



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

FIRST SECTION

CASE OF GIRIYEVA AND OTHERS v. RUSSIA

(Application no. 17879/08)

JUDGMENT

STRASBOURG

21 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 Giriyeva and Others v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyev,

George Nicolaou,

Mirjana Lazarova Trajkovska, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 17879/08) 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 three Russian nationals listed below (“the applicants”), on 27 March 2008.

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 11 September 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 the 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 Zara Giriyeva, who was born in 1957,
- 2) Mr Musost Aygumov, who was born in 1982, and
- 3) Ms Zarema Aygumova, who was born in 1991.

The first applicant lives in Grozny, the second and third applicants live in Avtury, Chechnya. The first applicant is the mother of Isa Aygumov, who was born in 1977; the second applicant is his brother and the third applicant is his sister.

A. Disappearance of Isa Aygumov

1. Information submitted by the applicants

6. At the material time Avtury village was under the full control of Russian federal forces. Military checkpoints manned by Russian servicemen were situated on the roads leading to and from the settlement. The military commander's office was located in the village. The applicants, Isa Aygumov and other relatives lived at 13 Naberezhnaya Street (in the submitted documents the address was also stated as 11 Naberezhnaya Street) in Avtury, in the Shali district of Chechnya. The household consisted of two dwellings in one yard.

7. In the afternoon of 9 January 2002 Isa Aygumov, the second applicant and a number of their neighbours, including Mr S.Sh., Mr A.S., Mr Kh.D., Mr A.Kh., Mr M.S., Mr S.Kh., Mr I.Kh. and Mr S.-M.M., were helping the applicants' family to saw up firewood in the area next to the courtyard. The first applicant was not at home that day.

8. At about 4 p.m. Isa Aygumov went to the courtyard to fetch a shovel. At that moment two UAZ vehicles arrived at the applicants' gate. One of them had the registration number 635 with the regional number 95. Another two UAZ cars stopped about 100 metres away down the street. A large number of armed military servicemen in camouflage uniforms got out of the vehicles. Some of them were wearing masks; those not masked were of Slavic appearance.

9. The servicemen split into several groups. One of them ran into the courtyard. Isa Aygumov saw the servicemen and ran to the house of his neighbours, the M. family. He told Mr S.-M. M. and his wife Ms Z.M. that a group of military servicemen had broken into his household, that he was scared and wanted to hide in their house. Four servicemen ran after Isa Aygumov. They climbed over the neighbours' fence and asked the neighbours in unaccented Russian where Isa was. Then the servicemen found him in one of the rooms, tied his hands behind his back and took him outside.

10. Meanwhile other servicemen quickly searched the applicants' house. They did not explain their actions; they neither identified themselves nor

produced any documents. They ordered the family members to stay quiet. As a result of the search they took Isa Aygumov's passport. The officers also searched the dwelling of the applicants' relative Mr A.A. Immediately after the search the servicemen shut the third applicant and her relatives in the house and propped a metal pipe against the door outside to keep it closed.

11. In the meantime another group of servicemen made all the men who had been sawing up firewood lie face down in the snow; a soldier stood over each of them. Mr I.Kh. asked the officers why they were there. In response, one of the officers pointed his gun at him and said that if he kept asking questions they would take him away. The officers did not ask the men for identity documents. One of the soldiers pulled the second applicant's head up from the ground and asked his colleague whether they were supposed to take this man away. The other responded in the negative.

12. While they were shut in the house the applicants' relatives saw from the window the four servicemen taking Isa Aygumov away from the neighbours' yard and putting him into one of the UAZ vehicles. After that the cars drove away in the direction of Shali.

13. The abduction of Isa Aygumov was witnessed by the second and third applicants, their relatives and neighbours.

14. In support of their statements, the applicants submitted the following documents: a statement by Ms Zh.G. dated 20 February 2008; a statement by Mr S.Sh., undated; a statement by Mr Kh.D., undated; a statement by Mr I.Kh., dated 29 February 2008; and a statement by Mr S.-M.M., dated 29 February 2008.

