



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

FIRST SECTION

CASE OF MAKHARBIYEVA AND OTHERS v. RUSSIA

(Application no. 26595/08)

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 Makharbiyeva 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,

Julia Laffranque,

Linos-Alexandre Sicilianos, *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. 26595/08) 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 five Russian nationals listed below (“the applicants”), on 23 May 2008.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative (“the 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 and 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 Zura Makharbiyeva, born in 1951,
- 2) Mr Khamid Makharbiyev, born in 1943,
- 3) Ms Olga Grigoryeva, born in 1980,
- 4) Mr Movsar Makharbiyev, born in 1999, and
- 5) Ms Malika Makharbiyeva, born in 2001.

The first and second applicants live in Grozny; the other applicants live in Gekhi in Urus-Martan district, Chechnya. The first and the second applicants are the parents of Adam Makharbiyev, who was born in 1973; the third applicant is his wife, and the fourth and the fifth applicants are his children.

A. Disappearance of Adam Makharbiyev

1. Information submitted by the applicants

(a) Abduction of Adam Makharbiyev

6. At the material time the Urus-Martan district and the town of Grozny were under the full control of the Russian federal forces. Military checkpoints manned by Russian servicemen were located on all roads leading to and from the area, which was under a strict curfew. A checkpoint manned by policemen from the Special Task Unit of the Yaroslavl region (“the OMON”) was located on the road between the town of Urus-Martan and the village of Gekhi. The applicants and Adam Makharbiyev lived in Gekhi, in Urus-Martan district. In March 2001 Adam Makharbiyev was trying to get a job at the Zavodskoy district department of the interior (the Zavodskoy ROVD) in Grozny.

7. In the afternoon of 24 March 2001, on his way from Grozny to Gekhi, Adam Makharbiyev stopped at his cousins’ house in Chernorechye village on the outskirts of Grozny. On the same evening he drove back to Gekhi with his cousins, Mr I.M. and Mr L.M., in the latter’s black VAZ-2106 car. At the time Mr L.M. was a police officer at the Oktyabrskiy ROVD in Grozny. On their way Adam Makharbiyev, Mr I.M. and Mr L.M. passed through a number of checkpoints; Mr L.M. showed his police identity card and the car was allowed to pass through. The road to Gekhi went through the checkpoint manned by the OMON from the Yaroslavl region; the servicemen had previously seen Mr L.M. crossing the roadblock on a regular basis and knew that he was a police officer.

8. At about 5 p.m. the car with the three men was stopped for yet another identity check at the checkpoint manned by the OMON from Yaroslavl. The servicemen looked at the police identity card provided by Mr L.M. and asked for the passports of Adam Makharbiyev and Mr I.M. After the two men had produced their documents the servicemen surrounded them,

blocked the passage through the checkpoint, handcuffed all three men and dragged Adam Makharbiyev inside the checkpoint building, while Mr I.M. and Mr L.M. remained outside. The servicemen also took away Mr L.M.'s service gun. Immediately after this the servicemen called someone on a portable radio and requested that representatives of the military commander's office come to the checkpoint.

9. The detention of Adam Makharbiyev and his cousins was witnessed by two residents of Gekhi who happened to cross the checkpoint at the same time as the detained men. One of them went to the applicants' house straight away and informed them about the incident. The first and second applicants immediately got into their car and drove to the checkpoint.

10. About fifteen minutes after the servicemen had called for representatives of the military commander's office to attend, an armoured URAL lorry, two black VAZ-2109 cars with military registration numbers of the '11' region and a white VAZ-2121 ('*Хуа*') car arrived at the checkpoint. Adam Makharbiyev was forced into one of the VAZ-2109 cars; Mr I.M. and Mr L.M. were placed in the URAL lorry; black sacks were put over their heads. Mr L.M.'s black VAZ-2106 car was driven away by one of the abductors, who was in military uniform.

