Yurt in the Achkhoy-Martan district. On 25 or 26 November 2003 the second Tul. brother and the second Taz. brother had been released from detention on the premises of the Achkhoy-Martan district department of the interior ("the ROVD"). The first applicant spoke to them after their release. They confirmed that they had been detained at the ROVD.

21. The first six applicants have had no news of Khamzat Merzhoyev since 23 November 2003.

22. The description of the events of the night of 23 November 2003 is based on the first applicant's account submitted with the application. In addition, the applicants' representative provided the first and third applicants' accounts given on 4 July 2008 and an account by witness Mr K.T. given on 5 July 2008.

23. In her account dated 4 July 2008, the first applicant submitted that Khamzat Merzhoyev had participated in the first Chechen war between 1994 and 1996, challenging the authority of the Russian troops. He had been wounded after three or four months of military action. Thereafter he had no longer taken part in the hostilities, including during the second war in Chechnya.

24. The Government did not challenge most of the facts as presented by the applicants. They submitted that during the night of 23 November 2003 "armed unidentified persons wearing masks and camouflage uniforms" had entered Khamzat Merzhoyev's house at no. 129 Lenina Street and taken him away to an unknown destination. The Government denied any involvement of State agents in Khamzat Merzhoyev's disappearance.

2. Apprehension of Ali Gastamirov

25. The seventh applicant is the mother of Ali Gastamirov, also referred to as Ali Gastemirov, born in 1979.

26. On the night of 12 May 2002 the seventh applicant and her husband, Mr A.-Kh.G., were staying with their relatives in a neighbouring village. Their son Ali Gastamirov, his wife, Ms M.G., also referred to as Ms M.T., his two sisters, including Ms Kh.G., and Ms E.Z., Mr A.-Kh.G.'s sister, stayed at home, at no. 8 Lenina Street (in the documents submitted, the address is also referred to as no. 2 Lenina Street) in Katyr-Yurt. The settlement was under curfew.

27. At the material time the seventh applicant's house was composed of two separate dwellings. That night Ali Gastamirov and Ms M.G. were sharing a room in the first house, whereas Ms Kh.G. was sleeping in a separate room there. Ms E.Z. and Ms Kh.G.'s sister were sleeping in the second house.

28. At around 4 a.m. a group of armed men in camouflage uniforms parked their cars, an APC and two UAZ vehicles, in the vicinity of the river Shalazhi, some 300 metres away both from a Russian military unit and from the seventh applicant's house. They then headed for Katyr-Yurt on foot.

29. Between 3 and 4 a.m. a group of ten to sixteen armed men in camouflage uniforms arrived at Lenina Street. Some of them were masked, others were wearing helmets. Five or six of them burst into the house of the seventh applicant's neighbour, Mr A.D., whereas the others remained waiting outside. After five or ten minutes the men walked out of Mr A.D.'s house. Then they split up into two groups: the first broke into the house of Mr M.Sh. and the second into the seventh applicant's house.

30. Ms Kh.G. was woken up by three armed men in camouflage uniforms. They were tall and heavyset, and were speaking unaccented Russian. One of them was unmasked and had Slavic features. The men conducted a quick search of the room. They did not allow Ms Kh.G. to join her brother in the neighbouring room. At some point the men ordered Ms M.G. to open the second house to them. She obeyed.

31. Ms E.Z., who was sleeping in the second house, was woken up by six or seven armed men in camouflage uniforms. One of them was unmasked and had Slavic features. They started searching the house. Fear rendered Ms E.Z. powerless and she fainted.

32. In the meantime the servicemen burst into Ali Gastamirov's room. They asked him questions and checked his passport. They further took him to the street on the pretext of showing them around the backyard. Ali Gastamirov asked Ms Kh.G. to follow him. The men objected. They hustled Ms Kh.G. and Ms M.G. into the house and closed the front door with an axe from the outside. Ms Kh.G. and Ms M.G. understood that the servicemen had taken Ali Gastamirov away.

33. At the same time the second group of servicemen walked out of Mr M.Sh.'s house.

34. Once in the street, the two groups of servicemen got together in a tight circle, as if they were trying to hide someone in the middle. Thereafter

they ran in the direction of a pasture field on the outskirts of Katyr-Yurt, where regiment no. 47 of the Russian federal forces was deployed.

35. Some five or ten minutes later Ms Kh.G. and Ms M.G. managed to open the front door. They looked around but saw nobody in the backyard or in the street. Suddenly they heard the roar of engines starting up, coming from the river. Ms Kh.G. could distinguish the roar of an APC. The women thought that the cars belonged to the abductors. Then they heard the cars driving away.

36. At around 5 a.m. the neighbours got together at the seventh applicant's house. They saw clear footprints left by Ali Gastamirov and the servicemen in the yard, which led to the pasture field where the servicemen had parked their cars.

37. At around 9 a.m. the seventh applicant and her husband returned home. The neighbours related Ali Gastamirov's abduction to them.

38. The seventh applicant has had no news of Ali Gastamirov since 12 May 2002.

39. The description of the events of the night of 12 May 2002 is based on the seventh applicant's account submitted with the application. In addition, the following accounts have been provided by the applicant's representative: the seventh applicant's account, given on 18 December 2008; an account by Ms Kh.G., given on 1 November 2008; an account by Ms E.Z. given on 14 November 2008; an account by Mr Z.A., given on 29 November 2008; an account by witness Mr I.Sh., given on 14 December 2008; an account by witness Mr Kh.B., given on 18 December 2008; and an extract from the Achkhoy-Martan district newspaper *Iman*, dated 8 July 2002.

40. The Government did not challenge most of the facts as submitted by the seventh applicant. They stated that at about 4 a.m. on 12 May 2002 "armed unidentified persons wearing masks and camouflage uniforms" had apprehended Ali Gastamirov in his house at no. 2 Lenina Street and then abducted him. The Government argued that there were no grounds to suspect that State agents had been involved in Ali Gastamirov's disappearance.

B. The search for the applicants' relatives and the investigation

41. The applicants and their relatives contacted, both in person and in writing, various official bodies, such as the Russian President, the Chechen administration, military commanders' offices, departments of the interior and prosecutors' offices at different levels, describing in detail the circumstances of their relatives' apprehension and asking for help in establishing their whereabouts. The applicants kept copies of a number of those letters and submitted them to the Court. An official investigation was opened by the local prosecutor's office in both cases. The applicants

received hardly any substantive information from the official bodies about the investigation into the disappearances. Their letters to the relevant authorities were mostly forwarded to the district prosecutor's office and the ROVD. The relevant information is summarised below.

1. Search for Khamzat Merzhoyev

42. On 23 November 2003 the first and second applicants, accompanied by their relatives, went to the ROVD to enquire about Khamzat Merzhoyev. Police officers told them that he was not being held there. The applicants asked the police officers to pass warm clothes and shoes on to Khamzat, as he had been detained without any. The officers took the clothes and shoes from them.

43. Later on the same day the first and second applicants went to the prosecutor's office of the Achkhoy-Martan district ("the district prosecutor's office") where they met Mr A.E., the head of the Katyr-Yurt administration. Mr A.E. told the applicants that six persons out of the seven detained would be released. He was unaware who would be retained by the police.

44. Thereafter the first and second applicants returned to the ROVD. On the evening of 23 November 2003 the police officers gave them back the clothing that the applicants had handed over in the morning. The police officers told them that Khamzat had been provided with the necessary clothing and that he did not need anything.

45. Over the next few days Khamzat Merzhoyev's relatives regularly went to the ROVD and the district prosecutor's office. None of the officials whom they met there was able to tell the applicants why Khamzat had been detained and where he was being held.

46. A week after Khamzat Merzhoyev's abduction Mr A.E. told Mr S.-M.M., Khamzat Merzhoyev's brother, that the head of the Achkhoy-Martan district administration had informed him that Khamzat would not be released, for an unknown reason.

47. Two or three months after Khamzat Merzhoyev's disappearance Mr Sh.K., the head of the ROVD, informed the applicants and their relatives that he had almost established Khamzat's whereabouts. Mr Sh.K. refused to provide any further assistance to the applicants.

48. On 30 November 2003 Mr M.M. requested the district prosecutor's office to open an investigation into Khamzat Merzhoyev's kidnapping.

49. On 10 December 2003 the district prosecutor's office launched a criminal investigation (file no. 44090) into the abduction of Khamzat Merzhoyev under Article 126 § 2 of the Criminal Code (aggravated kidnapping).

50. On 11 December 2003 the district prosecutor's office granted victim status to Mr S.-M.M.

51. Between January 2004 and May 2005 the first applicant complained about her brother's abduction to a number of law-enforcement authorities,

including the Prosecutor General's office. However, she did not submit copies of those letters to the Court.

52. On 10 April 2004 the district prosecutor's office stayed the investigation in case no. 44090 on account of the failure to identify the perpetrators.

53. On 26 April 2004 the prosecutor's office of the Chechen Republic ("the Chechnya prosecutor's office") resumed the investigation.

