



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

FIRST SECTION

CASE OF KOSUMOVA AND OTHERS v. RUSSIA

(Application no. 27441/07)

JUDGMENT

STRASBOURG

7 June 2011

FINAL

28/11/2011

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

In the case of Kosumova 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 27441/07) 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 six Russian nationals listed below (“the applicants”), on 8 June 2007.

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

3. On 26 June 2009 the Court decided to apply Rule 41 of the Rules of Court, to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- (1) Ms Khalimat Kosumova (also spelled as Kasumova), who was born in 1978;
- (2) Mr Arbi Kasumov, who was born in 1952;
- (3) Ms Taus Kasumova, who was born in 1959;
- (4) Mr Usman Kasumov, who was born in 1988;
- (5) Ms Marina (also spelled as Milana) Kasumova (also known as Shadidova), who was born in 1982; and
- (6) Mr Ali Kasumov, who was born in 2001.

The first applicant is the sister of Abdul Kasumov (also spelled as Abdula or Abdulla Kosumov), who was born in 1982; the second and third applicants are his parents; the fourth applicant is his brother; the fifth applicant is his wife; and the sixth applicant is his son. The applicants live in Mesker-Yurt, Chechnya.

A. Disappearance of Abdul Kasumov

1. Information submitted by the applicants

6. At the material time the village of Mesker-Yurt was under the full control of the Russian military forces. Checkpoints manned by military servicemen were located on the roads leading to and from the settlement.

7. The applicants lived at 22 Partizanskaya Street (in the documents submitted the address was also referred to as 65 Lenina Street), Mesker-Yurt, in the Shali district of Chechnya. The household consisted of several dwellings around a courtyard. Abdul Kasumov lived in one of the dwellings with the fifth and sixth applicants.

8. On the evening of 21 November 2002 the applicants were at home. At about 9 p.m. they heard military Ural vehicles driving around in the village. According to the applicants, on the same evening their neighbours saw armoured personnel carriers (“APCs”) driving around the settlement.

9. On the night of 21 November 2002 the applicants, their relatives and Abdul Kasumov were sleeping at home. At about 4 a.m. a group of armed men in spotted camouflage uniforms broke into the applicants’ household. The men were not wearing masks, spoke unaccented Russian and were of Slavic appearance. They neither introduced themselves nor produced any documents. The applicants thought that they were Russian military servicemen.

10. The men pointed their guns at the applicants and their relatives. Then they broke down the door into the dwelling where Abdul Kasumov was sleeping with his wife and son. The men grabbed him, pulled a mask over his head and took him outside in his underwear. Next, they took Abdul Kasumov's sweater, shirt and trousers. When the fifth applicant attempted to follow them, the men ordered her to get back inside the house and threatened to kill her if she disobeyed.

11. While some of the abductors were raiding Abdul Kasumov's dwelling, others went into his brother's quarters. According to Abdul Kasumov's sister-in-law, Ms M.T., the intruders started shooting at the entrance door; some of the bullets hit a sideboard and broke its glass doors. The men swore at Ms M.T. and asked her: "Where is your husband? Where did he go? Is he planting a mine somewhere?"

12. Having spent about thirty minutes at the applicants' house, some of the men left with Abdul Kasumov whereas others remained in the yard and prevented the applicants from going outside.

13. The abduction of Abdul Kasumov was witnessed by a number of local residents. According to the applicants, another resident of Mesker-Yurt who lived about 300 meters away from the applicants, Mr E.M., was abducted on the same night and another resident of Mesker-Yurt had been abducted a day before.

14. The applicants stayed in the house until the sunrise. Then they followed the footprints left by the men in the snow. The prints led to the place where the abductors had parked their vehicles.

15. In the morning of 22 November 2002 the applicants went to the checkpoints located at the roads in and out of the village and enquired about their relative. The on-duty military servicemen ignored their questions.