11. When the vehicles with the detained men were leaving the checkpoint, the first and second applicants pulled up at the scene. They followed the convoy of military cars, which went to the centre of Urus-Martan. The applicants' car was stopped at a checkpoint located on the bridge, in the vicinity of the town administration and the military commander's office. The first applicant got out of the car and ran after the convoy, which drove into the yard of the Urus-Martan district military commander's office ("the district military commander's office"). The soldiers on duty stopped the first applicant from entering the building. Several minutes later the second applicant also arrived at the military commander's office. The applicants asked the soldiers to let them speak with the district military commander. The servicemen refused and demanded that the applicants leave the premises, as curfew was just starting.

(b) Subsequent events

12. After the arrival at the district military commander's office, Mr I.M. and Mr L.M. were taken to the third floor, where they were questioned for about two or three hours about involvement in the activities of illegal armed groups. Throughout the questioning they had sacks on their heads and were subjected to beatings.

13. After the questioning Mr L.M. was taken outside and placed in an UAZ minivan ('*Таблетка*'). He recognised the model of the car by its engine sound and layout. His brother, Mr I.M., was also put into the vehicle which took them to the building of the Urus-Martan temporary district

department of the interior (“the Urus-Martan VOVD”) located only a few hundred metres from the military commander’s office.

14. In the VOVD Mr L.M. was taken to an investigator’s office and the sack was removed from his head. Mr L.M. asked about his brother, Mr I.M., and his cousin, Adam Makharbiyev. The investigator told him that he and his brother had been brought over from the military commander’s office and that he did not know the whereabouts of Adam Makharbiyev. After that Mr L.M. and Mr I.M. were taken to a cell in which there were two other detainees.

15. On the following morning, 25 March 2001, the head of the Oktyabrskiy ROVD arrived in Urus-Martan and spoke with the head of the VOVD. As a result, Mr L.M. was released on the same day; during his release the VOVD officers mistakenly gave him Adam Makharbiyev’s official registration card. Mr I.M. was released a day later, on 26 March 2001. About eight days later Mr L.M. picked up his VAZ-2106 car, which had been taken away by the abductors, from the district military commander’s office.

16. On 27 March 2001 the first applicant managed to meet the district military commander, General G., and asked him whether his servicemen had taken away her son. He responded: “Yes, there is a detainee named Makharbiyev. We will question him and then release him.” A few days later the first applicant again spoke to the General and asked about her son. The latter told her that Adam Makharbiyev had absconded, taking a pistol from the district military commander’s office.

17. On an unspecified date in 2002 the first applicant lodged a claim with the Urus-Martan Town Court, requesting that Adam Makharbiyev be declared a missing person. On 22 March 2002 the court granted her claim and declared Adam Makharbiyev a missing person from 24 March 2001.

18. In support of their application the applicants submitted the following documents: a statement by the first applicant dated 22 April 2008; a statement by the second applicant dated 21 April 2008; a statement by Mr L.M. dated 16 April 2008, and copies of letters received from the authorities.

2. Information submitted by the Government

19. The Government neither challenged the version of events presented by the applicants nor provided their own version of the events.

B. The search for Adam Makharbiyev and the investigation*1. Information submitted by the applicants*

20. On 25 March 2001 the applicants complained to the VOVD about the abduction of Adam Makharbiyev. They did not retain a copy of this complaint.

21. On 28 March 2001 the first applicant again complained to the VOVD about her son's abduction. She stated that her son and his two cousins had been abducted by Russian military servicemen at the checkpoint located on the road between Urus-Martan and Gekhi, and that some time later Adam Makharbiyev's cousins had been released, but he had remained in detention. She stressed that she could provide the authorities with a detailed description of the abductors' vehicles and the names of witnesses to the abduction, and stated that at some point after the abduction her son had been taken to the Urus-Martan district department of the Federal Security Service ("the FSB").