2. Information submitted by the Government

15. The Government did not challenge the facts as presented by the applicants. They stated that the abduction had been perpetrated by unidentified armed men and that no special operations had been conducted in Avtury on 9 January 2002.

B. The search for Isa Aygumov and the investigation

1. Information submitted by the applicants

16. Immediately after the abduction, the applicants and their relatives complained about it to the head of the Avtury village administration. On the following day, 10 January 2002, the applicants complained about the abduction to the Shali district department of the interior ("the ROVD") and the Shali district prosecutor's office ("the district prosecutor's office").

17. On 31 January 2002 the district prosecutor's office instituted an investigation into the abduction of Isa Aygumov under Article 126 § 2 of

the Criminal Code (aggravated kidnapping). The case file was given the number 59046.

18. Around 9 February 2002 a group of investigators from the district prosecutor's office visited the applicants' house and questioned some of the family members about the events of 9 January 2002.

19. On 19 February 2002 the first applicant wrote to the head of the ROVD and complained that her son Isa Aygumov had been abducted by Russian federal servicemen in four UAZ vehicles, one of which had had the registration number 635 95/RUS.

20. On 12 March 2002 the head of the ROVD replied to the applicant, stating that as of 9 January 2002 Isa Aygumov had not been detained in local detention facilities. The letter also included the following:

“... based on the description of the car [provided by you to the authorities] the investigation identified one vehicle, which is currently being examined in connection with its possible involvement in your son's abduction ...”

21. On 18 March 2002 the military prosecutor's office of military unit no. 20116 informed the first applicant that their inquiry had not established whether federal servicemen were involved in her son's abduction.

22. On 6 April 2002 the district prosecutor's office informed the first applicant that the investigation in criminal case no. 53046 had been resumed because the ROVD had not carried out the necessary operational-search measures.

23. On 31 July 2002 the investigators informed the applicants that they had opened a criminal case in connection with the abduction of Isa Aygumov.

24. On 19 August 2002 the Chechnya Ministry of the Interior (“the Chechnya MVD”) forwarded the first applicant's complaint about her son's abduction to the Shali ROVD.

25. On 2 October 2002 the military prosecutor's office of the North Caucasus Military Circuit forwarded the first applicant's complaint about the abduction to the military prosecutor's office of military unit no. 20116 for examination.

26. On 22 November 2002 the military prosecutor's office of military unit no. 20116 informed the first applicant that they had forwarded information requests concerning detention of Isa Aygumov to the Chechnya Federal Security Service (“the FSB”), the Headquarters of the United Group Alignment (“the UGA”) and the Regional Headquarters of Counterterrorist Operations in the Northern Caucasus.

27. On 16 December 2002 the district prosecutor's office informed the first applicant that they had resumed the investigation of the criminal case.

28. On four occasions between December 2002 and August 2005 the Chechnya prosecutor's office forwarded the first applicant's complaints to the district prosecutor's office for examination.

29. On 16 January 2003 the district prosecutor's office informed the first applicant that they had suspended the criminal investigation for failure to identify the perpetrators.

30. On 25 February 2003 the district prosecutor's office informed the first applicant that they were verifying the information which she had provided in her complaint concerning the abduction.

31. On 4 March 2003 the Department of the Prosecutor General's office in the Southern Federal Circuit forwarded the first applicant's complaint about the abduction to the Chechnya prosecutor's office.

32. On 7 July 2003 the military prosecutor's office of the UGA forwarded the first applicant's complaint about the abduction to the military prosecutor's office of military unit no. 20116 for examination.

33. On 23 July 2003 the district prosecutor's office informed the first applicant that they had resumed the investigation of the criminal case.

34. On 2 November 2006 the applicants' representatives wrote to the district prosecutor's office and requested to be provided with an update on the criminal investigation. In particular, they asked to be informed about the following: whether the owner of the UAZ car with the registration number 635 had been identified; whether the first applicant had been granted victim status in the criminal case; and whether she could be provided with access to the investigation file.

35. On 20 February 2008 the first applicant complained to the district prosecutor's office that she had no information concerning the investigation of the criminal case.

36. On 20 February 2008 the district prosecutor's office informed the first applicant that on 4 September 2003 they had suspended the investigation of the criminal case for failure to identify the perpetrators.