16. The applicants have had no news of Abdul Kasumov ever since.

17. In support of their statements, the applicants submitted the following documents: a statement by the first applicant, dated 2 August 2006; a joint statement by the applicants' neighbours Mr V.U. and Mrs T.U., dated 12 November 2006; a statement by the fifth applicant, dated 12 November 2006; a statement by the second applicant, dated 26 January 2007; a statement by the fourth applicant, dated 26 January 2007; a statement by the applicants' relative Ms M.T., dated 26 January 2007; and two hand-drawn maps of the applicants' household and its premises.

2. Information submitted by the Government

18. The Government did not challenge the facts as presented by the applicants.

B. The search for Abdul Kasumov and the investigation

1. Information submitted by the applicants

19. On 5 December 2002 (in the documents submitted the date was also referred to as 2 and 15 December 2002) the Shali district prosecutor's office ("the district prosecutor's office") instituted an investigation into the abduction of Abdul Karimov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 59275 (in the documents submitted the number was also referred to as 48062).

20. On 10 December 2002 the second applicant was granted victim status in the criminal case.

21. On 24 December 2002 the Chechnya prosecutor's office forwarded the second applicant's report of his son's abduction to the district prosecutor's office.

22. On 29 January 2004 the Shali district department of the interior ("the Shali ROVD") informed the applicants that on 15 December 2002 the district prosecutor's office had initiated an investigation into the abduction and that operational-search measures were under way.

23. On 23 June 2005 the third applicant complained about her son's abduction by military servicemen in camouflage uniforms to a number of State authorities, including the deputy of the State Duma and the Chechnya Government.

24. On 8 August 2005 the Shali ROVD informed the applicants that on 2 December 2002 the district prosecutor's office had instituted an investigation into the abduction of Abdul Kasumov and that operational-search measures were under way.

25. On 15 September 2005 the Department of the Interior for the Rostov Region informed the applicants that Abdul Kasumov was not sought by the police, that he had not been arrested by their officers and that their information centre had no information concerning his whereabouts.

26. On 30 September 2005 the Shali ROVD informed the applicants that they were taking operational-search measures to establish the whereabouts of Abdul Kasumov. The text of the letter included the following:

"... [the investigators] have been verifying the theory of the involvement in the abduction of the special forces and power structures stationed in the Shali district of Chechnya. They have been also verifying the theory of possible involvement in the crime of military servicemen, and of members of illegal armed groups [arrested and] currently detained in the Shali detention centre..."

27. On 3 October 2005 the Chechnya Ministry of the Interior informed the applicants that on 10 May 2003 they had opened search file no. 71475 and that the search for Abdul Kasumov was being carried out in accordance with the plan approved by the head of the ROVD.

28. On 25 November 2005 the Chechnya prosecutor's office forwarded the applicants' complaint about the abduction of Abdul Kasumov to the district prosecutor's office for examination.

29. On 7 December 2005 the Chechnya prosecutor's office informed the applicants that on an unspecified date they had suspended the investigation of criminal case no. 59275 for failure to establish the identities of the perpetrators.

30. On 25 September 2006 the district prosecutor's office issued an information statement in relation to criminal case no. 59275. The document included the following:

“... The preliminary investigation established that on 22 November 2002, at about 3.30 a.m., unidentified persons of Slavic ethnic background in camouflage uniforms, armed with firearms, had broken into the house at 22 Partizanskaya Street and had taken Abdulla Kasumov away to an unknown destination...”

31. On 22 January 2007 the applicants' representatives complained to the district prosecutor's office about the lack of information concerning the investigation and asked to be informed about its progress.

32. On 1 February 2007 the Chechnya prosecutor's office replied to the applicants' representatives, stating that they had forwarded their complaint to the district prosecutor's office for examination.

33. On 19 February 2007 the district prosecutor's office informed the applicants' representatives that they had not established the whereabouts of Abdul Kasumov and that on 15 March 2003 (in the documents submitted the date was also referred to as 15 February 2003) they had suspended the investigation in the criminal case for failure to establish the perpetrators.