22. On 30 March 2001 the second applicant wrote to the Urus-Martan district prosecutor's office (the district prosecutor's office) about his son's abduction, and on 4 April 2001 to the district military commander, General G. He stated that at about 5 p.m. on 24 March 2001 his son had been abducted by Russian military servicemen at the checkpoint located on the road between Urus-Martan and Gekhi. The applicant further provided a detailed description of the vehicles involved in the abduction and stated that there were witnesses to the events who could provide statements to the authorities. He stated that he had learnt that at some point after the abduction his son had been detained in the Urus-Martan FSB, and stated that his attempts to establish the whereabouts of his son by lodging complaints with the VOVD, the ROVD, the FSB and the local administration had been futile.

23. On 14 April 2001 the district prosecutor's office instituted an investigation into the abduction of Adam Makharbiyev under Article 126 of the Criminal Code (kidnapping). The case file was given the number 25042. The applicants were informed of this on 12 July 2001.

24. On 8 June 2001 the second applicant again complained to the district prosecutor about his son's abduction at the checkpoint. He stated, amongst other things, that his two relatives, who had been abducted with his son, had later been released from the VOVD and that one of them had been given Adam Makharbiyev's registration card by mistake. The applicant further stated that he had applied to various authorities with numerous requests for an investigation to be initiated into his son's abduction by the OMON officers who had been manning the checkpoint on 24 March 2001 and for them to be questioned about his son's whereabouts. Finally, the applicant

complained of a lack of information from the district prosecutor's office and asked to be provided with an update.

25. On 18 June 2001 the second applicant wrote to the Chechnya prosecutor and the Russian Prosecutor General. He stated that his son and two of his cousins had been detained by Russian federal servicemen at a military checkpoint; that his cousins had been released later on from the VOVD and that one of them had mistakenly been given his son's documents during the release. He further stated that his numerous complaints to various authorities had not produced any results and that the investigation of his son's abduction had been ineffective. In particular, he pointed out that the investigators had failed to question the OMON officers who had been manning the checkpoint and taken away his son and that in spite of numerous witness statements the investigators had failed to establish the circumstances of his subsequent detention in the military prosecutor's office and the VOVD. According to the applicant, with this information and evidence at hand the investigators could have solved the crime and established his son's whereabouts shortly after the abduction and that such procrastination in the investigation demonstrated their lack of desire to identify and prosecute the perpetrators. The applicant requested that the authorities establish his son's whereabouts, inform him of any charges pending against his son and identify the culprits.

26. On three occasions between July and August 2001 the district prosecutor's office informed the applicants about the opening of criminal case no. 25042.

27. On 11 September 2001 the second applicant requested that the investigators grant him victim status in the criminal case. No response was made to this request.

28. On 20 September 2001 the second applicant again complained to the district prosecutor and challenged the investigator in the criminal case. The applicant stated that the investigator had failed to summon and question both the OMON officers who had been manning the checkpoint and the witnesses to the abduction; that the investigator had failed to include in the investigation file the witness statements given by him and the first applicant to the authorities; that during a conversation with the first applicant the investigator had told her: "it is not my fault that your son got killed". The applicant requested that due to this statement demonstrating the investigator's awareness of Adam Makharbiyev's possible fate, the investigator should be held responsible for covering up his son's murder.

29. On 16 February 2002 the district prosecutor's office informed the applicants that they had suspended the investigation in the criminal case for failure to identify the perpetrators.

30. On 18 May 2002 the second applicant again complained to the district military commander about his son's abduction by military servicemen and requested assistance in the search for his whereabouts.

31. On 21 May 2002 the first applicant complained to a number of local authorities, including the head of the ROVD and the district military commander, about her son's abduction by military servicemen and requested assistance in the search for him. She pointed out that immediately after the abduction her son had been taken to the district military commander's office and that the military commander had promised to release him after a check and that a day later the officer had told her that her son had absconded with a gun.