54. On 1 June 2004 the district prosecutor's office stayed the investigation in case no. 44090 because the term of the preliminary investigation had expired and the perpetrators had not been identified.

55. On an unspecified date the first applicant lodged an action with the Achkhoy-Martan District Court ("the district court"), seeking to have Khamzat Merzhoyev declared a missing person, in order to receive a pension for the loss of the family breadwinner. On 14 February 2005 the district court allowed her action and declared Khamzat Merzhoyev a missing person. The court noted that the criminal investigation in case no. 44090 had been pending since 28 December 2004.

56. On 21 June 2005 the first applicant wrote to the military prosecutor's office of the United Group Alignment ("the military prosecutor's office of the UGA"), requesting assistance in the search for Khamzat Merzhoyev.

57. On 27 June 2005 the Chechnya prosecutor's office informed the first applicant that it had examined her complaint about Khamzat Merzhoyev's abduction. According to the letter, the authorities had been conducting operational-search measures aimed at solving the crime.

58. On 7 July 2005 the ROVD informed the first applicant that the ROVD had opened operational-search file no. 91615 and had been taking measures to establish Khamzat Merzhoyev's whereabouts.

59. On 12 July 2005 the ROVD informed the family that the operational-search measures aimed at establishing Khamzat Merzhoyev's whereabouts had failed to produce any results.

60. On 23 November 2005 a group of dwellers of the Achkhoy-Martan district submitted to the Russian President a request for help in establishing the whereabouts of their 140 relatives, including Khamzat Merzhoyev. They submitted that their relatives had been abducted during counter-terrorist operations, conducted by Russian federal servicemen from 2000 to 2004 in that district.

61. On 9 December 2005 the petitions department of the Office of the Russian President (*Управление Президента Российской Федерации по работе с обращениями граждан* – "the petitions department") forwarded their request to the Prosecutor's General Office for examination.

62. On 12 January 2006 the military prosecutor's office of the UGA forwarded the first applicant's request for assistance in the search for Khamzat Merzhoyev to the military prosecutor's office of military unit no. 20102 for examination.

63. On 18 January 2006 the main department of the Russian Ministry of the Interior in the Southern Federal Circuit informed the first applicant that her complaint had been registered and forwarded to the Ministry of the Interior of Chechnya (“the Chechnya MVD”) for examination.

64. On 30 January 2006 the department of military counter-intelligence of the Federal Security Service (“the FSB”) informed the first applicant that the examination of her complaint had failed to establish Khamzat Merzhoyev's whereabouts. The authorities had been taking measures to identify the perpetrators of the crime and witnesses to his abduction.

65. On 2 February 2006 the criminal police of the Chechnya MVD wrote to the first applicant that the operational-search measures aimed at establishing her brother's whereabouts had failed to produce any results. The authority invited her to study the investigation file on the premises of the district prosecutor's office.

66. On 7 February 2006 the military prosecutor's office of military unit no. 20102 informed the first applicant that the examination of her complaint had failed to establish the involvement of any servicemen in the abduction of her brother.

67. On 17 February 2006 the Chechnya MVD informed the first applicant that Khamzat Merzhoyev had not been included on the authorities' wanted list.

68. On 11 April 2006 the district prosecutor's office informed the first applicant that it had taken the following investigative measures in criminal case no. 44090: examination of the crime scene; drafting of an investigation plan; granting victim status to a close relative of the disappeared; questioning of a number of persons familiar with Khamzat Merzhoyev; forwarding of information requests concerning his whereabouts to various law-enforcement authorities; and some other operational-search measures. According to the document, the supervising prosecutor had issued instructions aimed at solving the crime. In addition, the document stated that the investigation was considering a number of possible versions of Khamzat Merzhoyev's abduction, according to which the crime could have been committed by servicemen of the law-enforcement authorities and/or other “power structures” (*силовые структуры*), as well as by members of illegal armed groups or by other persons seeking a ransom or vengeance as a result of a blood feud. According to the letter, the authorities had no “discrediting information” about Khamzat Merzhoyev. Lastly, the district prosecutor's office informed the first applicant that, notwithstanding the decision of 1 June 2004 to stay the investigation, operational-search measures were under way.

69. On 10 July 2006 the first applicant submitted a new complaint to the district prosecutor's office. She stated in particular that she had been granted victim status in criminal case no. 44090. However, the prosecuting authorities had failed to inform her of the progress of the investigation.

Consequently, she had had no opportunity to challenge their decisions. The applicant requested the district prosecutor's office to inform her of the progress of the investigation, to grant her leave to study the investigation file and make copies of it, and to resume the investigation into the abduction, in the event that it had been suspended. The first applicant did not enclose the decision to grant her victim status with the application to the Court.

70. On 17 and 25 May 2007 the criminal police of the Chechnya MVD wrote to the first applicant that operational-search measures aiming to establish Khamzat Merzhoyev's whereabouts and to arrest the abductors were under way. The authority invited the applicant to study the investigation file on the premises of the district prosecutor's office.

71. On 2 July 2007 military unit no. 14057 replied to the first applicant that the Russian federal forces had not carried out any special operation at no. 129 Lenina Street in November 2003. The military unit had been pursuing search measures in order to establish her brother's whereabouts.

72. On 26 July 2007 the Chechnya FSB department wrote to the first applicant that it had no information either about Khamzat Merzhoyev's abduction on 23 November 2003 or about his current whereabouts. The department informed her that the Chechnya prosecutor's office was the authority competent to deal with the investigation and forwarded the applicant's complaint to that office for examination.

73. On 16 August 2007 the military prosecutor's office of military unit no. 20102 informed the first applicant that no evidence had been found to support the involvement of servicemen in the abduction of her brother. The office promised to assist the district prosecutor's office in conducting further search measures.

74. With reference to the first applicant's complaint of 10 July 2006, on 9 June 2008 the Achkhoy-Martan district investigations department wrote to her that, in accordance with the Russian Code of Criminal Procedure, the victim in a criminal case had the right to study the records of investigative measures conducted in his or her presence, to challenge them and to study the entire investigation file upon the completion of the investigation. The department informed the applicant that the preliminary investigation in case no. 44090 was pending.

75. It appears that the criminal investigation into Khamzat Merzhoyev's abduction has remained pending thereafter.

2. Search for Ali Gastamirov

(a) Criminal proceedings

76. On the morning of 12 May 2002, as soon as the seventh applicant returned home, she started the search for Ali Gastamirov.

77. Accompanied by her neighbours, she pursued the servicemen's footprints, which soon led her to their parking place close to the Shalazhi river. They could identify tracks left by an APC and two UAZ vehicles.

78. Thereafter, the applicant and her neighbours went to the nearby military unit and asked the military commander to release Ali Gastamirov. The commander told them that the military unit had never detained Ali Gastamirov and that he was not being held there. The commander did not let them enter the premises.

79. On the same day the seventh applicant and her husband went to the Achkhoy-Martan ROVD and the prosecutor's office to complain about their son's disappearance. Although they managed to have private talks with some officials, they were not allowed to go inside. The officials promised to find their son.

80. On 13 May 2002 the district prosecutor's office initiated an investigation into the abduction of Ali Gastamirov under Article 127 § 2 of the Criminal Code (unlawful deprivation of liberty). The case file was assigned number 63013.

81. On 13 May 2002 the district prosecutor's office granted victim status in case no. 63013 to the applicant's husband, Mr A.-Kh.G. The seventh applicant asserted that she had been granted victim status on the same day. However, she did not append the relevant decision.

82. On the same day the investigator Mr F.A. visited the applicant's house. He questioned the seventh applicant, Mr A.-Kh.G. and Ms M.G., who told him that the traces of the vehicles which the abductors had used on the previous day were still visible. Mr F.A. took some photographs in the applicant's dwellings but did not examine the traces. The applicant and her relatives also told the investigator that some neighbours had been eyewitnesses to Ali Gastamirov's abduction, that the abductors had also broken into some neighbouring houses and that the officers of the nearby military unit could have seen the vehicles used by them. Mr F.A. did not question any neighbour that day. The applicant, Mr A.-Kh.G. and Ms M.G. lastly stated that the abductors were servicemen, that they could have apprehended Ali Gastamirov and that they were keeping hold of him.

83. Thereafter, the investigator accompanied the seventh applicant and her relatives to the military unit. He entered the premises and soon reappeared. Mr F.A. said that he had checked the premises but Ali Gastamirov had not been there. Mr F.A. promised the relatives that he would find Ali and drove away.

84. On 14 May 2002 Ali Gastamirov's relatives and neighbours picketed in the centre of Katyr-Yurt in an attempt to draw the attention of the authorities to the abduction. The picket lasted three days. Servicemen from the nearest checkpoint at the east end of the village dissuaded them from continuing to protest, promising that Ali Gastamirov would soon be

released. The applicant enclosed a video record of the protest with her submissions.

