



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

FIRST SECTION

CASE OF GERASIYEV AND OTHERS v. RUSSIA

(Application no. 28566/07)

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 Gerasiyev and Others v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 Mai 2011,

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

PROCEDURE

1. The case originated in an application (no. 28566/07) 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 four Russian nationals, listed in paragraph 5 below (“the applicants”), on 29 May 2007.

2. The applicants were represented by Mr D. Itsleyev, a lawyer practising in Grozny. 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 20 May 2009 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. 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 and to the application of Rule 41 of the Rules of Court. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- 1) Mr Vaysu Gerasiyev, born in 1938;
- 2) Ms Asiyat Gerasiyeva, born in 1942;
- 3) Mr Khasmagomed Gerasiyev, born in 1962; and
- 4) Ms Zarema Gerasiyeva, born in 1971.

6. The applicants are Russian nationals and residents of the village of Gekhi, the Chechen Republic.

7. The first applicant is the father and the second applicant is the mother of Mr Valid Gerasiyev, born in 1977. The third and fourth applicants are, respectively, brother and sister of Valid Gerasiyev.

A. Disappearance of Valid Gerasiyev

1. The applicants' account

(a) Events preceding Valid Gerasiyev's abduction

8. In the autumn of 1999 the applicants and Valid Gerasiyev resided in their privately owned house in the village of Gekhi. After the launch of the counter-terrorist operation in Chechnya, the first applicant and some of his relatives moved to Ingushetiya. Valid Gerasiyev, the first applicant's other son and the fourth applicant stayed in Gekhi to look after the family house.

9. In December 1999 federal forces regained control over Gekhi. The hostilities ceased and the civil population began to return to the area. Valid Gerasiyev, the fourth applicant and their brother decided to stay in Gekhi and not to move to Ingushetiya as they had previously planned.

10. On an unspecified date in February 2000 the Gerasiyev family ran out of firewood to heat their house. There being no forest area in the vicinity of Gekhi, Valid Gerasiyev went to the neighbouring village of Shaami-Yurt where O.V., a relative of the Gerasiyevs, resided and where he could obtain firewood.

11. On 3 February 2000 Valid Gerasiyev and O.V. went to the forest to collect firewood in the latter's tractor. At a certain moment the tractor started skidding and O.V. had to return to the village to fetch a rope. When he returned to the forest on his bike and found Valid Gerasiyev, both men came under fire. They decided to leave the area and abandon the vehicles. While they were trying to leave, a shell hit the tractor and the bike. Valid

Gerasiyev was hit by a shell splinter in the back of his arm. The wound did not seem particularly serious but his arm was bleeding.

12. Later on the same day Valid Gerasiyev and O.V. returned to Shaami-Yurt. The village was also under fire and the residents tried to shelter from the bombing. The men learnt from the local residents that federal forces were bombing the village because a group of rebels had passed through it earlier. Those rebels had been previously forced out of Grozny by federal forces.

13. Having arrived at O.V.'s house, Valid Gerasiyev and O.V. went to the basement to shelter from the bombing. Later on the same day about ten residents of the village joined them in the basement, among them A.D., S.D. and Sh.M. They bandaged Valid Gerasiyev's arm because the wound was still bleeding.

14. On 4 February 2000 the bombing continued and the people stayed in the basement.

(b) Abduction of Valid Gerasiyev on 5 February 2000

15. On 5 February 2000 federal forces started a "sweeping" operation in Shaami-Yurt. The servicemen ordered everyone to come out of O.V.'s basement and checked their identity documents. They immediately spotted Valid Gerasiyev's bandaged arm and asked him how he had been wounded. He did not speak Russian and could not answer the question. When O.V. and others tried to explain that he had been wounded while collecting firewood, the servicemen threatened them with their submachine guns and ordered them to remain silent.

16. At the same time the servicemen brought people out of the neighbouring houses and checked their identities. It turned out that General Shamanov was in command of the federal forces' operation in Shaami-Yurt and that he was present during the identity checks. A certain A.S., a police officer from the neighbouring village Khambi-Irzi, tried to stand up for Valid Gerasiyev and the other young men targeted by the servicemen. He addressed General Shamanov and asked him why federal forces had remained passive while the rebels had been passing through the village and why were they now trying to find fault with peaceful village residents. According to the written statement by Sh.M. (see paragraph 20 below), in response General Shamanov allegedly ordered the servicemen to disarm A.S. and to beat him up, which they immediately did.

17. The servicemen then put Valid Gerasiyev in a KAVZ minibus which was specifically re-equipped for transporting detained persons and drove away. Residents of the village alleged to have subsequently seen the minibus in the courtyard of the Achkhoy-Martan military commander's office.

