



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

FIRST SECTION

**CASE OF KHAKIYEVA, TEMERGERIYEVA
AND OTHERS v. RUSSIA**

(Application nos. 45081/06 and 7820/07)

JUDGMENT

STRASBOURG

17 February 2011

FINAL

15/09/2011

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

In the case of Khakiyeva, Temergeriyeva 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,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 January 2011,

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

PROCEDURE

1. The case originated in two applications (nos. 45081/06 and 7820/07) 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 fourteen Russian nationals listed below (“the applicants”), on 10 November 2006 and 30 January 2007. The eighth applicant died on 9 April 2010.

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

3. The applicants alleged that their two male relatives had disappeared after being detained by servicemen in Grozny in 2002. They complained under Articles 2, 3, 5 and 13 of the Convention.

4. On 16 March and 7 May 2009 respectively 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 of the Convention).

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. 45081/06 are:

1. Ms Zara Khakiyeva, born in 1949,
2. Ms Zura Khakiyeva, born in 1952,
3. Ms Kheda Dadakayeva, born in 1958,
4. Ms Linda Khakiyeva, born in 1997,
5. Ms Iman Khakiyeva, born in 1999 and
6. Mr Mokhammad-Emin Khakiyev, born in 2000.

The applicants in application no. 7820/07 are:

7. Ms Taus Temergeriyeva, born in 1957,
8. Ms Eset Timirgeriyeva, born in 1923,
9. Ms Luiza Temirgeriyeva, born in 1961,
10. Ms Aminat Temirgeriyeva, born in 1983,
11. Ms Khava Temirgeriyeva, born in 1985,
12. Mr Magomed Temirgeriyev, born in 1988,
13. Ms Selima Temirgeriyeva, born in 2002 and
14. Ms Perdous Temergeriyeva, 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. Two of their male relatives, Lema Khakiyev and Musa Temergeriyev, were detained in 2002 in two separate incidents in Mikhaylika Street (also referred to as Visaitova Street) in the settlement of Michurina in the Oktyabrskiy District of Grozny, Chechnya, and subsequently disappeared. The third, sixth to ninth, thirteenth and fourteenth applicants were present during the abduction of their relatives. The other applicants were not eyewitnesses to the events and based their accounts on testimonies collected by them in the aftermath of their relatives' disappearance.

1. Apprehension of Lema Khakiyev

10. The first and the second applicants are sisters of Lema Khakiyev, born in 1960. The third applicant is his wife. The fourth to sixth applicants are their children.

(a) Events prior to the abduction

11. From 1995 to 1996 Lema Khakiyev worked at a local military commander's office near Khankala. From 24 May 1996 to 12 December 1996, during the first counterterrorist campaign in Chechnya, he served in the Russian military.

12. On 20 June 2002 Mr E.B., the head of the Oktyabrskiy district administration, wrote a complaint to the head of the Grozny town administration, accusing Lema Khakiyev of having been a sniper for illegal armed groups from 1995 to 1996.

13. According to the first applicant, at some time between 18 and 20 August 2002 a white VAZ-2106 car without registration numbers had been parked for several hours in the vicinity of Lema Khakiyev's house. Several men were sitting in the car and watching the house. The applicants' neighbours, who lived across the street, saw one of the men clearly. A man got out of the car, climbed onto a nearby pile of rubbish and looked over the fence into the applicants' yard. The third applicant and Lema Khakiyev also saw the men in the car. The very same car was seen along with an APC on the night of Lema Khakiyev's abduction.

14. On 20 August 2002 the Oktyabrskiy district department of the Federal Security Service ("the district FSB department") requested that Lema Khakiyev visit its office and provide explanations for the accusations against him. After interviewing him, the FSB officers told him that nothing incriminating had been found against him.

(b) Abduction of Lema Khakiyev

15. On the night between 20 and 21 of August 2002 the third and sixth applicants, together with Lema Khakiyev, were sleeping in the family house at no. 59 Mikhaylika Street in the settlement of Michurina. The settlement was under curfew. The first applicant was in Nazran.

16. At about 4 a.m. a group of six or seven masked men armed with machine guns broke into the house. The intruders spoke unaccented Russian. The applicants thought that they were Russian servicemen.

17. The servicemen neither introduced themselves nor produced any documents. They ordered Lema Khakiyev to follow them, threatening to kill his son. In the meantime, they conducted a quick search of the house. The servicemen ordered the third applicant to stay in the house and not to make any noise. When they were about to leave, Lema Khakiyev told the third applicant that she should look for him at the Oktyabrskiy district department of the interior of Grozny ("the ROVD") and that the intruders were from the ROVD. The servicemen then took Lema Khakiyev away to an unknown destination.

18. According to the applicants, their neighbours saw that Lema Khakiyev had been taken in the direction of the Oktyabrskiy district military commander's office ("the district military commander's office").

19. One of the applicants' neighbours, Mr S.S., told the applicants that at dawn on 21 August 2002 another neighbour of theirs, Mr N.T., had seen a group of servicemen and a half-naked man running by his house; shortly afterwards he had heard the noise of military vehicles. Some time later the neighbour had gone to the scene and found traces of machine oil and tyre marks.

20. The first applicant learnt of her brother's disappearance from Mr S.S. and Mr D.U. on her way back to Michurina.

21. The first six applicants have had no news of Lema Khakiyev since 21 August 2002.

22. The applicants' description of the circumstances surrounding Lema Khakiyev's abduction is based on witness accounts provided to the applicants' representatives: a statement by the first applicant, dated 30 November 2004; two statements by the neighbour Mr S.S., both dated 4 September 2006; a statement by the second applicant, dated 6 November 2006; and a statement by the neighbour Mr G.B., dated 7 November 2006. The applicants' representatives also produced copies of the following statements: a statement provided by Mr L.Ch. to an officer of the ROVD, dated 21 August 2002; a statement by the third applicant provided to the Grozny town prosecutor's office ("the town prosecutor's office") on 11 September 2002; and statements by Mr E.B. and Mr D.U., given to the town prosecutor's office on 8 and 10 October 2002 respectively. Finally, the applicants submitted the following documents: a copy of the contract between Lema Khakiyev and the Ministry of Defence, dated 5 June 1996; a copy of the order for Lema Khakiyev's dismissal from the military service in Chechnya, dated 31 December 1996; and a copy of the military order concerning his registration at the Chechnya military commander's office in Grozny, dated 20 January 1997.

23. The Government did not challenge most of the facts as presented by the applicants. They submitted that at night on 21 August 2002 "armed unidentified persons wearing masks and camouflage uniforms" had entered Lema Khakiyev's house at no. 59 Mikhaylika Street in the settlement of Michurina in the Oktyabrskiy district of Grozny, and subsequently taken him to an unknown destination. The Government denied any involvement of State agents in Lema Khakiyev's disappearance.

2. Apprehension of Musa Temergeriyev

24. The seventh to fourteenth applicants are relatives of Musa Temergeriyev, born in 1952. The seventh and fourteenth applicants are his sisters, the eighth applicant is his mother and the ninth applicant is his wife. The tenth to thirteenth applicants are their children.

25. At the material time the seventh to fourteenth applicants and Musa Temergeriyev resided at no. 55 Mikhaylika Street in the settlement of

Michurina. They occupied two houses connected by a covered area, with a shared courtyard.

26. In the morning of 27 December 2002 Musa Temergeriyev left his home to take his sister to the Grozny train station. The seventh, eighth, ninth, thirteenth and fourteenth applicants, as well as Ms M.T., the seventh and fourteenth applicants' sister, stayed at home.

27. Between 10.20 and 10.30 a.m. two armoured personnel carriers ("APCs") with the registration numbers E-546 and E-548 stopped by the applicants' house. The vehicles carried around twenty tall armed men in khaki and white camouflage uniforms. They were of Slavic appearance and spoke unaccented Russian. The armed men secured the entry to the courtyard, which made the applicants think that they were carrying out a "sweeping-up" operation. Two armed men broke into the house, pointed their submachine guns at the applicants and asked them whether there were any men in the house. The applicants answered that the only man in the household, Musa Temergeriyev, had left for the train station. The intruders ordered the applicants not to leave the house and went outside.

28. Through a window the seventh applicant saw one of the armed men stop under the covered area and take out of his belt an object which looked like a mallet. Subsequently she learnt that it was an anti-tank hand grenade. The fourteenth applicant, who was in another room, also saw the man take something out from his belt.

29. When the fourteenth applicant approached the armed man, he showed her the object and explained that it was a grenade, which he had found in the applicants' refrigerator. The fourteenth applicant told him that she had seen him plant the grenade. Other applicants also confirmed that they had seen it and the man abandoned his accusations.

30. Twenty minutes later Musa Temergeriyev returned from the train station and entered the courtyard. The intruders stopped him and ordered him to show his passport. After that check they searched the house but did not find anything. Then the servicemen took Musa Temergeriyev outside the courtyard and put him in an APC.

31. The applicants followed the intruders. The seventh applicant asked them why they were taking her brother away. They replied that he would have to write an explanation on the spot and would then be free to leave. The ninth applicant caught hold of an APC. The men hit her hands with the butts of their guns. She fell on the ground and was dragged by the moving vehicle for a while.

32. The seventh applicant, together with Ms A., a neighbour, followed the APCs on their way through the village. The seventh applicant also ran to the local police station and told the police officers about the apprehension of her brother. Subsequently, the women stopped a car and followed the APCs until they entered the grounds of military unit no. 3186 in the east end of

Grozny. Thinking that she had found the place where her brother was being detained, the seventh applicant left.