85. Over the next several weeks the seventh applicant complained about her son's abduction, both in person and in writing, to different official bodies.

86. In June 2002 an investigator of the district prosecutor's office questioned some of the applicant's neighbours. The investigator asked them whether Ali Gastamirov had participated in illegal armed groups. The circumstances of Ali's apprehension were of no interest to him.

87. On 7 February 2003 the district prosecutor's office forwarded to Mr A.-Kh.G. a request sent to the ROVD for assistance in the search for his son with a view to organising the search.

88. On 17 December 2003 the Chechnya MVD informed the seventh applicant that the authorities had opened criminal case no. 63013 and that the investigation into the abduction of Ali Gastamirov was under way.

89. On 19 July 2004 the Prosecutor General's Office replied to the seventh applicant's request for a personal meeting. The letter stated that her complaint had failed to provide enough reasons for the organisation of such a meeting with the Prosecutor General.

90. On 20 September and 10 November 2004 the military prosecutor's office of military unit no. 20102 informed the applicant that the examination of her complaint had not established any involvement of Russian servicemen in the crime. The office forwarded her complaint to the Chechnya prosecutor's office.

91. On 18 July 2005 the district military commander's office informed the applicant that neither its office nor any other district power structures had conducted operational-search measures in Katyr-Yurt on 11 May 2002. The letter also stated that measures to establish her son's whereabouts were under way.

92. On 25 July 2005 the district prosecutor's office informed the seventh applicant that the investigation in criminal case no. 63013 had carried out a number of investigative measures. It had forwarded queries concerning Ali Gastamirov's whereabouts to various law-enforcement authorities and official bodies and pursued its cooperation with a number of other State authorities. According to the letter, the authorities had been taking operational-search measures aimed at solving the crime.

93. On 23 November 2005 a group of dwellers of the Achkhoy-Martan district submitted to the Russian President a request for help in establishing the whereabouts of their 140 relatives, including Ali Gastamirov. They submitted that their relatives had been abducted during counter-terrorist operations, conducted by servicemen from 2000 to 2004 in that district.

94. On 17 September 2006 the investigation in case no. 63031 was suspended on account of the failure to identify the perpetrators.

95. It appears that the investigation was subsequently resumed.

96. In July 2008 the investigation questioned some of the seventh applicant's neighbours who had witnessed her son's abduction.

97. On 25 November 2008 the Chechnya prosecutor's office informed Mr A.-Kh.G. that the investigation in case no. 63031 had been suspended on account of the failure to identify the perpetrators.

(b) Leave to study the investigation file

98. On 10 July 2006 and 24 January 2008 the seventh applicant applied to the district prosecutor's office, seeking leave to study the investigation file and to make copies of it. In the first application she indicated that at around 4 a.m. on 12 May 2002 "a large group of up to 40 federal servicemen" had apprehended and taken away Ali Gastamirov.

99. On 1 February 2008 the district prosecutor's office refused her requests. The office replied that until the completion of the investigation the applicant had only the right to study the records of the investigative steps which had been conducted in her presence.

C. Information about the investigation submitted by the Government

100. Despite specific requests by the Court the Government did not disclose most of the contents of the criminal investigation files. Thus, they submitted 160 pages from criminal investigation file no. 44090 and 47 pages from criminal investigation file no. 63031. They produced several witness statements and decisions to grant victim status in relation to both cases. The documents provided in relation to criminal investigation file no. 44090 also included correspondence between different State authorities on the progress of the investigation. The documents provided in relation to criminal investigation file no. 63031 included the decision to open the investigation. No other documents, such as expert reports or letters to the relatives informing them of the adjournment and reopening of the proceedings, were produced by the Government.

101. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the remaining documents would be in violation of Article 161 of the Code of Criminal Procedure, since the files contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

102. The documents, as well as the Government's submissions with regard to the investigation in cases nos. 44090 and 63031, can be summarised as follows.

1. Investigation into the kidnapping of Khamzat Merzhoyev

103. In their observations the Government did not dispute most of the information concerning the investigation of the abduction of Khamzat Merzhoyev as submitted by the first six applicants. They referred to a number of other procedural steps taken by the investigation which had not been mentioned by the applicants. However, the Government did not submit copies of most of the documents to which they referred (see below).

104. The Government stated that on 28 November 2003, and not on 30 November 2003 as the applicants asserted, Mr M.M. had submitted a written application to the district prosecutor's office to open an investigation into Khamzat Merzhoyev's kidnapping. The Government submitted that prior to 28 November 2003 a check had been conducted by the ROVD.

105. On 10 December 2003 the district prosecutor's office launched a criminal investigation (file no. 44090) into the abduction of Khamzat Merzhoyev from his house by "armed unidentified persons wearing camouflage uniforms and masks".

106. On 11 December 2003 Mr S.-M.M. was granted victim status. The Government did not specify whether any of the six applicants had also been granted victim status.

107. The Government submitted that Mr S.-M.M. had been questioned. However, they did not produce his account or specify the date of the questioning. According to the Government, Mr S.-M.M. had learnt from his relatives that at about 3 a.m. on 23 November 2003 two unknown armed men wearing masks and camouflage uniforms had broken into their house at no. 167 Lenina Street in Katyr-Yurt. The men had hit Mr M.M. with a rifle butt, tied up his hands and legs with adhesive tape and taken away Khamzat Merzhoyev. The applicants' neighbours had seen APCs and a UAZ vehicle in the street that night.

108. The Government stated that between December 2002 and May 2004 the investigation had questioned over fifty witnesses, including the first and second applicants, most probably the third applicant – the Government referred to the latter as Khamzat Merzhoyev's son – as well as Mr A.M., Mr M.M. and the applicants' neighbours. The neighbours had not been eyewitnesses to the abduction. The Government appended copies of thirty transcripts. They failed to produce copies of the accounts given by the first three applicants, Mr A.M., Mr M.M. and the other witnesses who had been questioned by the investigation.

109. The applicants' neighbours provided the following information.

110. On 14 December 2003 Mr S.-A.I., who lived in the same street as the first six applicants, testified that he personally knew Khamzat Merzhoyev and his family. They had no enemies and had not been involved in a blood feud. Mr S.-A.I. characterised Khamzat as a calm, decent and easygoing person, who had been taking care of his parents and had lived in their house. Khamzat had not participated in illegal armed groups or any

criminal activities and had no “discrediting connections”. On the morning of 23 November 2003 Mr S.-A.I. had learnt from his neighbours that a number of armed and masked men wearing camouflage uniforms had burst into Khamzat's house and taken him away to an unknown destination. His whereabouts had not been established. The relatives' search for Khamzat had not yielded any results. After the abduction, the investigating authorities had visited the relatives in order to question them and their neighbours, and had examined their house.

111. On 27 March 2004 Mr B.G. reported that there had been about fifteen armed men in the applicants' house that night.

112. On 18 May 2004 the investigation questioned Mr A.Ya., who added that the intruders, who had spoken Russian, had not told the applicants which bodies they were representing. They had acted quickly so as not to let the applicants leave the backyard. None of the applicants had been able to distinguish the hull numbers of the UAZ car used by the intruders because of the dark.

113. The Government produced copies of another twenty accounts given by the applicants' neighbours between December 2003 and May 2004. Sixteen neighbours gave a similar account of the events to that given by Mr S.-A.I., Mr B.G. and Mr A.Ya. Two neighbours questioned on 17 December 2003 added that the intruders had battered Khamzat Merzhoyev upon his arrest. Eleven statements collected in May 2004 literally reproduced Mr A.Ya.'s testimonies. Three out of the twenty neighbours did not know Khamzat Merzhoyev and his family and denied any knowledge of his abduction.

114. On 12 May 2004 the investigation questioned Mr A.E., the head of the Katyr-Yurt administration. Mr A.E. testified that at around 4 a.m. on the night of 23 November 2003 he had been woken up by relatives of Khamzat Merzhoyev, Mr S.A., Mr U.K., and relatives of the Tul. and Taz. brothers. They had recounted their relatives' abduction and added that the latter had been subsequently released. On a later date Mr A.E. had had a private talk with the abducted persons, excluding Khamzat Merzhoyev. They had explained that the abductors had not been violent and had only asked them about their involvement in illegal armed groups. The abductors had released them after a document check. None of the abducted persons had applied to the police in connection with the kidnapping. None of them had seen Khamzat Merzhoyev ever since. After the events all the above-mentioned persons had left Chechnya, fearing for their safety. Mr A.E. was unaware why those persons, including Khamzat Merzhoyev, had been detained and whether they had participated in illegal armed groups. Mr A.E. had no knowledge of Khamzat's whereabouts.

115. The investigation also questioned other persons who had been abducted during the night of 23 November 2003. The Government submitted copies of the accounts given by Mr U.K., Mr S.-M.S., Mr S.A.,

Mr K.Tul. and Mr A.Tul. The testimonies of the Taz. brothers were not enclosed with the Government's observations. It is unclear whether both of them were questioned.

