



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

FIRST SECTION

CASE OF DUDAROVY v. RUSSIA

(Application no. 5382/07)

JUDGMENT

STRASBOURG

10 February 2011

FINAL

20/06/2011

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

In the case of Dudarovy v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 5382/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Mr Akhmed Dudarov and Ms Lyubi Dudarova (“the applicants”), on 23 January 2007.

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

3. On 16 March 2009 the President of the First Section decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of the former Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application and to the application of Rule 41 of the Rules of Court. Having considered the Government's objection, the Court dismissed it.

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1951 and the second applicant was born in 1952. They live in the village of Ken-Yurt, in the Chechen Republic.

6. The first applicant is the father and the second applicant is the mother of Mr Magomed Dudarov, born in 1979.

A. Arrest of Magomed Dudarov in 2001

7. On an unspecified date in 2001, while Magomed Dudarov was studying at the Grozny Institute of Petroleum, members of the Russian security forces allegedly arrested him along with other students. He was held in detention for thirteen days. When he was released, he could not move allegedly because of beatings inflicted on him while in detention. After Magomed Dudarov had finished his studies the applicants decided to move to Ken-Yurt because they feared for their son's life. In Ken-Yurt they settled down at 11, Klubnaya Street.

B. Disappearance of Magomed Dudarov

1. The applicants' account

8. On the night of 17 November 2002 the second applicant and Magomed Dudarov were at home in Ken-Yurt, while the first applicant was in Grozny where he was working.

9. According to the applicants, at the material time the village was under the effective control of the Russian federal forces. There was a curfew and the authorities maintained manned checkpoints at the entry to and exit from the village.

10. At about 2 a.m. on 18 November 2002 Magomed Dudarov woke up the second applicant and told her that there was a group of men in military uniforms in their courtyard. He told her not to open the door and to cry out for help. At that moment, through a window the second applicant saw five or six men in camouflage uniforms jump over the fence. She got frightened and started shouting, crying out to neighbours for help and knocking on gas pipes to attract their attention. The men outside started knocking on the front door. The second applicant asked them in Chechen to wait until she got dressed but they continued knocking.

11. Having smashed a window, the men broke into the house. Two or three of them came running to the room where the second applicant and Magomed Dudarov were. The intruders wore masks and light-coloured camouflage uniforms with yellow spots. They were armed with submachine guns. They did not introduce themselves. One of them requested Magomed Dudarov's identity papers. He spoke unaccented Russian. Two other men immediately grabbed hold of Magomed Dudarov. The second applicant showed the intruders Magomed Dudarov's identity papers but no one looked at them. The two men holding Magomed Dudarov pinioned his arms and

moved him towards the exit. Although he was wearing only tracksuit bottoms and was barefoot, they refused to let him put anything on and took him outside. The second applicant attempted to find out where they were taking him but the intruders did not reply.

12. When the second applicant went outside she saw a four-wheeled armoured vehicle and a Ural truck. The second applicant did not know much about military equipment but found out later from other persons that the military vehicle had been an armoured reconnaissance vehicle (“ARV”, *бронированная разведывательно-дозорная машина (БРДМ)*). The intruders loaded Magomed Dudarov into the Ural truck, fired two shots in the air and went off. The second applicant was too distressed to memorise the number plates on the vehicles.

13. After the intruders had left, the applicants' neighbours came to the house. Subsequently, two spent cartridges left from the shots fired in the air were found in the courtyard by the gate. The applicants gave the cartridges to a local police officer named Sultan who later asserted that he had lost them.

14. According to the applicants, a certain officer S. of the local police who guarded the building of the village administration on the night of 18 November 2002 allegedly told the second applicant that he and his fellow officers had seen the intruders pass by the administration building in their vehicles, specifically an ARV. According to S., the armed men had come from the direction of the village of Tolstoy-Yurt and turned off the headlights before entering Ken-Yurt. They had returned in the same direction.

15. The description of the above events is based on the applicants' account given in their application form, the written statements of the first applicant and the applicants' neighbour Z.Sh. made on 22 January 2007 and the second applicant's written statement made on 4 December 2006.

16. The applicants have had no news of Magomed Dudarov since 18 November 2002.

2. Information submitted by the Government

17. The Government submitted that at about 2.15 a.m. on 18 November 2002 a group of unidentified armed men in camouflage uniforms had abducted Magomed Dudarov from his house at 11 Klubnaya Street, Ken-Yurt.

