



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

FIRST SECTION

CASE OF AKHMADOVA AND SADULAYEVA v. RUSSIA

(Application no. 40464/02)

JUDGMENT

STRASBOURG

10 May 2007

FINAL

12/11/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Akhmadova and Sadulayeva v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 10 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 40464/02) 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 two Russian nationals, Ms Tamusa Khamidovna Akhmadova and Ms Larisa Abdulbekovna Sadulayeva (“the applicants”), on 31 October 2002.

2. The applicants, who had been granted legal aid, 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 P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their son and husband had disappeared after being detained by Russian servicemen in Chechnya in March 2001. They relied on Articles 2, 3, 5, 6 and 13 of the Convention.

4. By a decision of 13 October 2005, the Court declared the application admissible.

5. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1957 and in 1975 respectively. They are residents of Argun, Chechnya. At present they live in Ingushetia.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Detention of Shamil Akhmadov

8. The first applicant's son, Shamil Said-Khasanovich Akhmadov, who was born on 17 December 1975, married the second applicant in 1992. They have five children – Layusa, who was born in 1993, Anzhela, born in 1995, Khedi, born in 1997, Magomed, born in 1998 and Fattakh, born in 2000. They lived in the town of Argun, about 10 kilometres east of Grozny, where Shamil Akhmadov worked as a butcher in the market. The first and the second applicants are housewives.

9. On 10 March 2001 illegal paramilitaries stormed and briefly occupied the local television station in Argun. Several press agencies also reported that on the same day a Russian military checkpoint in Argun had come under attack and sustained casualties.

10. Between 11 and 14 March 2001 the military carried out a “mopping-up” operation (*zachistka*) in the town, apparently in response to the attacks of the previous day. On 13 March 2001 the Interfax news agency reported that the military commander's office had said that the operation had been aimed at tracking down rebels and criminals, and finding weapons and ammunition. The movement of transport and people was restricted and the roads from Argun to Shali and Grozny closed. The commander's office reported that the operation had produced “tangible results”, including the detention of “individuals who, according to intelligence, may have been involved in the terrorist acts and murders committed [in Argun]”. The number of detainees was not reported.

11. Between 12 and 2 p.m. on 12 March 2001 Shamil Akhmadov left his home at 12 Novaya Street in Argun. Several military vehicles, including armoured personnel carriers (APCs) and police UAZ cars, took up positions in the nearby Gudermesskaya Street. The servicemen detained Shamil Akhmadov. The second applicant, who was informed of the events by a neighbour, rushed out to see what was going on. She saw her husband surrounded by a group of servicemen, who put him into an APC. She submitted the following account of the events:

“On 12 March 2001 ... I went to the dentist's. For the previous two months my husband had remained at home, because he was afraid to travel to Grozny. At first he wanted to accompany me but then decided to stay at home. I went with a female

relative, but as soon as I sat in the chair, the dentist's wife rushed into the office and told me that she had seen my husband Shamil being detained in the street. I immediately ran over but was too late to save him.

He was at the intersection of the road to Gudermes and the road to the suburbs. I guess he had decided to follow me because the intersection was less than 500 metres from the dental clinic. It's not far from our house, maybe 300-400 metres. That day Shamil was wearing a white T-shirt, black sweatshirt, navy jacket and birch-coloured trousers.

From where I was standing I could see three APCs, one Ural truck and one or two UAZ vehicles. There was a group of armed people, but I do not know exactly how many. They were wearing milk-grey uniforms, some were young and others middle-aged.

I saw them talking to my husband, but could not make out what they told him. I do not know if he showed them his passport, but I know for sure that he had his passport with him. By the time I had run over, they had already thrown Shamil, like a roll of cloth, into the APC, and when I reached them, they closed the APC door and drove away in the direction of Gudermes. I did not see any other civilians in the street, everyone else would have hidden away.”

12. The second applicant said that she then rushed home and, together with the first applicant, went to the military commander's office, where they talked to the commander, Nikolay Ivanovich Sidorenko. He told them that Shamil Akhmadov had not been brought to the commander's office. For the next three days both applicants, along with other relatives of the detained persons, remained in front of the office awaiting news of the detainees.