116. On 3 May 2004 Mr U.K. testified that on the night of 23 November 2003 he had been sleeping in his house at no. 161 Lenina Street in Katyr-Yurt. He had shared his bedroom with Mr S.-M.S., a relative. Mr U.K.'s mother, sister, wife and children were sleeping in two other rooms. At about 3 a.m. Mr U.K. had woken up because his wife was crying. He had gone to her bedroom and seen four or five armed persons wearing masks and camouflage uniforms. They had ordered him and Mr S.-M.S. to lie on the floor. They had obeyed. The intruders had not used violence or threats against them. Thereafter the men had taken Mr U.K. and Mr S.-M.S. out of the house, pulled their T-shirts over their heads and hustled them into a grey UAZ vehicle. Some other unknown armed men had been in the vehicle. The men had driven Mr U.K. and Mr S.-M.S. out of the village, checked their identity documents and asked whether they had participated in illegal armed groups. Mr U.K. and Mr S.-M.S. had replied in the negative and the men had let them go. Mr U.K. and Mr S.-M.S. had spent some 20 minutes in the vehicle. Mr U.K. was unaware whether other persons had been arrested that night. Soon after the accident Mr U.K. and Mr S.-M.S. had left Chechnya for work-related matters. They had returned in May 2004.

117. Mr S.-M.S., questioned on 4 May 2004, corroborated Mr U.K.'s statements. He considered that they had been apprehended for an ordinary document check and, therefore, had persuaded the relatives not to submit an application to the prosecutor's office. Mr U.K. and Mr S.-M.S. had been involved in some construction business in Ingushetia. They occasionally returned to Chechnya in order to give money to their relatives.

118. On 6 May 2004 the investigation questioned Mr S.A. He stated that on the night of 23 November 2003 he had been sleeping in his house at no. 47 Ordzhonikidze Street in Katyr-Yurt. At about 3 a.m. between five and ten unknown armed men wearing masks and camouflage uniforms had broken into his house. One of them had ordered Mr S.A. to get dressed and take his passport. He had obeyed. Afterwards the men had taken Mr S.A. to their UAZ car. Except for Mr S.A. and the men, there was no one else inside. The men had not used violence or threats against him. They had driven him out of the village and asked whether he had participated in illegal armed groups. Mr S.A. had replied in the negative and added that he had no information about any members of such groups. Then the men had let him go. On the following day, fearing for his safety, Mr S.A. had gone to Ingushetia to his relatives. He had returned to Katyr-Yurt in May 2004.

119. On 8 and 10 May 2004 respectively the investigation questioned Mr K.Tul. and Mr A.Tul., his elder brother. They testified that on the night of 23 November 2003 they had been sleeping in their house at no. 6 Shosseyny Lane in Katyr-Yurt. At about 3 a.m. unknown armed men

wearing masks and camouflage uniforms had broken into the house. Five or six men had woken them up. There had been a large number of unknown armed men outside. The intruders had ordered Mr K.Tul. and Mr A.Tul. to get dressed and had pulled jackets over their heads. Afterwards the men had taken them to the backyard, put them in the back of a Ural truck and driven them out of the village. The men had asked the brothers whether they had participated in illegal armed groups. The brothers had replied in the negative. Then the men had let them go. The men had not used violence against them. The brothers had not requested the prosecuting authorities to open an investigation into their abduction. On the following day Mr K.Tul., his brother and the latter's family had gone to their relatives in the Samara Region, fearing for their safety. They had been living there since then.

120. According to the Government, one of the Taz. brothers, Mr Ya.Taz., testified on an unspecified date that unknown persons had driven him out of the village and asked about his involvement in illegal armed groups. Afterwards they had let him go home. On the following day Mr Ya.Taz. had left Chechnya with his relatives.

121. On 5 July 2008 the investigation questioned Mr M.Ch., an investigator at the ROVD. He stated that he was aware that on 23 November 2003 a group of about fifteen armed men in APCs had abducted Khamzat Merzhoyev from his house. After the resumption of the investigation in case no. 44090, the ROVD had taken a number of measures to establish Khamzat Merzhoyev's whereabouts, such as questioning eyewitnesses and neighbours and visiting the Operational Search Bureau ("the ORB"), the FSB and the Department for Organised Crime of the Chechnya MVD. However, those measures had not yielded any results. Operational-search measures had been under way.

122. In December 2003 the investigator had inspected three checkpoints situated at the exit from Achkhoy-Martan to the Rostov-Baku road, the exit from Achkhoy-Martan towards Katyr-Yurt, and the exit from Katyr-Yurt towards Urus-Martan. Having examined the registration logs at the checkpoints, the investigator found no record of vehicles that had transited the checkpoints between 22 and 24 November 2003. The investigation also noted that the pages had not been numbered or bound and that they contained corrections of the registrations of vehicles that had passed through them at night.

123. The Government stated that the investigating authorities had sent queries to various State bodies, asking them to provide information concerning Khamzat Merzhoyev's apprehension and detention, any requests for medical assistance or any "discrediting" information about him, as well as information on special operations which could have been conducted in Katyr-Yurt on the night of 23 November 2003. In their letters different district departments of the interior stated that "on the night of 23 November 2003 Khamzat Merzhoyev was abducted from a private house in Katyr-

Yurt". The Government produced copies of the replies to such requests, which can be summarised as follows.

124. In February 2004 the ORB-2 and the Chechnya FSB department informed the investigation that they had no information about Khamzat Merzhoyev. On 22 April 2004 the Ingushetia FSB department stated that no special operations had been conducted in Katyr-Yurt by the FSB forces and also denied having any information about Khamzat Merzhoyev.

125. In December 2003, February, March and April 2004 the FSB departments in the Southern Federal Circuit and the local bodies of the Ministry of the Interior notified the investigation that they neither had any "discrediting" information about Khamzat Merzhoyev nor any information about his apprehension and abduction or the abductors' whereabouts. In May 2004 the ORB-2 and the criminal police of the Chechnya MVD replied that a number of measures had been taken to establish the abductors' whereabouts. The ORB-2 had been verifying whether any persons who had been delivered to its premises could have committed the crime.

126. The investigating authorities were unable to establish the whereabouts of Khamzat Merzhoyev. In December 2003 and January, February and April 2004 local bodies of the Ministry of the Interior, FSB departments and remand centres in the Southern Federal Circuit had replied that they had never detained Khamzat Merzhoyev on criminal or administrative charges and had not carried out any criminal investigation in respect of him. On 27 December 2003 the Urus-Martani ROVD reported that it had conducted a number of operational-search measures in connection with Khamzat Merzhoyev's abduction, which had revealed the following. Khamzat Merzhoyev had not been arrested or detained by the district law-enforcement authorities. He had not applied for help to the Urus-Martani ROVD or medical facilities. The internal databases had no information concerning the discovery of a body or the identification of a person without identification documents resembling him. The ROVD had disseminated search briefings (*розыскные ориентировки*) concerning Khamzat Merzhoyev across the district. In December 2003 and January 2004 other district departments of the interior, FSB departments and prosecutor's offices in the Southern Federal Circuit produced similar replies. They had informed their staff, subordinates and the public about Khamzat Merzhoyev's abduction. On 24 June 2004 the criminal police department of the Achkhoy-Martani ROVD informed the investigator that it had opened an operational-search file in connection with Khamzat Merzhoyev's abduction. The department had checked whether any persons registered in its database could have committed the crime.

127. The Government acknowledged that the investigation in case no. 44090 had been adjourned on several occasions but it had subsequently been resumed and had remained pending thereafter. The Prosecutor General's Office was supervising the progress of the

investigation. The Government further submitted that the investigating authorities had considered different possible versions of Khamzat Merzhoyev's kidnapping, including the involvement of servicemen. However, the investigation had so far failed to identify who was guilty.

2. Investigation into the kidnapping of Ali Gastamirov

128. The Government did not dispute most of the information provided by the seventh applicant relating to the investigation of her son's abduction.

129. The Government submitted that on 13 May 2002 the district prosecutor's office had launched criminal investigation file no. 63031 into the abduction of Ali Gastamirov from his house by "unidentified armed men wearing masks and camouflage uniforms" on the night of 12 May 2002. The investigation had been initiated at Mr A.-Kh.G.'s request.

130. On 13 May 2002 Mr A.-Kh.G. was granted victim status in case no. 63031. The Government disputed that victim status had been granted to the seventh applicant.

131. On the same day the investigation questioned Mr A.-Kh.G. as a victim, and the seventh applicant and Ms M.G. as witnesses. The Government provided copies of the transcripts.