37. According to the applicants, none of the applicants' neighbours who had witnessed the abduction were questioned by the investigators until November 2009.

38. According to the applicants, the investigation was suspended prematurely on numerous occasions. For instance, no proceedings were pending between 25 February 2003 and 13 November 2006, between 13 November 2006 and 20 February 2008, and between 14 March 2008 and 6 November 2009.

2. Information submitted by the Government

39. On 10 January and again on 23 January 2002 the first applicant complained to the district prosecutor about her son's "arrest" at his house at about 3.35 p.m. on 9 January 2002. She stated that Isa Aygumov had not participated in the activities of illegal armed groups and requested the prosecutor to take measures to release him from detention.

40. On an unspecified date in January 2002 the applicants' relative Mr A.A. (Isa Aygumov's uncle) complained to the Shali district military

commander and the Shali district military prosecutor about Isa Aygumov's abduction by officers from the Shali ROVD. He stated that Isa had been abducted from his house and that the officers had arrived in two UAZ minivans ("*Таблетка*").

41. On 31 January 2002 the district prosecutor's office instituted an investigation into the abduction of Isa Aygumov. The text of the document was not clear, as it stated that the applicants' relative had been abducted either from the local hospital or from his house:

"... at about 8 p.m. on 9 January 2002 unidentified armed men in camouflage uniforms, armed with automatic weapons, took Isa Aygumov away from the Shali central district hospital, where he had applied [for medical assistance] in connection with a gunshot wound to his face; [the abductors] took Isa Aygumov away from his house at no.11 in Naberezhnaya Street, Avtury ..."

42. On 31 January 2002 the investigators questioned the applicants' relative Mr A.A., who stated that at about 3.30 p.m. on 9 January 2002 a group of masked men in camouflage and the grey uniforms usually worn by the police had arrived at Isa Aygumov's house. The witness and a number of other relatives of the applicants as well as their neighbours had been present during the abduction. The abductors had put the witness and the other men face down in the snow and demanded their identity information. The abductors, who had arrived in several vehicles, including two UAZ minivans, had taken Isa Aygumov to the Shali ROVD.

43. On the same date, 31 January 2002, the investigators granted Isa Aygumov's wife Ms Z.B. victim status in the criminal case and questioned her. She stated that at about 3.30 p.m. on 9 January 2002 her husband had been abducted from his house by a group of masked armed men in camouflage uniforms, who had behaved aggressively and searched the house. The abduction had taken place in the presence of the second and third applicants, their relatives and neighbours. The abductors had arrived in four vehicles, including two grey UAZ minivans.

44. On 31 January 2002 the investigators questioned the applicants' relative Ms B.A., whose statement about the circumstances of the abduction was similar to the one given by Ms Z.B. In addition, the witness stated that the abductors had taken Isa Aygumov to the Shali ROVD.

45. On 10 February 2002 the investigators requested that the Shali FSB informed them whether they had detained the applicants' relative. The text of the document included the following:

"... the investigation established that at about 3.35 p.m. on 9 January 2002 four vehicles, including two UAZ minivans, one of them with the registration number 635, had arrived at [the applicants'] address. Men of Slavic appearance in camouflage uniforms had put Isa Aygumov in one of these vehicles and taken him to the Shali ROVD. His whereabouts have been unknown since.

You are asked to inform us of the following: did any of your employees participate in the arrest of Isa Aygumov? Does your agency have a UAZ minivan with the

registration number 635 and if not, do you know to which agency this vehicle might belong? Is Isa Aygumov registered by your agency as a member of illegal armed groups? ...”

46. On 19 February 2002 the first applicant complained to the Chechnya prosecutor about her son’s abduction. She stated that Isa Aygumov had been abducted by representatives of Russian federal forces who had arrived at her house in four UAZ vehicles, two of which were minivans, one of which had the registration number 635 95 RUS.

47. On 2 March 2002 the investigators granted the first applicant victim status in the criminal case.

48. On 13 March 2002 the first applicant again complained to the Chechnya prosecutor about her son’s abduction by representatives of Russian federal forces. On the same date she also lodged a similar complaint about the abduction with the district military commander’s office.