18. On the same day the servicemen took three other residents of Shaami-Yurt away. On an unspecified date in March 2000 the body of one

of them, Mr Akh.D., was found in the river on the outskirts of the village. The other missing persons were not found.

19. The applicants have had no news of Valid Gerasiyev since.

20. The account of the events described above is based on the information contained in the application form; a written statement made by the first applicant on 14 May 2007; written statements by O.V. and A.D. dated 19 October 2006; a written statement by S.D of 10 October 2006, and a written statement by Sh.M. made on 12 October 2006.

2. Information submitted by the Government

21. According to the Government, no evidence that Valid Gerasiyev had been abducted by servicemen during a special operation was uncovered during the domestic investigation.

B. Investigation into the abduction of Valid Gerasiyev

1. The applicants' account

22. It appears that the applicants returned to Gekhi around mid-February 2000. Having learnt about the abduction of Valid Gerasiyev at about that time, the applicants applied, orally and in writing, to various law-enforcement authorities, seeking information on his whereabouts. Although the first applicant was almost illiterate (he never went to school), he made most of the enquiries in connection with the disappearance of his son, also on behalf of other applicants. At certain points he asked his neighbours for assistance in compiling his complaints. In the applicants' submission, given the limited level of the first applicant's education, he did not keep copies of all his complaints to the authorities.

23. On 22 April 2000 the first applicant complained about the disappearance of Valid Gerasiyev to the Achkhoy-Martanovskiy Temporary Office of the Interior ("the VOVD").

24. On 31 May 2000 the Prosecutor's Office of the Chechen Republic ("the republican prosecutor's office") forwarded the first applicant's complaint about the disappearance of his son, along with about ten similar complaints by other persons from the Chechen Republic, to the head of the Department of the Interior of the Chechen Republic and instructed him to notify the complainants about the decisions taken.

25. On 22 August 2000 the VOVD replied to the first applicant that Valid Gerasiyev had not been detained on the VOVD premises.

26. On 26 August 2000 (or 2001 – the copy of the relevant letter is partly illegible) the republican prosecutor's office forwarded the first applicant's complaint about the disappearance of Valid Gerasiyev to the acting prosecutor of the Urus-Martanovskiy District.

27. On 4 November 2001 the first applicant filed another complaint about the disappearance of Valid Gerasiyev with the VOVD. It appears that the VOVD carried out an inquiry which resulted in a decision of 14 November 2001 refusing to open a criminal case into the disappearance of the first applicant's missing son.

28. On 12 December 2001 the prosecutor's office of the Achkhoy-Martanovskiy District ("the district prosecutor's office") set aside the decision of 14 November 2001 and launched a criminal investigation into the disappearance of Valid Gerasiyev under Article 127 § 2 of the Criminal Code (aggravated unlawful deprivation of liberty). The case file was assigned no. 27054. The investigator's decision referred, among other things, to a written statement by O.V. to the effect that on 5 February 2000 about ten officials of the military commander's office of the village of Lermontov-Yurt had come to O.V.'s home and had taken away Valid Gerasiyev, and also to the fact that since that time the latter had been missing. It appears that the applicants were notified about that decision.

29. According to the applicants, after the initiation of the investigation on 12 November 2001, they were convinced that the district prosecutor's office would search for Valid Gerasiyev and find his abductors. Consequently, for several years they waited for that body to fulfil its duties. Moreover, each time they enquired, mostly orally, about the progress of the investigation, the officials of the district prosecutor's office reassured them that the investigation was under way. It was only in February 2006 that the first applicant sought professional legal advice in connection with the disappearance of Valid Gerasiyev.

30. On 7 February 2006 the first applicant requested the district prosecutor's office to provide him with information on the progress of the investigation into the disappearance of his son and to grant him victim status in connection with those proceedings. It does not appear that his request was ever replied to.

31. On 19 September 2006 the first applicant filed another complaint with the district prosecutor's office, claiming that the investigation into the disappearance of his son had been slow and that he had not had any information on its progress. He requested to be provided with access to the investigation case file and the proceedings to be resumed in the event that they had been suspended.

32. On 22 September 2006 the district prosecutor's office notified the first applicant that it had granted his request in so far as it concerned the resumption of the investigation and had dismissed the remainder of the complaint.