132. Mr A.-Kh.G. testified that on the night of 12 May 2002 he had been sleeping at home. At around 4 a.m. a group of unknown armed men wearing masks and camouflage uniforms had broken into his house from the backyard. Five or six men had entered the house through the front door, while the others had remained waiting outside. The men had headed for Ali's and Ms M.G.'s room. On their way they had locked Mr A.-Kh.G., the applicant and their children in their room. The men had checked Ali's passport, asked him to get dressed and dragged him, barefoot, to the backyard. The men had ordered Mr A.-Kh.G. and the applicant to stay in the house and had threatened to open fire. All in all, the intruders had spent five minutes in the house. Ms A.M., a neighbour, had seen that there had been some fifteen or sixteen men in the backyard. One of them, a tall, heavysset and blond-haired man, had been unmasked. Ms A.M. would be able to identify him. The men had taken Ali Gastamirov and headed for a military unit, which was located across the Shalazhi river and some 700 or 800 metres from Mr A.-Kh.G.'s house. Some military forces had been deployed there since 2 May 2002. Ms A.M. had then heard the roar of a starting engine, which could have been an APC, some 300 metres from the house. After his son's abduction, Mr A.-Kh.G. had seen the tracks left by the APC, leading to the above-mentioned military unit. The servicemen deployed there had been living in tents. Mr A.-Kh.G. was unaware which unit it was. He said that Ali Gastamirov had not been involved in any illegal armed groups. He further provided a detailed physical description of his son and of the clothes that he had been wearing on the night of his abduction.

133. The seventh applicant and Ms M.G. corroborated Mr A.-Kh.G.'s statements. The seventh applicant added that the men had burst all the light bulbs in the backyard so that nobody could see what they were doing. She also recalled that the men had gone in the direction of the deployment of regiment no. 47 and other military forces. Ms M.G. clarified that the seventh applicant and her husband had not witnessed the abduction as the intruders had locked them in their room. Ms M.G. was an eyewitness to the events. She added that the intruders had spoken unaccented Russian and that she would be able to identify the unmasked man.

134. On 18 May 2002 the investigation again questioned the seventh applicant and her husband. As appears from their transcripts enclosed with the Government's submissions, they both changed their initial statements, without clarifying the reason for the change. In particular, they admitted to having stayed in Grozny with their relatives on the night of 12 May 2002. In the morning, upon their return to Katyr-Yurt, the seventh applicant and her husband had learnt that Ali had been taken away by unknown armed men in masks and camouflage uniforms. They had had no news of him thereafter. They had immediately contacted the ROVD and the district military commander's office, which had denied having detained Ali Gastamirov. On 13 May 2002 they had submitted a request to the district prosecutor's office to open an investigation in connection with his abduction.

135. As appears from the Government's submissions, they also referred to another statement by Ms M.G., in which she had acknowledged that Ali Gastamirov's parents had spent the night of 12 May 2002 in Grozny. The Government submitted that after Ali's abduction, Ms M.G. and his two sisters had been locked in the house. Therefore, Ms M.G. had not been able to see in which direction the intruders had departed. Ms A.M. had told her that there had been fifteen or sixteen men, who had headed for the river. The Government did not produce a copy of the transcript.

136. The Government submitted that the investigation had questioned over thirty witnesses, including Ms A.M., Ms Kh.G., personnel of the ROVD and the Katyr-Yurt administration, as well as a number of neighbours. The Government produced copies of six accounts given by the neighbours and a brief outline of some other witness statements, without specifying the dates of the questioning. These submissions can be summarised as follows.

137. As appears from the transcripts enclosed, the six neighbours were questioned on 18 and 22 July 2006 and on 15 July 2008. They had learnt about Ali Gastamirov's abduction from their neighbours on 12 May 2002. They personally knew Ali and characterised him as a shy, outgoing and hard-working person. Between 4 and 5 a.m. that night some fifteen or sixteen unknown armed men had burst into his house and taken him away to an unknown destination. The intruders had not introduced themselves, nor had they said why and where they were taking Ali. When Ali's relatives had

attempted to help him escape, the men had threatened them with guns. The six neighbours had no information that Ali Gastamirov had been involved in illegal armed groups or blood feuds. They were not cognisant of his whereabouts and did not know who could have abducted him.

138. The Government submitted that the investigation had questioned forty other neighbours, who had given a similar account of the events.

139. The Government cited testimony given by another neighbour, Ms A.M., on an unspecified date. On the night of 12 May 2002 she had been woken up by the noise coming from neighbouring houses. She had seen some fifteen or sixteen masked armed men in camouflage uniforms enter the seventh applicant's backyard, burst all the light bulbs there and break down the front door of the house. Some five or seven minutes later, the intruders had taken Ali Gastamirov away. One of them had been unmasked and she would be able to identify him. Then Ms A.M. had heard the roar of an engine. She thought that it had been an APC.

140. According to the Government, on an unspecified date Ms Kh.G. related that on the night of 12 May 2002 a group of armed men in masks and camouflage uniforms had burst into the house. One of them had been unmasked. The men had checked Ali Gastamirov's passport and then taken him away. Ms M.G., Ms Kh.G. and her younger sister had attempted to stop the intruders but the latter had locked them in a room and left.

141. The Government referred to a statement by Mr L.A., an employee of the Katyr-Yurt administration, who on an unspecified date had described Ali Gastamirov as a decent person who had not taken part in illegal armed groups. On 12 May 2002 Mr A.-Kh.G. had contacted him in person and recounted his son's abduction.

142. In a statement cited in the Government's observations, Mr R.Z., a police officer at the ROVD, had testified on an unknown date that Katyr-Yurt dwellers had informed him of Ali Gastamirov's abduction by unknown armed persons on 12 May 2002. The ROVD had on a number of occasions conducted house-to-house enquiries in order to establish the circumstances of the abduction and find out any information about the abductors. However, those measures had proved to be unsuccessful, since the crime had taken place at night and nobody could have seen anything.

143. The Government submitted that on 13 May 2005 the investigating authorities had sent a number of queries to various State bodies in the Southern Federal Circuit in order to establish the whereabouts of Ali Gastamirov and his abductors. Without producing copies of their replies, the Government stated that law-enforcement authorities had not arrested or detained Ali Gastamirov on criminal or administrative charges, that he had never been held in remand centres and that no unidentified body resembling him had been discovered. The Government also stated that a number of operational-search measures had been taken to establish Ali Gastamirov's whereabouts but they did not specify what those measures had been.

144. On 10 July 2006 the seventh applicant submitted a written complaint to the district prosecutor's office, in which she stated that her son had been detained on 12 May 2002 by a large group of armed servicemen using APCs and a UAZ vehicle. She stated that on 13 May 2002 she had been granted the status of a victim in the criminal investigation opened into the abduction. She complained that the investigation had lasted for four years without any visible progress and that she had lost confidence in its effectiveness. Accordingly, she asked to be allowed access to the material relating to the investigation and to be informed about the progress of the investigation and of its current status.

145. Without referring to any specific document, the Government further stated in their observations that the “special branches of the power structures” (*специальные подразделения силовых структур*) had not carried out any special operation in Katyr-Yurt during the period relevant to the investigation.

146. The Government argued that notwithstanding the fact that the seventh applicant had not been granted victim status, she had been kept informed of all relevant decisions taken during the investigation.

147. The Government submitted that the investigation in case no. 63031 had been suspended and resumed on several occasions, and had so far failed to identify who was guilty. The Government further specified that the investigation was in progress and had been considering different possible versions of Ali Gastamirov's abduction, including the involvement of Russian federal servicemen.

148. In her observations submitted in reply to those of the Government, the seventh applicant questioned the relevance and accuracy of some of the witness statements collected by the investigation and submitted or cited by the Government. She relied on the statements made by her relatives and neighbours to the Court (see paragraph 39 above).

149. As regards the difference in her and her husband's statements of 13 and 18 May 2002, she explained that they had at first been frightened and disoriented by the events and had not wanted to put the lives of other witnesses, including their family members and neighbours, in danger. Thus, at first they had decided to tell the investigator that they had witnessed their son's detention. The applicant also alleged that she had had no legal assistance at the time and could not fully grasp the meaning of the procedures.

150. For their part, the Government questioned the evidential value of the testimonies collected by the seventh applicant, which did not comply with the guarantees of criminal procedural law.

D. Proceedings against law-enforcement officials instituted by the seventh applicant

151. On 27 February 2008 the seventh applicant applied to the Achkhoy-Martan District Court, complaining about the refusal of her request for access to the case file (see paragraphs 69 and 74 above).

152. On 10 March 2008 the district court partly allowed the applicant's complaint. The court declared that the district prosecutor's refusal of her request for access to the case file was unlawful. At the same time the court stated that the applicant did not have the right to study the entire investigation file until the completion of the investigation. The court thus ordered that the applicant be allowed to access and make copies of the following documents: decisions to conduct investigative steps and procedural records of such steps which had been conducted in her presence; decisions to carry out forensic examinations, regardless of the nature of the experts' actions and conclusions; decisions to open an investigation in criminal cases; decisions to grant or refuse victim status to the applicant; decisions to stay or close the investigation; decisions to make an accusation against a specific person; complaints submitted in connection with the criminal case if such complaints affected the victim's rights and legal interests; and decisions to establish an investigating group.