33. The applicants have had no news of Musa Temergeriyev since 27 December 2002.

34. The description of the events of the morning of 27 December 2002 is based on witness accounts provided to the applicants' representatives: a statement by the seventh applicant, dated 3 August 2006; statements by the ninth and fourteenth applicants, as well as by Ms R.S. and Mr I.D., dated 15 July 2006; an account by Ms A.I., given on 16 July 2006; and an account by Ms Estamirova (also referred to as Ms Estemirova and Ms Estimirova), dated 22 August 2006.

35. The Government did not challenge most of the facts as presented by the applicants. They submitted that in the morning of 27 December 2002 "armed unidentified persons had abducted Musa Temergeriyev". The Government denied the involvement of State agents in the disappearance.

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

36. The applicants 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' abduction 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 Lema Khakiyev and subsequent investigation

37. On 21 August 2002 the third applicant complained about her husband's abduction to the town prosecutor's office. She asked the town prosecutor to appoint an investigation team and immediately send the team to the scene.

38. On 21 August 2002 the ROVD questioned Mr L.Ch., a neighbour, who had known about Lema Khakiyev's abduction from the third applicant.

39. On 23 August 2002 the first and the third applicants, together with their neighbours Mr S.S., Mrs Ya.A., Mrs T.T. and Mr G.B., and other residents of the Oktyabrskiy district, went to the district military commander's office. The district military commander went outside to speak with the crowd. He introduced himself as Sergey. The applicants explained to him that they were looking for Lema Khakiyev. At first the military

commander told the applicants that their relative was not being detained on the premises. Then the gate opened and a white VAZ-2106 car with the registration number 648 drove away from the office's yard, together with an APC. The third applicant and the neighbours recognised the car and told the commander that Lema Khakiyev had been taken away in that car in the direction of the district military commander's office. At first, the military commander promised to find the missing man but several days later he retracted his promise.

40. On 24 August 2002 the town prosecutor's office instituted an investigation into Lema Khakiyev's abduction under Article 126 § 2 of the Criminal Code ("aggravated kidnapping"). The case file was assigned no. 52098. The applicants were informed of the decision in due time.

41. On 30 August 2002 the first and the third applicants complained to the town prosecutor's office about Lema Khakiyev's disappearance. They emphasised that he had disappeared as a result of Mr E.B.'s report of 20 June 2002 and asked for the investigation to take that factor into account.

42. On 2 and 13 September 2002 the town prosecutor's office replied that the investigation in case no. 52098 was pending and promised to keep the applicants informed of its progress. It also assured the first applicant that her arguments would be thoroughly examined.

43. On 11 September 2002 the town prosecutor's office questioned the third applicant, who related the circumstances of her husband's abduction.

44. On 17 September 2002 the deputy head of the ROVD drew up a report concerning Lema Khakiyev's disappearance. The report was based on the third applicant's testimonies. The document stated that he had been abducted by armed men in masks and camouflage uniforms and that, despite the inquiry, his whereabouts remained unknown. In view of the foregoing, the deputy head of the ROVD ordered the discontinuation of the search for Lema Khakiyev and declared him a missing person as of 21 August 2002.

45. On 8 October 2002 the investigators questioned the head of the Oktyabrskiy district administration, Mr E.B., who stated that he did not have any personal animosity towards Lema Khakiyev, that the complaint of 20 June 2002 had been written as a routine working document and that he had no information as to the identities of Lema Khakiyev's abductors.

46. On 9 October 2002 the investigators granted the first applicant victim status in criminal case no. 52098. It does not appear that the second to sixth applicants were granted victim status.

47. On 10 October 2002 the investigators questioned a former colleague of Lema Khakiyev, Mr D.U., who stated that he had been in Moscow at the time of the abduction. He did not know whether Lema Khakiyev had been a sniper for illegal armed groups from 1995 to 1996 and confirmed that Lema Khakiyev had been on bad terms with Mr E.B.

48. On 24 October 2002 the town prosecutor's office stayed the investigation in criminal case no. 52098 owing to the failure to identify the

perpetrators and ordered the ROVD to continue the search. The first applicant was informed of that decision in writing on 31 March 2003.

49. On 18 December 2002 the first applicant complained about her brother's disappearance to the Special Envoy of the Russian President in the Chechen Republic for Rights and Freedoms ("the Envoy"). She underlined that Mr S.P., Mr E.B., the head of the Chechnya Department of the Interior ("the Chechnya MVD"), and Mr D.U., her brother's former ROVD colleague, had information on Lema Khakiyev's abduction.

50. On 30 December 2002 the Envoy wrote to the town prosecutor's office and the ROVD and suggested that Lema Khakiyev's abduction had been a result of the complaint by the head of the Oktyabrskiy district administration.

51. On 10 January 2003 residents of the settlement of Michurina complained to the Oktyabrskiy district prosecutor's office ("the district prosecutor's office"). Their collective letter stated, *inter alia*, that their district had been subjected to "targeted sweeping-up operations" (*адресные «зачистки»*) and that four residents had disappeared after the night raids at the end of 2002. Lema Khakiyev's name was listed as no. 2.

52. On 5 February 2003 the first applicant complained about her brother's abduction to the military prosecutor's office of the United Group Alignment ("the UGA"). The applicant provided a detailed description of the circumstances of Lema Khakiyev's apprehension and pointed out that he had told his wife to search for him at the ROVD. The first applicant further stated that on 20 August 2002 Lema Khakiyev had been interviewed about his past activities at the local FSB office, as a result of Mr E.B.'s complaint. The applicant requested to be provided with information about the charges brought against her brother and asked for assistance in establishing his whereabouts.

53. On 15 February 2003 the military prosecutor's office of military unit no. 20102 informed the first applicant that the inquiry had not confirmed the involvement of any servicemen in the crime and forwarded her complaint to the town prosecutor's office for examination.

54. On 28 April 2003 the investigator Mr V.D. from the town prosecutor's office summoned the first applicant for questioning as a victim. He told her that Lema Khakiyev was dead and that there was no point in searching for him but did not disclose his source of information. He promised to tell the applicant everything the following day. However, she was subsequently told that Mr V.D.'s assignment had come to an end and that he had left Grozny. The first applicant has never seen Mr V.D. since.

55. On 14 August 2003 the town prosecutor's office requested the ROVD to identify the officers of the Ministry of the Interior assigned to the ROVD in August 2002 and summon Mr E.B. for questioning.

56. On 18 August 2003 the ROVD replied that the information about the officers was available at the UGA and the headquarters of the Russian military in Khankala, Chechnya.

57. It appears that at some point in 2003 the town prosecutor's office entrusted the district prosecutor's office with the investigation in criminal case no. 52098.

58. On 24 August and 30 August 2003 respectively the Chechnya FSB department and the Operational Search Bureau ("ORB") informed the district prosecutor's office that they did not have any incriminating information about Lema Khakiyev, who was not listed in their databases.

59. At some point in 2003 the first applicant received a letter from a certain Mr R.Z., then detained in remand prison IZ-20/1 in Grozny. Mr R.Z. alleged that he had met Lema Khakiyev in the remand prison (*CHZO*) in Pyatigorsk. The applicant wrote to the district prosecutor's office, requesting clarification of that information. Mr R.Z.'s and the applicant's letters were not submitted to the Court.

60. On 1 December 2003 the FSB department of military counter-intelligence informed the district prosecutor's office that it had not detained Lema Khakiyev and did not have any information concerning his whereabouts.

61. On 14 April 2004 the interim Chechnya military commander reported that the military commanders' offices had not been manned in Chechnya until 1 July 2003. Consequently, they had no information as to Lema Khakiyev's disappearance, which had occurred on 21 August 2002.

62. On 21 April 2004 the military prosecutor's office of military unit no. 20102 informed the first applicant that its inquiry had failed to establish the involvement of any federal servicemen in her brother's abduction. The military prosecutor's office forwarded its inquiry file to the Chechnya prosecutor's office, which then transmitted it to the district prosecutor's office.

63. On 8 December 2004 the first applicant complained to the district prosecutor's office. In her letter she requested the authorities to take the following steps: resume the investigation in criminal case no. 52098; question Mr U.I., a resident of Michurina, who had asserted that Lema Khakiyev had been detained on FSB premises; establish the law-enforcement units which had been assigned to the ROVD in August 2002; question Mr N.T., who had seen Lema Khakiyev's abductors on the night of the events; inform her about the progress of the investigation and conduct it in an effective and thorough manner.

64. On 17 August 2005 the applicants' representatives wrote to the Chechnya prosecutor, the town prosecutor and the district prosecutor. They requested the following information: whether any progress had been made in the investigation into the abduction; what measures had been taken to establish the whereabouts of Lema Khakiyev and identify his abductors;

what had been the results of the measures taken by the ROVD in connection with the letter of 14 August 2003; whether the ROVD officers had been questioned; whether the investigators had identified and questioned the servicemen who had manned the checkpoints in the vicinity of the settlement; whether the investigators had identified the vehicles which had passed through the checkpoints on the night of the abduction; whether any special operation had been conducted against the members of illegal armed groups between 20 and 21 August 2002 in the Oktyabrskiy district of Grozny; and whether anyone had been detained.

65. It does not appear that any response was given to these requests.

66. On 10 May and 30 June 2006 the district prosecutor's office informed the applicants' representatives that on an unspecified date it had stayed the investigation in criminal case no. 52098 on account of the failure to identify the perpetrators. The investigators had failed to establish which units had conducted special operations against members of illegal armed groups in the settlement of Michurina between 20 and 21 August 2002.

67. On 23 August 2006 the first applicant wrote to the district prosecutor's office. In her letter she stated that Mr D.U., her brother's former colleague, Mr U.I., a former official of the Michurina settlement administration, and Mr M.D., Mr U.I.'s neighbour, had known that Lema Khakiyev had been detained on the local FSB premises. The applicant suspected them of having organised her brother's abduction and regretted that they had not even been questioned by the investigation.