33. On 28 September 2006 the district prosecutor's office resumed the investigation in case no. 27054. The decision, in so far as relevant, stated as follows:

“... In the present case on 12 December 2001 [the district prosecutor’s office] initiated a criminal investigation under Article 127 § 2 of the Criminal Code in connection with the fact that on 5 February 2000, during a special operation carried out by federal security forces in the village of Shaami-Yurt, in the Achkhoy-Martanovskiy District, a group of unidentified persons in camouflage uniforms, who arrived in a grey KAVZ minibus, arrested and took away to an unknown destination Valid Gerasiyev, [born in] 1977, resident of the village of Gekhi, who was, at the moment of his abduction, at no 38 Shkolnaya Street, the home of [O.V.], resident of Shaami-Yurt. The whereabouts of Valid Gerasiyev remain unknown.

On 12 February 2001, upon the expiry of the time-limit for the preliminary investigation, the proceedings [in case no. 27054] were adjourned.

The decision to suspend the investigation was unfounded and premature and should be set aside as it was issued on the basis of insufficiently verified information about the crime.

The examination [of the case file] reveals that not all comprehensive measures aimed at establishing the truth were carried out; the investigation was incomplete ... In particular, in order to elucidate the circumstances of the crime [the investigators] should question the residents of the village of Gekhi, relatives, neighbours and acquaintances of the missing person, as well as persons from Shaami-Yurt residing in the immediate vicinity of the crime scene. Not all measures necessary to identify other witnesses, eyewitnesses to the crime or the culprits were taken. Furthermore, the investigators did not verify information pertaining to the ownership of the KAVZ vehicle used by the perpetrators; a close relative of the missing person was neither questioned nor granted victim status.

An additional investigation should broaden the circle of potential witnesses to the crime, instruct the police to take additional operational and search measures aimed at establishing the whereabouts of the missing person and identifying the perpetrators, to examine all the relevant circumstances of the crime ...”

34. On 2 October 2006 the first applicant was granted victim status in connection with the proceedings in case no. 27054. He was notified about that decision on the same day.

35. On 12 October 2006 the first applicant complained to the Achkhoy-Martanovskiy District Court (“the District Court”) about the refusal of the district prosecutor’s office to provide him with access to case file no. 27054 (see below).

36. On 28 October 2006 the district prosecutor’s office suspended the investigation in case no. 27054 owing to the failure to identify those responsible.

37. On 22 January 2007 the first applicant formally joined the proceedings in case no. 27054 as a civil party. He claimed 2,500,000 Russian roubles (RUB) in respect of pecuniary and non-pecuniary damage caused by the offence.

2. Information submitted by the Government

38. Despite the Court's specific requests, the Government refused to submit a copy of the entire criminal case file opened into the abduction of the applicants' relative. They did not put forward any explanation for their failure to do so. The Government furnished only copies of several witness' statements, the decisions to open and resume the investigation and the investigators' requests to various authorities concerning the whereabouts of Valid Gerasiyev, as well as some of the replies to them. Some of the documents provided by the Government were illegible; others were legible only in part. The information contained in those documents, in so far as they are legible, is summarised below.

39. On 12 December 2001 the deputy prosecutor of the Achkhoy-Martanovskiy District quashed the decision of 14 November 2001, issued by the Achkhoy-Martanovskiy district department of the interior ("the VOVD") and refusing to institute a criminal investigation into the first applicant's complaint about the abduction of Valid Gerasiyev. The deputy prosecutor's decision stated, in particular, that on 4 November 2001 the VOVD had received the first applicant's complaint about the abduction of his son on 5 February 2000 from house no. 24, Shkolnaya Street, in Shaami-Yurt. Following a preliminary inquiry, the VOVD had refused to open a criminal case. However, their refusal was unlawful because the materials of the preliminary inquiry contained a statement by O.V. to the effect that on 5 February 2000 a group of ten servicemen from the military commander's office of the village of Lermontovo-Yurt had come to his house at no. 24, Shkolnaya Street and had taken Valid Gerasiyev away in their bus. By the same decision the deputy prosecutor instituted an investigation into the abduction of Valid Gerasiyev under Article 127 § 2 of the Criminal Code (aggravated unlawful deprivation of liberty). The case file was assigned the number 27054.

40. On 29 December 2001 the investigators interviewed O.V., residing at 24, Shkolnaya street, Shaami-Yurt, as a witness. He stated that at the beginning of February 2000 Valid Gerasiyev had visited him in Shaami-Yurt and had asked for help in collecting firewood. O.V. had given him a tractor and the latter had gone to the forest. At a certain point after his departure unspecified forces had started shelling the village and a group of rebel fighters had entered the village. Civilians had been given the opportunity to leave the village in several buses. O.V. had sent his parents away in a bus but had had to stay in Shaami-Yurt. In the evening of the same day unspecified persons had brought Valid Gerasiyev, who had been wounded and was bleeding severely, to his house. When a local doctor, called by O.V., had started bandaging the wound, a group of servicemen of the federal forces had come and taken Valid Gerasiyev away. O.V. had himself seen them place the applicants' relative into a light-grey KAVZ bus with a blue stripe on the side. As they were taking Valid Gerasiyev away,

the servicemen had said that they would provide him with the necessary medical assistance. Residents of Shaami-Yurt B.D., S.D. A.D. and Sh.M. had been present during Valid Gerasiyev's abduction.

