



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

FIRST SECTION

CASE OF SHOKKAROV AND OTHERS v. RUSSIA

(Application no. 41009/04)

JUDGMENT

*This version was rectified on 1 June 2012
under Rule 81 of the Rules of Court*

STRASBOURG

3 May 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 Shokkarov and Others v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Christos Rozakis,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 5 April 2011,

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

PROCEDURE

1. The case originated in an application (no. 41009/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Russian nationals listed below (“the applicants”), on 19 November 2004.

2. The applicants were represented by lawyers of the International Protection Centre, an NGO registered in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that two relatives of theirs had been deprived of their lives by members of law-enforcement agencies in Chechnya and that the ensuing investigation into the events had been ineffective. They relied on Articles 2, 3 and 5 of the Convention.

4. On 7 January 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (the former Article 29 § 3 of the Convention). The President of the Chamber acceded to the Government’s request not to make publicly accessible the documents from the criminal investigation file deposited with the Registry in connection with the application (Rule 33 of the Rules of Court).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

(1) Mr Vakha Shokkarov (also spelled Vakhi Shokarov), who was born in 1941,

(2) Ms Amani Shokkarova (also spelled Shokarova), who was born in 1939,

(3) Ms Khava Shokkarova (also spelled Shokarova), who was born in 1964, and

(4) Ms Zulay Tatsegova¹.

The first and second applicants are the parents of Mr Visadi (also known as Murad) Shokkarov (also spelled Shokarov and Shakarov), who was born in 1972, and Mr Visita (also spelled Visit) Shokkarov, who was born in 1966. Visita Shokkarov was married to the third applicant; Visadi Shokkarov was married to the fourth applicant. At the material time the Shokkarovs were residing in the Satsita camp for internally displaced persons in Ordzenikidzovskaya, Ingushetia. At some point later they moved back to Grozny, Chechnya, where they are currently residing.

A. Events of January 2003 and subsequent developments

1. Information submitted by the applicants concerning Visadi Shokkarov

(a) Arrest of Visadi Shokkarov

7. At about 7 a.m. on 6 January 2003 a group of policemen from the Sunzhenskiy district department of the interior (ROVD) in Ingushetia arrived at the Satsita camp in four vehicles. They arrested Visadi Shokkarov and took him away without any explanation.

8. Later that day Visadi Shokkarov's relatives came to the ROVD; the policemen told them that Visadi was detained in the police station.

(b) Criminal proceedings against Visadi Shokkarov

9. On 21 January 2003 Visadi Shokkarov was charged with the aggravated murder of two officials from the Nadterechniy district administration in Chechnya.

¹ Rectified on 1 June 2012: the text was "Ms Zulay Patsegova".

10. On 22 January 2003 the Nadterechniy District Court authorised Visadi Shokkarov's detention on remand until 20 March 2003, stating that there was a risk of his absconding from the authorities.

11. At some point the first applicant retained a lawyer to represent his son's interests. On 27 and 31 January, as well as on 5 February 2003, the lawyer requested that he be allowed to contact Visadi Shokkarov, but to no avail.

(c) Visadi Shokkarov's death

12. On 2 February 2003 Visadi Shokkarov and his co-accused Mr V.B. were taken for the reconstruction of events to the site of the murder in the Nadterechniy district. They were in a car driven by Mr B., an officer of the Federal Security Service (FSB). Near Bena-Yurt (also spelled Beno-Yurt) in the Nadterechniy district the car fell into a pit and exploded. Visadi Shokkarov and Mr V.B. died, whereas officer B. survived.

13. On 10 February 2003 Visadi Shokkarov's lawyer again requested the investigators to allow him to visit Visadi Shokkarov and was informed that his client had died.

(d) Forensic examinations of Visadi Shokkarov's corpse

14. On 3 February 2003 the Nadterechniy district prosecutor's office (the Nadterechniy prosecutor's office) ordered a post-mortem examination of Visadi Shokkarov's corpse. The applicants were not informed about this decision.

15. Between 3 February and 1 March 2003 an expert of the Mozdok forensic bureau carried out the autopsy. According to the report, Visadi Shokkarov had died from blunt complex trauma to the head and chest, which had been probably inflicted on him in the car crash. The expert also stated that the body had burned and charred after the death.

16. On 11 February 2003 Visadi Shokkarov's lawyer informed the applicants about his client's death. On the same date in the Mozdok town morgue the applicants collected a burnt and unidentifiable corpse without internal organs; they were told that it was Visadi Shokkarov's body.

17. On 11 February 2003 the Mozdok forensic bureau issued a death certificate stating that Visadi Shokkarov had died on 2 February 2003 in Bena-Yurt as a result of "blunt complex trauma to the head and chest with subarachnoid haematoma, cerebral injury, cardiac rupture, incomplete separation of the lung, burning and charring of the corpse".

18. On 16 June 2003 the Mozdok district prosecutor's office in North Ossetia requested that the applicants collect Visadi Shokkarov's body, which had been brought to the Mozdok morgue by Mr I., an investigator from the Nadterechniy prosecutor's office, on 3 February 2003. On an unspecified date the applicants visited the Mozdok morgue, examined the corpse and concluded that it was not that of Visadi Shokkarov.

(e) Official investigation into Visadi Shokkarov's death

(i) Criminal proceedings against the FSB officer B.

19. On 10 February 2003 the military prosecutor's office of military unit no. 20111 ("the military prosecutor's office") instituted criminal proceedings against the FSB officer B., who had driven the exploded car, under Article 350 § 3 of the Russian Criminal Code (breach of rules on using a special vehicle causing two or more deaths). The case was assigned no. 46012.