C. The search for Magomed Dudarov and the investigation

1. The applicants' account

18. On the morning of 18 November 2002 the applicants' neighbours went to Grozny and told the first applicant about the abduction of Magomed Dudarov. He immediately went to Tolstoy-Yurt and complained about the abduction of his son to the local military commander's office, the department of the interior and the prosecutor's office.

19. On 10 December 2002 the prosecutor's office of the Groznenskiy District ("the district prosecutor's office") instituted a criminal investigation into the abduction of Magomed Dudarov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 56189.

20. On 30 December 2002 the first applicant was granted victim status in the proceedings in case no. 56189. He was notified of the decision on the same day.

21. By a letter of 8 January 2003, the deputy head of the Department of the Federal Security Service in the Chechen Republic ("the Chechen Department of the FSB") informed the second applicant that Magomed Dudarov was not on the list of wanted persons and that the department had no information on his whereabouts.

22. On 2 March 2003 the military commander of the Leninskiy District of Grozny informed the prosecutor of military unit no. 20102 that the commander's office had not carried out any operation aimed at abducting Magomed Dudarov.

23. On 9 June 2003 a prosecutor with the 5th department of the prosecutor's office of the United Group Alignment forwarded the first applicant's complaint about the abduction of his son to the prosecutor of military unit no. 20102.

24. On 3 July 2003, the prosecutor of military unit no. 20102 informed the first applicant that his complaint contained no evidence that servicemen of that military unit had been involved in the abduction of Magomed Dudarov. A letter along the same lines dated 21 August 2003 was sent to the second applicant.

25. On 8 June 2005 the district prosecutor's office provided the first applicant with the following information concerning the investigation. On 10 December 2002 the district prosecutor's office had launched the investigation into the abduction of Magomed Dudarov. Following that decision, the investigators had granted the first applicant victim status on 30 December 2002 and had interviewed the second applicant and inspected the crime scene on 17 January 2003. On 10 February 2003 the investigation had been suspended owing to the failure to identify the perpetrators. It had been resumed on 16 August 2004 and had been adjourned a month later for

failure to establish those responsible. On 7 June 2005 the investigation had been reopened, following which, on 16 and 17 June 2005 the investigators had interviewed as witnesses A.D., M.D. M.A., M.E., A.S. and U.S. On 8 July 2005 the investigation had been suspended owing to its failure to identify those responsible for the abduction of the applicants' son.

26. On 7 April 2006 the investigation was resumed, of which the first applicant was informed by a letter of the same date.

2. Information submitted by the Government

(a) The Government's refusal to submit the entire criminal file

27. Despite specific requests by the Court, the Government did not disclose most of the contents of criminal case no. 56189, providing only copies of the decisions to open, suspend and resume the investigation; records of several witness interviews; crime scene inspection reports; requests for information addressed to various State authorities and some of the replies to them. The Government relied on Article 161 of the Russian Code of Criminal Procedure and specifically stated that they had withheld from the bulk of materials submitted to the Court the documents containing information on location and activities of military units and special-purpose squads of law-enforcement authorities.

28. A considerable part of the documents submitted by the Government were illegible or legible only in part.

29. The information contained in the documents submitted by them, in so far as they are legible, can be summarised as follows.

(b) Opening of the investigation

30. On 22 November 2002 the first applicant applied to the Groznenskiy District Department of the Interior (ROVD) in connection with the abduction of his son.

31. On the same date an investigator of the ROVD interviewed the second applicant. She stated that at about 2.15 a.m. on 18 November 2002 a group of armed men in masks and camouflage uniforms had burst into her house where she had been with Magomed Dudarov. In particular, they had first requested her to open the door but had then smashed a window to get inside. They had taken her son away, without letting him get dressed. Outside, the applicant had seen the abductors' vehicles, in particular, an ARV and a Ural truck, which had been parked at the house. When the abductors had left, the neighbours had told the second applicant that there had also been other vehicles parked further up the street.

32. On 10 December 2002 the district prosecutor's office instituted an investigation into the abduction of the applicants' son under Article 126 § 2

of the Criminal Code (aggravated kidnapping). The case file was given the number 56189.

33. On the same date the investigator in charge of the case compiled a plan of the following investigative steps to be taken: requesting information from law-enforcement authorities on Magomed Dudarov's eventual participation in illegal armed groups or other illegal activities and obtaining his personal characteristics; inspecting the crime scene; granting victim status "to someone of Magomed Dudarov's family"; establishing whether any special operations had been conducted in Ken-Yurt and identifying witnesses to the abduction and interviewing them. The deadline for those steps to be taken was set at 11-15 December 2003. The document also mentioned that the investigation was considering the theory that Magomed Dudarov had been abducted by servicemen in connection with his implication in illegal armed groups.