49. On 31 March 2002 the investigation in the criminal case was suspended for failure to identify the perpetrators.

50. On an unspecified date in April 2002 the supervising prosecutor overruled the decision to suspend the investigation as unsubstantiated and premature. The text of the document included the following:

“... the examination of the investigation file demonstrated that the preliminary investigation has been conducted passively, and the circumstances of events established by the investigators had not been fully and objectively assessed by them. For instance, the investigators had not looked into the fact that Isa Aygumov had been abducted by men in camouflage uniforms who had driven around in UAZ vehicles. The investigators had failed to identify the neighbours and local residents who had witnessed the crime; they had not examined the crime scene and had not obtained replies to their information requests from the ROVD ... and the FSB ...”

51. On 4 May 2002, upon the supervising prosecutor’s instructions, the investigation in the criminal case was resumed.

52. On 6 May 2002 the supervising prosecutor instructed the Shali ROVD to comply with the investigators’ request for assistance in the search for Isa Aygumov of 1 February 2002.

53. On 25 May 2002 the Shali FSB informed the investigators that their employees had not been involved in Isa Aygumov’s arrest, that their agency did not have a UAZ minivan with the registration number 635, and that they did not have any compromising information concerning Isa Aygumov.

54. On various dates in the spring of 2002 the investigators asked a number of the district departments of the interior and the district prosecutors’ offices in Chechnya whether they had arrested or detained Isa Aygumov. Negative responses were received from all the agencies.

55. On an unspecified date in June 2002 the investigation in the criminal case was suspended for failure to identify the perpetrators.

56. On 12 July 2002 the investigators requested the Traffic Police Department of the Chechnya MVD to inform them of the identity of the owner of a grey UAZ minivan with the registration number 635 95 RUS.

57. On 1 December 2002 the supervising prosecutor overruled the decision to suspend the criminal investigation as unsubstantiated and premature. The prosecutor criticised the investigators and pointed out that they had failed to take a number of basic steps:

“... the investigators failed to take all the necessary measures ...

For instance, no plan of investigative action has been drawn up so far ...;

Not all the theories concerning the identities of the perpetrators have been examined ...

The investigator Mr G.A. had not taken a single investigative step [while in charge of the investigation] ...

... the crime scene has not been examined;

The owners of the UAZ vehicle with the registration number 635 95 RUS, which was used by the abductors to take Isa Aygumov away, have not been identified;

... to remedy the above shortcomings of the investigation, it is necessary:

To obtain responses to the information requests forwarded [to a number of law-enforcement agencies];

To request information from the MVD and the FSB concerning special operations on 9 January 2002, the units involved and the results of these operations;

To identify and question additional witnesses;

To find out whether the drivers of the vehicles with the registration numbers 635 95 RUS had been involved in the abduction ...”

58. On 16 December 2002, following orders from the supervising prosecutor, the investigation of the criminal case was resumed.

59. On 30 January 2003 the Chechnya MVD informed the investigators that they had not conducted any special operations in Avtury on 9 January 2002, that they had not detained Isa Aygumov and that they did not have a UAZ vehicle with the registration number 635 95 RUS.

60. On an unspecified date in January 2003 the FSB informed the investigators that they had not conducted any special operations in Avtury on 9 January 2002 and that they had not detained Isa Aygumov.

61. On 16 January 2003 the investigation of the criminal case was again suspended for failure to identify the perpetrators.

62. On 4 August 2003 the supervising prosecutor overruled the decision to suspend the investigation as unlawful and ordered that the proceedings be resumed. The text of the decision included the following:

“... the investigator Mr A.B. had suspended the investigation of the criminal case without having taken a single one of the steps ordered by the supervising prosecutor ...”

63. On 12 August 2003 the investigators examined the crime scene at the applicants' household. Nothing was collected from the scene.

64. On 1 September 2003 the investigators questioned the applicants' neighbour Mr S.-M.M., who stated that in January 2002 he had been at home when a group of masked armed men in camouflage uniforms ran into his yard looking for Isa Aygumov. They had entered the witness's house, found Isa there and taken him away.