32. On 14 June 2002 the first applicant again complained about the abduction to the Prosecutor General. She stated that her son had been abducted by servicemen at the military checkpoint when he had been driving with his two cousins in a black VAZ-2106 car from Grozny to Gekhi; that after the abduction her son and his relatives had been taken to the district military commander's office and that she and the second applicant had witnessed the abduction. She further provided a description of the abductors' vehicles and pointed out that Mr L.M. and Mr I.M. had been released a few days after the abduction, and that about a week later Mr L.M. had returned his car, which had been taken away by the abductors; that during the release from detention Mr L.M. had mistakenly been given Adam Makharbiyev's registration card; that the district military commander had promised to her that her son would be released, and that on the fourth day after the abduction the officer had told her that Adam had absconded from the military commander's office with a gun. The applicant further complained that the investigation had had all the necessary information to identify the perpetrators, but that in spite of that they had failed to take even basic steps. In her opinion, the investigators were trying to cover up her son's abduction by military servicemen. Finally, she requested that the Prosecutor General assist her in her search for Adam Makharbiyev.

33. On 1 July 2002 the first applicant complained to a number of State authorities, including the head of the Chechnya FSB, the Russian Defence Minister and the district prosecutor. She provided a detailed description of her son's abduction by federal servicemen and his subsequent detention in the military commander's office and the VOVD, and complained that the investigation had failed to examine the evidence proving the authorities' involvement in her son's abduction. In addition, she stated that on 5 June 2002 her son had been seen in a bus next to Chervlyenaya station in the Shelkovskoy district of Chechnya. According to a woman who had spoken with Adam Makharbiyev, he had told her that FSB officers were taking him in the bus to the Chernokozovo detention centre in Chechnya. According to the witness, Adam looked famished and was very pale. The applicant requested that the authorities establish her son's whereabouts and release him from detention.

34. On five occasions between July 2001 and August 2002 the Chechnya prosecutor's office forwarded the applicants' complaints to the district prosecutor's office.

35. On two occasions between August 2001 and August 2002 the Prosecutor General's office informed the applicants that they had forwarded their complaints to the Chechnya prosecutor's office.

36. On 30 July 2002 the first applicant again complained about her son's abduction by federal servicemen to the district prosecutor's office and requested to be granted victim status in the criminal case. On 9 August 2002 she was granted victim status in the case.

37. On 24 September 2002 the military prosecutor's office of the North Caucasus Military Circuit informed the first applicant that they had forwarded her complaint about the abduction to the military prosecutor's office of military unit no. 20102 in Khankala, Chechnya.

38. On 30 September 2002 the first applicant requested an update from the investigators on the investigation in the criminal case.

39. On 16 November 2002 the Chechnya prosecutor's office informed the first applicant that according to their information received from the Chernokozovo detention centre Adam Makharbiyev had never been detained on their premises.

40. On 5 March 2003 the first applicant again complained to the district military commander. She stated that her son and his two cousins had been abducted by servicemen from a military checkpoint on the way from Grozny to Gekhi; that after the abduction the men had been taken to the district military commander's office, and that she and the second applicant had witnessed the events. She further provided a description of the abductors' vehicles and pointed out that Mr L.M. and Mr I.M. had been released a few days after the abduction and that about a week later Mr L.M. had returned his car which had been taken away by the abductors; that when being released from detention Mr L.M. had mistakenly been given Adam Makharbiyev's registration card; that the district military commander had promised her that her son would be released, and that on the fourth day after the abduction the officer had told her that Adam had absconded with a gun from the military commander's office. The applicant further complained that the investigation into the abduction had been ineffective, and requested assistance in her search for her son.

41. On 16 July 2003 the first applicant complained to the Military Prosecutor of the United Group Alignment (the UGA). She provided a detailed description of her son's abduction by federal servicemen, his subsequent detention in the military commander's office and the VOVD and complained that the investigation had failed to examine the evidence proving the authorities' involvement in her son's abduction. She stated that on 5 June 2002 her son had been seen in a bus next to Chervlyenaya station in the Shelkovskoy district of Chechnya. According to the woman who had

spoken with Adam Makharbiyev, he had told her that the FSB officers were taking him in the bus to the Chernokozovo detention centre in Chechnya. The applicant requested that the authorities establish her son's whereabouts and release him from detention.