41. On an unspecified date the investigators interviewed the first applicant as a witness. He stated that before 1999 his family had resided in the village of Gekhi and that in 1999 they had moved to Ingushetiya, except for Valid Gerasiyev and his other son V.G., who had stayed in Gekhi. In February 2000 the first applicant had returned to Gekhi but had not found Valid Gerasiyev there. From V.G. he had learnt that Valid Gerasiyev had gone to Shaami-Yurt to collect firewood. When the first applicant had gone there, O.V. had told him that Valid Gerasiyev had indeed come to Shaami-Yurt and that at that time sweeping operations had been conducted there. Valid Gerasiyev had been wounded and had then been taken away by servicemen who had promised to provide him with medical assistance.

42. On 10 January 2002 the investigators interviewed the third applicant as a witness. He stated that in 1999 he had left Gekhi together with his parents, whilst Valid Gerasiyev and V.G. had stayed in the village. The family had gone back to Gekhi in the mid-February 2000 and had learnt, after a certain lapse of time, from O.V. that Valid Gerasiyev had been at O.V.'s home in Shaami-Yurt and had been wounded while collecting firewood in the forest. At that time there had been clashes between the federal forces and the rebel fighters who had entered the village. At the beginning of February servicemen of the federal forces had taken Valid Gerasiyev from O.V.'s house, had placed him in a KAVZ bus and had taken him away. Since February 2000 the Gerasiyevs had contacted various State authorities with complaints about the disappearance of Valid Gerasiyev but had been unable to obtain any information.

43. On 16 January 2002 the investigators interviewed Sh.M. as a witness. He submitted that during a special operation in the area in February 2000 the rebel fighters had been given a free corridor to leave through Shaami-Yurt. They had entered the village on 2-3 February 2000, after which the federal forces had started shelling the village. Sh.M. had gone down to O.V.'s basement to hide from the shelling. There he had seen a number of people, including S.D., other neighbours and a wounded young man left behind by the rebel fighters when they had left the village on 4-5 February 2000. On 5 February 2000 a group of servicemen in camouflage uniforms had ordered everyone out of the basement. Having checked their identity papers, the servicemen took the young man with them.

44. On 18 January 2002 the investigators interviewed B.D. as a witness. He stated that at the beginning of February 2000 members of illegal armed groups had entered Shaami-Yurt and that the federal forces had been conducting a special operation in the village on 2-5 February 2000. When the federal forces had started shelling the village, B.D. had gone down to

O.V.'s basement There B.D. had seen a wounded young man who, according to the other people hiding in the basement, had been from the village of Gekhi and had been left behind by the rebel fighters. At about 10 a.m. on 5 February 2000 a group of servicemen or police officers had come to the basement, had ordered everyone outside and had checked their identity papers. The servicemen had then taken the wounded man with them.

45. On 18 November 2002 A.D. was interviewed as a witness. She gave a similar account of the events concerning Valid Gerasiyev's abduction to those given by Sh.M. and B.D.

46. On 20 January 2002 the investigators interviewed S.D. as a witness. He stated that on 2-3 February 2000 rebel fighters had entered Shaami-Yurt, following which the village had been blocked off by federal forces which had put the village under fire. As he did not have a basement, S.D. went to O.V.'s house, where other residents of Shaami-Yurt were also sheltering. On 5 February 2000 servicemen had blocked off the basement and ordered everyone in it outside. They had checked the residents' passports and taken away the wounded person.

47. On 12 February 2002 the investigation was suspended owing to the failure to identify the perpetrators. The related decision mentioned that a copy of it was to be forwarded to the Achkhoy-Martanovskiy Interdistrict prosecutor but was silent on as to whether it was supposed to be sent to the applicants.

48. On 28 September 2006 the deputy prosecutor of the Achkhoy-Martanovskiy district set aside the decision of 12 February 2002 as premature and unfounded. The decision stated that the investigators had not interviewed the residents of Gekhi, had not taken steps to identify a number of eyewitnesses to the abduction of Valid Gerasiyev and had not verified the information that he had been taken away in a KAVZ vehicle. Moreover, none of the relatives of the missing person has been granted victim status. After the opening of the investigation the investigators were instructed to increase the pool of witnesses to be interviewed and to carry out additional measures to step up the investigation.