68. On 11 September 2006 the first applicant requested the district prosecutor's office to inform her about the progress of the investigation into her brother's abduction. She stated that she had already provided the authorities with the names of the witnesses to be questioned, including Mr N.T., Mr U.I., Mr M.D., Mr D.U., Mr E.B. and Mr V.D. However, the investigating authorities had failed to question them. She reiterated that her brother's abduction had been consequent upon Mr E.B.'s report. The applicant also requested the authorities to establish the source of the investigator Mr V.D.'s allegations of Lema Khakiyev's death (see paragraph 54 above).

69. It does not appear that the first applicant has ever received a reply to this letter.

70. On 6 August 2007 the Oktyabrskiy District Court of Grozny ("the district court") granted the third applicant's request to declare Lema Khakiyev a missing person as of 30 August 2002. It noted that his whereabouts had remained unknown since the launch of criminal investigation file no. 52098 on 24 August 2002.

71. In addition, the applicants regularly applied in writing to various prosecutor's offices, complaining about the ineffective nature of the investigation. Their letters were routinely forwarded to the town prosecutor's office, and then to the district prosecutor's office.

2. Search for Musa Temergeriyev and subsequent investigation

72. In the evening of 27 December 2002, local police officers questioned the seventh to fourteenth applicants about the abduction of Musa Temergeriyev. They inspected the crime scene and collected the machine gun cartridges left after the abduction.

73. In the morning of 28 December 2002 the seventh applicant came to the military unit to enquire about Musa Temergeriyev. At the checkpoint she met relatives of other apprehended persons. The servicemen at the checkpoint denied having admitted any detainees.

74. According to the applicants, in the morning Ms Estamirova, a member of the NGO Memorial, managed to speak to the commander of the regiment over the phone. The man confirmed that Musa Temergeriyev had been brought to and registered at the grounds of the military unit. In the evening Ms Estamirova passed through the checkpoint and spoke to two servicemen. They explained that Musa Temergeriyev had been arrested by servicemen from Khankala temporarily assigned to the military unit. Since those servicemen were absent on an assignment, Ms Estamirova left. The applicants' attempts to meet the servicemen proved futile.

75. On 29 December 2002 at 11 a.m. the seventh applicant noticed two APCs leaving the grounds of the military unit. She recognised them as the vehicles which had been used during her brother's abduction.

76. On the same day Mr Boyarintsev, an assistant to the military prosecutor, spoke to the commanding officer of the military unit. The officer asserted that Musa Temergeriyev had been charged with unlawful storage of a grenade and taken to Khankala.

77. On 13 January 2003 the town prosecutor's office instituted a criminal investigation into the abduction of Musa Temergeriyev under Article 126 § 2 of the Criminal Code ("aggravated kidnapping"). The case was assigned no. 40060. It is unclear whether the applicants were notified of that decision in due time.

78. On an unspecified date the abduction case was assigned no. 40007.

79. On 17 July 2003 the town prosecutor's office stayed the investigation in case no. 40007 on account of the failure to identify the perpetrators. The decision stated as follows:

"... The preliminary investigation established that on 27 December 2002 at about 10.20 a.m. unidentified armed and camouflaged servicemen of the 2nd battalion of military unit no. 3186 had unlawfully entered the Temergeriyevs' house, searched it and discovered a grenade in the refrigerator... Meanwhile Musa Temergeriyev, born in 1952, returned home. [He] was arrested and brought in an APC to the military unit located on the grounds of the former 15th military base in Gudermesskaya Street in the Oktyabrskiy District in Grozny. [Thereafter] his whereabouts have remained unknown."

80. By a letter of 8 January 2004 the Chechnya prosecutor's office informed the seventh applicant that the whereabouts of her brother had not

been established and that operational-search measures were under way. The Chechnya prosecutor's office invited the applicant to address her questions and concerns to the district prosecutor's office. By a similar letter dated 27 February 2004 the seventh applicant was invited to address her queries to the town prosecutor's office.

81. On an unspecified date the investigation in case no. 40007 was entrusted to the district prosecutor's office. It is unclear whether the applicants were notified of that fact.

82. On 2 April 2004 a military prosecutor of the UGA requested military unit no. 20102 to conduct an additional inquiry in connection with the seventh applicant's complaint about her brother's disappearance.

83. On 15 May and 7 June 2004 the military prosecutor's office of the UGA and the military prosecutor's office of military unit no. 20102 informed the applicant that nothing in her complaint pointed to the involvement of any federal servicemen in the crime.

84. On 21 February 2005 the Chechnya military commander forwarded the seventh applicant's complaint about her brother's abduction to the Chechnya prosecutor's office. The military commander stated that:

“... On December 2002 officers of the Ministry of the Interior using two APCs without registration plates took him [Musa Temergeriyev] from his house to Khankala. At present, his whereabouts remain unknown”.

85. On 6 September 2005 the Chechnya FSB department informed the seventh applicant that FSB officials had not arrested Musa Temergeriyev and had no information on his whereabouts.

86. On 10 September 2005 the criminal police department of the Ministry of the Interior in Khankala notified the seventh applicant that it had no information as to Musa Temergeriyev's arrest by agents of law-enforcement authorities and federal forces deployed in Chechnya.

87. By a letter of 11 October 2005 the FSB department of military counter-intelligence notified the seventh applicant that the operational-search measures conducted by its branches in the Southern Federal Circuit had failed to establish Musa Temergeriyev's whereabouts.

88. By letters of 28 February and 20 March 2006 the branches of the Main Prisons Directorate of the Ministry of Justice (“the prisons directorates”) in the Rostov and Volgograd Regions informed the seventh applicant that Musa Temergeriyev was not being detained in any prisons in those regions and was not registered in the database of the Ministry of the Interior.

89. On 13 October 2006 the main military prosecutor's office transmitted the seventh applicant's request for assistance in the search for her brother to the military prosecutor of the UGA. The letter stated in particular that:

“... on 27 December 2002 federal servicemen arrested Musa Temergeriyev on suspicion of storing weapons and ammunition. The man subsequently disappeared.”

90. In addition, on several occasions the Chechnya prosecutor's office forwarded the seventh applicant's complaints to the district prosecutor's office. In response, the seventh applicant was informed, without any further details, that the investigation was pending or had been suspended and that measures aimed at finding her brother were being taken.

91. On an unspecified date the ROVD issued a certificate, stating that Musa Temergeriyev had no criminal record and that the ROVD had no "discrediting" information about him.

C. Information about the investigation submitted by the Government

92. Despite specific requests by the Court the Government did not disclose the entire contents of the criminal investigation files. Thus, they submitted some 210 pages from criminal investigation file no. 52098 and around 290 pages from criminal investigation file no. 40007, accompanied by 108 pages from a case file compiled by the military prosecutor's office of the UGA further to Musa Temergeriyev's disappearance. The Government produced witness statements, decisions to open, stay and resume the investigation or to grant victim status, letters to the relatives, and correspondence between different State authorities on the progress of the investigation in relation to both cases. They also appended copies of expert reports, records of some investigative steps and investigation plans in relation to case no. 40007.

93. With reference to criminal case no. 52098, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning witnesses or other participants in criminal proceedings.

94. The Government did not dispute the information concerning the investigation into the abduction of Lema Khakiyev and Musa Temergeriyev, as submitted by the applicants. They referred to a number of other procedural steps taken by the investigating authorities, in particular decisions to stay and resume the investigation, which had not been mentioned by the applicants. Their submissions and documents can be summarised in the following manner.

1. Investigation into the kidnapping of Lema Khakiyev

(a) Progress of the investigation in disappearance case no. 52098

95. On 21 August 2002 an investigator inspected Lema Khakiyev's house, but found nothing pertinent to the case.

96. On 24 August 2002 the town prosecutor's office instituted a criminal investigation (file no. 52098) into the abduction of Lema Khakiyev by "unidentified armed men in masks and camouflage uniforms". The Government submitted that the third applicant had been notified of the decision on the same day.

97. On 3 September 2002 the deputy town prosecutor asked the investigator in case no. 52098, *inter alia*, to question Lema Khakiyev's relatives and Mr E.B., and to send queries to different authorities in order to carry out research into Lema Khakiyev's personality.

98. On 5 September 2002 the investigator sent queries to the ROVD and the military commander's office, requesting Lema Khakiyev's work contracts, performance appraisals, records of disciplinary sanctions and rewards, information on his relationship with colleagues and ROVD officials, or any community complaint against him. The investigator also wrote to the Chechnya MVD, asking it to produce Mr E.B.'s complaint of 20 June 2002 and to inform him whether his accusations regarding Lema Khakiyev had been confirmed.

99. On the same date the investigation retrieved Mr E.B.'s original complaint from the administration of Grozny and appended it to case file no. 52098.

100. In September 2002 the military commander's office reported that it had no relevant information.

101. On 23 September 2002 the Chechnya MVD transmitted to the town prosecutor's office a twenty-five-page file compiled in respect of Lema Khakiyev further to Mr E.B.'s accusations. The Government submitted only one document from that file, according to which on 17 August 2002 the public safety department of the Chechnya MVD stated that their inquiry had not confirmed Lema Khakiyev's alleged involvement in illegal armed groups as a sniper from 1995 to 1996.

102. It follows from the documents submitted by the Government that between 2002 and 2009 the investigation was suspended and resumed on seven occasions. It appears that the first applicant was regularly informed of the decisions.

103. On 14 August 2003 the district prosecutor's office ordered the ROVD to check which regional military units had been deployed in the Oktyabrskiy district on 20 and 21 August 2002 and who had supervised them, and to summon Mr E.B. for questioning.