34. On 23 December 2002 the deputy prosecutor of the Groznenskiy district instructed the investigator in charge of criminal case no. 56189 to activate the investigation and to redraft the plan of investigative steps by making it more specific. Among other things, the investigator was instructed to speed up the carrying out of the crime scene inspection; to verify whether there was evidence of the shooting, seize any items of evidence, such as spent cartridges, append them to the criminal file and carry out a ballistic examination of them; to interview without delay the relatives of the abducted man; to grant victim status to the first applicant; to identify possible eyewitnesses to the abduction and the neighbours who, according to the second applicant, had seen the military vehicles at the crime scene; to instruct the ROVD to establish whether a special operation had been conducted in Ken-Yurt on 18 November 2002, who had been in its command, with which law-enforcement authorities it had been coordinated, which forces had participated in it and what equipment had been used, in particular which military vehicles; to request information on those points from the military commander of the district and of the Chechen Republic, heads of the United Group Alignment (UGA) and other authorities; and also to ask them whether, even in the absence of a special operation, their officials had arrested Magomed Dudarov and, if so, on what ground.

(c) Interviewing of witnesses

35. On 30 December 2002 the first applicant was granted victim status in the proceedings in case no. 56189. While being interviewed on the same day, he stated that at about 9 a.m. on 18 November 2002, while he had been at work in Grozny, his relative I.D. had told him about the abduction of Magomed Dudarov by a group of armed men in masks and camouflage uniforms. On the same day the first applicant had gone to Ken-Yurt and had learnt from neighbours that the abductors had driven an ARV and a Ural truck and that there had been other vehicles, such as UAZ all-terrain

vehicles. Being interviewed as a witness on 10 September 2009, the first applicant confirmed his earlier statement to the investigation.

36. On 17 January 2003 the second applicant was interviewed as a witness. She submitted that on the night of 18 November 2002 her son had woken her up, saying that there had been armed and masked men in camouflage uniforms in their courtyard. The intruders had then started knocking on the front door. Having smashed a window, around four armed men had burst into the house. They had spoken Russian with a strong accent. They had requested the second applicant to produce identity papers. They had then taken Magomed Dudarov, who had been barely dressed, outside. Having followed them outside, the second applicant had seen an ARV and a Ural truck parked in the street. The second applicant had started shouting and some neighbours had come outside. The intruders had then loaded Magomed Dudarov in the Ural truck, fired several shots in the air and driven off towards the centre of the village. The second applicant had not noticed the licence plates on the vehicles. After the abduction, local police officer S.M. had come to the applicants' house and had discovered near it a spent 5.45 mm submachine gun cartridge and a pillowcase. He had taken those items with him. When re-interviewed as a witness on 20 August 2004, the second applicant confirmed her account of the events given on 17 January 2003. Interviewed as a witness on 17 June 2005, the second applicant confirmed her previous statements and submitted, in addition, that she had inferred that the abductors of Magomed Dudarov were servicemen because they had been driving military vehicles.

37. On 16 June 2005 the investigators interviewed the applicants' daughter A.D. as a witness. She submitted that at the time of Magomed Dudarov's abduction she had resided in the town of Shali and that on 18 November 2002 the first applicant had visited her there and had told her that her brother had been kidnapped by a group of armed men in camouflage uniforms, who had been driving an armoured personnel carrier (APC) and a Ural truck.

38. The applicants' other daughter M.D., residing in Novosibirsk, was interviewed as a witness on 16 June 2005 and stated that in 2003 she had visited the applicants in Ken-Yurt and had learnt from them that a group of armed men in camouflage uniforms and masks, who had driven an ARV and a Ural truck, had kidnapped Magomed Dudarov.

39. On 16 June 2005 the investigators interviewed as a witness M.A., a resident of Ken-Yurt. She stated that at about 3 a.m. on 18 November 2002 the village had been blocked by a number of servicemen and military Ural trucks. After the abduction of Magomed Dudarov the servicemen had driven their military vehicles in the direction of the Nadterechny district of the Chechen Republic.