49. On 30 September 2006 the first applicant was granted victim status in the proceedings in case no.27054 and interviewed. He confirmed his account of the events surrounding his son's abduction and stated, in addition, that O.V. had told him that rebel fighters had brought Valid Gerasiyev, wounded, to his house in Shaami-Yurt. The latter had a missile wound to the right forearm and was bleeding. O.V. had called the local doctor, D., who had tried to stop the bleeding. At about that time a group of servicemen had emerged and had asked the people hiding in the basement to go outside. When they had seen Valid Gerasiyev, they had taken him away, saying that they would provide him with the necessary medical assistance. The servicemen had left in a KAVZ vehicle.

50. On 30 September 2006 the investigators interviewed the second applicant as a witness. She confirmed the account of the events surrounding the abduction of Valid Gerasiyev given by the first applicant.

51. On 2 October 2006 the investigators interviewed V.Sh., the applicants' neighbour, as a witness. He stated that he had learnt about the abduction of Valid Gerasiyev from his relatives and relayed the account of the events given by the first and second applicants.

52. Residents of Gekhi S.A., A.M., M.K., S.M., A.Ch., M.I., S.A., R.Kh., Ch.P., M.A., Kh.I., Kh.U., I.M., Sh.U., A.T., Sh.B. and A.A., interviewed between 2 and 26 October 2006, made similar statements to that of V.Sh.

53. On 21 October 2006 the investigators interviewed I.G. as a witness. He stated that in February 2000 the federal forces had opened a corridor for rebel fighters, who could leave Grozny through Shaami-Yurt. After the rebel fighters had entered the village, the federal forces had started shelling it. When the rebel fighters had left, the servicemen had started a sweeping operation, checking the houses of the residents and their identity papers. I.G. had heard from an acquaintance that the servicemen had taken away a young wounded man from O.V.'s basement. That man had gone to O.V.'s house to collect firewood and had been wounded while in the forest.

54. On 22 October 2006 the investigators interviewed M.A., a resident of Shaami-Yurt, as a witness. He submitted that in February 2000 a corridor had been opened for the rebel fighters to leave from Grozny through Shaami-Yurt. When the rebel fighters had entered the village, the federal forces started shelling it. M.A. had stayed with his family in the basement of his house. When the rebel fighters had left, the servicemen had started a sweeping operation, looking for rebel fighters who might have stayed. M.A. had learnt from O.V. that the servicemen had taken away a young man from Gekhi, who had come to visit O.V. and ask him for assistance in finding firewood.

55. Residents of Shaami-Yurt T.V. and R.M., interviewed on 24 October 2006, gave a similar account of the events concerning the sweeping operation in Shaami-Yurt and the apprehension of Valid Gerasiyev to that given by M.A.

56. On 28 October 2006 the investigation in case no. 27054 was suspended owing to the failure to identify the perpetrators.

57. On 22 January 2007 the decision to suspend the investigation was set aside as premature and unfounded and the investigators were instructed to step up the investigation.

58. On 1 February 2007 the investigators interviewed residents of Shaami-Yurt Kh.Sh., R.A., R.D., M.T., Kh.Kh., E.Kh. and A.Kh. as witnesses. They gave similar accounts of the events of the sweeping operation in Shaami-Yurt and Valid Gerasiyev's abduction to that given by M.A.

59. On 22 February 2007 the investigation in case no. 27054 was suspended owing to the failure to identify the perpetrators.

60. According to the Government, the investigation in case no. 27054 is pending.

C. Court proceedings against law-enforcement officials

61. On 24 November 2006 the Achkhoy-Martanovskiy District Court dismissed the first applicant's complaint about the district prosecutor's office's refusal to provide him access to the criminal case file opened into his son's abduction and to allow him make copies from it. The court decision stated, among other things, that it transpired from the materials of case file no. 27054 that on 5 February 2000 servicemen of the federal security forces had arrested and taken away Valid Gerasiyev and that the latter had subsequently disappeared. The investigation had obtained information on the involvement of servicemen in the abduction of Valid Gerasiyev. However, it had proved impossible to identify the specific persons who had committed the crime.

62. On 25 April 2007 the Supreme Court of the Chechen Republic upheld the decision of 24 November 2006 on appeal.

II. RELEVANT DOMESTIC LAW

63. 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

64. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the applicants had not appealed against the decision of the Achkhoy-Martanovskiy District Court, as upheld on appeal by the Supreme Court of the Chechen Republic, by way of supervisory review. They also argued that it had been open to the applicants to pursue civil complaints but that they had failed to do so.