153. On 30 April 2008 the Chechnya Supreme Court upheld the decision of 10 March 2008 on appeal.

II. RELEVANT DOMESTIC LAW

154. 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. JOINDER OF THE APPLICATIONS

155. In accordance with Rule 42 § 1 of the Rules of Court, the Court has decided to join the applications, given their similar factual and legal background.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

156. The Government contended that the complaints should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigations into the disappearance of Khamzat Merzhoyev and Ali Gastamirov had not yet been completed. They further argued that it had been open to the applicants to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of any such remedy. They also argued that it was open to the applicants to pursue civil complaints, which they had failed to do.

157. The applicants contested that objection. With reference to the Court's practice, they argued that they had not been obliged to apply to the civil courts in order to exhaust domestic remedies. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect had been futile.

B. The Court's assessment

158. 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).

159. 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. The preliminary objection in this regard is thus dismissed.

160. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that criminal investigations were opened upon the applicants' complaints and are currently pending. The parties disagreed as to the effectiveness of those investigations.

161. 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.

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

A. The parties' arguments

1. In respect of the disappearance of Khamzat Merzhoyev

(a) The applicants

162. The applicants maintained that it was beyond reasonable doubt that the men who had intruded into their home and taken away Khamzat Merzhoyev had been State agents. In support of their complaint they referred to the following evidence that was not challenged by the Government. First, they pointed out that Khamzat Merzhoyev had been detained by a large group of armed men, wearing camouflage uniforms, who had spoken Russian without any accent. During the same night seven other men from the village had been detained in identical circumstances and taken to the outskirts of the village in military vehicles; these men had had their identity documents checked and had been asked questions about their alleged involvement with illegal armed groups. The applicants stressed that the authorities had taken no steps whatsoever to identify the persons who had carried out the arrests and questioning. Moreover, the intruders had arrived late at night, which indicated that they had been able to circulate freely during the curfew and to pass through military roadblocks. The applicants further referred to the witness statements collected by them and by the investigation to the effect that on that night they had seen vehicles such as UAZs, Urals and (some of them) APCs.

163. As to the facts in dispute, the applicants argued that the absence of notes in the registration logs for the roadblocks showed that no such notes had been made between 22 and 24 November 2003, and not that no vehicles had passed through. The applicants questioned the evidential value of the testimonies of twenty-one residents of Katyr-Yurt submitted by the Government, since these persons had lived too far from their house and could not have witnessed the abduction. They also pointed out that the transcripts revealed the very superficial nature of the questioning and raised doubts as to their authenticity, since ten witnesses had signed the same printed statement reproduced verbatim. On the basis of the above, the applicants concluded that their relative had been detained during a secret special operation carried out by law-enforcement personnel.

164. They further argued, referring to the circumstances of the abduction and the absence of any news about Khamzat Merzhoyev for several years, that he must be presumed dead.

(b) The Government

165. The Government submitted that on 23 November 2003 “unidentified masked men in camouflage uniforms armed with machine guns” had abducted Khamzat Merzhoyev. They further contended that the investigation into the incident was still pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They relied on several points. First, even though the applicants submitted that Mr Merzhoyev had taken part in the hostilities against the federal authorities in 1994-1995 and thus could have been targeted by the Russian law-enforcement agencies, no such information had been obtained by the investigation, either from the State authorities or from his neighbours. Second, the Government disputed the applicants' reference to witness statements about the involvement of military vehicles such as APCs in the abduction. They argued that the noise of APCs was very specific and would have been heard by many people, especially at night and in a rural area. However, none of the witnesses had stated that they had heard the noise of APCs' engines. Third, the head of the village administration, Mr A.E., had not stated that he had heard either the noise of military vehicles or the shots allegedly fired by the abductors near the office of the local administration on the night in question. He had only learnt of the events from the relatives of the detained men. Next, the Government argued that the registration logs of the roadblocks situated at the exit of Katyr-Yurt had not noted any movement of military or law-enforcement vehicles between 22 and 24 November 2003. Furthermore, the Government argued that the other men who had been detained by unknown persons in Katyr-Yurt on the same night and later released had stated in their testimonies that they had been transported inside UAZ or Ural vehicles where there were no other detainees. None of them had seen Khamzat Merzhoyev. Therefore, there were no grounds to suggest that he had been detained by the same persons as the other villagers. Finally, the Government insisted that, according to their submissions to the investigation, neither the head of the administration nor the serviceman of the ROVD, Mr M.Ch., had been aware of the whereabouts of Khamzat Merzhoyev after the latter's abduction, contrary to the applicants' statements.

166. The Government further argued that there was no convincing evidence that the applicants' relative was dead, given that his whereabouts had not been established and his body had not been found.

2. In respect of the disappearance of Ali Gastamirov

(a) The applicants

167. The seventh applicant maintained that it was beyond reasonable doubt that the men who had taken away her son had been State agents. In support of that assertion, she referred to the following evidence that was not challenged by the Government. First, she pointed out that Ali Gastamirov had been detained by a large group of armed men, wearing camouflage uniforms, who had spoken Russian without any accent. At least one of the intruders who had not been masked had had Slavic features. Moreover, the men had arrived late at night, which indicated that they had been able to circulate freely during the curfew and to pass through military roadblocks. The applicants further referred to the witness statements collected by them and by the investigation to the effect that on the night of the incident they had seen and heard military vehicles such as APCs.

168. The applicant also reported a number of inaccuracies and unresolved contradictions arising out of the statements of the witnesses produced by and cited by the Government (see paragraphs 39 and 148 above). Thus, she noted that Ms G.Kh. had only been questioned in September 2008 and that her testimony had not been disclosed by the Government. Relying on the latter's statement of November 2008 to the Court, the seventh applicant stressed that Ms G.Kh. had stated that she had heard the noise of an APC on the night of her brother's abduction. The seventh applicant also relied on the statement of her sister-in-law E.Z., who had been an eyewitness to the kidnapping and who had not been questioned by the domestic investigation. In her statement to the Court Mrs E.Z. had also mentioned the sound of military engines. Two other neighbours, Mr A.Z. and Mr I.Sh., who had not been questioned by the investigation, had seen the group who had detained the applicant's son. Mr I.Sh. had been in the house opposite the applicant's house. He had observed the events from his window and heard the sound of military vehicles, including the APC. He also testified that the group of armed men had first entered the houses of two other villagers, Mr A.D. and M.Sh., and broken down their front doors. These two men had not been questioned by the domestic investigation. Mr A.Z. lived at the end of the village, near the river. On the night of 12 May 2002 he had clearly heard the noise of an APC engine which he could recognise and which had come from the river bed, from the side where the Russian military unit was located. This witness stated that neither he nor his son, who had been at home on the night in question, had been interviewed in relation to Ali Gastamirov's detention.

169. Furthermore, the seventh applicant noted that three out of the six witnesses whose statements the Government had disclosed to the Court had lived too far from her house to see or hear anything. Another of those six,

Mr Kh.B., had produced a written statement that he had not been in Katyr-Yurt at the time of the events, that he had said so to the investigator and that he had learnt of the applicant's son's abduction from his neighbours. The seventh applicant alleged that Mrs Z.O., whose testimony was provided by the Government, had not lived at the indicated address. The seventh applicant knew the family who had lived at that address and had talked to them; however, no woman with such a name had been known to them or had lived at their home at any point in time.

170. She further argued, referring to the circumstances of the abduction and the absence of any news about Ali Gastamirov for many years, that he must be presumed dead.

(b) The Government

171. The Government submitted that, according to the applicant's and her husband's statements, on 12 May 2002 unidentified armed and masked men in camouflage uniforms had abducted Ali Gastamirov. They further contended that the investigation into the incident was still pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicant's rights. There was no information about the conduct of a special operation in the village on the night in question. No law-enforcement authority had ever detained Ali Gastamirov. Finally, there were no data to support the applicant's allegation about her son's death.

172. The Government drew the Court's attention to the fact that most of the witnesses had not heard anything on the night of Ali Gastamirov's arrest. Since the noise of APCs was very specific it would have been heard by the residents, especially at night and in a rural area. Thus, they questioned the reliability of the applicant's allegations and the value of the reference to the APCs by one witness, Mrs A.M. (see paragraph 139 above). The Government also concluded from the statements of Mrs A.M. that the behaviour of the intruders who had burst the light bulbs before entering the applicant's house was more likely to be that of criminals than of the security forces. Furthermore, they challenged the overall reliability of the statements by the applicant and her husband, given that they had altered their statements between 13 and 18 May 2002 on the issue of whether they had witnessed Ali Gastamirov's detention. This also applied to the statement of Mrs M.G. (see paragraphs 132-135).

B. The Court's evaluation of the facts

173. The Court observes that it has developed a number of general principles relating to the establishment of facts 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*, 18 January 1978, § 161, Series A no. 25).