65. On 4 September 2003 the investigation in the criminal case was suspended again for failure to identify the perpetrators. The applicants were informed about it.

66. On 2 November 2006 the first applicant again complained to the district prosecutor about her son's abduction by federal servicemen. She provided a description of the circumstances surrounding the events and requested assistance in the search.

67. On 13 November 2006 the investigators informed the applicants that they had suspended the investigation in the criminal case.

68. On 13 November 2006 the ROVD informed the first applicant that they were taking operational-search steps to establish the whereabouts of Isa Aygumov.

69. On 20 February 2008 the first applicant requested the investigators to inform her about the progress in the investigation and resume the proceedings.

70. On the same date, 20 February 2008, the investigators informed the applicants that the investigation in the criminal case had been suspended on 4 September 2003.

71. On 5 March 2008 the first applicant complained to the district prosecutor's office, stating that her complaint had been fully allowed by the district court (see paragraph 89 below), but that the investigators had failed to comply with the court's decision and carry out an effective investigation of the criminal case. She requested the investigators to comply with the court orders and resumed the investigation.

72. On 14 March 2008 the district prosecutor's office rejected the first applicant's complaint as unsubstantiated, stating that all the necessary investigative measures had been taken by the investigators. The applicant was informed about this decision.

73. On 6 November 2009 the supervising prosecutor overruled the decision to suspend the investigation as unlawful and premature. The prosecutor criticised the investigation and ordered that the investigators took a number of basic steps which they had failed to take before.

74. On 11 November 2009 the investigators questioned the first applicant, who stated that on 9 January 2002 she had been visiting her

parents when the second applicant had arrived at their house and informed her that Isa Aygumov had been abducted by a group of about fifteen armed military servicemen in camouflage uniforms, who had arrived at the applicants' house in two UAZ vehicles. On that date Isa Aygumov and his seven male neighbours and relatives had been sawing up logs next to the applicants' yard. When Isa saw the armed men he ran to the neighbours, while the seven other men were pushed face down in the snow by the intruders. The servicemen had searched the house, turning everything upside down, found Isa's passport and taken it away with them. After the search the servicemen, who had spoken unaccented Russian, had blocked the entrance door, shutting the residents inside the house, and left, propping the door closed from outside with a metal pipe. The applicant's relatives Ms Zh.G. and Ms Z.A. had seen from the window a group of servicemen taking Isa from the house of their neighbours, the M. family. Isa's hands were behind his back. The servicemen had put Isa in the grey UAZ vehicle with a registration number containing the digits 635 and regional indication 95. Shortly after the abduction the first applicant and her relatives had complained to the head of the Avtury village administration, Mr I.U., who had promised to assist them in the search for their relative. On the next day the applicants had complained about the abduction to the district prosecutor's office and the ROVD.

75. On 12 November 2009 the investigators questioned the first applicant's sister, Ms Zh.G., and the second applicant, both of whom had witnessed the abduction of Isa Aygumov. Their statements were similar to the one given by the first applicant.

76. On 18 November 2009 the Chechnya FSB informed the investigators that they had not conducted any special operations on 9 January 2002 in Avtury and did not have any information as to whether Isa Aygumov was involved in illegal armed groups.

77. On 20 November 2009 the investigators questioned the applicants' relatives Mr O.A., Ms Z.A. and Ms B.A., all of whom had witnessed the abduction of Isa Aygumov. Their statements were similar to the one given by the first applicant.

78. On 25 November 2009 the investigators questioned Mr I.M., who stated that he had had a 1973 UAZ vehicle with the registration number A635 BE95 RUS. The car was very old, required constant repair and therefore had hardly been used. In 2005 the witness had sold the car to a man in Zaki-Yurt, Chechnya.

79. On 25 November 2009 the Chechnya MVD informed the investigators that they had not conducted any special operations on 9 January 2002 in Avtury and that they did not have any information as to whether Isa Aygumov had been involved in illegal armed groups.

80. On various dates in November 2009 the investigators received replies to their information requests from various detention centres and

regional departments of the interior in the Northern Caucasus. All of the agencies stated that Isa Aygumov had not been detained by their officers, that he was not listed as a detainee and that no corpse with features similar to those of Isa Aygumov had been found in their areas.