65. The applicants contested that objection. They stated that challenging the impugned court decisions by way of supervisory review did not constitute an effective remedy. With reference to the Court's practice, they argued that they were not obliged to apply to the civil courts in order to exhaust domestic remedies.

B. The Court's assessment

66. 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).

67. In so far as the Government argued that the applicants should have appealed against the decision of the District Court, as upheld by the Supreme Court, by way of supervisory review, the Court notes, with reference to its extensive case-law, that such extraordinary remedies cannot, as a general rule, be taken into account for the purpose of applying Article 35 of the Convention (see, among many other authorities, *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II (extracts)). In any event, the Government failed to demonstrate how an application for supervisory review of the impugned decisions could have provided the applicants with either preventive or compensatory redress in respect of the alleged violations of the Convention.

68. 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.

69. In sum, the Court dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

A. Submissions by the parties

71. The Government argued that the domestic investigation had obtained no evidence that Valid Gerasiyev had been arrested during a special operation by servicemen or that he should be presumed dead. The domestic investigation had only established that he had been abducted by unidentified armed men. The fact that the abductors had worn uniforms and had been armed did not prove that they were servicemen. None of the witnesses interviewed by the investigation had been able to give a detailed description of the abductors or specify whether they had had insignia or used specific military terms in communicating among themselves. The body of Valid Gerasiyev had not been discovered. Moreover, V.O. had given contradictory statements to the investigation and the Court.

72. As regards the investigation, the Government submitted that it satisfied the Convention requirements. The domestic authorities had carried out an important number of investigating measures. They had interviewed numerous witnesses and sent out requests for information to various State authorities. The fact that the applicants were dissatisfied with the amount of information provided by the investigating authorities did not render the investigation ineffective. In the Government’s submission, even in the periods when the investigation had been suspended, the authorities continued carrying out operational and search measures aimed at establishing the missing person’s whereabouts and identifying the culprits.

73. The applicants argued that the evidence submitted by them and the documents disclosed by the Government unequivocally showed that the State authorities had been conducting a special operation in Shaami-Yurt at the time of the abduction of their relative. Numerous witnesses interviewed by the investigation stated that Valid Gerasiyev had been abducted by a group of servicemen. They concluded that there existed evidence “beyond reasonable doubt” that their relative had been abducted by servicemen during a special operation. They claimed that he was to be presumed dead following his unacknowledged detention and invited the Court to draw inferences from the Government’s unjustified refusal to furnish the documents requested from them.

74. In the applicants' submission, the investigation of the kidnapping of Valid Gerasiyev had been neither prompt nor effective. It had been instituted with a considerable delay. Despite the evidence of implication of servicemen in the abduction of the applicants' relative, the authorities had not identified and interviewed the persons who had been in charge of the operation and those who had participated in it. They had also failed to take any steps to obtain any information on the vehicles used by the servicemen. The interviewing of witnesses had been superficial. The investigation had been pending for over seven years without any tangible results.

B. The Court's assessment

1. Admissibility

75. 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. 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 Valid Gerasiyev

(i) General principles

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

(ii) Establishment of the facts

77. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

78. The applicants alleged that at about 10 a.m. on 5 February 2000 their relative, Valid Gerasiyev, had been abducted by servicemen during a sweeping operation conducted by the authorities in Shaami-Yurt and had then disappeared. They invited the Court to draw inferences as to the well-foundedness of their allegations from the Government's failure to provide the documents requested from them. They submitted that several persons had witnessed their relative's abduction and enclosed their statements to support that submission.

79. The Government conceded that Valid Gerasiyev had been abducted on 5 February 2000 by unidentified armed camouflaged men and that the authorities had conducted a special operation in Shaami-Yurt at the time of his abduction. However, they denied that the abductors had been servicemen, referring to the absence of conclusions from the ongoing investigation.

80. The Court notes that despite its requests for a copy of the investigation file into the abduction of Valid Gerasiyev, the Government refused to produce most of the documents from the case file and that they did not refer to any reasons which would justify their refusal to do so.

81. 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.

82. Having regard to the applicants' submissions and statements by witnesses enclosed by them, the Court considers that they presented an overall coherent and convincing picture of Valid Gerasiyev's abduction on 5 February 2000 by a group of armed and camouflaged men during a security operation. It further observes that the applicants' account was consistent both throughout the domestic investigation and before this Court (see paragraphs 8-18, 20, 41 and 42 above). It also cannot but note that the sparse materials from the criminal case file that the Government agreed to disclose appear not only to confirm the applicants' allegation that the authorities had conducted a security operation in Shaami-Yurt at the time of Valid Gerasiyev's abduction but also that it had been precisely the servicemen participating in the operation who had taken the applicant's relative with them (see paragraphs 40, 43, 46, 53-55 and 58 above).