42. Between July 2003 and February 2006 the applicants were not provided with any information concerning the investigation of the abduction.

43. On 21 February 2006 the first applicant wrote to the district prosecutor and complained that the investigation of her son's abduction was ineffective. She requested an update on its progress and asked for the proceedings to be resumed. No reply was given by the authorities.

2. Information submitted by the Government

44. On 31 March 2001 the district prosecutor, on a complaint by the second applicant, requested that the head of the Urus-Martan FSB and the district military commander inform him whether they had detained Adam Makharbiyev and if so, where he had been taken afterwards.

45. On 14 April 2001 the investigators opened criminal case no. 25042 in connection with "... the detention of Adam Makharbiyev at the checkpoint located between Gekhi and Urus-Martan on 24 March 2001 and his subsequent removal in the direction of Urus-Martan ..."

46. On 17 April 2001 the ROVD officially registered the second applicant's complaint about the abduction.

47. On an unspecified date in April 2001 the investigators questioned the first applicant, who provided a detailed description of her son's abduction by servicemen at the military checkpoint and his subsequent removal to the military commander's office.

48. On an unspecified date in April 2001 the investigators questioned the second applicant, whose statement about the circumstances of the abduction was similar to that made by the first applicant. In addition, he stated that a few days after the abduction he and his brother (the father of Mr L.M. and Mr I.M.) had spoken with the head of the administration, Mr Sh.Ya., who had told them that on 24 March 2001 their sons had been taken away from the checkpoint by servicemen of the Yaroslavl OMON and that later on Mr L.M. and Mr I.M. had been transferred to the VOVD, whereas Adam Makhashev had allegedly absconded from the military commander's office.

49. On 7 June 2001 the investigators questioned the third applicant, who stated that in the evening of 24 March 2001 she had learnt about her husband's abduction at the checkpoint, from a man who had arrived at her house.

50. On an unspecified date in 2001 the investigation in the criminal case was suspended for failure to identify the perpetrators.

51. On 24 June 2002 the investigators resumed the investigation in the criminal case. The text of the decision included the following:

“... on 24 March 2001 during the crossing of the checkpoint located on the road between Gekhi and Urus-Martan Mr Adam Makharbiyev, Mr L.M. and Mr I.M. were detained for an identity check; after that the men were taken to the Urus-Martan military commander’s office and from there they were transferred to the Urus-Martan VOVD, from where Mr L.M. and Mr I.M. were subsequently released, but the whereabouts of Adam Makhashev have not been known since ...”

52. On 27 June 2002 the investigators again questioned the second applicant, who stated that his son and his two cousins, Mr L.M. and Mr I.M., had been detained at the checkpoint by the OMON servicemen and that subsequently the detainees had been taken to the military commander’s office and that later on during the release Mr L.M. had noticed that he had mistakenly been given Adam Makharbiyev’s registration card. The applicant provided the investigators with a detailed description of the vehicles used to transport the detained men from the checkpoint to the military commander’s office, and pointed out that on the day after the abduction the military commander had confirmed to him that the servicemen had detained his relatives at the checkpoint.

53. On the same date the investigators questioned the second applicant’s brother, Mr R.M., who stated that his sons had been detained at the checkpoint together with Adam Makharbiyev.

54. On the same date the investigators questioned the applicants’ neighbour Mr A.B., who stated that he had heard that Adam Makharbiyev had been taken away from the checkpoint, and provided a positive character reference for him.

55. On 24 July 2002 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators.

56. On 9 August 2002 the investigators granted the first applicant victim status in the criminal case but did not question her.

57. On 30 May 2003 the investigators again questioned the second applicant’s brother, Mr R.M., who confirmed his previous statement.