20. On 18 February 2003 the military prosecutor's office found that officer B. had lost control of the vehicle because Visadi Shokkarov had hit him and discontinued the proceedings against the officer for lack of *corpus delicti*.

(ii) The applicants' appeals against the decision of 18 February 2003

21. On 10 September 2003 the applicants appealed against the decision of 18 February 2003 to the Sunzhenskiy District Court of Ingushetia, the Nadterechniy District Court in Chechnya and the Chechnya Supreme Court. They stated that Visadi Shokkarov's self-incriminating statements and the confession to the murders had been made as a result of torture being applied to him and that the circumstances of his death in the car crash had not been effectively investigated. The applicants requested the courts to overrule the decision to terminate the investigation into the death of Visadi Shokkarov, to order the investigative authorities to carry out an effective investigation of his ill-treatment and death and to provide them and their representatives with access to the criminal case file. From the documents submitted to the Court it follows that all of the complaints were lodged by the first applicant, who provided the courts with his address at the Satsita camp in Ingushetia.

22. On 7 July 2004 the applicants' representatives requested the Sunzhenskiy District Court of Ingushetia, the Nadterechniy District Court in Chechnya and the Chechnya Supreme Court to inform them of the outcome of the examination of the complaints they had lodged in September 2003.

23. On 4 August 2004 the Nadterechniy District Court informed the applicants' representatives of the following:

"... the Nadterechniy District Court is informing you that V.A. Shokkarov's complaint against the law-enforcement agencies was examined and rejected on 6 October 2003.

A copy of this decision was forwarded to the applicant's address on 9 October 2003 under outgoing no. 2150."

According to the applicants, they neither participated in the examination of their complaint on 6 October 2003 nor received the copy of the court's decision, since on an unspecified date in the autumn of 2003 they had had to leave the Satsita camp owing to the dismantling of the camp by the local

authorities. Therefore, in October 2003 they had not resided at the address provided by them to the Nadterechniy District Court. The applicants did not submit to the Court any document confirming the dismantling of the camp in the autumn of 2003.

24. On 12 January 2005 the Sunzhenskiy District Court informed the applicant that

“... on 23 October 2003 the District Court left V.A. Shokkarov’s complaint unexamined as the criminal case concerning [the death of] Visadi Shokkarov had been investigated by a prosecutor’s office in Chechnya. It was recommended that the applicant apply to the court where the relevant prosecutor’s office was situated.”

25. The applicants did not appeal against the decisions of the Nadterechniy and the Sunzhenskiy District Courts.

26. According to the applicants, no reply was received from the Chechnya Supreme Court to their request of 7 July 2003. The outcome of these proceedings remained unknown as the applicants did not lodge any further requests with the court.

(iii) The applicants’ correspondence with State agencies

27. On 22 January 2003 the Special Envoy of the Russian President in Chechnya for Rights and Freedoms (“the Envoy”), on behalf of the applicants, requested the Ingushetia prosecutor’s office to inform him of the whereabouts of Visadi and Visita Shokkarov and the grounds for their arrest. The letter stated that the two brothers had been detained by officers of the Sunzhenskiy ROVD on 6 January 2003, that Visadi had been arrested in the Satsita camp and that Visita had been arrested later on the same date on the premises of the ROVD.

28. On 10 February 2003 the Ingushetia prosecutor’s office replied to the Envoy as follows:

“... on 6 January 2003 officers of the Sunzhenskiy ROVD, acting on instructions from the Nadterechniy district prosecutor’s office in Chechnya, arrested Mr Murad Shokarov (a.k.a. Visadi) on suspicion of murdering Mr Z. and Ms Kh. ... and took him to the Sunzhenskiy ROVD. Mr Visita Shokarov was taken to the ROVD together with Mr Shokarov. On the same day the two men were handed over to the head of the investigative unit of the Nadterechniy district prosecutor’s office Mr P. and officers of the Nadterechniy ROVD who accompanied him.”

29. Between February and June 2003 the authorities conducted a forensic examination of Visadi Shokkarov’s corpse and issued his death certificate (see paragraphs 15 and 17 above).

30. On 31 March 2003 the first applicant requested the Sunzhenskiy district prosecutor’s office (“the Sunzhenskiy prosecutor’s office”) and the Chechnya prosecutor’s office to conduct an investigation into Visadi Shokkarov’s arrest and death.

31. On 7 April 2003 the Chechnya prosecutor’s office informed the first applicant of the following:

“On 20 January 2003 officers of the Nadterechniy district department of the Federal Security Service, together with officers of the Sunzhenskiy ROVD, acting on the basis of information concerning the murder of the head of the Nadterechniy district administration, arrested Mr V[isadi] Shokkarov. On 21 January 2003 he was charged [with a crime punishable] under Article 105 § 2 and Article 277 of the Russian Criminal Code; on 22 January 2003 his detention was authorised by a court.”

The letter further mentioned that Visadi Shokkarov had partly confessed to the murder and described the circumstances of his death in the car crash. It also informed the applicants that the criminal proceedings against the FSB officer B. had been terminated for lack of *corpus delicti*.

32. On 30 April 2003 the Nadterechniy prosecutor’s office informed the applicants that Visadi Shokkarov’s death had been investigated by the military prosecutor’s office and that the applicants had already been informed of the outcome of that investigation.

33. On 7 August 2003 the Ingushetia prosecutor’s office informed the applicants’ representatives that on 6 January 2003 the ROVD police officers had arrested Visadi Shokkarov on the basis of a written instruction from the Nadterechniy prosecutor’s office. The letter further stated that Visadi Shokkarov had also been arrested and that on the same date, 6 January 2003, the Shokkarov brothers had been handed over to the investigator from the Nadterechniy prosecutor’s office, Mr V.P., and the servicemen of the Nadterechniy ROVD.