13. According to a report issued by NGO Memorial in March 2001, 170 people were detained in houses and on the streets of Argun as a result of the mopping-up operation. The relatives of the detainees gathered at the local commander's office. In response to these events, the Chechnya Republican Prosecutor Mr Chernov and the Deputy Mayor of Grozny arrived in Argun on 17 March 2001. Within several days most of those detained were released without charge. However, 11 detained men were not released: Shamil Akhmadov, Muslim Batayev, Said-Magomed Dikiyev, Ali Eldiyev, Ayub Gairbekov, Ismail Khutiyev, Ali Labazanov, Ruslan Mezhidov, Abdul-Malik Tovzarkhanov, Ruslan Viskhadzhiyev and Abdul-Vakhab Yashurkayev.

14. The Government did not dispute the circumstances of Shamil Akhmadov's detention as presented by the applicants. They submitted that in 2001 Shamil Akhmadov had been charged with a crime under Article 228 part 1 of the Criminal Code (possession of illegal drugs without the intention to sell) in the Krasnodar Region, but was a fugitive from justice and had breached the obligation not to leave a particular location. On 13 February 2001 the Sovetskiy District Court of Krasnodar had put Shamil Akhmadov on the list of wanted persons. The Government further submitted

that Shamil Akhmadov was unemployed and had problems with drugs and alcohol.

2. The search for Shamil Akhmadov and the investigation. Discovery of the bodies of the other detainees

15. Immediately after the detention of Shamil Akhmadov the applicants began a search for him with the relatives of the other ten men who had “disappeared”. The search was primarily carried out by the first applicant, while the second applicant remained at home to take care of the children. On numerous occasions, both in person and in writing, they made appeals to the prosecutors of various levels, the Ministry of Interior, the administrative authorities in Chechnya and the Special Representative of the Russian President in the Chechen Republic for rights and freedoms, media and public figures.

16. In their letters to the authorities the applicants stated the circumstances in which Shamil Akhmadov had been detained and asked for assistance and details of the investigation. The first applicant kept a folder of her letters to and responses from the authorities; she also listed these in a diary. However, she submitted that in February or March 2002 her house was raided by soldiers who took away the folder and the diary. As a result, she was able to provide copies of very few letters.

17. The first applicant also personally visited detention centres and prisons in Chechnya as well as further afield in the Northern Caucasus. She also went to places where unidentified bodies were discovered, and over a period of 14 months saw dozens of corpses across Chechnya.

18. The applicants received hardly any substantive information from the authorities about the investigation into Shamil Akhmadov's disappearance. On several occasions they were sent copies of letters forwarding their requests to the various prosecutors' services.

19. On an unspecified date soon after 11 March 2001 the first applicant was questioned by an investigator at the military commander's office. She went there with the mother of another “disappeared” person. The first applicant submitted that she had neither been summoned nor formally requested to see the investigator, but persuaded the guards to let her into the compound. The investigator asked a lot of questions about the circumstances of the detention and personal details relating to Shamil Akhmadov such as what he had been wearing on the day he was detained and what size shoes he wore. The first applicant signed the record of the questioning at the end of the interview.

20. Shortly after the “mopping-up” operation in Argun, four bodies were discovered on the edge of the Russian main military base in Khankala. These men were later identified as four of the 11 missing persons who had been detained in Argun on 12 March 2001.

21. In a report of March 2001 NGO Memorial, citing as its source a staff member of the military prosecutor's office in Khankala, stated:

“On 13 March 2001, near the Russian military base in Khankala, a military patrol discovered a fresh grave, which they initially mistook for a landmine, in an irrigation canal. Instead of a landmine, however, the arriving sappers found human remains. With the assistance of sappers and in the presence of a military prosecutor, four bodies were exhumed with bullet wounds to their backs and the back of their heads. The bodies were cleaned and brought to [the base].

Because the bodies bore signs of violent death, the military prosecutor opened criminal investigation no. 14/33/0132-01. Between March 14 and 16, autopsies were conducted by forensic experts in Rostov and after that, on 19 March 2001, the bodies were transferred for burial to the Ministry of Emergency Situations [Emercom] of Chechnya.”

22. Several days later relatives identified these four persons as those detained on 12 March 2001 in Argun – Muslim Batsiyev, Ayub Gairbekov, Ismail Khutiyev and Abdul-Malik Tovzarkhanov.