40. On 17 June 2005 the investigators interviewed as a witness U.S., head of the village administration. He stated that at about 3 a.m. on

18 November 2002 he had been woken up by the shouting of a woman who had cried for help. When he had got outside, he had met the second applicant, who had explained to him that armed men in camouflage uniforms and masks had taken away Magomed Dudarov and that the abductors had driven an ARV and a green Ural truck. U.S. had returned home, taken his car and tried to search for the applicants' son but in vain. Interviewed as a witness on 5 May 2006 and 27 July 2009, U.S. confirmed his earlier statements. During his interview of 27 July 2009 U.S. also stated that on the day following the abduction he had talked to the servicemen who manned the checkpoint located at the exit of the village but they had denied having arrested Magomed Dudarov. Those servicemen had formed part of the special purpose police unit from Irkutsk deployed in the village throughout 2002.

41. On 13 April 2006 the investigators interviewed as a witness the applicants' neighbour Z.Sh. She stated that on the night of 17-18 November 2002 she had heard cries for help coming from the applicants' house and had gone outside. There Z.Sh. had seen a large group of about twenty servicemen wearing camouflage uniforms and armed with submachine guns. The servicemen had had a number of military vehicles. Z.Sh. had seen the servicemen load Magomed Dudarov into one of their military vehicles and drive away in the direction of Grozny. While being interviewed as a witness on 6 October 2008, Z.Sh. confirmed that account of the events, specifying that she had seen an Ural truck and an APC at the time of Magomed Dudarov's abduction.

42. On 6 May 2006 the investigators interviewed police officer S.M. as a witness. He stated that he was working for the local police and that the applicants' house was within his area of responsibility. On 18 November 2002 he had learnt from residents of Ken-Yurt that at about 2 a.m. on that day a group of armed men in camouflage uniforms had abducted Magomed Dudarov from his parents' house. On the same day S.M. had come to the applicants' house, interviewed the second applicant about the circumstances of the abduction and inspected the house and the adjacent premises but had discovered nothing specific. S.M. also stated that the second applicant had not handed over a spent cartridge or pillowcase to him but that she could have given those items to the police officers of the special police unit from Irkutsk, whose squad had been stationed in Ken-Yurt at the material time. While being interviewed again as a witness on 4 August 2009, S.M. clarified that, having learnt of the abduction of Magomed Dudarov on 18 November 2002, he had immediately gone to the applicants' house. During the inspection of the premises, S.M. had discovered tyre tracks of an APC and a Ural truck near the applicants' house but had not taken any steps to establish in which direction they had led. Several days later S.M. had been approached by the second applicant, who had handed him a spent cartridge and a pillowcase. S.M. had handed those items over to ROVD

officials and asked them to give them to the investigator in charge of criminal case no.56189. S.M. had not taken any formal decision on the seizure of those items. Lastly, he submitted that he had handed over all materials and information about the abduction collected during his visit on 18 November 2002 to the ROVD.

43. On 13 June 2006 the investigators interviewed as a witness the applicants' neighbour I.M. He stated that on the night of 17-18 November 2002 he had been woken up by the noise of vehicles. Once outside, he had seen a large number of servicemen, who had blocked the entire street. There had been APCs, UAZ vehicles and a Ural truck. I.M. had also heard a woman shouting. He had learnt of Magomed Dudarov's abduction in the morning of 18 November 2002.

44. On 13 June 2006 the investigators interviewed as a witness the applicant's neighbour Sh.I. He stated that on 18 November 2002 he had been at his relatives in Shali and that he had learnt of the abduction of Magomed Dudarov from his relatives residing in Ken-Yurt after his return. They had told him that at the time of the abduction there had been numerous servicemen and military vehicles.

45. On 21 October 2008 the investigators interviewed as a witness the applicants' neighbour T.G. She submitted that on 18 November 2002 she had been woken up by the noise of several vehicles and by the second applicant's shouting. When T.G. had gone outside, she had seen an APC and a Ural truck and a number of servicemen. After the servicemen had left, T.G. had gone to the second applicant who had told her that they had abducted her son.

46. On 13 August 2009 the investigators interviewed A.B. as a witness. He stated that he had been in charge of the investigation in case no. 56189 at its initial stage and that he had not been approached by any persons who would have handed over a spent cartridge or pillowcase to him.

(d) Other investigative steps

47. Between 11 December 2002 and 13 January 2003 the investigators sent a number of requests to various law-enforcement authorities enquiring about whether they had information on Magomad Dudarov's possible arrest or detention, his criminal record, his whereabouts and whether any special operations had been conducted on the night of his abduction. Those authorities were also instructed to take operational search measures to establish his whereabouts.