34. On 15 August 2003 the Nadterechniy prosecutor’s office informed the applicants’ representatives that the military prosecutor’s office had terminated the criminal proceedings against the FSB officer B. for lack of *corpus delicti*.

35. On 5 September 2003 the first applicant complained to the Chechnya prosecutor’s office, the military prosecutor’s office of the United Group Alignment (“the UGA prosecutor’s office”), the Prosecutor General’s office and the Chief Military Prosecutor’s office and requested to be provided with a copy of the decision of 18 February 2003 concerning the termination of the criminal proceedings for lack of *corpus delicti*. He stated that Visadi Shokkarov’s confession to the murders had been obtained under duress, that several attempts by his lawyer to meet Visadi in detention had been futile and that the circumstances of his death in the car crash had been suspicious. The applicant further requested that this decision be overruled, that the investigation of Visadi Shokkarov’s death be continued and that he and the applicants’ representatives be provided with access to the criminal case file.

36. On 10 September 2003 the applicants requested the Nadterechniy prosecutor’s office to provide them with copies of documents relating to the investigation of Visadi Shokkarov’s death. On the same date they appealed against the decision to discontinue the criminal investigation into Visadi Shokkarov’s death (see paragraph 21 above).

37. On 29 September 2003 the Nadterechniy prosecutor’s office informed the applicants’ representatives that the criminal case had been

joined with another criminal case and transferred to the Chechnya Supreme Court on 7 April 2003.

38. On 18 January 2005 the Sunzhenskiy prosecutor's office in Ingushetia informed the applicants of the following:

“... based on the information received from the Sunzhenskiy ROVD and the statement obtained from one of the participants [in the arrest], it was established that on 6 January 2003, at the request of police officers from the Nadterechniy ROVD who had arrived with the investigator of the Nadterechniy district prosecutor's office Mr V.P. and the head of the criminal search department of the Nadterechniy ROVD Mr S., the officers of Sunzhenskiy ROVD had assisted them in arresting the Shokkarov brothers, who had been suspected of killing of the head of the Nadterechniy district administration.

After the arrest the Shokkarov brothers had been taken away by the officers of the Nadterechniy ROVD...”

The letter further stated that the applicants could obtain additional information about the detention from the investigator Mr V.P. and the head of the criminal search department of the Nadterechniy ROVD, Mr S.

2. Information submitted by the Government concerning Visadi Shokkarov

(a) Criminal proceedings against Visadi Shokkarov

39. According to the Government, at the material time the Nadterechniy ROVD, the Nadterechniy prosecutor's office and the Nadterechniy department of the FSB were situated next to each other in the same courtyard.

40. On 9 September 2002 the Shatoy district prosecutor's office in Chechnya (“the Shatoy prosecutor's office”) opened criminal case no. 65034 in connection with the murder of two officials from the Nadterechniy district administration.

41. On 20 January 2003, in the course of the investigation in criminal case no. 65034, the law-enforcement agencies arrested Visadi Shokkarov, who subsequently confessed to murdering the two officials from the Nadterechniy district administration. The Government stated that according to the detention record dated 20 January 2003, Visadi Shokkarov had been detained on 20 January, and not on 6 January 2003.

42. On 21 January 2003 Visadi Shokkarov was charged with the two murders and on 22 January 2003 the Nadterechniy District Court remanded him in custody.

43. On 2 February 2003 the FSB officers B., S. and P. were requested by the investigation to convey Visadi Shokkarov and his co-accused Mr V.B. to Bena-Yurt for the reconstruction of the crime. The reconstruction had been requested by Visadi Shokkarov and his co-accused. In the vicinity of the village Visadi Shokkarov hit the driver in the back of the neck. The

latter lost control of the vehicle, and the car fell into an open pit, turned over and exploded. As a result, the servicemen managed to get out of the car, but Visadi Shokkarov and Mr V.B. remained inside and died.

44. On 28 March 2003 the Nadterechniy prosecutor's office terminated the criminal investigation in case no. 65034 in respect of Visadi Shokkarov on account of his death.

(b) Official investigation into Visadi Shokkarov's death

45. On 10 February 2003 the military prosecutor's office opened criminal case no. 34/34/0015-03D against the FSB officer B. under Article 350 § 3 of the Russian Criminal Code (breach of rules on using a special vehicle causing two or more deaths).

46. On 18 February 2003 the military prosecutor's office discontinued the criminal proceedings against the officer for lack of *corpus delicti*.

47. On 18 February 2003 criminal case no. 34/34/0015-03D was transferred to the Nadterechniy prosecutor's office, where it was assigned no. 46012. On 6 March 2003 the criminal case file was joined with criminal case no. 65034 under the joined number 65034.

48. On 23 October 2003 the Sunzhenskiy District Court of Ingushetia refused to examine the applicants' appeal against the decision of 18 February 2003 for lack of territorial jurisdiction. The applicants failed to appeal against that decision.

49. The Government submitted that the applicants had not appealed against the decision of 18 February 2003 to any of the courts in Chechnya.

3. Information submitted by the applicants concerning Visita Shokkarov

(a) Abduction of Visita Shokkarov

50. On 6 January 2003, while the applicants, their relatives and other residents of the Satsita camp were waiting outside the Sunzhenskiy ROVD building for news of Visadi Shokkarov following his arrest, two men in civilian clothes approached Visita Shokkarov. They asked his relatives to wait for Visita just for a few minutes and took him through the gates into the courtyard of the ROVD. The applicants have not seen him ever since.