58. On 2 June 2003 the investigators questioned the first applicant, who stated that in June 2001 she had learnt that Mr Akh.I. had been detained with her son Adam Makharbiyev in the Chernokozovo detention centre. She had spoken with him and found out that her son had been detained in cell no. 24 and that the guards had given him the nickname “*Stariy*” (*Old*). Mr Akh.I. had identified Adam in the picture shown to him by the applicant. Several months later the applicant had learnt that Mr Akh.I. had been killed. The applicant also provided the investigators with a detailed description of the circumstances under which a woman named Zara had met her son Adam in the bus on his way to the Chernokozovo detention centre.

59. On 3 June 2003 the investigators questioned the head of the administration, Mr Sh.Ya., who stated that he did not remember the circumstances of his conversation with the second applicant (see paragraph 48 above).

60. On 13 June 2003 the investigators questioned the applicants' relative Mr L.M., who stated that on 24 March 2001 he, his brother Mr I.M. and his cousin Adam Makharbiyev had been detained by servicemen at the checkpoint for an identity check. He and his brother Mr I.M. had been put into an armoured URAL vehicle; he had seen Adam Makharbiyev blindfolded and handcuffed. Adam had remained at the checkpoint and Mr L.M. and Mr I.M. had been driven to Urus-Martan. On the way there the brothers had also been blindfolded. About an hour later the brothers had arrived at the ROVD, where they had been questioned separately about their cousin Adam Makharbiyev. After that they had been put into cells and on the following day questioned about Adam again. A few days later Mr I.M. had been released, and a day later the witness had been released as well. According to the witness, he had collected his car, which had been taken away from him at the checkpoint, from the district military commander's office.

61. On 16 June 2003 the investigators questioned the applicants' relative Mr I.M., whose statement about the abduction was similar to the one given by his brother Mr L.M.

62. On 28 June 2003 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators.

63. The investigation failed to establish the whereabouts of Adam Makharbiyev. The investigating authorities sent requests for information to the competent State agencies and took other steps to have the crime resolved. The law-enforcement authorities of Chechnya had never arrested or detained Adam Makharbiyev on criminal or administrative charges, and therefore did not carry out a criminal investigation in his respect.

64. According to the Government, at the Court's request they furnished the Court with copies of the entire contents of the investigation file in criminal case no. 25042 amounting to 46 pages.

II. RELEVANT DOMESTIC LAW

65. 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

66. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Adam Makharbiyev had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints about any acts or omissions on the part of the investigating authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil complaints, but that they had failed to do so.

67. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective, and argued that they were not obliged to lodge civil claims in order to exhaust domestic remedies.

B. The Court's assessment

68. 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).

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

70. 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.

71. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement authorities shortly after Adam Makharbiyev was taken away from the checkpoint and that an investigation has been pending since 14 April 2001. The applicants and the

Government dispute the effectiveness of the investigation of the disappearance.

72. 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. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

73. The applicants complained under Article 2 of the Convention that their relative had been detained and then 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

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

75. The applicants argued that Adam Makharbiyev had been detained by State servicemen and should be presumed dead, in the absence of any reliable news of him for more than nine years. The applicants also argued that the investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law, by being opened belatedly and failing to take even basic investigative steps. The fact that the investigation had been pending for such a long period of time without

producing any known results was further proof of its ineffectiveness. They also submitted that in spite of the Government's submission to the contrary, the Government had provided only some of the documents from the investigation file.

B. The Court's assessment

1. Admissibility

76. 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 on 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 72 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 Adam Makharbiyev

(i) General principles

77. 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 individuals 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

78. The Court observes that it has developed a number of general principles relating to the establishment of the facts when there are disputed versions of events, 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).

79. The applicants alleged that at about 5 p.m. on 24 March 2001 their relative, Adam Makharbiyev, had been detained by military servicemen at the checkpoint located on the road between Gekhi and Urus-Martan, taken to the military commander's office, and had then disappeared. They relied on their own accounts of the events and the witness statements obtained by the domestic investigation.

80. The Government did not object to the applicants' statement concerning the circumstances of the abduction and did not put forward their own version of the events. At the same time the Government made a general reference to the effect that Adam Makharbiyev's abductors had been unidentified armed men, who could easily have purchased the vehicles and military uniforms, and that there was no evidence proving that the applicants' relative was dead.