34. The applicants did not receive any further information from the authorities concerning the criminal investigation into the abduction.

2. Information submitted by the Government

35. On 10 December 2002 the applicants reported Abdul Kasumov's abduction by military servicemen to the district prosecutor's office. They described its circumstances in detail and asked for assistance in the search for their relative.

36. On 10 December 2002 the investigators granted the second applicant victim status in the criminal case and questioned him. He stated that at about 3.30 a.m. on 22 November 2002 a group of five or six Russian armed military servicemen in camouflage uniforms had broken into his house. The servicemen had had a strong build and had not worn masks. The officers had grabbed Abdul Kasumov and had hit the applicant with rifle butts when he had attempted to prevent them from taking his son away. At the same time more servicemen, around fifteen or twenty, had broken into the other dwellings situated around the courtyard. The servicemen had walked away with Abdul Kasumov in a southerly direction.

37. On 15 December 2002 the district prosecutor's office opened criminal case no. 59275 in connection with the abduction of Abdul Kasumov "...by a group of unidentified armed men of Slavic appearance who had broken into the house at 22 Partizanskaya Street, Mesker-Yurt at about 3.30 a.m. on 22 November 2002..."

38. On 16 December 2002 the investigators questioned the fifth applicant, who stated that early in the morning on 22 November 2002 a group of Russian military servicemen had broken into her house, had handcuffed her husband Abdul Kasumov and had taken him away. The applicant stated that the servicemen had worn camouflage uniforms and khaki helmets resembling those of motorcyclists and that they had spoken Russian among themselves. The servicemen had stopped her from leaving the room. After the abductors had gone, the applicant and her relatives had waited for the sunrise and had then followed the footprints left by the abductors in the snow. The footprints had led to the southern outskirts of the village.

39. On 17 December 2002 the investigators requested that the military prosecutor's office of military unit no. 20116 inform them whether they had arrested or detained Abdul Kasumov and whether their servicemen had left the premises of the military unit on the date of the abduction. No reply was given to this request.

40. On 19 December 2002 the investigators requested that the Shali ROVD provide them with assistance in establishing the perpetrators of Abdul Kasumov's abduction and inform them whether they had detained the applicant's relative.

41. On 29 December 2002 the second applicant complained about his son's abduction by military servicemen in camouflage uniforms to the Chechnya prosecutor's office. The applicant provided a brief description of the circumstances of the abduction and stated that the abductors could have belonged to the Federal Security Service.

42. On 30 December 2002 the investigators requested that the Stavropol Regional detention centre (IZ-26/2) inform them whether Abdul Kasumov was detained on their premises. The detention centre replied in the negative.

43. On 6 and 8 January 2003 the Shali ROVD replied to the investigators' requests of 19 December 2002, stating that they could not establish the perpetrators of Abdul Kasumov's abduction and that he was not detained on their premises.

44. On unspecified dates in December 2002 and January 2003 the investigators sent queries to the Gudermes ROVD and the Argun ROVD in Chechnya asking whether those agencies had arrested or detained Abdul Kasumov or whether his corpse had been found in their districts. Negative replies were received from both ROVD bureaus.

45. On 15 February 2003 the investigators suspended the investigation of the criminal case for failure to identify the perpetrators.

46. On 29 August 2005 the investigators replied to the first applicant's request for information about the progress of the criminal case. The letter stated that on an unspecified date the investigation had been suspended, but that operational-search measures were under way.

47. On 24 August 2009 the supervisory prosecutor from the Chechnya prosecutor's office ordered that the investigation of Abdul Kasumov's abduction be resumed and provided the investigators with a list of measures to be taken by the investigators in the criminal case. The Government did not disclose the contents of this document.