(b) Official investigation into the abduction

51. On 24 March 2003 the first applicant requested the Sunzhenskiy prosecutor's office in Ingushetia to institute an investigation into Visita Shokkarov's disappearance. On 31 March 2003 the Sunzhenskiy prosecutor's office forwarded the request to the Nadterechniy prosecutor's office in Chechnya.

52. On 31 March 2003 the first applicant complained about the abduction of Visita Shokkarov and the death of Visadi Shokkarov to the Chechnya prosecutor's office. The complaint was received by the office on 3 April 2003.

53. On 7 April 2003 the Chechnya prosecutor's office informed the applicants that the criminal proceedings concerning the death of Visadi Shokkarov had been terminated on 18 February 2003 for lack of *corpus delicti*. The letter also stated that

“... Visita Shokkarov, who had been detained with Visadi Shokkarov, was released by officers of the Nadterechniy FSB after a check ...”

54. On 30 April 2003 the Nadterechniy prosecutor's office dismissed the first applicant's complaint about the abduction of Visita Shokkarov, stating that Visita Shokkarov had been lawfully arrested in connection with criminal case no. 65034 (it appears that the investigators confused Visita Shokkarov with his brother Visadi). They also noted that “the military prosecutor's office had opened an investigation into V.V. Shokkarov's death” and that the applicant had been informed about its outcome.

55. On 7 August 2003 the Ingushetia prosecutor's office informed the applicants' representatives that on 6 January 2003 the ROVD police officers had arrested Visita Shokkarov along with his brother Visadi and that on the same date, 6 January 2003, the Shokkarov brothers had been handed over to the investigator of the Nadterechniy prosecutor's office, Mr V.P., and the servicemen of the Nadterechniy ROVD from Chechnya, and that the subsequent whereabouts of the brothers were unknown to the Ingushetia prosecutor's office (see paragraph 33 above).

56. On 9 August 2003 the Nadterechniy prosecutor's office instituted an investigation into Visita Shokkarov's disappearance under Article 126 § 1 of the Russian Criminal Code (kidnapping). The case was assigned no. 46037. The applicants were informed of the decision on 14 August 2003.

57. On 19 August 2003 the Nadterechniy prosecutor's office granted the third applicant victim status in the criminal case. The decision stated that on 6 January 2003 Visita Shokkarov had been arrested along with his brother Visadi and taken to the Sunzhenskiy ROVD and subsequently to the village of Znamenskoye in the Nadterechniy district, and released the following day. However, Visita Shokkarov had not returned home and had gone missing.

58. On 27 September 2004 the Chechnya prosecutor's office informed the third applicant that an investigation into Visita Shokkarov's abduction was under way.

4. Information submitted by the Government concerning Visita Shokkarov

(a) Disappearance of Visita Shokkarov

59. On an unspecified date the third applicant complained about the disappearance of Visita Shokkarov to the Mozdok district prosecutor's office in North Ossetia. On 16 June 2003 the office informed her that Visita had not been detained in the Mozdok ROVD.

60. On 7 June 2003 the third applicant complained to the Envoy about the abduction of Visita Shokkarov. On 1 July 2003 this complaint was forwarded to the Chechnya prosecutor's office and on 1 August 2003 it was received by the Nadterechniy prosecutor's office.

61. On an unspecified date the Mozdok forensic bureau informed the investigators that on 3 February 2003 an investigator from the Nadterechniy prosecutor's office had brought Visadi Shokkarov's corpse to the morgue and requested the third applicant to collect it. It appears that the investigator had been confused and instead of stating that the corpse belonged to Visadi Shokkarov he had stated that it had belonged to Visita Shokkarov.

(b) Official investigation of Visita Shokkarov's disappearance

62. On 9 August 2003 the Nadterechniy prosecutor's office opened criminal case no. 46037 (also referred to as no. 54043) under Article 126 § 1 of the Criminal Code (kidnapping) in connection with the abduction of Visita Shokkarov from Ordzhenikidzovskaya on 6 January 2003.

63. On 19 August 2003 the investigators granted the third applicant victim status in the criminal case and questioned her. The applicant stated that on 6 January 2003 her relative Visadi Shokkarov and another man had been taken from the camp in Ordzhenikidzovskaya by armed masked men to the Sunzhenskiy ROVD in Ingushetia. After that she, her husband Visita and other relatives had gone to the ROVD to find out the reasons for Visadi's arrest. Near the ROVD her husband Visita had been approached by two men, who had come out of the ROVD building. They had taken Visita into the police station. The applicant had attempted to follow Visita, but she had been stopped at the entrance by the deputy head of the ROVD, Mr I.M., who had told her that Visita had been taken in for questioning and would be released shortly afterwards. The applicant had seen through a crack in the fence that her husband Visita and his brother Visadi had been put by police officers into a UAZ car and after that the car had driven away. After that the ROVD policemen had told her that Visita had been taken from the ROVD to Znamenskoye, in the Nadterechniy district, Chechnya, by representatives of the Chechnya FSB. On the seventh day after Visita's abduction, the applicant and her relatives had gone to Znamenskoye, where the investigator of the Nadterechniy prosecutor's office Mr V.P. had informed

her, having been in touch with the local branch of the FSB, that on the third day after the arrest Visita Shokkarov had been released from the FSB and apparently had gone home. After that the applicant had requested information concerning Visita's whereabouts at the Nadterechniy ROVD, where she had been informed that he had not been detained there.

64. On 21 August 2003 the investigators forwarded a number of information requests to various law-enforcement agencies in Chechnya, Ingushetia, Dagestan and the Stavropol region, asking for any information concerning Visita Shokkarov's whereabouts. No pertinent information was received as a result.