104. On 6 September 2007 the investigation unit of the Zavodskoy district of Grozny ("the district investigation unit"), a branch of the investigation department of the Chechnya prosecutor's office, was entrusted with the task of pursuing the investigation in case no. 52098 instead of the district prosecutor's office.

105. On 22 November 2007 a deputy town prosecutor criticised the progress of the investigation, in particular the failure to question Mr R.Z.

and to send queries to all the authorities concerned as to Lema Khakiyev's arrest, detention and admission to medical institutions, any criminal proceedings brought against him or the discovery of a body resembling him. The deputy town prosecutor ordered that the investigation be resumed.

106. On 9 February 2009 the head of the Procedural Control Unit, a branch of the investigation department of the Chechnya prosecutor's office, ordered the district investigation unit to: resume the investigation; question the first applicant, Mr E.B., Mr A.I., Mr R.Z. and a number of officials on duty from 21 August 2002, such as the district military commander, the head of the district ROVD and the ROVD officer in charge of the criminal police; check whether Mr A.M. could have been involved in Lema Khakiyev's abduction; inquire whether Lema Khakiyev had been held in the remand prison in Pyatigorsk; and ask the Ministry of the Interior, the Ministry of the Defence and the district military prosecutor's office to provide information concerning the district military commander and the ROVD staff at the relevant time, any special operation conducted in the night of 21 August 2002 or any person detained in that connection.

107. According to the Government, on 10 June 2009 the investigation in case no. 52098 was again resumed. That same day the Special Investigation Unit no. 2 (*Отдел по расследованию особо важных дел № 2*), a branch of the investigation department of the Chechnya's prosecutor's office, took over the investigation into Lema Khakiyev's disappearance. The Government submitted that the first applicant had been informed accordingly.

(b) Witness statements

108. From the Government's submissions and documents appended, it follows that the investigators questioned the first and the third applicants as well as several other persons.

109. The third applicant was questioned on 21 August and 11 September 2002. She testified that on 20 August 2002 Lema Khakiyev had been called to the Chechnya MVD in order to be questioned further to Mr E.B.'s allegations that he had been a sniper from 1995 to 1996. Upon his return, Lema Khakiyev had told his wife that the authorities had cleared him of all suspicion. On the following day a group of armed and camouflaged servicemen had burst into the family house through the courtyard and taken him away. They had spoken unaccented Russian. Lema Khakiyev had told the applicant to look for him at the ROVD since the intruders worked there. The servicemen had left on foot and there had been no car around.

110. The first applicant was questioned on 10 September 2002 and 19 February 2009. On 9 October 2002 the first applicant was granted victim status. She corroborated the third applicant's statements and added that on 21 August 2002 she had been in Nazran and learnt of Lema Khakiyev's kidnapping from the third applicant. They had conducted their own

investigation into the disappearance and established that Lema Khakiyev had been on bad terms with Mr E.B. The first applicant considered that their animosity had developed in 2001, when her brother had headed the administration of the Michurina settlement and often disagreed with Mr E.B.'s policy. Mr E.B. had obstructed Lema Khakiyev's work, which had made the latter quit. During the investigation, Mr A.I., an officer of the Oktyabrskiy district administration, had told the applicant that Lema Khakiyev had been detained on the premises of the Chechnya FSB. The applicant explained that, before the disappearance, her brother had owed 2,500 United States dollars (USD) to Mr A.M. Thereafter Lema Khakiyev's relatives had reimbursed Mr A.M. The applicant did not suspect Mr A.M. of the abduction.

111. On 8 October 2002 Mr E.B. testified that he did not have any personal animosity towards Lema Khakiyev but had received a number of complaints against the Michurina subdivision of the ROVD, where the latter had worked. Mr E.B. had written the report of 20 June 2002 in reaction to such complaints. That report had been a routine document totally unrelated to Lema Khakiyev's disappearance. Mr E.B. was unaware who could have abducted him. When questioned further on 2 March 2009, Mr E.B. added that the report meant that Lema Khakiyev had been trained as a sniper.

112. On 10 October 2002 Mr D.U., Lema Khakiyev's former colleague from the ROVD, stated that he had known him since 1970. He had been in Moscow on holiday when the kidnapping had occurred and learnt about it from relatives on 23 October 2002. Mr D.U. characterised Lema Khakiyev as a law-abiding citizen. He was unaware whether Lema Khakiyev had been a sniper from 1995 to 1996 and would not have believed it of him. During that period Lema Khakiyev had worked at the military commander's office. He had previously been trained as a sniper during his military service in Afghanistan. Mr D.U. confirmed that the Michurina subdivision of the ROVD had been on bad terms with the head of the Oktyabrskiy district administration, who had sent a number of complaints against their subdivision to different authorities. Lastly, Mr D.U. denied all knowledge of Lema Khakiyev's abductors and his involvement in a blood feud.

113. On 16 October 2002 and 24 February 2009 Mr A.M. testified that in 1996 he had lent Lema Khakiyev USD 3,000, which had subsequently been refunded by his relatives. Mr A.M. had learnt of Lema Khakiyev's abduction on 21 August 2002. He did not know who could have kidnapped him. It had been rumoured that the abduction had resulted from a complaint by the head of the Oktyabrskiy district administration.

114. Between October 2003 and March 2009 the investigation questioned four other witnesses, including Ms Kh.D., the third applicant's sister, and Mr A.I., an officer of the Oktyabrskiy district administration. Ms Kh.D. and Mr A.I. had learnt of the abduction from the local residents.

Mr A.I. denied having said that the disappeared man had been detained on FSB premises.

(c) Attempts to find Mr R.Z.

115. It follows from the documents submitted by the Government that since 2003 the investigating authorities had unsuccessfully tried to establish Mr R.Z.'s whereabouts and to question him.

116. On 10 November 2003 the district prosecutor's office resumed the investigation with reference to the first applicant's information that Mr R.Z. had met Lema Khakiyev in the remand prison (SIZO) in Pyatigorsk (see paragraph 59 above).

117. On an unspecified date the Chechnya prisons directorate reported that Mr R.Z. had been found guilty of handling weapons and released from detention in remand prison SIZO-1 in Grozny on 4 November 2003.

118. On 19 February 2009 the first applicant testified that she was unaware of Mr R.Z.'s whereabouts.

119. In March 2009 the investigating authorities questioned Mr R.Z.'s wife and sister. Both denied having his telephone number and were unaware of his whereabouts.

(d) Requests for information on Lema Khakiyev's abduction and whereabouts

120. The Government stated that the investigating authorities had sent queries to various State bodies, asking them to provide information concerning Lema Khakiyev's abduction and any special operations which might have been conducted in the settlement of Michurina on the night of 21 August 2002. In their letters different district departments of the interior stated that "on the night of 21 August 2002 Lema Khakiyev had been abducted from his house at no. 59 Mikhaylika Street in Grozny". The Government produced some copies of the replies to such requests, which can be summarised as follows.

121. On 24 August 2003 the Chechnya FSB department denied having any data about Lema Khakiyev or any incriminating information about him. On 30 August 2003 the ORB replied that he was not registered in its database.

122. On 18 August 2003 the ROVD denied any knowledge of military units deployed in the Oktyabrskiy district at the relevant time. On 1 December 2003 the FSB department of military counter-intelligence stated that no special operation entailing Lema Khakiyev's apprehension had been conducted by the FSB forces. The department denied all knowledge of any special operations conducted by other structures. On 4 December 2003 the military prosecutor's office of the UGA replied that all documents relating to special operations and checks conducted in 2002, and the military units and personnel who had participated in them, were stored in Rostov-on-Don.

123. On 30 March 2004 the head of military unit no. 54844 submitted that motor rifle division no. 42 had participated in a special operation conducted on 21 August 2001, while two other motor rifle divisions had blocked Grozny that day. He further underlined that motor rifle division no. 42 had been deployed exclusively to block settlements during special operations. He denied all knowledge of anyone who might have been detained as a result of those events. The Government added that Lema Khakiyev had not been mentioned on the list of detainees, but they did not submit the relevant detention records.

124. In November and December 2003 regional departments of the Main Prisons Directorate in the Southern Federal Circuit informed the investigation that Lema Khakiyev had not been detained in their remand facilities or prisons.

125. In January, February and May 2008 local bodies of the Ministry of the Interior reported that they had no information about Lema Khakiyev.

126. In December 2007 and January 2008 district investigation departments of the Chechnya prosecutor's office submitted that the district law-enforcement authorities had not brought criminal proceedings against Lema Khakiyev.

2. Investigation into the kidnapping of Musa Temergeriyev

(a) Progress of the investigation in disappearance case no. 40007

127. On 27 December 2002 an investigator of the ROVD inspected the applicants' house at no. 55 Mikhaylika Street. Although no transcript was appended to the Government's observations, it appears that four machine gun cartridges were collected.

128. On 13 January 2003 the town prosecutor's office instituted a criminal investigation into the abduction of Musa Temergeriyev by "unidentified men in camouflage uniforms and masks, using APCs", under Article 126 § 2 of the Russian Criminal Code ("aggravated kidnapping"). The case was assigned no. 40007.

129. It follows from the Government's submissions that between 2003 and 2009 the investigation was suspended on nine occasions and resumed on eight occasions. The seventh applicant was informed of the decisions.

130. On 12 May 2003 the town prosecutor's office referred the case to the military prosecutor's office for examination. With reference to witness statements given by the seventh applicant, Ms Estamirova and Mr Boyarintsev, the investigator stated as follows:

"... the investigation established that Mr Temergeriyev had been apprehended in his house ... and taken to an unknown destination by servicemen of military unit no. 3186. After the end of their posting in Grozny, the servicemen had left for the town of Reutov in the Moscow Region, where they have been deployed on a permanent basis. Mr Temergeriyev's whereabouts have remained unknown ever since.