48. According to the Government, the investigation has neither established the whereabouts of Abdul Kasumov nor found his corpse. The investigators found no evidence to support the involvement of military servicemen or representatives of law-enforcement agencies in the abduction. The law-enforcement authorities of Chechnya had never arrested or detained Abdul Kasumov on criminal or administrative charges and had not carried out a criminal investigation in his respect. No special operations had been carried out against the applicants' relative.

49. Despite a specific request by the Court the Government did not disclose most of the contents of criminal case file no. 59275, providing only copies of "main documents" from the case file amounting to twenty-seven pages. The Government stated that the investigation was in progress and that disclosure of the rest of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure and to the detriment of the investigation and the participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

51. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Abdul Kasumov had not yet been

completed and that his corpse had not been found. They further argued that it had been open to the applicants to challenge in court any acts or omissions of the investigating authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil remedies but that they had failed to do so.

52. The applicants contested that objection. They stated that the only effective remedy in their case – the criminal investigation – had proved to be ineffective and argued that they were not obliged to initiate civil proceedings in order to exhaust domestic remedies.

B. The Court's assessment

53. 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).

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

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

56. As regards criminal law remedies, the Court observes that the applicants complained to the law-enforcement authorities after the abduction of Abdul Kasumov and that an investigation has been pending since 15 December 2002. The applicants and the Government dispute the effectiveness of this investigation.

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

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

A. The parties' arguments

58. The applicants maintained that it was beyond reasonable doubt that the men who had abducted Abdul Kasumov had been State agents. In support of their allegations they referred to the following facts. At the material time Mesker-Yurt had been under the full control of federal troops. There had been Russian military checkpoints on the roads leading to and from the settlement. The abductors had been armed and in camouflage informs; they had been of Slavic appearance and had spoken Russian, which proved that they had not been of Chechen origin. The men had arrived in military vehicles and on the date of abduction a number of APCs had been driving around in the village and in the vicinity of the applicants' house. The abductors had acted in a manner similar to that of special forces carrying out identity checks. The applicants also pointed out that the Government's refusal to submit the full contents of the file concerning criminal case no. 59275 and thus disclose all the information in their exclusive possession should be interpreted as indirect proof of their allegations. The applicants further submitted that since Abdul Kasumov had been missing for a very lengthy period, he could be presumed dead. That presumption was further supported by the circumstances in which he had been abducted, which should be recognised as life-threatening.

59. The Government submitted that unidentified armed men had abducted Abdul Kasumov. They further contended that the investigation of the incident was pending, that there was no evidence that the perpetrators had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relative was dead. The Government made general reference to the effect that the abduction of the applicants' relative could have been attributable to illegal armed groups who could have managed to slip through the local military checkpoints.

B. The Court's evaluation of the facts

60. The Court observes that in its extensive jurisprudence 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).

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

62. 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-founded nature 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.

63. The applicants alleged that the individuals who had taken Abdul Kasumov away on 22 November 2002 and had then killed him had been State agents. The Government did not dispute any of the factual elements underlying the application and did not provide another explanation for the events in question.

64. The Government suggested in their submissions that the abductors of Abdul Kasumov may have been members of paramilitary groups. However, this allegation was not specific and the Government did not submit any material to support it. The Court would stress in this regard that the evaluation of evidence and the establishment of 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 *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

65. The Court notes that the applicants' allegation is supported by the witness statements collected by them and by the few documents submitted by the Government from the criminal case file. It finds that the fact that a large group of armed men in uniform equipped with military vehicles was able to move freely through military checkpoints and proceeded to apprehend Abdul Kasumov at his home in the presence of a number of his relatives strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their complaints to the authorities the applicants consistently maintained that Abdul Kasumov had been detained by military servicemen and requested that the investigators look into that possibility (see paragraphs 23, 35, 36, 38 and 41 above). The domestic investigation also accepted factual assumptions as presented by the applicants and took limited steps to check whether military forces were involved in the abduction (see paragraphs 26 and 39 above), but it does not appear that any serious further steps were taken in that direction.