65. On 25 August 2003 the investigators questioned the first applicant, who stated that on 6 January 2003 officers of the Sunzhenskiy ROVD had arrived in three UAZ vehicles and taken away his son Visadi Shokkarov. Immediately after that the applicant and his relatives had gone to the Sunzhenskiy ROVD, where the head of the ROVD had told him that Visadi had been suspected of murdering an official from the Nadterechniy district administration. Later that day, when the applicant had returned to the ROVD, he had seen the third applicant, who had been crying and waiting next to the police station. She had told him that the police officers had taken away her husband Visita. One of them, a certain "Magomed", had told her that the police would soon release her husband. At about 4 p.m. on the same date, 6 January 2003, three UAZ cars had left the courtyard of the ROVD and driven away to an unknown destination. After that the head of the ROVD had told the applicant and his relatives that the Shokkarov brothers had been taken by investigator Mr V.P. from the Nadterechniy prosecutor's office to the village of Znamenskoye in Chechnya. On 8 January 2003 the applicant had been informed by the Nadterechniy FSB that he could bring food and warm clothing for his detained sons. The applicant had brought some food and passed it on to the FSB officers. About five days later the third applicant had gone to Znamenskoye, where she had been told that Visita Shokkarov had been released three days after the arrest and that Visadi Shokkarov had continued to be detained on suspicion of killing the official.

66. On an unspecified date the Nadterechniy FSB informed the investigators that it had not arrested or detained Visita Shokkarov and that he had not been listed as a member of any illegal armed groups.

67. On 28 August 2003 the investigators questioned the investigator of the Nadterechniy prosecutor's office Mr V.P., who stated he could not recall the relevant details of the criminal investigation owing to the passing of time, but stated that he had requested the local court to remand Visadi Shokkarov in custody and that he could not recall whether one or both brothers had been detained.

68. On 3 April 2006 (in the documents submitted the date was also indicated as 10 March 2008) the investigators questioned police officer S.G.

of the Nadterechniy ROVD, who stated that Visita Shokkarov had not been brought to the ROVD and that the police had not conducted any checks in respect of him.

69. On 7 and 11 or 12 April 2006 the investigators questioned Mr V.Tch. and Mr Kh.T., both of whom had been officers of the Nadterechniy ROVD at the material time. Their statements were similar to the one given by officer S.G.

70. On 12 April 2006 (in the documents submitted the date was also indicated as 24 March 2006) the investigators examined the registration log of detainees in the Nadterechniy ROVD for the period between 31 October 2002 and 3 July 2003. As a result, it was established that during this period Visita Shokkarov had not been detained in the ROVD.

71. On 20 April 2006 the investigators suspended the investigation in the criminal case owing to the failure to identify those responsible for Visita Shokkarov's abduction. The third applicant was informed of that decision.

72. On 27 February 2008 the decision to suspend the investigation was overruled by the supervising prosecutor and the proceedings in the criminal case were resumed.

73. On 28 March 2008 the Nadterechniy ROVD informed the investigators that they had not arrested or detained the Shokkarov brothers.

74. On 19 May 2008 the Nadterechniy department of the FSB informed the investigators that no special operations had been conducted against the Shokkarov brothers in Ingushetia.

5. Documents submitted by the Government to the Court

75. Despite specific request by the Court the Government did not disclose most of the contents of the criminal case files opened in connection with the death of Visadi Shokkarov and the abduction of Visita Shokkarov. The Government provided copies of documents from the criminal case files running to 561 pages; the vast majority of the documents concerned third persons and only a few were relevant to the applicants' complaints. The Government stated that the investigation was in progress and that disclosure of the other documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information concerning witnesses or other participants in criminal proceedings.

II. RELEVANT DOMESTIC LAW

76. 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. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

77. The applicants complained under Article 2 of the Convention that Visadi and Visita Shokkarov had been deprived of their lives by State servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

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

A. The applicants’ complaint in respect of Visadi Shokkarov

1. The parties’ submissions

78. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the applicants had failed to appeal against the decision of 18 February 2003 to terminate the criminal proceedings. They argued that it had been open to the applicants to lodge complaints with the courts about any acts or omissions of the investigating authorities, but that the applicants had not availed themselves of that remedy.

79. The applicants contested the Government’s objections. They stated that they had unsuccessfully appealed against the decision of 18 February 2003 to the domestic courts.

2. *The Court's assessment*

(a) **Admissibility**

(i) *Alleged violation of the right to life of Visadi Shokkarov*

80. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, §§ 51-52, and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

81. To the extent that the Government argued that the applicants had not appealed against the decision of 18 February 2003 to discontinue the criminal proceedings concerning the circumstances surrounding the death of Visadi Shokkarov, the Court emphasises that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports* 1996-IV, and *Tanrıku v. Turkey* [GC], no. 23763/94, § 82, ECHR 1999-IV).

82. As regards the Government's argument concerning the applicants' alleged failure to appeal against the decision of 18 February 2003 to

discontinue the criminal proceedings, the Court reiterates that, in principle, this remedy may offer a substantial safeguard against the arbitrary exercise of power by the investigating authority, given a court's power to annul a decision to dispense with or discontinue criminal proceedings and indicate the defects to be addressed (see, *mutatis mutandis*, *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003; *Medov v. Russia*, no. 1573/02, §§ 102-105, 8 November 2007; *Chitayev and Chitayev v. Russia*, no. 59334/00, §§ 143-144, 18 January 2007; and *Aziev v. Russia* (dec.), no. 28861/03). Therefore, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution has decided not to investigate the claims.