83. In this connection it is also highly significant to the Court that the domestic courts, which apparently had access to the investigation file,

unequivocally stated that the applicant's relative had been abducted by servicemen who had conducted a security operation in Shaami-Yurt (see paragraph 61 above). Against this background the Court does not consider that the discrepancies in the statements by O.V., as referred to by the Government, were such as to critically undermine the overall coherent and consistent account of the events given by the applicants.

84. The Court notes that in their applications to the authorities the applicants consistently maintained that Valid Gerasiyev had been detained by unknown servicemen during a security operation and requested the investigating authorities to look into that possibility. It further notes that after more than seven years the investigation has produced no tangible results.

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

86. 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 during a security operation. The Government's statement that the investigation had not found any evidence to support the involvement of servicemen in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents, which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Valid Gerasiyev was arrested on 5 February 2000 by State servicemen during an unacknowledged security operation.

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

88. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among many others, *Bazorkina*, cited above; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-XIII (extracts); *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-VIII (extracts); *Baysayeva v. Russia*, no. 4237/01, 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 Valid Gerasiyev or of any news of him for more than seven years supports this assumption.

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

(iii) The State's compliance with Article 2

90. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147 Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

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

92. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Valid Gerasiyev.

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

93. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family and carried out with reasonable promptness and expedition. It should also be effective in the sense that it is capable of leading to a determination of

whether or not the force used in such cases was lawful and justified in the circumstances, and should afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

94. The Court notes at the outset that the Government refused to produce most of the documents from case file no. 27054. It therefore has to assess the effectiveness of the investigation on the basis of the very sparse information submitted by the Government and the few documents available to the applicants that they provided to the Court.

95. Turning to the facts of the present case, the Court observes that Valid Gerasiyev was abducted on 5 February 2000 and that the investigation into his abduction was instituted on 12 December 2001, that is, one year and ten months later. The applicants claimed that they had complained about their relative's disappearance shortly after they had returned to Gekhi in mid-February 2000 and had learnt about it. However, they did not provide any further information in that connection. The Government did not contest that submission. The applicants also submitted that they had not kept copies of all their initial complaints to the authorities, but furnished a copy of their complaint to the VOVD dated 22 April 2000 and the letter of the prosecutor's office of the Chechen Republic dated 31 May 2000 in which the latter authority instructed the head of the Ministry of the Interior of the Chechen Republic to examine their submissions and to notify the applicants of any decisions taken.

96. Against this background the Court is unable to attribute the responsibility for the delay in the opening of the investigation to any of the parties in the time span between 5 February and 31 May 2000. Nonetheless, having regard to the available documents it considers that as of 31 May 2000 the republican prosecutor's office became aware of the crime allegedly committed and it was for them to report the matter to the appropriate prosecutor's office via the official channels of communication that should exist between various law-enforcement agencies (see *Khalidova and Others v. Russia*, no. 22877/04, § 93, 2 October 2008, and *Vakayeva and Others v. Russia*, no. 2220/05, §§ 141-42, 10 June 2010). Accordingly, it finds that the delay of one year and six months in the opening of the investigation is attributable to the domestic authorities. In this connection it stresses that such an important postponement *per se* is 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.

97. The Court has further to assess the scope of the investigative measures taken.

98. The Government argued that the investigating authorities had made enquiries to a number of State bodies about Valid Gerasiyev's whereabouts and that the replies received indicated that those authorities had no relevant

information. However, in view of their refusal to provide copies of the related documents, not only is it impossible for the Court to establish how promptly those measures were taken, but whether they were taken at all.

99. Furthermore, it seems that a number of investigative steps were taken with a considerable delay. In particular, the Court is struck by the fact that the investigating authorities waited for over five years to interview the residents of Shaami-Yurt, who were able to provide information on the circumstances of Valid Gerasiyev's abduction and the details of the security operation conducted in the village.

100. More importantly, it appears that a number of crucial investigative steps were not taken at all. The Court notes that, despite the abundance of witness' statements explicitly stating that a large-scale security operation had been conducted in the village of Shaami-Yurt at the time of Valid Gerasiev's abduction, it does not transpire that the investigators made any genuine attempts to establish which State authorities and military units had been in charge of it and had carried it out. Likewise, it does not appear that the investigators took any steps to obtain information on the vehicles used by the servicemen and, in particular, the KAVZ bus in which Valid Gerasiyev had been taken away. It is particularly striking given that in setting aside one of the decisions to suspend the investigation, the higher-ranking prosecutors explicitly referred to those omissions and instructed the investigators to rectify them and to pursue the matter (see paragraph 33 above).