81. On 3 December 2009 the investigators questioned the applicants' neighbour, Mr M.S., whose statement concerning the abduction was similar to the one given by the first applicant.

82. On 4 December (in the submitted documents the date was mistakenly stated as 4 November 2009), 5 and 7 December 2009 the investigators questioned the applicants' neighbours Mr Ya.Sh., Mr Kh.D., Mr A.Kh. and Mr S.Kh., all of whom had witnessed the abduction of Isa Aygumov. Their statements were similar to the one given by the first applicant and the other witnesses.

83. On 7 December 2009 the investigators questioned the applicants' neighbour Mr S.-M.M., whose statement about the circumstances surrounding Isa Aygumov's abduction was similar to the one given by the first applicant. In addition, he stated that Isa had run into his house to hide from the abductors, but three or four of them, who were in camouflage uniforms and black masks, broke in, searched the premises, dragged Isa outside and took him away.

84. On 7 December 2009 the investigators again questioned Isa Aygumov's wife Ms Z.B., whose statement about the circumstances of the abduction was similar to the one given by the first applicant.

85. The investigation failed to establish the whereabouts of Isa Aygumov. The investigating authorities sent requests for information to the competent State agencies and took other steps to have the crime resolved. The investigation found no evidence to support the involvement of federal servicemen in the abduction. The law-enforcement authorities of Chechnya had never arrested or detained Isa Aygumov on criminal or administrative charges and had not carried out a criminal investigation in his respect. No special operations had been carried out in respect of the applicants' relative.

86. According to the documents submitted by the Government, the investigation was suspended and resumed on several occasions, and has so far failed to identify the perpetrators. In a number of decisions to resume the investigation the supervising prosecutor criticised the progress of the proceedings, and ordered that a number of important investigative steps be taken without delay.

87. Despite a specific request by the Court the Government did not disclose the full contents of criminal case no. 59046, providing only part of the documents running up to 158 pages. The Government did not specify the reasons for their failure to provide the remaining documents.

C. Proceedings against law-enforcement officials

88. On 4 May 2007 the first applicant complained to the Shali Town Court (“the Town Court”) that the investigation of the criminal case was ineffective. She stated that the investigation had been suspended and resumed on a number of occasions, that she had not been provided with information about its progress, and that in spite of the fact that it had gone on for a long time it had failed to identify the perpetrators of Isa Aygumov’s abduction. The applicant requested the court to order the district prosecutor’s office to conduct a thorough and effective investigation into her son’s disappearance and to provide her with access to the investigation file.

89. On 29 June 2007 the Town Court allowed the applicant’s complaint and ordered the district prosecutor’s office to conduct a thorough and effective investigation of the criminal case and provide the applicant with access to the case file.

II. RELEVANT DOMESTIC LAW

90. 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

91. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of Isa Aygumov’s abduction had not yet been completed. The Government further argued that it had been open to the applicants to challenge in court any acts or omissions of the investigators and to pursue civil remedies, but that they had failed to do so.

92. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect, including their complaint to the district court, had been futile.

B. The Court's assessment

93. 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).

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

95. As regards a civil action to obtain redress for damage sustained through alleged illegal acts or unlawful conduct on the part 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.

96. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement authorities shortly after the abduction of Isa Aygumov, and that an investigation has been pending since 31 January 2002. The applicants and the Government dispute the effectiveness of the investigation.

97. 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 THE ESTABLISHMENT OF THE FACTS

A. The parties' arguments

98. The applicants maintained that it was beyond reasonable doubt that the men who had taken Isa Aygumov away were State agents. In support of their complaint they referred to the following facts. At the material time Avtury had been under the total control of federal troops. There had been Russian military checkpoints on the roads leading to and from the settlement. The armed men who had abducted Isa Aygumov spoke unaccented Russian; they had arrived in several vehicles and were able to drive around freely in the village and pass through the checkpoints. The abductors, who were armed and in camouflage uniforms, acted in a manner

similar to that of special forces carrying out identity checks. All the information disclosed from the criminal investigation file supported the applicants' assertion that State agents were involved in the abduction. Since Isa Aygumov has 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 arrested, which should be recognised as life-threatening.