83. The applicants argued before the Court that they had challenged the decision to terminate the investigation into the circumstances surrounding Visadi Shokkarov's death by applying to three courts in September 2003 (see paragraph 21 above). The Government submitted that the applicants had not applied to the domestic courts. The Court considers that it is not necessary to establish whether the applicants did indeed challenge the decision to terminate the investigation into Visadi Shokkarov's death in all three courts as they in any event failed to comply with the requirement of the exhaustion of domestic remedies for the following reasons. Firstly, even assuming that they did indeed appeal against the impugned decision to all three courts, the Court notes that the applicants, who were represented by experienced human-rights lawyers, did not inform themselves about the outcome of any of these proceedings in a timely manner (see paragraphs 21 and 22) and failed to provide the courts with appropriate information concerning their address or that of their representatives (see paragraph 21 above). From the documents submitted to the Court it follows that the applicants' representatives were able to receive correspondence concerning the applicants' complaints in the autumn of 2003 (see paragraph 37 above). Secondly, even after the receipt of the letters from the domestic courts (see paragraphs 23, 24 and 25 above), the applicants failed to provide the Court with a plausible explanation of their failure to pursue their appeals further with the appellate courts, or to apply to the district courts for restoration of procedural time-limits. Thirdly, the applicants did not furnish the Court with any evidence demonstrating that there existed special circumstances absolving them from the requirement to exhaust domestic remedies (see paragraph 23 above; see also *Akdivar and Others*, cited above, § 68).

84. Taking into account the above circumstances, the Court finds that the applicants failed to exhaust effective domestic remedies in respect of their complaint concerning the substantive aspect of Article 2 of the Convention in respect of Visadi Shokkarov. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

(ii) Alleged inadequacy of the investigation into Visadi Shokkarov's death

85. As to the applicants' complaint under the procedural aspect of Article 2 of the Convention, having regard to its above finding concerning the applicants' failure to exhaust available domestic remedies, the Court finds that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

B. The applicants' complaint in respect of Visita Shokkarov

1. The parties' submissions

86. The Government contended that the domestic investigation had obtained no evidence to the effect that Visita Shokkarov was dead or that any State servicemen had been involved in his abduction or alleged killing. They contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies as the investigation into the abduction of Visita Shokkarov had not yet been completed. They further stated that it had been open to the applicants to lodge court complaints against acts or omissions of the investigating authorities.

87. The applicants contested these objections. They stated that the criminal investigations into the disappearance of Visita Shokkarov had proved to be ineffective.

2. The Court's assessment

(a) Admissibility

88. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below. Furthermore, the Court considers that this part of the application is not inadmissible on any other ground. This complaint under Article 2 of the Convention must therefore be declared admissible.

(b) Merits

(i) Alleged violation of the right to life of Visita Shokkarov

89. The Court observes that in its extensive case-law it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearances under Article 2 of the Convention (for a summary of these principles, 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).

90. The Court notes that despite its requests for a copy of the file on the investigation into the abduction of Visita Shokkarov, the Government did not produce most of the documents from the case file, relying on 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).

91. 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 the 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.

92. The applicants alleged that the persons who had taken Visita Shokkarov away on 6 January 2003 and then killed him had been State agents.

93. The Government suggested in their submissions that Visita Shokkarov had disappeared in connection with his possible involvement in the murders committed by his brother Visadi Shokkarov, or that he had absconded from the authorities because of his participation in illegal armed groups, or that he might have died as a result of an accident. However, the Government did not submit any documents to substantiate these suppositions. 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).

94. The Court notes that the applicants' allegation is supported by a number of official documents explicitly stating that Visita Shokkarov had been detained by officers of the Sunzhenskiy ROVD on 6 January 2003 (see paragraphs 28, 33, 53, 55 and 57 above). In their complaints to the authorities the applicants maintained that Visita Shokkarov had been detained at the ROVD and requested the investigation to look into that possibility (see paragraphs 63 and 65 above). The domestic investigators also accepted factual assumptions made in the version of the facts submitted by the applicants and took steps to check whether law-enforcement agencies had been involved in the abduction (see paragraphs 68, 70, 73 and 74 above), but it does not appear that any serious steps were taken in that direction.

95. The Court observes that where an applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to

a lack of documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

96. In their submissions on the admissibility and merits of the application the Government contended that the local authorities had not had any reasons or motives to detain Visita Shokkarov. However, the documents from the criminal case file demonstrate, contrary to the Government's submission, that the local authorities did in fact have motives to detain Visita Shokkarov (see paragraph 38 above).

97. Taking into account the above elements, the Court is satisfied that the applicants have made out a *prima facie* case that their relative Visita Shokkarov was detained by State agents. The Government's statement that the investigation did not find any evidence to support the involvement of members of law-enforcement agencies 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 documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court concludes that Visita Shokkarov was detained on 6 January 2003 by State agents.

98. There has been no reliable news of Visita Shokkarov since the date of his abduction. 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 his arrest.

99. The Court further notes that, regrettably, it has been unable to have the benefit of the results of the domestic investigation, owing to the Government's failure to disclose the documents from the criminal case files in full (see paragraph 75 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of Visita Shokkarov's kidnapping.

100. Accordingly, the Court finds that the evidence available permits it to establish that Visita Shokkarov must be presumed dead following his unacknowledged detention by State servicemen. In the absence of any justification put forward by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of Article 2 in respect of Visita Shokkarov.

(ii) Alleged inadequacy of the investigation of the abduction

101. 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).