The evidence collected in the present case forms a sufficient basis for considering the criminal responsibility of the servicemen who arrested Mr Temergeriyev and took him to the criminal police department of the Ministry of the Interior in Khankala.”

131. On 22 May 2003 the Chechnya prosecutor quashed the referral as premature and returned the case to the town prosecutor’s office. The prosecutor relied on the statement given by Mr Zhizhin, the head of the criminal police, who denied that Musa Temergeriyev had been delivered to the grounds of the criminal police department in Khankala.

132. On 14 December 2004 the district prosecutor’s office took over the investigation in case no. 40007. He ordered the investigation to take the following steps: to draw up an investigation plan; to question eyewitnesses and Musa Temergeriyev’s relatives in order to clarify the alleged involvement of the servicemen in the crime; to question the assistant to the military prosecutor in order to clarify the circumstances of Musa Temergeriyev’s apprehension and delivery to Khankala; to identify the head of the criminal police in Khankala at the material time; to check whether Mr Temergeriyev had been detained in any remand facilities or prisons; and to consider the possible referral of the investigation to the military prosecutor’s office.

133. On 27 April 2007 the decision of the district prosecutor’s office to suspend the investigation stated as follows:

“On 27 December 2002 at around 10.20 a.m. unidentified servicemen of the law-enforcement authorities entered the private house at no. 55 Mikhaylika Street ... [They] arrested Musa Temergeriyev and drove him in two APCs with registration numbers E-546 and E-548 to the grounds of the former 15th military base in the Oktyabrskiy district in Grozny, where military unit no. 3186 was deployed. Thereafter Mr Temergeriyev’s whereabouts have remained unknown.”

134. All subsequent decisions to resume or stay the investigation stated the facts in the same manner.

135. On various occasions the supervising prosecutors criticised the investigation in case no. 40007. They emphasised, in particular, that no measures had been taken to establish the provenance of the two APCs used by the abductors, to identify the servicemen who had arrested Mr Temergeriyev and to question his former colleagues.

(b) Witness statements

136. On 30 December 2002 the investigator submitted to the town prosecutor’s office the account given by the seventh applicant on 27 December 2002, and the accounts by the seventh and fourteenth applicants, Ms M.T. and Ms K.M., collected on an unspecified date. All of them had observed Musa Temergeriyev’s disappearance. They had asserted that he had been abducted by Russian servicemen in APCs. The servicemen had also planted a grenade in the Temergeriyevs’ refrigerator.

137. On 31 January 2003 and 9 October 2008 the seventh and ninth applicants were granted victim status in case no. 40007.

138. On 17 January 2003 the seventh applicant was questioned as a witness. After the acknowledgment of her victim status on 31 January 2003, she was questioned at least four times: on 21 April 2003, 14 April 2007, 9 October and 1 December 2008. The seventh applicant testified that before the abduction her brother had worked at the Main Prisons Directorate in Khankala. In the morning of 27 December 2002 a group of Russian servicemen, some of them with chevrons of the Ministry of the Interior, had taken him away in one of two APCs. They had Slavic features and had spoken unaccented Russian. The seventh and fourteenth applicants had seen the APCs enter the grounds of military unit no. 3186. The seventh applicant had immediately related the events to an on-duty police officer at the Michurina subdivision of the ROVD. The following day, a serviceman at the checkpoint and Ms Estamirova had told the applicant that Musa Temergeriyev had been taken to and registered at the grounds of the military unit. On 29 December 2002 Mr Boyarintsev had informed the applicant that her brother had subsequently been taken to the criminal police department in Khankala on suspicion of unlawful storage of a grenade.

139. The ninth applicant was questioned as a witness on two occasions: on 29 May 2003 and 20 December 2004. After the acknowledgment of her victim status on 9 October 2008, she was questioned twice: on 9 October and 22 December 2008. She gave the same account of the events as the seventh applicant. The applicant further submitted that Musa Temergeriyev had been detained at the military unit deployed on the grounds of the military base in the Oktyabrskiy district of Grozny. The military unit had occupied a five-storey half-destroyed building with a checkpoint.

140. The fourteenth applicant was questioned on 28 May 2003, 17 December 2004 and 14 April 2007. She made similar submissions to those of the seventh and ninth applicants, recalling that the intruders had Slavic features and had worn uniforms with chevrons of the Ministry of the Interior. She added that a large number of other military vehicles had been parked in the vicinity of their house on the day of the abduction. When the APCs with Musa Temergeriyev had taken off, the seventh applicant and Ms M.T. had run after them, while the fourteenth applicant had rushed to the ROVD.

141. On 29 May 2003 and 16 December 2004 the investigating authorities had questioned Ms M.T. She gave a similar account of the events to those given by the seventh, ninth and fourteenth applicants and submitted a number of additional details. On 28 December 2002 Ms M.T., the applicants, their neighbours and Ms Estamirova had got together in the vicinity of the military unit. While Ms Estamirova had entered the checkpoint building, Ms M.T. had had a conversation with an on-duty officer, who had confirmed that on 27 December 2002 at around 4 p.m.

servicemen had driven Musa and another Chechen man from the grounds of the military unit in the direction of the military base in Khankala. Those servicemen had worked in Khankala and had been temporarily assigned to the military unit. That information had been further confirmed by “Mr Vladimir Vladimirovich”, an officer at the military unit, with whom Ms M.T. had talked later in December 2002. Lastly, Ms M.T. submitted that a Russian serviceman from the Khankala military base had informed her that Musa Temergeriyev had been detained at the central commander’s office on terrorism charges. He had seen the man and provided a detailed description of him. However, fearing for his own safety, the serviceman had refused to assist Ms M.T. any further.

142. On 6 March 2003 and 28 April 2005 Ms Estamirova gave the following account of the events. On 28 December 2002 she had entered the grounds of the first battalion of the second regiment, where she had had two telephone conversations about Musa Temergeriyev with the battalion commander and another serviceman. The battalion commander had confirmed that Musa Temergeriyev had been arrested by the servicemen deployed on the grounds of the military unit. They had taken him to the military unit and registered him there. Mr Boyarintsev had subsequently informed the applicants and Ms Estamirova that Musa Temergeriyev had been held at the criminal police department in Khankala. The applicants had searched for him in Khankala but the authorities had denied that he had ever been brought there.

143. The Government also submitted copies of the accounts given in May 2003, December 2004, April 2007 and November 2008 by seven of Musa Temergeriyev’s neighbours residing in Mikhaylika Street, namely Ms K.I., Mr Z.U., Mr A.I., Ms A.D., Ms R.S., Mr Sh.T. and Ms M.U., and three of his former colleagues, Mr M.V., Mr B.M. and Mr M.K. Six of them had observed the events. Ms R.S. and Ms M.U. had also seen the servicemen put Musa Temergeriyev in one of the APCs. The neighbours and colleagues characterised him as a law-abiding, polite and outgoing person. Nobody had ever complained about him. He had never been involved in any illegal matters or armed groups.

144. Lastly, the Government submitted a number of references concerning Musa Temergeriyev given in May 2003 by the ROVD, the Oktyabrskiy district administration, the Chechnya prisons directorate and a number of residents of the settlement of Michurina. They emphasised that Musa Temergeriyev had been a hardworking and highly esteemed person responsive to others. He had no criminal record and the authorities had no “discrediting” information about him.

(c) Attempts to identify and question servicemen involved in the kidnapping

145. In July 2003 the military prosecutor’s office of military unit no. 20102 sent a query to the headquarters of the Internal Troops of the

Ministry of the Interior, seeking to identify the commander of military unit no. 3186 and the commander of a police department then deployed on the grounds of that unit.

146. In July 2003 different departments of the interior submitted that they had no relevant information.

147. On 20 July 2006 the district prosecutor's office ordered the investigating authorities to check which military units had been deployed on the grounds of the former 15th military base at the time and to see if the servicemen and commanding officers of military unit no. 3186 could be questioned.

148. In May 2007 the investigating authorities questioned three servicemen. From early November to the end of February 2003 these middle-ranking officers had been temporarily assigned to the first special battalion (*батальон оперативного назначения*) of military unit no. 3186 deployed on the grounds of the former 15th military base in the Oktyabrskiy district of Grozny. They testified that at the material time at least two subdivisions of the Special Purpose Police Unit (*Отдел милиции особого назначения* – OMON) had been deployed on the grounds of the military base along with the first special battalion and the military commander's office. The battalion staff had not been involved in special operations or allowed to detain anyone on their premises. The servicemen denied all knowledge of Musa Temergeriyev's detention and of any police officer named Mr Nikolenko or Nikolayenko.

149. In December 2008 the district investigation unit asked the head of the investigation committee to order his subordinates to establish the whereabouts of Mr P.Ch. and Mr I.Kh., two former servicemen of military unit no. 3186, who had subsequently been dispatched to the Yaroslavl Region, and question them about the circumstances surrounding the abduction.

150. It does not appear that any response was given to the above request.

(d) Attempts to establish Mr Nikolenko's whereabouts

151. On 20 January 2003 the investigating authorities questioned Mr Boyarintsev, then an assistant to the military prosecutor at military unit no. 20102. He submitted that on 29 December 2002 the military prosecutor of the UGA had directed him to visit the second battalion. Mr Boyarintsev had met the commander of the second battalion, whose name he had forgotten, and Mr Nikolenko, a middle-ranking police officer from Saratov, who, together with his subordinates, had been temporarily deployed on the grounds of the military unit. Both men had asserted that Musa Temergeriyev had been arrested at home on suspicion of unlawful storage of a grenade. He had been arrested by Mr Nikolenko's subordinates, who had subsequently delivered him to the military unit. On the same day those subordinates had taken Musa Temergeriyev to the criminal police

department in Khankala. Mr Nikolenko had identified Musa Temergeriyev on a photograph. After the meeting Mr Boyarintsev had explained to the applicants that their relative had been taken to the criminal police department in Khankala, and had reported this to the military prosecutor.