99. The Government submitted that unidentified armed men had kidnapped Isa Aygumov. They further contended that the investigation of the incident was pending, that there was no evidence that the men were 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.

B. The Court's evaluation of the events

100. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of matters 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*, § 161, Series A no. 25).

101. The Court notes that despite its request for a copy of the investigation file into the abduction of Isa Aygumov, the Government produced only a part of the documents from the case file without providing any explanation as to their failure to submit the file in full. The Court observes that such a blank refusal is insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

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

103. The applicants alleged that the persons who had taken Isa Aygumov away on 9 January 2002 and killed him had been State agents. The Government did not dispute any of the factual elements underlying the application; they did not challenge the credibility of the applicants' submission to the Court and did not provide any other explanation of the events. The Court would like to stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and

it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

104. The Court notes that the applicants' allegation is supported by the witness statements collected by them and by the investigation. It finds that the fact that a large group of armed men in uniform in broad daylight, with several vehicles, was able to move freely through military checkpoints came to the applicant's house and proceeded to check identity and then abducted the applicants' relative, strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their application to the authorities the applicants and their relatives consistently maintained that Isa Aygumov had been detained by unknown servicemen, and requested the investigation to look into that possibility (see paragraphs 19, 39, 40, 42, 44, 46, 48, 66 and 74 above). The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies were involved in the abduction (see paragraphs 20, 21, 26 and 45 above), but it does not appear that any serious steps were taken in that direction.

105. 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).

106. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that Isa Aygumov was abducted by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of the State servicemen in the abduction is 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 Isa Aygumov was arrested on 9 January 2002 by State servicemen during an unacknowledged security operation.

107. There has been no reliable news of Isa Aygumov since the date of the abduction. His name has not been found in any official detention facility records. Neither have the Government submitted any explanation as to what happened to him after his arrest.

108. 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 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 Isa Aygumov or of any news of him for several years supports this assumption.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

110. The applicants complained under Article 2 of the Convention that their relative 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

111. The Government contended that the domestic investigation had obtained no evidence to the effect that Isa Aygumov was dead or that any State servicemen had been involved in his abduction or alleged killing. The Government claimed that the investigation of the abduction met the Convention requirement of effectiveness, as all measures available under national law were being taken to solve the crime. The Government also noted that the numerous decisions to suspend and resume the proceedings did not demonstrate their ineffectiveness, but showed that the authorities in charge had continued to take steps to identify the culprits.

112. The applicants argued that Isa Aygumov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for eight years. They also argued that the investigation had not met the requirements of effectiveness and adequacy laid down by the Court's case-law. The applicants pointed out that the prosecutor's office had not taken some crucial investigative steps, such as questioning key witnesses and gathering other important evidence. The investigation had been opened more three weeks after the events and it had subsequently been suspended and resumed on several occasions without even the most important steps having been taken. The applicants and their relatives had not been properly informed of the progress of the proceedings. 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

113. 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 97 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 Isa Aygumov

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

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

115. 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).

116. In the present case, the kidnapping of Isa Aygumov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

117. 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.

118. The Court notes that the authorities were officially made aware of the crime by the applicants' submissions on 10 January 2002 at the latest. The investigation in case no. 59046 was instituted on 31 January 2002, twenty-two days after Isa Aygumov's abduction. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government in 2009, or not at all. Furthermore, the Court notes that, as can be seen from the decisions of the supervising prosecutors (see paragraphs 50, 57, 62 and 73 above) and the town court decision (see paragraph 89 above) prior to November 2009 the investigators had not established the identity of the owners of the UAZ vehicles used by the abductors; nor had they questioned the applicants' relatives and all the neighbours who had witnessed the abduction (see paragraphs 75, 77, 81 and 83 above). 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 volition 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).