102. In the present case, an investigation was conducted into the abduction of Visita Shokkarov. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

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

104. The Court notes that by the end of March 2003 at the latest the authorities were made aware of the abduction as a result of the applicants' submissions (see paragraphs 51, 52 and 54 above). The investigation in the criminal case was instituted on 9 August 2003, that is, more than four months after the authorities were informed about the incident. Such a postponement *per se* was liable to affect the investigation of a kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were either delayed or were not taken at all. For instance, the investigators did not take such crucial steps as questioning the deputy head of the ROVD, Mr I.M. (see paragraph 63 above), and police officer "Magomed" (see paragraph 65 above), who had assured the applicants about the release of Visita Shokkarov from the police station. In addition, it does not appear, in spite of the applicants' witness statements to this effect, that the investigators attempted to either identify and question the applicants' relatives or neighbours with whom they had gone to the ROVD on 6 January 2003 (see paragraphs 50, 63 and 65 above) or to question any of the employees of the Sunzhenskiy ROVD, the Nadterechniy prosecutor's office and the Nadterechniy FSB (see paragraph 65 above) about their possible involvement in the abduction. It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

105. The Court also notes that even though the third applicant was granted victim status in the investigation concerning the abduction of her husband, she was only informed of the suspension and resumption of the

proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

106. Finally, the Court notes that the investigation was suspended and resumed on numerous occasions and that there were lengthy periods of inactivity on the part of the prosecutor's office when no proceedings were pending.

107. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for seven years without producing any tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection.

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

109. The applicants complained under Article 3 of the Convention that Visadi Shokkarov had been ill-treated while in police custody from 6 January to 2 February 2003, but that no effective investigation had been carried out on that account. The applicants also claimed that the death of Visadi Shokkarov and the disappearance of Visita Shokkarov and the authorities' failure to properly investigate these incidents had caused them profound moral suffering. Article 3 reads:

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

A. The parties' submissions

110. The Government disagreed with these allegations. They stated that Visadi Shokkarov had not been subjected to ill-treatment at the hands of the police. They also argued that the investigation had not established that either Visadi Shokkarov or the applicants had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

111. The applicants maintained their submissions.

B. The Court's assessment

1. The complaint in respect of the ill-treatment of Visadi Shokkarov

(a) Admissibility

112. The Court considers that this part of the application is not manifestly ill-founded. Furthermore, it is not inadmissible on any other ground. It must therefore be declared admissible.

(b) Merits

(i) Alleged ill-treatment of Visadi Shokkarov

113. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161 *in fine*).

114. From the documents submitted by the parties, it follows that Visadi Shokkarov was arrested by State representatives in January 2003 and was in detention until 2 February 2003 (see paragraphs 28 and 43 above). However, in view of the violent nature of Visadi Shokkarov's death (see paragraph 15 above), it is not possible to draw any conclusions as to whether or not he was ill-treated prior to it. In these circumstances the evidence as it stands does not enable the Court to find beyond all reasonable doubt that Visadi Shokkarov was ill-treated while in the custody of the police.

115. Therefore, the Court finds that there has been no violation of the substantive aspect of Article 3 of the Convention in respect of Visadi Shokkarov.

(ii) Alleged ineffectiveness of the investigation of the ill-treatment

116. The Court reiterates that "where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention, requires by implication that there should be an effective official investigation" (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

117. The Court notes that the applicants raised their complaints about Visadi Shokkarov's ill-treatment with the domestic authorities (see

paragraphs 21 and 35 above). However, it does not appear that these complaints were examined by them in any way. The Court notes in this respect that the only investigation carried out concerned Visadi Shokkarov's death on 2 February 2003 whereas no measures were taken in order to verify the applicants' allegations concerning ill-treatment while at the hands of the police from 6 January to 2 February 2003.

118. For the reasons stated above in paragraphs 101-108 in relation to the procedural obligation under Article 2 of the Convention, the Court concludes that the State authorities failed to conduct an effective investigation into the applicants' allegations concerning Visadi Shokkarov's ill-treatment at the hands of the police.

119. Accordingly, there has been a violation of the procedural aspect of Article 3 of the Convention on account of the authorities' failure to investigate the allegations of ill-treatment.

2. The complaint concerning the applicants' mental suffering

(a) Admissibility

120. The Court notes that the applicants' complaint in respect of the mental suffering caused by the death of Visadi Shokkarov does not raise a separate issue as the Court has consistently refused to extend the application of Article 3 to the relatives of persons who have allegedly been killed in violation of Article 2, as opposed to the relatives of the victims of enforced disappearances (see *Yasin Ateş v. Turkey*, no. 30949/96, § 135, 31 May 2005; *Tangiyeva v. Russia*, no. 57935/00, § 105, 29 November 2007; and *Dangayeva and Taramova v. Russia*, no. 1896/04, § 107, 8 January 2009). In these circumstances, and taking into account its findings in paragraphs 84-85 above, the Court concludes that the applicants' complaint under Article 3 of the Convention in respect of the death of Visadi Shokkarov must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

121. As for the applicants' complaint under Article 3 of the Convention insofar as it concerns their alleged mental suffering caused by the disappearance of Visita Shokkarov, the Court notes that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

122. 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).

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

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

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

125. The applicants complained under Article 5 § 1 of the Convention that Visadi Shokkarov's detention between 6 and 22 January 2003 had not been authorised by court order. They argued that the decision authorising Visadi Shokkarov's detention had been taken in the absence of the defence and that Visadi Shokkarov's lawyer had not been able to visit him in detention. Lastly, they relied on Article 5 as a whole, complaining that Visita Shokkarov's detention had been unlawful. Article 5 of the Convention reads in so far as relevant:

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

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

...