152. In July 2003 the Chechnya prosecutor's office requested a copy of Mr Boyarintsev's report. In October 2008 the military prosecutor's office of military unit no. 20102 replied that the report might have been destroyed as part of its archives collected in 2002 or 2003.

153. It follows from the Government's submissions that the investigation made several attempts to establish Mr Nikolenko's whereabouts. However, in all queries the investigating authorities wrongly referred to him as Mr Nikolayenko.

154. On 8 July 2003 the town prosecutor's office submitted a request to the military prosecutor of the UGA with a view to identifying Mr Nikolayenko and his colleague who had spoken to Mr Boyarintsev during his visit to military unit no. 3186 on 29 December 2002.

155. In January 2005 the deputy prosecutor of the Frunzenskiy district of Saratov and the main department of the Ministry of the Interior in the Saratov Region informed the investigation that Mr Nikolayenko had not served as a police officer there and had not been dispatched to the North-Caucasian Region.

(e) Expert reports

156. On 22 April 2003 the town prosecutor's office ordered a ballistic expert evaluation of the machine gun cartridges found at the applicants' house.

157. On 24 April 2003 the expert stated that the cartridges had been fired from one Kalashnikov-type machine gun and their individual characteristics made it possible to identify the weapon used.

158. On 4 July 2008 the Forensic Centre of the Chechnya MVD informed the investigating authorities that its database contained no mention of machine gun cartridges resembling those found on the crime scene and no mention of the gun from which they could have been fired.

159. On 3 July and 14 October 2008 the district investigation unit requested a forensic assessment of the ninth applicant's injuries sustained during her husband's arrest. On 17 November 2008 a forensic expert concluded that there were no visible injuries to report.

(f) Requests for information on Musa Temergeriyev's disappearance and whereabouts

160. According to the Government, the investigators requested information about Musa Temergeriyev's disappearance from various State authorities, stating that "on 22 December 2002 unidentified persons in two APCs had abducted Musa Temergeriyev from his house at no. 55

Mikhaylika Street in Grozny”. Certain requests issued in 2003, 2004 and 2008 stated that “after kidnapping Musa Temergeriyev, the servicemen had brought him to the grounds of military unit no. 3186 and then transported him to the criminal police department in Khankala”. The Government produced copies of the replies to such requests, which can be summarised as follows.

161. Further to a query from the International Committee of the Red Cross Mission in the Northern Caucasus concerning the abduction of over sixty men by federal servicemen in Chechnya, the deputy commander of the UGA replied in April 2003 that he had no information concerning most of those persons, including Musa Temergeriyev.

162. In April 2003 and May 2007 the Chechnya FSB informed the investigating authorities that it had no information as to Musa Temergeriyev’s involvement in illegal armed groups. In May 2007 the ORB-2 and district departments of the criminal police submitted that they had no “discrediting” information about him.

163. In May 2003 the military prosecutor’s office of military unit no. 20102 informed the town prosecutor that it had no information about special operations carried out in Chechnya at the time and referred to the North Caucasus department of the interior in Rostov-on-Don. It is unclear whether any query was ever sent there.

164. In 2003 and 2004 the military prosecutor of military unit no. 20102 submitted that its inquiries had not established the involvement of any servicemen in Musa Temergeriyev’s abduction. In August 2008 the military prosecutor of the UGA gave a similar reply.

165. In February 2003 the head of the criminal police department in Khankala, Mr Zhizhin, informed the town prosecutor’s office that Mr Temergeriyev had not been taken to the criminal police department in Khankala, since there were no detention facilities there. In February 2003 the head of the operational group for the prison system of the Ministry of Justice in the Northern Caucasus reported that there were no detention facilities on the premises of the operational group in Khankala. In July 2003 the military prosecutor’s office of the UGA and the military prosecutor’s office of military unit no. 20102 denied all knowledge of Musa Temergeriyev’s detention on the grounds of military unit no. 3186.

166. On 29 April 2003 the ROVD submitted that it had no information as to Musa Temergeriyev’s whereabouts. It added that house-to-house enquiries by its staff had revealed that “on 27 December 2002 camouflaged men armed with machine guns had taken Mr Temergeriyev to the 15th military base in two APCs with the registration numbers E-546 and E-548”.

167. In August 2006 regional departments of the prisons directorate in the Southern Federal Circuit informed the investigation that Musa Temergeriyev had not been detained in their remand facilities or prisons.

168. In 2007 and 2008 district departments of the criminal police reported that they had neither detained Musa Temergeriyev on criminal or administrative charges, nor carried out any investigation in respect of him. Musa Temergeriyev had not been registered in any internal database, admitted to medical facilities or granted victim status in criminal proceedings. The district departments of the criminal police had informed their staff, subordinates and the public about the disappearance. They had conducted house-to-house enquiries, disseminated search briefings concerning the disappeared man and had pursued search measures to establish his whereabouts and those of his abductors.

II. RELEVANT DOMESTIC LAW

169. 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

170. 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

171. The Government contended that the complaints should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Lema Khakiyev and Musa Temergeriyev had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints about the allegedly unlawful detention of their relatives or 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 failed to do.

172. 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

173. 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).

174. 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.

175. 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.

176. The Court considers that this limb of the Government's objection raises issues concerning the effectiveness of the criminal 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 ESTABLISHMENT OF THE FACTS

A. In respect of the disappearance of Lema Khakiyev

1. The parties' arguments

(a) The applicants

177. The applicants maintained that it was beyond reasonable doubt that the men who had intruded into their home and taken away Lema Khakiyev had been State agents. In support of their complaint they referred to the following evidence. First, they pointed out that Lema Khakiyev's abduction

had been the result of the complaint by the head of the district administration, Mr E.B., who had accused him of having been a sniper for illegal armed groups. Notwithstanding that those allegations had not been proved, no legal proceedings had been instituted against Mr E.B. Second, the abductors had been armed and camouflaged and had spoken unaccented Russian. The men had arrived in APCs late at night, which indicated that they had been able to circulate freely during the curfew and pass through military roadblocks. No special operation had been reported in the settlement of Michurina at the time. Third, prior to having been taken away, Lema Khakiyev had told his wife to search for him at the ROVD. The applicants also referred to witness statements to the effect that the abductors had taken him in the direction of the district military commander's office. Thereafter, the district military commander, who had introduced himself as Sergey, had confirmed that Lema Khakiyev had been under the control of State agents. In addition, several eyewitnesses had seen the military vehicles used by the abductors, including an APC, on the grounds of the district military commander's office. Lastly, the applicants referred to a number of reports issued by non-governmental organisations, such as Memorial and Human Rights Watch, which underlined the widespread and systematic practice of enforced disappearances in Chechnya.

178. The applicants further stressed that the Government had failed to submit the entire investigation file in criminal case no. 52098 – in particular, detention records – and invited the Court to draw inferences in favour of the applicants.

179. Lastly, they argued, referring to the circumstances of the abduction and the absence of any news of Lema Khakiyev for over seven years, that he must be presumed dead. That presumption was further supported by the circumstances in which he had been arrested, which should be recognised as life-threatening.

(b) The Government

180. The Government submitted that on 21 August 2002 “unidentified masked men in camouflage uniforms” had abducted Lema Khakiyev. They contended that there was no evidence that the abductors had been State agents. The Government relied on the following points. First, the replies to the investigators' queries revealed that there had been no special operation conducted in Grozny between 20 and 21 August 2002, no investigation had been initiated in respect of Lema Khakiyev, he had not been arrested or detained in any remand facilities or prisons, and no body resembling him had been discovered. Second, there was no convincing evidence that Lema Khakiyev's prolonged absence had resulted from his apprehension by State agents, rather than from his own wish to disappear or his abduction by illegal paramilitary groups, composed of Russian-speaking mercenaries of Slavic appearance, such as Ukrainians or ethnic Russians. The Government

contended that the latter had often introduced themselves as federal servicemen or law-enforcement officers.

181. The Government also raised some objections to the applicants' presentation of the facts. First, they pointed to an inconsistency in the applicants' statements as regards the means of transport used by the abductors. Thus, on 11 September 2002 the third applicant had testified that the abductors had arrived and left on foot (see paragraph 109 above), whereas in their observations the applicants submitted that they had used APCs. Second, the Government emphasised that neither the applicants nor the witnesses questioned by the investigating authorities had recalled any details of the abductors' clothes, weapons or markings on their uniforms, or any specific military jargon which they might have used.

182. The Government argued that the investigation into the incident was still pending and that there were no grounds for holding the State liable for the alleged violations of the applicants' rights. They lastly 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. Furthermore, the applicants had not applied to the domestic courts with a view to having Lema Khakiyev declared dead.

2. The Court's evaluation of the facts

183. 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).

184. The Court notes that despite its requests for a copy of the entire files of the investigation into the abduction of Lema Khakiyev, the Government withheld a number of documents from the case file. With reference to his abduction, the Government mentioned 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).

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

186. The applicants alleged that the persons who had taken Lema Khakiyev away on 21 August 2002 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 any other explanation of the events.

187. In so far as the Government questioned the credibility of certain applicants' statements on issues such as whether or not APCs were 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.