81. The Court notes that in their applications to the authorities the applicants consistently, from the very first complaint, maintained that Adam Makharbiyev had been detained by military servicemen at the checkpoint and fruitlessly requested that the investigating authorities look carefully into their allegations.

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

83. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was abducted by State servicemen. The Government's general statement that the investigation had not found any evidence to support the involvement of servicemen in the disappearance is insufficient to discharge them from the above-mentioned burden of proof. The Court finds that Adam Makharbiyev was taken away on 24 March 2001 by State servicemen during an unacknowledged security operation.

84. There has been no reliable news of Adam Makharbiyev since the date of his detention at the checkpoint. His name has not been found in any

official detention facility records. The Government have not submitted any explanation as to what happened to him after his arrest.

85. 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-XIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this situation can be regarded as life-threatening. The absence of Adam Makharbiyev or of any reliable news of him for more than nine years supports this assumption.

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

(iii) The State's compliance with Article 2

87. 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 *Avjyar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

88. The Court has already established 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 Adam Makharbiyev.

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

89. 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).

90. In the present case, the kidnapping of Adam Makharbiyev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

91. The Court has to assess the effectiveness of the investigation on the basis of the documents submitted by the parties and the information about its progress presented by the Government.

92. The Court notes that the applicants officially informed the authorities about the abduction of Adam Makharbiyev at the latest on 31 March 2001. The investigation in case no. 25042 was instituted on 14 April 2001, that is twenty-one days after Adam Makharbiyev was taken away from the checkpoint and fourteen days after the authorities had officially been informed about it. Such a postponement *per se* was liable to affect the investigation of the abduction in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were either delayed or not taken at all. For instance, the investigators questioned the key witnesses to the abduction, Mr L.M. and Mr I.M., more than two years after the commencement of the investigation (see paragraphs 60 and 61 above). The investigation had not taken any steps to identify the servicemen who had been manning the checkpoint on the date of Adam Makharbiyev's abduction, nor did it question any of the servicemen at the military commander's office or the VOVD who might have had information about the fate of the disappeared man. In addition, no measures were taken to question the district military commander about the whereabouts of Adam Makharbiyev and his alleged absconding from the district military commander's office (see paragraphs 31, 40 and 52 above) or to obtain information from the Chernokozovo detention centre about Adam Makharbiyev's alleged detention there (see paragraph 33, 41 and 58 above). It is obvious that these basic investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, or as soon as the investigation commenced and the relevant information was received. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

93. 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 not informed of any significant developments in the proceedings. 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.

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

95. 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, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged acts or omissions of investigating authorities before a court. Furthermore, the Court emphasises in this respect that while the suspension or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to suspend the investigation were made without the necessary 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 taken. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

96. 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 Adam Makharbiyev, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

97. 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

98. 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.

99. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

100. 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

101. The Court observes that the question as to 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 proximity of the family tie, 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 the 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 directly to be a victim of the authorities’ conduct (see *Orhan*, cited above, § 358).

102. In the present case the Court notes that the first and second applicants are the parents of the missing person, the third applicant is his wife, and the fourth and fifth applicants are his children. It is noteworthy that it was the first, second and third applicants who lodged petitions and enquiries with the domestic authorities in connection with their relative’s disappearance and dealt with the investigators. It is quite natural that the fourth applicant, who was two years old at the time of his father’s disappearance and the fifth applicant, who was born shortly after the events, did not participate in any manner in the search for Adam Makharbiyev (see, by contrast, *Luluyev and Others*, cited above, § 112). In the light of these circumstances, the Court, while accepting that the fact of being raised without their father would be a source of continuing distress for these applicants, cannot assume that the mental anguish they experienced on account of Adam Makharbiyev’s disappearance and the authorities’ attitude towards that incident was distinct from the inevitable emotional distress such a situation would entail, and that it was serious enough to fall within the ambit of Article 3 of the Convention (see, *mutatis mutandis*, *Nenkayev*

and Others v. Russia, no. 13737/03, § 168, 28 May 2009, and *Musikhanova and Others v. Russia*, no. 27243/03, § 81, 4 December 2008).