48. On 13 January 2003 the investigators instructed the ROVD officers to seize from police officer S.M. spent cartridges found at the crime scene and to interview the applicants' neighbours about the vehicles which had been on their street the night of the abduction. There is no indication that the request was carried out.

49. On 17 January 2003 the investigators inspected the crime scene. According to the crime scene inspection report of the same date, no objects of interest to the investigation were discovered.

50. Between an unspecified date in August 2004 and 2 September 2004 the investigators requested the prosecutor's office of the Leninskiy District of Grozny to inform them if any criminal proceedings had been instituted against Magomed Dudarov in 2001, following his arrest and detention in May 2001.

51. Between 11 and 18 June 2005 the investigators requested from various law-enforcement authorities information on whether they had conducted any operations in Ken-Yurt on 18 November 2002, arrested Magomed Dudarov or had information on his possible place of detention. According to those authorities' replies, they had no relevant information.

52. Between 7 and 12 April 2006 similar requests for information were sent to a further number of authorities. It appears that no relevant information was obtained in reply.

53. On 13 April 2006 the investigators carried out a repeated crime scene inspection. According to the crime scene inspection report of the same date, no objects of interest to the investigation were discovered.

54. Between 8 and 21 October 2008 the investigators sent to several law-enforcement authorities further requests for information on Magomed Dudarov's whereabouts and places of his possible detention.

55. On 18 June 2009 the investigators asked the head of the Archives of the North Caucasus Military Circuit to provide information on any special operations conducted by military forces in Ken-Yurt on 18 November 2002. The letter stated that the investigation in case no. 56189 had sufficient grounds to believe that unidentified members of military forces had been involved in the abduction of Magomed Dudarov. In reply, the investigator was informed that there were no such documents in the archives and was advised to apply to the Operational Department of the Headquarters of the North Caucasus Military Circuit in Rostov on Don. There is no indication that the investigators applied to that State authority. It appears that similar requests lodged with further State authorities were also unsuccessful.

56. On 9 September 2009 the investigators inspected criminal case file no. 11161. According to the documents submitted by the Government, on 23 May 2001 Magomed Dudarov had been arrested in Grozny on suspicion of having murdered, in concert with a third person, two FSB officers. On 30 May 2001 he had been released for lack of evidence of his involvement in the murder.

(e) Information relating to the decisions to suspend and resume the investigation

57. According to the Government, the investigation in case no. 56189 was suspended on the following dates: 10 February 2003, 16 September

2004, 8 July 2005, 7 May 2006, 30 October 2008 and 18 September 2009. All related decisions referred to its failure to identify the perpetrators.

58. The investigation was reopened on 16 August 2004, 7 June 2005, 6 April 2006, 30 September 2008 and 18 June 2009.

59. The relevant information submitted by the Government may be summarised as follows.

60. The decision of 16 August 2004 stated that the decision to suspend the investigation given on 10 February 2003 had been premature and unfounded because the investigators had failed to comply with the instructions given by the deputy prosecutor on 23 December 2002. Among other things, they had not examined the allegation that Magomed Dudarov could have been abducted by FSB officials with the participation of servicemen of the federal troops following a false accusation of suspicion of involvement in illegal armed groups. They had also failed to identify the neighbours who, according to the second applicant, had seen the military vehicles used by the abductors, and had not verified information concerning Magomed Dudarov's previous arrest in 2001. Whilst there was information that local police officer S.M. had seized a spent cartridge and pillowcase found at the applicants' house on 19 November 2002, that person had not been found and interviewed, the impugned items had neither been seized from him nor appended to the criminal file and the cartridge had not been sent for ballistic examination.

61. In a document entitled "Report on the progress in criminal case no. 56189" (*Заключение по уголовному делу № 56189*) of 6 June 2005, the deputy prosecutor of the Groznenskiy district declared unlawful the decision of 16 September 2004 to suspend the investigation, finding that the investigators had failed to comply with the instructions issued on 23 December 2002.

62. On 7 April 2006, after the investigation in case no. 56189 had been resumed for the third time, the deputy prosecutor of the Groznenskiy District instructed the investigators to carry out the following investigative measures: to update the plan of investigative steps; to comply in full with the instructions issued by the deputy prosecutor on 23 December 2002 and 16 August 2004; to interview police officer S.M., who had seized the spent cartridge and pillowcase from the crime scene; to append those items to the criminal case file; to carry out a ballistic examination of the cartridge; to check whether the cartridge was recorded in the federal and regional ballistic databases, and to identify and interview friends and colleagues of the missing person.