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

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

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

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

A. The parties’ submissions

126. The Government asserted that Visadi Shokkarov had been detained on 20 January 2003, that on 22 January 2003 his detention on remand had been authorised by the Nadterechniy District Court, and that he had had unrestricted access to his lawyer. In sum, they submitted that Visadi Shokkarov’s detention had fully complied with the requirements of Article 5 of the Convention. As to the allegedly unlawful detention of Visita Shokkarov, the Government submitted that no evidence had been obtained by the investigators to confirm that he had been deprived of his liberty. Visita Shokkarov was not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

127. The applicants reiterated the complaint.

B. The Court’s assessment

1. The applicants’ complaint in respect of Visadi Shokkarov

(a) Admissibility

128. The Court reiterates at the outset that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months from the final decision for the purposes of exhaustion of domestic remedies. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), nos. 62566/00 et seq., 10 January 2002). Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period may be calculated from the time when the applicant becomes aware, or should have become aware, of those circumstances (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002).

129. The Court further points out that it is not open to it to set aside the application of the six-month rule solely because the respondent Government have not made a preliminary objection based on that rule, since the said

criterion, reflecting as it does the wish of the Contracting Parties to prevent past events being called into question after an indefinite lapse of time, serves the interests not only of respondent Governments but also of legal certainty as a value in itself. It marks out the temporal limits of the supervision carried out by the Convention institutions and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

130. The Court notes the absence of a plea by the Government concerning non-exhaustion of domestic remedies in respect of the alleged unlawfulness of Visadi Shokkarov's detention between 6 and 22 January 2003. But it concludes that this complaint is inadmissible as it was lodged outside the prescribed time-limit. From the factual circumstances of the present case it follows that on 7 April 2003 at the latest the applicants were informed that Visadi Shokkarov's detention had been authorised by the District Court more than two weeks after the date of his actual arrest (see paragraph 31 above). More than nineteen months passed from the date on which they learnt of the unlawfulness of Visadi Shokkarov's detention on remand and the date on which they lodged their complaint to the Court. In such circumstances it follows that this part of this part of the applicants' complaint under Article 5 of the Convention is inadmissible for failure to comply with the six-month requirement and should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

2. The applicants' complaint in respect of Visita Shokkarov

(a) Admissibility

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

(b) Merits

132. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII).

133. The Court has found that Visita Shokkarov was detained by State servicemen on 6 January 2003 and has not been seen since. His detention was not acknowledged and was not logged in any custody records, and there

exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. 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

137. The applicants claimed damages in respect of the loss of earnings of Visadi and Visita Shokkarov. The first and second applicants claimed 30,000 euros (EUR) each for the loss of their two sons. The third applicant claimed a total of EUR 67,200 on behalf of herself and her four minor children in respect of the loss of earnings of her husband Visita Shokkarov.

138. The applicants submitted that the calculation should be based on the average monthly salary in Russia. They calculated the amount on the basis of a self-defined monthly salary and their own expected longevity. The applicants did not submit any documents to substantiate their calculations.

139. The Government regarded these claims as unfounded. They pointed to the existence of domestic statutory machinery for the provision of a

pension for the loss of the family breadwinner. They also submitted that the third applicant and her four children received monthly social benefits from the State in the total amount of 7,000 Russian roubles (RUB – about EUR 180).

140. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. It also notes that the applicants' complaints under Article 2 of the Convention in respect of Visadi Shokkarov were found inadmissible. Further, the Court recalls that the loss of earnings applies to dependent children and, in some instances, to elderly parents and that it is reasonable to assume that Visita Shokkarov 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' relative Visadi Shokkarov and the loss by the applicants of the financial support which he could have provided. Having regard to the applicants' submissions, the Court awards EUR 10,000 to the first and second applicants jointly and EUR 20,000 to the third applicant in respect of pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Non-pecuniary damage

141. The applicants claimed amounts ranging from EUR 50,000 to EUR 200,000 each, depending on the proximity of their family ties with Visadi and Visita Shokkarov, in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their close relatives and the indifference shown by the authorities towards them.

142. The Government found the amounts claimed excessive.

143. The Court has found a violation of Article 3 of the Convention on account of the authorities' failure to investigate the applicants' allegations of ill-treatment in respect of Visadi Shokkarov and of Articles 2 and 5 on account of the unacknowledged detention and disappearance of Visita Shokkarov. 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 first and second applicants jointly EUR 30,000, the third applicant EUR 48,000 and the fourth applicant EUR 26,000, plus any tax that may be chargeable on those amounts.

C. Costs and expenses

144. The applicants also claimed a total amount of EUR 11,700 for the costs and expenses incurred in connection with their representation before the domestic authorities and the Court.

145. The Government did not dispute the amounts claimed.

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

147. Having regard to the above and the details of the information submitted by the applicants, the Court awards them the amount of EUR 5,500 together, with any value-added tax that may be chargeable to them.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of domestic remedies in respect of the complaint concerning the disappearance of Visita Shokkarov and dismisses it;
2. *Declares* the complaints under Article 2 of the Convention in respect of Visita Shokkarov, under Article 3 of the Convention in respect of Visadi Shokkarov's alleged ill-treatment and the applicants' moral suffering in connection with the disappearance of Visita Shokkarov and under Article 5 of the Convention in respect of Visita Shokkarov admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Visita Shokkarov;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Visita Shokkarov disappeared;

5. *Holds* that there has been no substantive violation of Article 3 of the Convention in respect of Visadi Shokkarov;
6. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to conduct an effective investigation into the applicants' allegations of ill-treatment in respect of Visadi Shokkarov;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their moral suffering;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Visita Shokkarov;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, to the first and second applicants jointly in respect of pecuniary damage;
 - (ii) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, to the third applicant in respect of pecuniary damage;
 - (iii) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, to the first and second applicants jointly in respect of non-pecuniary damage;
 - (iv) EUR 48,000 (forty-eight thousand euros), plus any tax that may be chargeable, to the third applicant in respect of non-pecuniary damage;
 - (v) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, to the fourth applicant in respect of non-pecuniary damage;
 - (vi) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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

André Wampach
Deputy Registrar

Nina Vajić
President