119. A number of the most essential steps were never taken. Most notably, it does not appear that the investigation tried to identify and question any of the policemen from the Shali ROVD in spite of the applicants' and their relatives' complaints that it had been they who had abducted Isa Aygumov (see paragraphs 42 and 44 above); the investigators had not identified or questioned the servicemen who had been manning the checkpoints in the village or any other military servicemen or law-enforcement officers about their possible involvement in the abduction of the applicants' relative. It does not appear that the investigators had attempted to question the head of the local administration about events

following the abduction (see paragraphs 16 and 74 above) or elucidated the contradictory information which had served as the basis for the opening of the criminal investigation of the abduction (see paragraph 41 above).

120. The Court also notes that even though the first applicant was granted victim status in the investigation concerning the abduction of her son, she was only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

121. Finally, the Court notes that the investigation was suspended and resumed on numerous occasions and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending. The supervising prosecutors criticised deficiencies in the proceedings and ordered remedial measures. It appears that their instructions were not complied with.

122. The Government argued that the applicants could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. The Court observes that the applicants did in fact make use of that remedy, which eventually led to the resumption of the investigation. Nevertheless, the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures. Moreover, the town court's instructions to the investigators to investigate the crime effectively did not bring about any tangible results for the applicants. The investigation was repeatedly suspended and resumed, but it appears that no significant investigative measures were taken to identify those responsible for the abduction. In such circumstances, the Court considers that the applicants could not be required to challenge in court every single decision of the district prosecutor's office. 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.

123. 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 Isa Aygumov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

124. 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

125. 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.

126. The applicants maintained their submissions.

B. The Court’s assessment

1. Admissibility

127. 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

128. 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).

129. In the present case the Court notes that the first applicant is the mother of the missing person, the second applicant is his brother and the third applicant is his sister. For more than six 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.

130. 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 relative Isa Aygumov 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.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

132. The applicants further stated that Isa Aygumov 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

133. The Government asserted that no evidence had been obtained by the investigators to confirm that Isa Aygumov 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 recorded information about his detention.

134. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

135. 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

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

137. The Court has found that Isa Aygumov was abducted by State servicemen on 9 January 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).

138. 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.

139. In view of the foregoing, the Court finds that Isa Aygumov 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

140. 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

141. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had the opportunity to challenge the acts or omissions of the investigating authorities in court and they could also have claimed damages in civil proceedings.

142. The applicants reiterated the complaint.

B. The Court’s assessment

1. *Admissibility*

143. 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*

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

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

146. 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

147. 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

148. The first applicant claimed damages in respect of loss of earnings by her son Isa Aygumov after his arrest and subsequent disappearance. She claimed 700,490 Russian roubles (RUB) (about 17,200 euros (EUR)).

149. The applicant claimed that Isa Aygumov had been working as a welder and a car mechanic at the time of his arrest, but that she was unable to obtain salary statements for him, and that in that case the calculation should be made on the basis of the subsistence level established by national law. She calculated his earnings for the period, taking into account an average inflation rate of 13.44%. Her 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”).

150. 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.

151. 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 loss of earnings may also be claimed by elderly parents and that it is reasonable to assume that Isa Aygumov would eventually have had some earnings from which the first applicant 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 applicant's son and the loss by her of the financial support which he could have provided. Having regard to the applicants' submissions, the Court awards the first applicant EUR 12,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

152. The applicants jointly claimed EUR 100,000 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.

153. The Government found the amounts claimed excessive.

154. 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 have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicants jointly EUR 60,000, plus any tax that may be chargeable thereon.

C. The applicants' request for an investigation

155. The applicants also requested that an effective investigation, which would comply with the requirements of the Convention, be conducted into their relative's disappearance.

156. The Court notes that in *Kukayev*, cited above, §§ 131-34, in comparable circumstances, the Court decided that it was most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention. The Court does not see any exceptional circumstances which would lead it to reach a different conclusion in the present case.

D. Costs and expenses

157. 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 9,168.

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

159. 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).

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

161. 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 due to the application of former Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that the legal drafting involved was necessarily time-consuming to the extent claimed by the representatives.

162. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 5,500, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

E. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the 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 Isa Aygumov;

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 Isa Aygumov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Isa Aygumov;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Articles 3 and 5 of the Convention;
9. *Holds*
 - (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles on the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the first applicant;
 - (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 5,500 (five 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;
10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President