63. On 28 September 2008 the deputy prosecutor of the Groznenskiy District Court issued a document entitled "Request to rectify the breaches of the federal legislation committed in the course of the preliminary investigation" (*Требование об устранении нарушений федерального законодательства, допущенных в ходе предварительного*

расследования). The document stated that on 10 December 2002 the district prosecutor's office had instituted a criminal investigation into the abduction of Magomed Dudarov and that it had been suspended on numerous occasions. The latest decision to suspend the investigation had been taken on 7 May 2006 despite the fact that the investigators had failed to take the investigative steps enumerated in the plan of investigative measures issued on 10 April 2006. The deputy prosecutor instructed the investigators to rectify the shortcomings and to report to him on the measures taken by 5 October 2008. There is no information on whether the request was complied with.

64. On 18 September 2009 the deadline for the preliminary investigation in case no. 56189 was extended by two months. The decision stated, among other things, that the following investigative steps needed to be taken: request information from a number of State authorities or their archives about possible special operations in Ken-Yurt on 18 November 2002 and obtain judicial authorisation for seizure of the related documents classified as State secret; interview the first applicant and carry out a confrontation between the second applicant and S.M. on the issue of the items found at the applicants' house after the abduction; obtain further information on Magomed Dudarov's detention in 2001.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

66. The Government contended that the applicants' complaint concerning the disappearance of their relative should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Magomed Dudarov had not yet been completed. They further argued that it was open to the applicants to request the district prosecutor's office to take certain investigative steps or to complain about the investigation to a court. Lastly, the Government stated

that the applicants could have applied to civil courts for compensation under Articles 151 and 1069 of the Civil Code.

67. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that the effectiveness of the investigation had been undermined in its early stages by the authorities' failure to take the relevant steps in due time. With reference to the Court's practice, they argued that they were not obliged to apply to civil courts in order to exhaust domestic remedies.

B. The Court's assessment

68. 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).

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

70. 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 Government's objection in this regard is thus dismissed.

71. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement authorities shortly after the kidnapping of Magomed Dudarov and that an investigation has been pending since 10 December 2002. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

73. The applicants complained under Article 2 of the Convention that their relative had been deprived of his life by the 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. Submissions by the parties

74. The Government argued that the domestic investigation had obtained no evidence that State agents had been involved in the abduction of Magomed Dudarov or that any special operations had been conducted in the village of Ken-Yurt on the night of his kidnapping. Magomed Dudarov's body had not been discovered. The fact that the abductors had worn camouflage uniforms and had spoken Russian did not prove that they were State agents. The domestic authorities were taking all reasonable steps to identify the persons responsible for the applicants' relative's abduction, as well as to establish Magomed Dudarov's whereabouts.

75. The applicants claimed that there was evidence “beyond reasonable doubt” that their son had been detained by State agents and that he was to be presumed dead following his unacknowledged detention. They pointed out that the Government was not disputing their account of the events and that it was, moreover, confirmed by the witness interview records the Government had provided to the Court. They stressed that APCs and ARVs were armoured military vehicles used by the Russian armed forces and not available to civil persons. Moreover, the area from which the applicants' son had been abducted had been under the exclusive control of State authorities. It had been under curfew, the authorities maintained manned checkpoints there and an entire police unit had been stationed there. Lastly, the applicants invited the Court to draw inferences from the Government's refusal to provide a copy of the entire case file on the abduction of their son at the Court's request.

76. As regards the investigation into Magomed Dudarov's abduction, the applicants submitted that it did not satisfy the Convention requirements. It has been pending for many years without any tangible results. It was neither prompt nor expeditious. The authorities took no steps to identify the entities involved in the special operation or the vehicles used for the abduction of Magomed Dudarov. No officials, such as the military commander, had been

interviewed with a view to establishing how the abductors could have moved around during curfew. The applicants were not informed of the progress of the investigation. The first occasion on which they received any meaningful information in that respect was after the communication of their application to the Government.

B. The Court's assessment

1. Admissibility

77. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 72 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Magomed Dudarov

(i) General principles

78. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

(ii) Establishment of the facts

79. 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).

80. The applicants alleged that at about 2 a.m. on 18 November 2002 their son, Magomed Dudarov, had been abducted by servicemen and had then disappeared. They invited the Court to draw inferences as to the well-foundedness of their allegations from the Government's failure to provide the documents requested from them. They submitted that several persons, as well as the second applicant, had witnessed Magomed Dudarov's abduction and enclosed their written statements to support that submission.