101. It is obvious that, if they were to produce any meaningful results, these investigative measures should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. The delays and omissions, 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 matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

102. The Court further notes that the first applicant was granted victim status in the proceedings concerning the abduction of his son only more than four years after the opening of the investigation and there is no indication that the authorities ever considered granting that status to the other applicants. Regard being had to the applicants' unanswered requests for information addressed to the investigating authorities (see, for example, paragraph 30 above), the Court has serious doubts that they were properly informed of any developments in the investigation. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

103. It is further observed that the investigation was adjourned and resumed on numerous occasions. It also transpires that there were lengthy periods of inactivity on the part of the prosecuting authorities when no investigative measures were being taken. In this respect the Court emphasises that while the adjourning or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to adjourn were made without the necessary investigative steps being taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted.

104. 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 Valid Gerasiyev, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

105. 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

106. The Government submitted that the investigation had not established that the applicants had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

107. The applicants maintained their complaint.

B. The Court's assessment

1. Admissibility

108. 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

109. 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*, cited above, § 358, and *Imakayeva*, cited above, § 164).

110. In the present case the Court notes that the applicants are close relatives of the disappeared person. 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.

111. In view of the above, the Court finds that the applicants suffered, and continue to suffer, distress and anguish as a result of the disappearance of their close relative 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.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

113. The applicants further stated that Valid Gerasiyev 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

114. The Government asserted that no evidence had been obtained by the investigators to confirm that Valid Gerasiyev had been deprived of his liberty. He was not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

115. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

116. 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

117. 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).

118. The Court has found that Valid Gerasiyev was apprehended by State servicemen on 5 February 2000 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).

119. 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.

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

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

121. 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

122. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them

123. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

124. 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

125. 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).

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

127. 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).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

128. 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

129. The first and second applicants claimed damages in respect of loss of earnings by their son after his arrest and subsequent disappearance. They submitted that although Valid Gerasiyev had been unemployed before his abduction, he would have been able to find a job. For instance, if he had worked at a construction site, he would have earned about 460 euros (EUR) a month, which constituted the average salary for construction workers in the Chechen Republic at the time of the submission of the applicants' claims. Accordingly, the first applicant claimed a total amount of EUR 9,568 and the second applicant claimed EUR 16,650 in respect of pecuniary damage.

130. The Government argued that the applicants' claims were unsubstantiated and that they had not made use of the domestic avenues for obtaining compensation for the loss of a breadwinner.

131. 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. Having regard to its conclusions above, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relative and the loss to them of the financial support which he could have provided.

132. Having regard to the applicants' submissions and the fact that Valid Gerasiyev was not employed at the time of his abduction, the Court awards EUR 3,000 to the first applicant and EUR 4,000 to the second applicant in respect of pecuniary damage plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

133. The applicants claimed EUR 1,000,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relative.

134. The Government found the amounts claimed excessive.

135. 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 applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the first and second applicants jointly EUR 50,000 and EUR 5,000 to the third and fourth applicants each in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

C. Costs and expenses

136. The applicants were represented by Mr D. Itsleyev. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 8,657. They submitted the following breakdown of costs:

- (a) EUR 8,025 for 53.50 hours of research and drafting of legal documents submitted to the Court at a rate of EUR 150 per hour;
- (b) EUR 472 for translation costs, as certified by invoices, and
- (c) EUR 160 for administrative and postal costs.

137. The Government claimed that the agreement for the applicants' representation bore the date of 7 September 2009, that is, it had been concluded four days before the Government had submitted their observations. Furthermore, the applicants failed to furnish any documents in support of the postal and administrative claims and the translation fee note submitted by them had no seal.

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

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

140. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of the former Article 29 § 3 in the present case, the applicants' representatives submitted their observations on the admissibility and merits in one set of documents. Moreover, 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. Furthermore, whilst agreeing with the Government that the applicants did not submit any documents in support of their claim for administrative costs, it does not accept their submission concerning the lack of a seal on the translation fee note.

141. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 3,500, together with any value-added tax that may be chargeable to them.

D. Default interest

142. 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. *Declares* the application admissible;
2. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Valid Gerasiyev;
3. *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 Valid Gerasiyev disappeared;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;
5. *Holds* that there has been a violation of Article 5 of the Convention in respect of Valid Gerasiyev;
6. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
7. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
8. *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 3,000 (three thousand euros) to the first applicant and EUR 4,000 (four thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 50,000 (fifty thousand euros) to the first and second applicants jointly, and EUR 5,000 (five thousand euros) to the third and fourth applicants each, plus any tax that may be chargeable to them, in respect of non-pecuniary damage;
 - (iii) EUR 3,500 (three 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;
9. *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