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

67. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was abducted by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of special forces in the abduction and their general reference to the possibility of illegal insurgents' involvement in the crime are insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Abdul Kasumov was arrested on 22 November 2002 by State servicemen during an unacknowledged security operation.

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

69. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Abdul Kasumov or of any news of him for more than eight years supports this assumption.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

A. The parties’ submissions

72. The Government contended that the domestic investigation had obtained no evidence to the effect that Abdul Kasumov was dead or that any State agents had been involved in his abduction or alleged killing. The Government claimed that the investigation into the abduction met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify the perpetrators.

73. The applicants argued that Abdul Kasumov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for eight years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy laid down by the Court’s case-law. They pointed out that the investigators had not taken some crucial investigative steps, such as questioning a number of witnesses to the events. The investigation of the abduction had been opened belatedly and had then been suspended – thus delaying the most basic steps from being taken – and Abdul Kasumov’s relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any tangible results was further proof of its ineffectiveness. The applicants also invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

74. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 57 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Abdul Kasumov

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

(b) The alleged inadequacy of the investigation

76. 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).

77. In the present case, the abduction of Abdul Kasumov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

78. 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 presented by the Government.

79. The Court notes that the authorities were made aware of the abduction by the applicants' reporting it on 10 December 2002 at the latest. The investigation of criminal case no. 59275 was instituted on 15 December 2002, that is twenty-three days after the abduction and five days after the applicants' official complaint was received by the competent authorities. Such a delay of several days by itself is liable to affect the investigation of

an abduction in life-threatening circumstances, where crucial action has to be taken as soon as possible after the event. In the present case, a number of essential steps were not taken at all. For example, it does not appear that the investigators examined the crime scene or that they identified or questioned any of the military servicemen who had been stationed in the area and who could have been involved in the abduction. Neither did they establish the particulars of the APCs and the other military vehicles that had moved around Mesker-Yurt on 21 and 22 November 2002. Further, the investigators failed to question a number of the applicants' relatives and neighbours who had witnessed the abduction. In addition, they did not check the registration logs at the military checkpoints noting vehicles' passage on the night of the abduction and they did not identify and question the servicemen who had manned those checkpoints on that night. 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).

80. The Court also notes that even though the second applicant was granted victim status (in the documents submitted it was also stated that the fifth applicant was granted such status) in the investigation concerning the abduction of his son, he was only informed of the suspension 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.

81. Finally, the Court notes that the investigation was suspended and resumed on several occasions and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending. For instance, no proceedings whatsoever were pending between 15 February 2003 and 24 August 2009. The supervising prosecutor's office ordered remedial measures (see paragraph 47 above), but it appears that those instructions were not complied with.

82. The Government argued that the applicants could have sought judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged the acts or omissions of the investigating authorities before a court. Furthermore, the Court emphasises in this respect that while the suspension or reopening of proceedings is not in itself a sign that proceedings are ineffective, in the

present case the decisions to suspend were made without the necessary investigative steps being taken, which led to periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

83. 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 Abdul Kasumov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. The parties' submissions

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

86. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

87. The Court notes that this complaint under Article 3 of the Convention 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.

2. Merits

88. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the closeness of the family relationship, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in attempts to obtain information about the disappeared person, and the way in which the authorities responded to those enquiries. The Court would further emphasise that 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. It is especially in respect of the latter that a relative may claim to be a direct victim of the authorities’ conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002).