174. The Court notes that despite its requests for a copy of the entire files of the investigation into the abduction of Khamzat Merzhoyev and Ali Gastamirov, the Government withheld a substantial number of 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 found this explanation insufficient to justify the withholding of key information requested by it (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII).

175. 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' relatives can be presumed dead and whether their deaths can be attributed to the authorities.

1. In respect of the disappearance of Khamzat Merzhoyev

176. The applicants alleged that the persons who had taken Khamzat Merzhoyev away on 23 November 2003 and then killed him had been State agents. The Government did not dispute any of the major factual elements underlying the application and did not provide another explanation of the events.

177. In so far as the Government questioned the credibility of certain applicants' statements on issues such as whether or not an APC was involved in the kidnapping, the Court notes that no other essential elements underlying the applicants' submissions as to the facts have been disputed by the Government. It observes that the Government's objection does not cast doubt on the overall presentation of the facts in question as summarised above.

178. The Court reiterates that where applicants make out a prima facie case and the Court is prevented from reaching factual conclusions owing to the 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).

179. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their relative was

apprehended by State servicemen. In particular, the Court finds that the fact that a large group of armed men in uniform, equipped with military vehicles, was able to move freely through military roadblocks during the curfew hours and apprehended several persons at their homes strongly supports the applicants' allegation that these were State servicemen conducting a security operation. The transcripts of the questioning of the men who were released indicate that they were subjected to identity checks, questioned about their possible involvement in illegal armed groups and placed in military vehicles, such as grey UAZ all-terrain vehicles and a Ural truck. The applicants and their neighbours indicated that Khamzat Merzhoyev had also been detained by a group of armed men using UAZ vehicles. In their applications to the authorities the applicants consistently maintained that Khamzat Merzhoyev had been detained by unknown servicemen and requested the investigation to look into that possibility. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies had been involved in the kidnapping. The investigation was unable to establish which precise military or security units had carried out the operation, but it does not appear that any serious steps were taken to that end.

180. The Government's statement that the investigators had not found any evidence to support the involvement of the special forces 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 Khamzat Merzhoyev was arrested on 23 November 2003 by State servicemen during an unacknowledged security operation.

181. There has been no reliable news of Khamzat Merzhoyev 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 the arrest.

182. Having regard to previous cases concerning disappearances in Chechnya which have come before it (see, among other authorities, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII; *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 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 Khamzat Merzhoyev or of any news of him for six and a half years supports this assumption.

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

2. In respect of the disappearance of Ali Gastamirov

184. The seventh applicant alleged that Ali Gastamirov had been arrested by servicemen at his home in Katyr-Yurt on 12 May 2002 and then killed. The Government did not dispute any of the major factual elements underlying the application and did not provide any other explanation of the events.

185. The Government questioned the credibility of certain testimonies in view of discrepancies relating to the exact circumstances of the arrest. In particular, the first testimonies of the seventh applicant and her husband given on 13 May 2002 wrongly indicated that they had been at home during their son's detention, while from their later submissions it was clear that they had been in Grozny (see paragraphs 132-135 above). However, no questions were put to them to explain the difference in their statements; it is therefore impossible to explain how it came about and what consequences should be attached to it. The Court also notes the seventh applicant's statement to it on this subject, which it finds convincing (see paragraph 149 above). In any event, the Court notes that no other elements underlying the applicant's submissions as to the fact of her son's detention and subsequent disappearance have been disputed by the Government. The circumstances of the event are sufficiently established through the eyewitness statements collected by the domestic investigation and by the applicant.

186. The Court finds that the seventh applicant has made a *prima facie* case that her son was apprehended by State servicemen. In particular, the Court finds that Ali Gastamirov was detained at his home by a group of several persons, wearing camouflage uniforms and armed with automatic weapons, who used military vehicles, such as APCs. They moved freely during curfew hours in the vicinity of the Russian military unit. In their applications to the authorities the applicants consistently maintained that Ali Gastamirov had been detained by unknown servicemen and requested the investigation to look into that possibility. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies had been involved in the kidnapping. The investigation was unable to establish which precise military or security units had carried out the operation, but it does not appear that any serious steps were taken to that end. Finally, the Court notes the striking similarity between the two disappearances forming the subject of the present judgment, both of which occurred on the same street in the same village, although separated by eighteen months. The Court finds that this similarity not only must have come to the attention of the investigation into the two events, but also has a bearing on the credibility of the seventh

applicant's allegation that her son had been detained by unknown servicemen during an unacknowledged security operation.

187. The Court observes that the situation in which Ali Gastamirov was arrested should be regarded as life-threatening (see paragraph 181 above). The absence of Ali Gastamirov or of any news of him for over eight years supports this assumption.

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

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

189. The applicants complained under Article 2 of the Convention that their relatives had disappeared after having been detained 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. Admissibility

190. The Court considers, in the light of the parties' submissions, that the complaints raise 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. The complaints under Article 2 of the Convention must therefore be declared admissible.

B. Merits

1. Alleged violation of the right to life of Khamzat Merzhoyev and Ali Gastamirov

191. The Court has already found it established that the applicants' relatives must be presumed dead following their unacknowledged detention by State servicemen and that the deaths can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Khamzat Merzhoyev and Ali Gastamirov.

2. Alleged inadequacy of the investigation of the abduction

(a) In respect of the disappearance of Khamzat Merzhoyev

192. The applicants argued that the investigation had not been effective and adequate, as required by the Court's case-law on Article 2. They noted that the investigation had been opened belatedly, that it had been adjourned and reopened a number of times and thus the taking of the most basic steps had been protracted, and that the applicants had not been informed properly of the most important investigative steps. They argued that the fact that the investigation had been pending for such a long period of time without producing any known results had been a further proof of its ineffectiveness. The applicants 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.

193. The Government claimed that the investigation of the disappearance of the applicants' relatives met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators. They argued that the applicants had been granted victim status and had had every opportunity to participate effectively in the proceedings. The prosecutor's office which had carried out the investigation had been independent and acted in strict accordance with the national legislation. The Government stressed that the investigation had sent numerous requests to various law-enforcement bodies, questioned over fifty witnesses, including the eyewitnesses and officials of the local administration and the ROVD. The investigation continued to look into all possibilities regarding Mr Merzhoyev's disappearance, including the possibility of his arrest by unidentified servicemen; however, no conclusions had been reached.

194. 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).

195. In the present case, the kidnapping of Khamzat Merzhoyev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

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

197. Turning to the facts of the case, the Court notes that the authorities were immediately aware of the crime through the applicants' submissions. The investigation was opened on 10 December 2003, eighteen days after the detention occurred. It does not appear that any investigative measures were taken prior to that decision. This delay in itself was liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action has to be taken in the first few days after the event. It also appears that within the following days some of the applicants' neighbours were questioned and the scene of the crime inspected. The first applicant's brother was granted victim status on 11 December 2003. However, it appears that after that a number of crucial steps were delayed. In particular, the Court notes that the testimonies of other men who had been detained, questioned and released in Katyr-Yurt on the same night were collected in May 2004. The head of the local administration was also questioned in May 2004. It is obvious that these 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 commenced. These 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).

198. A number of essential steps were never taken. Most notably, it does not appear that the investigation took steps to elucidate the circumstances of the detention and questioning of seven other men, even though the pattern had been identical to the detention of Khamzat Merzhoyev. The investigation also failed to identify and question the servicemen who had manned the roadblocks to which the witnesses referred, in addition to checking the loosely kept logbooks, which contained no entries for the two days in question (see paragraph 122 above), or to find and question the servicemen who could have been involved in the arrest of Khamzat Merzhoyev or his fellow detainees.

199. The Court also remarks that even though the first applicant's brother had been granted victim status, he and the applicants were hardly informed of any significant developments. It does not appear that, apart from the letter from the district prosecutor's office of 11 April 2006 (see paragraph 68 above), the family members of the missing man received any meaningful update of the steps taken to find Khamzat Merzhoyev. 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.

200. Lastly, the Court notes that the investigation was adjourned and resumed on several occasions and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending.

201. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, the Court finds that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years without producing any tangible results. The Government argued that the first six applicants could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. However, the Court notes that the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures. The investigation was repeatedly suspended and resumed, but it appears that no significant measures were taken to identify those responsible for the kidnapping. Nor were the applicants properly informed of the progress of the proceedings. Furthermore, the investigation has been resumed by the prosecuting authorities themselves a number of times owing to the need to take additional investigative steps. However, they still failed to investigate the applicants' allegations properly. In such circumstances, the Court considers that the applicants could not be required to challenge in court similar decisions of the district prosecutor's office. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

202. 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 Khamzat Merzhoyev, in breach of Article 2 in its procedural aspect.