81. The Government conceded that Magomed Dudarov had been abducted on 18 November 2002 by unidentified armed camouflaged men. However, they denied that the abductors had been servicemen, referring to the absence of conclusions from the ongoing investigation.

82. The Court notes that despite its requests for a copy of the investigation file into the abduction of Magomed Dudarov, the Government refused to produce a copy of the entire case file, referring to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

83. Having regard to the applicants' submissions and the materials at its disposal, the Court considers that they presented an overall coherent and convincing picture of Magomed Dudarov's abduction on 18 November 2002 by a group of armed and camouflaged men driving in a convoy of military vehicles, including an ARV and a Ural truck. It notes that the applicants' account remained consistent both throughout the domestic investigation and before this Court (see paragraphs 8-16, 35 and 36 above). It further observes that the witness statements referred to by the Government appear to confirm the applicants' account of the events concerning their son's abduction on all points, including the presence of military vehicles, such as APCs, which the witnesses either submitted to have seen at the applicants' house at the time of the abduction or whose tyre tracks they stated to have discovered there after it had occurred, and the fact that the abductors had loaded Magomed Dudarov into one of those vehicles and left with him (see paragraphs 39, 41-43).

84. The Court further takes note of the fact that the Government did not dispute the applicants' submission that the village of Ken-Yurt had been under the authorities' effective control at the material time, that a curfew had been in place and that the authorities had maintained manned checkpoints at the entry to and exit from the village. Moreover, it can be seen from the witness statements that at the material time a special purpose police unit was

deployed in the village on a permanent basis (see paragraphs 40 and 42 above).

85. In the Court's view, the fact that a large group of armed men in uniforms, driving in a convoy of military vehicles was able to pass freely through checkpoints during curfew hours and proceed to arrest the applicants' relative in a manner similar to that of State agents strongly supports the applicants' allegation that they were State servicemen and that they were conducting a special operation in Ken-Yurt on the night of Magomed Dudarov's abduction.

86. The Court notes that in their applications to the authorities the applicants consistently maintained that Magomed Dudarov had been detained by unknown servicemen and requested that the investigating authorities look into that possibility. Moreover, the investigators themselves had considered that there were sufficient grounds to believe that members of military forces had been involved in the abduction of Magomed Dudarov (see paragraph 55 above). It further notes that after more than seven years the investigation has produced no tangible results.

87. The Court observes that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, 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 (extracts)).

88. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their son was abducted by State servicemen. The Government's statement that the investigation had not found any evidence to support the involvement of servicemen in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. 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 Magomed Dudarov was arrested on 18 November 2002 by State servicemen during an unacknowledged security operation.

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

90. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among many others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*,

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

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

(iii) The State's compliance with Article 2

92. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47 Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

93. The Court has already found it established that the applicants' son must be presumed dead following unacknowledged detention by State servicemen. Noting that the authorities do not rely on any ground of justification in respect of any use of lethal force by their agents, it follows that liability for his presumed death is attributable to the respondent Government.

94. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Magomed Dudarov.

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

95. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [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 (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure

their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family and carried out with reasonable promptness and expedition. It should also be effective in the sense that it is capable of leading to a determination of whether or not the force used in such cases was lawful and justified in the circumstances, and should afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105 and 109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

96. The Court notes at the outset that the Government refused to produce a copy of the entire criminal file no. 56189 and furnished only copies of the documents summarised above. It therefore has to assess the effectiveness of the investigation on the basis of the information submitted by the Government and the few documents available to the applicants that they provided to the Court.

97. Turning to the circumstances of the case, the Court points out that it transpires from the statement of police officer S.M. that the authorities, in particular the police, were made aware of the abduction of Magomed Dudarov immediately after it had occurred, that is, on 18 November 2002 (see paragraph 42 above). However, the investigation in case no. 56189 was instituted only on 10 December 2002, that is, twenty-two days after the applicants' son's abduction. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

98. It appears that an important number of basic investigative steps were taken with considerable delay. In particular, it was only on 17 January 2003, that is, two months after the incident, that the investigators interviewed the second applicant, who was an eyewitness to the abduction. The crime scene was inspected with the same delay, which, in the Court's opinion, must have deprived that measure of any useful effect. It further transpires that witnesses, such as the applicants' neighbours, police officer S.M. and the head of the administration, were interviewed with a delay ranging from two and a half to six years after the incident. This delay is particularly striking, given that already in December 2002 the deputy prosecutor had explicitly instructed the investigators to interview those persons (see paragraph 34 above) and that at no point have the Government argued that it had been impossible to locate or interview them.