188. The Government suggested that the persons who had detained Lema Khakiyev could have been members of paramilitary groups. However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

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

190. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their relative was detained by State servicemen. In particular, the Court finds that Lema Khakiyev was detained at home by a large group of armed men in camouflage uniforms. The men moved freely during curfew hours. The witnesses stated that the intruders had acted in a manner similar to that of a security operation – they had checked Lema Khakiyev's identity documents and had spoken Russian among themselves and to the applicants. The applicants' neighbours also indicated that the men had then gone towards the building of the district military commander's office, and referred to the use of military vehicles, which would not have been available to illegal paramilitaries (see paragraph 19 above). Lema Khakiyev had recognised the abductors as ROVD officials and told the third applicant to look for him at the ROVD (see paragraph 17 above). In their applications to the authorities the applicants consistently maintained that Lema Khakiyev had been detained by unknown servicemen further to the accusations by the head of the district

administration, Mr E.B., and requested the investigation to look into that possibility. The domestic investigating authorities accepted factual assumptions as submitted by the applicants and took steps to check whether law-enforcement agencies and Mr E.B. had been involved in the kidnapping. Moreover, they obtained proof that a special operation had taken place in Grozny on the night in question and identified the military unit which had carried it out (see paragraph 123 above). However, it does not appear that any serious steps were taken to follow up this lead and to identify and question the persons involved.

191. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction 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 of the events in question, the Court finds that Lema Khakiyev was arrested on 21 August 2002 at his house by State servicemen during an unacknowledged security operation.

192. There has been no reliable news of Lema Khakiyev since the date of the kidnapping. His name has not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to him after the arrest.

193. 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 Lema Khakiyev or of any news of him for over seven years supports this assumption.

194. Furthermore, the Court notes the striking similarity between the two disappearances forming the subject of the present judgment, both of which occurred in the same street, although separated by four 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 applicants' allegation that Mr Khakiyev had been detained by unknown servicemen during an unacknowledged security operation.

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

B. In respect of the disappearance of Musa Temergeriyev

1. The parties' arguments

(a) The applicants

196. The applicants maintained that it was beyond reasonable doubt that the men who had intruded into their home and taken Musa Temergeriyev away had been State agents. In support of their complaint they referred to the following evidence. First, they emphasised that Musa Temergeriyev had been detained by a group of armed men in camouflage uniforms, who had been of Slavic appearance, had spoken Russian without any accent and had arrived in military vehicles – APCs – which could not have been available to anyone except State servicemen. Second, the applicants referred to investigation file no. 40007 – in particular, witness statements, decisions to resume the investigation, queries regarding the investigation and replies to them – which pointed out conclusively that Musa Temergeriyev had been taken to military unit no. 3186. Third, they stressed that the commander of the second battalion and the police officer Mr Nikolenko, who had worked on the grounds of the military unit, had confirmed to the assistant military prosecutor Mr Boyarintsev that some servicemen had arrested Musa Temergeriyev at home on suspicion of unlawful storage of a grenade, taken him to the military unit and subsequently transported him to the criminal police department in Khankala. Furthermore, two servicemen of that unit, with whom Ms Estamirova had spoken shortly after the abduction, had asserted that Musa Temergeriyev had been delivered there.

197. The applicants stated that the Government's arguments were in serious contradiction with the contents of investigation file no. 40007.

198. They further argued, referring to the circumstances of the abduction and the absence of any news of Musa Temergeriyev for over seven years, that he must be presumed dead.

(b) The Government

199. The Government submitted that on 27 December 2002 “unidentified masked men in camouflage uniforms armed with machine guns” had abducted Musa Temergeriyev. The Government stated that the applicants' allegations that the abductors had belonged to State agencies could not be confirmed. None of the applicants was able to provide a precise description of the abductors or to recall any details of their clothes, weapons or markings on their uniforms, or any specific military jargon which they might have used. The weapons used by the intruders could have been stolen or unlawfully obtained. Referring to the case-law of the European Court of Human Rights, the Government argued that, given the overall situation in Chechnya in 2002, the mere fact that the abductors had spoken Russian and

had been armed and camouflaged did not prove that they had belonged to State agencies or participated in a special operation carried out by the State.

200. The Government further contended that the investigation into the incident was still pending and that there were no grounds for holding the State liable for the alleged violations of the applicants' rights. They lastly 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. The Court's evaluation of the facts

201. The applicants alleged that Musa Temergeriyev had been taken away by the servicemen on 27 December 2002 and then killed. The Government did not challenge any of the factual elements underlying the application but denied any involvement of federal servicemen in the abduction. At the same time, the Government did not provide any other explanation of the events.

202. On the basis of the parties' submissions and the material in the case-file, including witness testimonies and official documents, the Court finds it established that on 27 December 2002 Musa Temergeriyev was detained at his home by a group of several servicemen, wearing camouflage uniforms and armed with submachine guns, who used two military vehicles – APCs – with the registration numbers E-546 and E-548 (see paragraphs 133-134 above). The servicemen delivered Mr Temergeriyev to the grounds of the 15th military base, registered him there and on the same day transported him to the criminal police department in Khankala (see paragraphs 138, 139, 141, 142 and 151 above). It appears that no formal records were drawn up by the military servicemen or the criminal police department in relation to the detention and questioning of Mr Temergeriyev or to any suspicions raised about him.

203. No explanation whatsoever has been forthcoming from any authority as to the subsequent whereabouts of Mr Temergeriyev. He has never been seen again and his family has had no news of him since the date of his disappearance. In such circumstances the Government's reference to the absence of final conclusions from the criminal investigation is insufficient to absolve them of their responsibility to account for the fate of detainees last seen alive in their hands (see *Akkum and Others*, cited above, § 211).

204. Taking into account its conclusions in paragraphs 193-194 above, the Court is convinced that the situation in which Musa Temergeriyev was arrested should be regarded as life-threatening. The absence of Mr Temergeriyev or of any news of him for over seven years supports the assumption that he has been killed.

205. For the above reasons the Court considers that it has been established beyond reasonable doubt that Musa Temergeriyev must be

presumed dead following his unacknowledged detention by State servicemen.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

206. 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

207. 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 Lema Khakiyev and Musa Temergeriyev

208. 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 Lema Khakiyev and Musa Temergeriyev.

2. *Alleged inadequacy of the investigation of the abductions*

(a) *In respect of the disappearance of Lema Khakiyev*

209. The first six applicants 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 three days after the abduction, victim status had not been granted to the first applicant until forty-five days after the launch of the investigation. The investigation had failed to identify and question a substantial number of witnesses, including eyewitnesses to Lema Khakiyev's abduction, servicemen who might have participated in special operations conducted in Grozny at the material time, and officers assigned to the ROVD, the district military commander's office and the district FSB department, despite the supervising investigator's request to that effect (see paragraph 106 above). The applicants also emphasised that the transcripts submitted by the Government revealed the superficial nature of the questioning. Lastly, the applicants argued that the investigation 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 contended that the fact that the investigation had been pending for such a long period of time without producing any known results was further proof of its ineffectiveness. 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.

210. The Government claimed that the investigation of the disappearance of the applicants' relative met the Convention requirement of effectiveness. In particular, the investigation had questioned a number of witnesses and sent queries to various law-enforcement authorities. The mere fact that the abductors had not been identified and their alleged membership of the federal forces had not been established could not serve as proof of the Government's failure to comply with the procedural aspect of Article 2.

211. 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).

212. In the present case, an investigation of the abduction was carried out. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

213. The Court notes at the outset that certain 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 produced by the parties and the information about its progress submitted by the Government.

214. 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 24 August 2002, three days after the detention occurred. Prior to that decision the investigator inspected the scene of the crime and questioned the third applicant. However, it appears that afterwards, a number of crucial steps were delayed. In particular, the first applicant was questioned on 10 September 2002 and granted victim status only on 9 October 2002. The head of the district administration, whom the applicants suspected of involvement in the crime, was first questioned in October 2002. Testimony from Mr A.I., the officer of the district administration who had alleged that Lema Khakiyev had been detained on the premises of the Chechnya FSB, was not obtained until February 2005. The relatives of Mr R.Z., who had allegedly seen Lema Khakiyev in the remand prison in Pyatigorsk in 2003, were questioned in March 2009. Furthermore, it does not appear that any requests for information about Lema Khakiyev's possible whereabouts were sent prior to 25 September 2002, over a month after the disappearance. 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, 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).

215. A number of essential steps were never taken. Most notably, it does not appear that the investigating authorities took any meaningful steps to follow up the information contained in the letter of 30 March 2004 from the head of military unit no. 54844 about the participation of a certain subdivision in the special operation in Grozny on the night in question, such as identifying and questioning the servicemen involved or their commanders, or collecting more information about the nature of the operation (see paragraph 123 above). The investigating authorities also failed to identify and question the servicemen who had manned the roadblock to which the witnesses referred and the other witnesses whose questioning was requested by the applicants and the prosecutors (see paragraphs 68 and 106 above).

216. The Court also remarks that even though the first applicant had been granted victim status, the applicants were informed only of the

adjournment and reopening 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.

217. The Court further notes that the investigation was adjourned and resumed a number of times and that on several occasions the supervising prosecutors criticised deficiencies in the proceedings and ordered remedial measures, but it appears that these instructions were not complied with. Furthermore, there were lengthy periods of inactivity on the part of the investigating authorities when no proceedings were pending.

218. Lastly, the Court finds it particularly disturbing that the two cases, concerning virtually similar facts which occurred in the same location within the space of four months, have never been treated as connected. Despite the factual similarity of the two cases and the possible involvement of the same perpetrators or commanders of the unacknowledged security operations resulting in the applicant's relatives' disappearance, the investigating authorities have never taken steps to connect the two events. The Court firmly believes that more coordinated efforts were required from the investigating bodies to bring to justice those responsible for what appears not to have been an isolated instance of enforced disappearances at the Michurina settlement in Grozny during the period in question.

219. 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 was 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. 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.

220. 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 Lema Khakiyev, in breach of Article 2 in its procedural aspect.