(b) In respect of the disappearance of Ali Gastamirov

203. The seventh applicant argued that the investigation had not been effective and adequate, as required by the Court's case-law on Article 2. In

particular, even though a criminal investigation had been started immediately after the abduction, only three witnesses had been questioned at that time. It did not appear that anyone else had been questioned before 2006. The investigators had not taken any other urgent steps, such as collecting fingerprints, following the footsteps of the intruders and noting the tracks left by the military vehicles. The investigation had not identified the military units in the district which could have had access to APCs and UAZ vehicles and had not questioned anyone responsible for driving and registering them. The seventh applicant noted that as followed from the documents submitted by the Government, the investigation had considered only one version of the events, namely that her son had been detained by the authorities; however, no one from the military commander's office or from the military unit located near the village had been questioned about the events. As to the statements submitted by the Government, the applicant stressed that out of the six witnesses, three lived too far from her house to have been able to witness the events, one had been away from Katyr-Yurt at the material time and one witness had not lived at the indicated address (see paragraph 169 above). She argued that the fact that the investigation had been pending for such a long period of time without producing any known results had been further proof of its ineffectiveness. She invited the Court to draw conclusions from the Government's unjustified failure to disclose the documents from the case file.

204. The Government claimed that the investigation of the disappearance of the applicant's son met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators. They argued that the proceedings had been opened on the day of the notification of the crime; that the applicant and other key witnesses had been questioned without delay; and that the applicant's husband had been immediately granted victim status. Over thirty witnesses had been questioned in the course of the investigation, including eyewitnesses and one serviceman of the ROVD; and numerous requests for information had been sent to various law-enforcement authorities. The investigation had looked into all possible versions of the disappearance, including the one advanced by the applicant. The seventh applicant had had every opportunity to participate effectively in the proceedings. The Government stressed, in particular, that even though she had no procedural status in the criminal investigation, she had been kept informed of the relevant developments and in March 2008 she had been allowed access to the case file by the court (see paragraph 152 above).

205. The Court notes, again, that most of the documents from the investigation were not 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.

206. Drawing on the principles referred to above in paragraph 194, the Court notes the following shortcomings of the investigation. First, there were delays in taking important investigation steps. While the applicant, her husband and their daughter-in-law testified in May 2002, other witnesses, it appears, were not questioned until 2006 and 2008. It also does not appear that any requests for information about Ali Gastamirov's possible whereabouts were sent prior to 2005. Second, the investigation did not take the most basic procedural steps in order to secure the available evidence, such as drawing up a report at the site of the crime, collecting fingerprints, and noting footprints and tracks left by vehicles, despite the clear reference in the statements collected by the investigation on 13 May 2002 (see paragraphs 132-133 above). It appears that some of the eyewitnesses to the detention, such as Mrs E.Z. and the applicant's immediate neighbours, were never questioned. The Court also notes that even though the applicant's husband had been granted victim status in the investigation, he and the applicant 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.

207. The Court also notes several decisions to adjourn and resume the investigation, resulting in periods of inactivity when no proceedings were pending. For the same reasons as above (see paragraph 201), the Court finds that the Government's objection as to non-exhaustion of domestic remedies in the context of the criminal investigation should be dismissed.

208. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding Ali Gastamirov's disappearance, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

209. The first six applicants relied on Article 3 of the Convention, submitting that as a result of their relatives' disappearance and the State's failure to investigate those events 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.”

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

A. Admissibility

211. 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.

B. Merits

212. 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).

213. In the present case the Court notes that the first six applicants are close relatives of Khamzat Merzhoyev. For many 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, the applicants 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.

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

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

215. The applicants further stated that Khamzat Merzhoyev and Ali Gastamirov had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

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

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

...

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

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

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

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

216. The Government asserted that no evidence had been obtained by the investigators to confirm that Khamzat Merzhoyev and Ali Gastamirov had been deprived of their liberty. They were not listed among the persons held in detention centres and none of the regional law-enforcement agencies had any information about their detention.

A. Admissibility

217. 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.

B. Merits

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

219. The Court has found that Khamzat Merzhoyev and Ali Gastamirov were apprehended by State servicemen on 23 November 2003 and on 12 May 2002, respectively, and that they have not been seen since these dates. Their detention was not acknowledged and was not logged in any custody records, and there exists no official trace of their 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).

220. 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 relatives 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 them against the risk of disappearance.

221. In view of the foregoing, the Court finds that Khamzat Merzhoyev and Ali Gastamirov were 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.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

222. The first six applicants complained that they had been deprived of effective remedies in respect of the violation of Article 2, 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.”

223. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the acts or omissions of the investigating authorities in court. They added that participants in criminal proceedings could also claim damages in civil proceedings and referred to cases where victims in criminal proceedings had been awarded damages from State bodies and, in one instance, the prosecutor's office. In sum, the Government submitted that there had been no violation of Article 13.

A. Admissibility

224. 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.

B. Merits

225. The Court reiterates that in circumstances where, as here, a criminal investigation into a 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).

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

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

227. 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

228. The second to sixth applicants claimed damages in respect of the lost wages of their husband and father following his arrest and subsequent disappearance.

229. They submitted that Khamzat Merzhoyev had been employed as a security guard in 2003 and that they had been financially dependant on him. They claimed that they were unable to obtain salary statements for him, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. They calculated their earnings for the period. The applicants assumed that each of the four children of the second applicant and Khamzat Merzhoyev could have counted on 16.6% of their father's income until reaching the age of majority, and that the second applicant could have counted on the same share of his earnings until their youngest son, the sixth applicant, reached the age of fourteen. By these calculations they claimed a total of 359,122 Russian roubles (RUB) (8,976 euros (EUR)).

230. 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, which the applicants had failed to use.

231. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with

the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

232. The Court further reiterates that the damage claimed 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 applicants' husband and father and the loss by the second to sixth applicants of the financial support which he could have provided. The Court agrees that it is reasonable to assume that Khamzat Merzhoyev would eventually have had some earnings from which the applicants would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to the applicants' submissions, the Court awards the second to sixth applicants jointly the amount of EUR 8,976 as claimed, in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

233. The applicants asked the Court to award them compensation in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives. They left the amount to the determination of the Court.

234. The Government disputed that any damage had been caused to the applicants; or, in the alternative, argued that the finding of a violation had constituted sufficient compensation.

235. The Court has found a violation of Articles 2 and 5 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relatives. In addition, Khamzat Merzhoyev's disappearance constituted a breach of Article 13 of the Convention. The first six 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 the following amounts, plus any tax that may be chargeable thereon:

- (i) EUR 12,000 to the first applicant;
- (ii) EUR 48,000 to the second to sixth applicants jointly;
- (iii) EUR 60,000 to the seventh applicant.

C. Costs and expenses

236. The first six applicants claimed EUR 9,868 jointly for the costs and expenses incurred before the Court. They submitted that the lawyer had charged EUR 150 per hour of legal work. They presented a detailed

breakdown of the time spent by their representative, which included 61.25 hours of legal work. They claimed reimbursement of postal and administrative costs in the amount of EUR 145 and of translation costs in the amount of EUR 536, as certified by an invoice. They also submitted a copy of the legal representation agreement of 7 July 2008.

237. The seventh applicant claimed EUR 5,951 under this heading. This included 35 hours of legal work, also at a rate of EUR 150 per hour. In addition, she claimed reimbursement of postal and administrative costs in the amount of EUR 85 and of translation costs in the amount of EUR 616, as certified by an invoice. She also submitted a copy of the legal representation agreement of 1 February 2008.

238. The applicants requested the Court to order the payment of the fees awarded under this heading directly into the representative's account in Chechnya, Russia.

239. The Government did not contest those claims.

240. The Court may make an award in respect of costs and expenses in so far that they were actually and necessarily incurred and were reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V, and *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). Making its own estimate based on the information available, the Court awards the first six applicants jointly the total sum of EUR 4,000, and the seventh applicant the sum of EUR 3,500, together with any value-added tax that may be chargeable to the applicants. The awards made under this heading are to be paid into the representative's bank account in Russia, as identified by the applicants.

D. Default interest

241. 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 the applications;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and dismisses it;
3. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Khamzat Merzhoyev and Ali Gastamirov;
5. *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 Khamzat Merzhoyev and Ali Gastamirov disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first six applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Khamzat Merzhoyev and Ali Gastamirov;
8. Holds that there has been a violation of Article 13 in conjunction with Article 2 of the Convention in respect of Khamzat Merzhoyev;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement:
 - (i) EUR 8,976 (eight thousand nine hundred and seventy-six euros) jointly to the second to sixth applicants in respect of pecuniary damage;
 - (ii) in respect of non-pecuniary damage:
 - α. EUR 12,000 (twelve thousand euros) to the first applicant;
 - β. EUR 48,000 (forty-eight thousand euros) to the second to sixth applicants jointly;
 - γ. EUR 60,000 (sixty thousand euros) to the seventh applicant;
 - (iii) EUR 4,000 (four thousand euros) to the first six applicants jointly and EUR 3,500 (three thousand five hundred euros) to the seventh applicant, plus any tax that may be chargeable to the applicants, in respect of costs and expenses; the awards made under this heading are to be paid into the representative's bank account in Russia, as identified by the applicants;
 - (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 7 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President