103. As regards the first, second and third applicants, for more than nine years they have not had any news of the missing man. During this period they have made enquiries to 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.

104. In view of the above, the Court finds that the first, second and third applicants suffered, and continue to suffer, distress and anguish as a result of the disappearance of their relative Adam Makharbiyev 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.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

106. The applicants further stated that Adam Makharbiyev 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

107. The Government asserted that no evidence had been obtained by the investigation to confirm that Adam Makharbiyev 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.

108. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

109. 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

110. 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).

111. The Court has found that Adam Makharbiyev was abducted by State servicemen on 24 March 2001 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).

112. 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.

113. In view of the foregoing, the Court finds that Adam Makharbiyev 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

114. 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

115. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the actions or omissions of the investigating authorities in court and could also claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

116. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

117. 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

118. 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).

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

120. 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

121. 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

122. The applicants claimed damages in respect of loss of earnings by their relative after his arrests and subsequent disappearance. The first applicant, as the mother of Adam Makharbiyev, claimed a total of 182,504 Russian roubles (RUB) (4,390 euros (EUR)); the second applicant, as his father, claimed a total of RUB 168,405 (EUR 4,050); the third applicant, as his wife, claimed a total of RUB 398,108 (EUR 5,570); the fourth applicant, as his son, claimed a total of RUB 85,244 (EUR 2,050) and the fifth applicant, as his daughter, claimed a total of RUB 100,952 (EUR 2,430). The aggregated amount of the applicants' claim under this heading was EUR 18,490.

123. The applicants submitted that Adam Makharbiyev had been unemployed at the time of his arrest, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. They calculated his earnings for the period, taking into account an average inflation rate of 13.44%. Their calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 (“Ogden tables”).

124. The Government regarded these claims as based on supposition 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.

125. 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 appropriate cases include compensation in respect of loss of earnings. The Court further finds that loss of earnings also applies to dependent children and, in some instances, to elderly parents, and that it is reasonable to assume that Adam Makharbiyev would eventually have had some earnings from which the applicants would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relative and the loss by the applicants of the financial support which he could have provided. Having regard to the applicants' submissions and the fact that Adam Makharbiyev was not employed at the time of his abduction, the Court awards EUR 7,000 to the first and second applicants jointly and EUR 10,000 to the third, fourth and fifth applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

126. The applicants claimed jointly EUR 1,500,000 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 authorities' failure to provide any information about the fate of their close relative.

127. The Government found the amounts claimed exaggerated.

128. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The first, second and third 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 the applicants jointly EUR 60,000, plus any tax that may be chargeable thereon.

C. The applicant's request for an investigation

129. The applicants also requested, referring to Article 41 of the Convention, that an independent investigation, which would comply with the requirements of the Convention, be conducted into their relative's disappearance. They relied in this connection on the case of *Assanidze v. Georgia* ([GC], no. 71503/01, §§ 202-203, ECHR 2004-II).

130. The Court notes that in *Kukayev v. Russia*, no. 29361/02, §§ 131-34, 15 November 2007, 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

131. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour for the work in the area of exhausting domestic remedies and of EUR 150 per hour for the drafting of submissions to the Court. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 5,607.

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

133. 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).

134. 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' representatives.

135. 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 the 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 legal drafting was necessarily time-consuming to the extent claimed by the representatives.

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

E. Default interest

137. 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 Adam Makharbiyev;
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 Adam Makharbiyev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first, second and third applicants on account of their mental suffering;
6. *Holds* that there has been no violation of Article 3 of the Convention in respect of the fourth and fifth applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Adam Makharbiyev;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
10. *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 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the first and second applicants jointly;
- (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the third, fourth and fifth applicants jointly;
- (iii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
- (iv) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen
Registrar

Nina Vajić
President