(b) In respect of the disappearance of Musa Temergeriyev

221. The last eight applicants argued that the investigation had not been effective and adequate, as required by the Court's case-law on Article 2. In particular, they noted that notwithstanding the life-threatening circumstances of the abduction, the investigation had been opened belatedly and had been adjourned and reopened a number of times, and thus the taking of the most basic steps had been protracted. The applicants underlined that as followed from the documents submitted by the Government, the investigation had considered only one version of the events, namely that Musa Temergeriyev had been detained by Russian servicemen; however, the investigation had been entrusted to the civilian prosecutor's office and not to the military prosecutor, which testified to the lack of independence and competence of the investigating authorities. Furthermore, they pointed out that the investigation had failed to take a number of important steps: to locate and question Mr Nikolenko, who had confirmed that Musa Temergeriyev had been brought to the grounds of the military unit (see paragraph 151 above), and the servicemen of the military unit who could have detained him; to establish the provenance of the two APCs used by the abductors; and to check whether the cartridges found on the crime scene had been registered in the federal database and ascertain which military unit could have used them. The applicants further submitted that they had not been informed properly of the most important investigative steps. In particular, they had been unaware of the questioning of the witnesses and had had no access to their statements. Hence, the applicants considered that they had been excluded from the criminal proceedings and had been unable to safeguard their legitimate interests. Lastly, they argued that the fact that the investigation had been pending for such a long period of time without producing any known results was further proof of its ineffectiveness. Referring to the relevant case-law of the Court and a number of international reports, the applicants submitted that there was strong and unequivocal evidence suggesting a consistent failure by the Government to investigate crimes committed by Russian federal servicemen in Chechnya and to bring the perpetrators to justice.

222. The Government claimed that the investigation into the disappearance of the applicants' relative met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators. They argued that a substantial number of witnesses had been questioned; the testimonies of the key witnesses, such as the seventh applicant, had been obtained on the very day of the disappearance; the crime scene had been examined; a ballistic expert evaluation of the machine gun cartridges found on the spot had been carried out; and

numerous requests for information had been sent to various law-enforcement authorities. The Government stressed that the mere fact that the applicants considered that the information about the investigation had been insufficient and that the investigation had not achieved the intended results could not serve as proof of its ineffectiveness. Referring to the Court's case-law, the Government stated that the applicants did not have the absolute right to secure a prosecution or conviction. Moreover, the investigation was still pending and the search for the perpetrators was still being pursued.

223. Drawing on the principles referred to above in paragraph 211, the Court notes a number of serious shortcomings in the investigation. Most notably, it does not appear that the investigation tried to establish the provenance of the two APCs with known registration numbers (see paragraph 133 above), or to locate and question Mr Nikolenko and his subordinates (see paragraph 151 above). Nor does it appear that any steps were taken to resolve the glaring inconsistency between the numerous statements and reports about the taking of Musa Temergeriyev to the premises of the criminal police department in Khankala and that department's commander's denial of his detention there (see paragraph 131 above).

224. The Court also notes a number of delays in taking important investigative steps. Thus, the seventh applicant reported her brother's abduction to the local police station immediately after the events (see paragraph 32 above) and the police officers questioned the seventh to fourteenth applicants and inspected the scene of the crime on the same day (see paragraphs 72 and 127 above). However, the investigation was opened only on 13 January 2003, that is, more than two weeks later. At the same time it is striking that the machine gun cartridges collected at the crime scene on 27 December 2002 were checked against the federal database only in July 2008 (see paragraph 158 above), despite the fact that as early as April 2003 the ballistic expert evaluation had concluded that their individual characteristics made it possible to identify the weapon used (see paragraph 157 above). Servicemen deployed on the grounds of the military base where Musa Temergeriyev had been taken after his detention were questioned in May 2007. It also does not appear that any requests for information about Musa Temergeriyev's possible whereabouts were sent prior to February 2003.

225. The Court also remarks that, as in the case concerning the kidnapping of Lema Khakiyev, 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.

226. 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 set out above (see paragraph 219 above),

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.

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

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

228. The applicants further relied on Article 3 of the Convention, submitting that as a result of their relatives' 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."

229. The Government disagreed with those 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

230. 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

231. 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).

232. In the present case the Court notes that the applicants are close relatives of the disappeared persons. For many years they have not had any news of the missing men. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing relatives. Despite their attempts, the applicants have never received any plausible explanation or information about what became of

them following their detention. The responses they received mostly denied State responsibility for their relatives' 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.

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

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

234. The applicants further stated that Lema Khakiyev and Musa Temergeriyev 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.”

235. The Government asserted that no evidence had been obtained by the investigators to confirm that Lema Khakiyev and Musa Temergeriyev 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

236. 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

237. 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 *Luhuyev and Others*, cited above, § 122).

238. The Court has found that Lema Khakiyev and Musa Temergeriyev were apprehended by State servicemen on 21 August and 27 December 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).

239. 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.

240. In view of the foregoing, the Court finds that Lema Khakiyev and Musa Temergeriyev 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

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

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

242. 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

243. 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

244. 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).

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

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

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

247. 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

248. The third to sixth, eighth, ninth and eleventh to thirteenth applicants claimed damages in respect of loss of earnings by their two relatives after their arrest and subsequent disappearance. They assumed that they would have been financially dependent on Lema Khakiyev and Musa Temergeriyev. They calculated the amounts their two relatives would have earned during the period in question, assuming that each of the applicants concerned would have been able to count on a certain percentage of their two missing relatives' eventual income. They also relied on the Ogden Actuarial Tables to calculate future pecuniary losses.

249. The third to sixth applicants claimed a total of 531,415 Russian roubles (RUB) under this heading (12,401 euros (EUR)). They submitted that they could not obtain salary statements in respect of Lema Khakiyev and that in such cases the calculation should be made on the basis of the subsistence level established by national law.

250. The eighth, ninth and eleventh to thirteenth applicants claimed a total of RUB 546,385 (EUR 12,752). They submitted that Musa Temergeriyev had worked for a private construction company at the time of his arrest. According to a handwritten note signed on 12 October 2009 by two persons who had worked for the same company, from 2000 to 2002 Mr Temergeriyev's average monthly salary amounted to RUB 9,950 (EUR 232).

251. 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 not used.

252. 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”.

253. The Court reiterates that, in appropriate cases, the applicants' claims in respect of pecuniary damage may include compensation for 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' family members and the loss by the applicants of the financial support which they could have provided. The Court further finds that the loss of earnings also applies to dependent children and, in some instances, to elderly parents and that it is reasonable to assume that their missing relatives would eventually have had some earnings from which the applicants would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). 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' family members and the loss by the applicants of the financial support which they could have provided. Having regard to the parties' submissions, the Court awards the following sums to the applicants in respect of pecuniary damage, plus any tax that may be chargeable on these amounts:

- (i) EUR 12,400 to the third to sixth applicants jointly;
- (ii) EUR 2,800 to the eighth applicant's heirs;
- (iii) EUR 9,950 to the ninth, eleventh, twelfth and thirteenth applicants jointly.

B. Non-pecuniary damage

254. Each of the two families (the first to sixth applicants in respect of Lema Khakiyev and the seventh to fourteenth applicants in respect of Musa Temergeriyev) claimed EUR 1,000,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives.

255. The Government found the amounts claimed exaggerated.

256. 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' two relatives. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the following amounts to the applicants, plus any tax that may be chargeable thereon:

- (i) EUR 60,000 to the first to sixth applicants jointly;
- (ii) EUR 60,000 to the seventh and ninth to fourteenth applicants jointly.

C. Costs and expenses

257. All applicants were represented by the SRJI. They submitted itemised schedules 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 lawyers working on the exhaustion of domestic remedies and EUR 150 per hour for lawyers working on the submissions to the Court and the SRJI experts. They also claimed administrative and postal expenses. The aggregate claims in respect of costs and expenses related to legal representation amounted to EUR 5,029 for the first to sixth applicants and to EUR 8,147 for the seventh to fourteenth applicants. The applicants requested the Court to order the payment of the fees awarded under this heading directly into the representatives' account in the Netherlands.

258. The Government did not contest the amounts claimed, but reminded the Court that the applicants were entitled to reimbursement of their costs and expenses only in so far as they were actually incurred and reasonable.

259. The Court may make an award in respect of costs and expenses in so far as 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 3,500. On the same basis, it awards jointly to the seventh and ninth to fourteenth applicants the sum of EUR 4,000, 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 representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

260. 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 substantive violation of Article 2 of the Convention in respect of Lema Khakiyev and Musa Temergeriyev;
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 Lema Khakiyev and Musa Temergeriyev disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Lema Khakiyev and Musa Temergeriyev;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5 of the Convention;
10. *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 rate applicable at the date of settlement, save for the award in respect of costs and expenses:
 - (i) in respect of pecuniary damage:
 - (α) EUR 12,400 (twelve thousand four hundred euros) to the third to sixth applicants jointly;
 - (β) EUR 2,800 (two thousand eight hundred euros) to the eighth applicant's heirs;
 - (γ) EUR 9,950 (nine thousand nine hundred and fifty euros) to the ninth, eleventh, twelfth and thirteenth applicants jointly;
 - (ii) in respect of non-pecuniary damage:
 - (α) EUR 60,000 (sixty thousand euros) to the first to sixth applicants jointly;
 - (β) EUR 60,000 (sixty thousand euros) to the seventh and ninth to fourteenth applicants jointly;
 - (iii) in respect of costs and expenses, the following awards, plus any tax that may be chargeable to the applicants, to be paid into their representatives' bank account in the Netherlands, as identified by the applicants:
 - (α) EUR 3,500 (three thousand five hundred euros) to the first six applicants jointly;

- (β) EUR 4,000 (four thousand euros) to the seventh and ninth to fourteenth applicants jointly;
- (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;

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

Done in English, and notified in writing on 17 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President