89. In the present case the Court notes that the applicants are close relatives of the missing person. It is noteworthy that it was the first, second, third, fourth and fifth applicants who lodged petitions and enquiries with the domestic authorities in connection with their relative’s disappearance and dealt with the investigators. It is quite natural that the sixth applicant, who was one year old at the time of his father’s disappearance, did not participate in any manner in the search for Abdul Kasumov (see, by contrast, *Luluyev and Others*, cited above, § 112). In the light of these circumstances, the Court, while accepting that the fact of being raised without his father may be a source of continuing distress for the sixth applicant, cannot assume that the mental anguish he experienced on account of Abdul Kasumov’s disappearance and the authorities’ attitude towards that incident was distinct from the inevitable emotional distress such a situation would entail, and that it was serious enough to fall within the ambit of Article 3 of the Convention (see, *mutatis mutandis*, *Nenkayev and Others v. Russia*, no. 13737/03, § 168, 28 May 2009, and *Musikhanova and Others v. Russia*, no. 27243/03, § 81, 4 December 2008).

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

91. In view of the above, the Court finds that the first, second, third, fourth and fifth applicants suffered, and continue to suffer, distress and anguish as a result of the disappearance of their relative Abdul Kasumov and their inability to find out what happened to him. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

92. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the first, second, third, fourth and fifth applicants, and no violation of this provision in respect of the sixth applicant.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

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

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

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

...

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

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

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

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

A. The parties' submissions

94. The Government asserted that no evidence had been obtained by the investigation to confirm that Abdul Kasumov had been deprived of his

liberty. He had not been listed among the persons kept in detention centres and none of the regional law-enforcement agencies had held information about his detention.

95. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

96. The Court notes that this 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.

2. Merits

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

98. The Court has found that Abdul Kasumov was detained by State servicemen on 22 November 2002 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

99. 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.

100. In view of the foregoing, the Court finds that Abdul Kasumov was held in unacknowledged detention without any of the safeguards contained

in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. The parties’ submissions

102. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention. The applicants had had the opportunity to challenge the acts or omissions of the investigating authorities in court and that they could have also claimed damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

103. The applicants reiterated the complaint.

B. The Court’s assessment

1. *Admissibility*

104. The Court notes that this 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.

2. *Merits*

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

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

107. As regards the applicants’ reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction with Articles 3 and 5 of

the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The fifth and sixth applicants claimed damages in respect of loss of earnings by their relative after his detention and subsequent disappearance. The fifth applicant, as the wife of Abdul Kasumov, claimed a total of 1,362,122 Russian roubles (RUB) under this heading (32,200 euros (EUR)) and the sixth applicant, as his son, claimed a total of RUB 1,148,785 under this heading (EUR 27,200). The total amount claimed by both applicants comprised EUR 59,400.

110. The applicants claimed that Abdul Kasumov had been working as a field mower at the time of his arrest, but that they had been unable to obtain salary statements for him, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. They calculated his earnings for the period, taking into account an average inflation rate of 13.63%. Their calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary’s Department in 2007 (“Ogden tables”).

111. 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.

112. 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. The Court further finds that a loss of earnings may also be claimed by dependent children and that it is reasonable to assume that Abdul Kasumov would eventually have had some earnings from which the fifth and sixth 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 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 25,000 to the fifth and sixth applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

113. The applicants claimed EUR 110,000 jointly in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member and the indifference shown by the authorities towards them.

114. The Government found the amounts claimed excessive.

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

C. Costs and expenses

116. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour for the work in the area of exhausting domestic remedies and of EUR 150 per hour for the drafting of submissions to the Court. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 5,823.

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

118. 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).

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

120. As to whether the costs and expenses were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time that the case involved little documentary evidence, in view of the Government's refusal to submit

most of the case file. The Court thus doubts that research was necessary to the extent claimed by the representatives.

121. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 4,500, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Abdul Kasumov;
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 Abdul Kasumov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first, second, third, fourth and fifth applicants on account of their mental suffering;
6. *Holds* that there has been no violation of Article 3 of the Convention in respect of the sixth applicant on account of his mental suffering;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Abdul Kasumov;
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 conjunction with Articles 3 and 5;
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 date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the fifth and sixth applicants jointly;
 - (ii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
 - (iii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President