99. It further emerges from the materials available to the Court that only in 2009 did the investigators make a genuine attempt to establish whether Magomed Dudarov had been abducted during a special operation (see paragraph 55 above). Nonetheless, even then that investigative measure appears not to have been completed: although the investigator had initially considered obtaining judicial authorisation for getting access to the relevant documents and had been informed from which State authority he could

request them, the materials submitted by the Government suggest that he decided to suspend the investigation without pursuing the matter (see paragraphs 55, 57 and 64 above).

100. The Court also points out that a number of crucial investigative steps were never taken. In particular, nothing suggests that the investigators attempted to establish the route taken by the abductors' vehicles or interview the servicemen at the checkpoint located at the entrance to the village. It remains unclear what became of the spent cartridge and the pillowcase which the second applicant handed over to police officer S.M., although in his interview he acknowledged having taken them from her and submitted that he had handed those items over to the authorities.

101. The Court also cannot but note that the majority of the investigative steps mentioned above were enumerated in the written instructions to the district prosecutor's office issued by the deputy prosecutor in December 2002 (see paragraph 34 above). Nonetheless, it transpires that the investigators persistently failed to comply with those instructions and suspended the investigation without taking those steps and in disregard of the higher-ranking prosecutors' explicit and repeated instructions to look into the matter (see paragraphs 60-62 above). It appears that even a formal request to rectify the shortcomings in the investigation produced only minimal, if any, results in that respect (see paragraph 63 above).

102. It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

103. The Court further notes that whilst the first applicant was eventually granted victim status in the proceedings in case no. 56189, there is no indication that the authorities ever considered granting that status to the second applicant. There is also no indication that the applicants were informed of any significant developments in the investigation. 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.

104. Lastly, the Court observes that the investigation was adjourned and resumed on numerous occasions and that there were lengthy periods of inactivity on the part of the investigating authority when no proceedings were pending. Despite the fact that the higher-ranking prosecutors repeatedly criticised deficiencies and omissions in the proceedings, issued formal warnings and ordered remedial measures to those in charge of the

investigation, it appears that their instructions were not followed (see paragraphs 60-63 above).

105. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years having produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances.

106. Furthermore, in so far as the Government argued that the applicants could have complained about the deficiencies in the investigation to a higher-ranking prosecutor or a court, the Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged the actions or omissions of investigating authorities before those authorities. Moreover, the Court emphasises in this respect that while the adjourning or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to suspend them were made without the necessary investigative steps being taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success.

107. In sum, the Court finds that the remedies cited by the Government were 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.

108. 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 Magomed Dudarov, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. The parties' submissions

110. The Government disagreed with these allegations and claimed that the applicants' rights under Article 3 had not been breached.

111. The applicants maintained the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

113. 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).

114. In the present case the Court notes that the applicants are the parents of the disappeared person and that the second applicant witnessed his abduction. For more than seven years they have not had any news of their son. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about Magomed Dudarov. 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 his 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.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

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

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

(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.”

A. The parties' submissions

117. The Government asserted that no evidence had been obtained by the investigators to confirm that Magomed Dudarov had been deprived of his liberty.

118. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

120. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that

unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev*, cited above, § 122).

121. The Court has found that Magomed Dudarov was abducted by State servicemen on 18 November 2002 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

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

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

124. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations of Articles 2 and 5, contrary to Article 13 of the Convention, which provides:

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

A. The parties' submissions

125. 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.

126. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

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

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

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

131. 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. Non-pecuniary damage

132. The applicants claimed 70,000 euros (EUR) jointly in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards him and the failure to provide any information about the fate of their close relative.

133. The Government found the amounts claimed exaggerated.

134. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' son. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus

accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicants jointly EUR 60,000, plus any tax that may be chargeable thereon.

B. Costs and expenses

135. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff, as well as administrative expenses, translation and courier delivery fees. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,049.79, to be paid into the representatives' bank account in the Netherlands.

136. The Government pointed out that the applicants should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had actually been incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005).

137. The Court has to establish first whether the costs and expenses indicated by the applicants' relative were actually incurred and, second, whether they were necessary (see *McCann*, cited above, § 220).

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

139. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time that, owing to the application of former Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives. The Court also notes that the applicants did not submit any documents in support of their claim for administrative costs.

140. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 4,000, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Magomed Dudarov;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Magomed Dudarov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Magomed Dudarov;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Article 5 of the Convention;
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 on the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 60,000 (sixty thousand euros) to the applicants jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President