23. Referring to documents in the criminal investigation file, the Government submitted in December 2005 that on 13 March 2001 on territory guarded by military unit no. 98311 the bodies of Batsiyev, Gairbekov, Khutiyev and Tovzarkhanov were found with indications that they had met a violent death. On the same day the military prosecutor of military unit no. 20102 opened criminal investigation no. 14/33/0132-01 under Article 105 part 2 (a) of the Criminal Code for aggravated murder.

24. On 20 March 2001 the Chechnya Republican Prosecutor's Office informed the first applicant that her complaint had been forwarded to the Argun Town Prosecutor's Office for investigation.

25. According to the information submitted by the Government in November 2005, on 23 March 2001 the Argun District Prosecutor's Office opened criminal investigation file no. 45031 into the abduction of several persons from Argun. The first applicant was questioned and granted victim status in the proceedings on 17 April 2001. The Government cited the first applicant's statement in which she alleged that she had been told by a fellow detainee that her son had been detained on 15–16 March 2001 at the premises of the Argun VOVD.

26. On 19 April 2001 the first applicant wrote to the military prosecutor's office of military unit no. 20102 in Khankala. It replied on 24 April 2001 that her complaint had been forwarded to the Argun Town Prosecutor's Office.

27. On 11 May 2001 criminal investigation file no. 45031 was transferred to the military prosecutor's office of military unit no. 20102, where on 16 May 2001 it was joined with file no. 14/33/0132-01 that had been opened in relation to the discovery of the four bodies in Khankala.

28. On 28 May 2001 an investigator from the Argun Town Prosecutor's Office informed the first applicant that a criminal investigation into her

son's disappearance had been opened on 23 March 2001 under Article 126 part 2 of the Criminal Code for the kidnapping of two or more persons by a group. The letter further stated that “in the course of the investigation the involvement of military servicemen was established in the abduction of your son and others” and informed her of the transfer of the investigation to a military prosecutor.

29. On 3 September 2001 the Office of the Special Envoy of the Russian President in the Chechen Republic for rights and freedoms informed the first applicant that her complaint had been forwarded to the Chechnya Prosecutor's Office.

30. Eight or nine months after Mr Akhmadov's detention the first applicant was told by one of the guards at the military commander's office that he had seen her son at the compound several days after the “mopping-up” operation. According to the guard, whose name the first applicant does not know, her son had been detained there for about two weeks and had been badly beaten. He had then been taken to another location.

31. On 30 November 2001 the Argun Department of the Interior issued a note to the second applicant, certifying that she was searching for the family breadwinner, Shamil Akhmadov, who had been missing since 12 March 2001. The note was addressed to humanitarian agencies and asked them to help the family with five small children.

32. On 21 March 2002 an investigator at the Argun Town Prosecutor's Office informed the first applicant that according to “the available information [the military prosecutor of military unit no. 20102 has] suspended the criminal investigation owing to a failure to identify those responsible for the kidnapping of Akhmadov and others and to establish [his] whereabouts”.

33. On an unspecified date the first applicant travelled to Khankala with relatives of the other missing persons where they submitted their complaints to a military prosecutor. She claims that sometime later she received a letter from a military prosecutor informing her that the investigation had been resumed and that the efforts to establish the whereabouts of Shamil Akhmadov were continuing.

34. In early March 2002 local residents discovered three bodies on pasture land on the outskirts of Argun. The grave was excavated by the military in the presence of a prosecutor; apparently, it had been booby-trapped. One of the bodies had its head missing and was identified through surgical scars by his wife as being that of Abdul-Vakhid Yashurkayev. He too was one of the eleven missing detainees of 12 March 2001. In March 2002 Memorial reported the finding in their press-release “Argun. Disappearance of Detainees. The 'Disappeared' are Found in Unmarked Graves”.

35. On 12 March 2002 the first applicant applied to the Shali District Court for a declaration that her son was missing, in order to obtain an

allowance for the loss of the family breadwinner. In her application, she stated the circumstances in which her son had been detained and the failure of the investigative authorities to establish his whereabouts.

3. Discovery of Shamil Akhmadov's body and further investigation

36. In late April 2002 local residents discovered a body in a field outside Argun. Upon making the discovery they requested the military commandant's office to exhume it, fearing that it, too, might be booby-trapped. One week later, military sappers exhumed the remains and brought it to the cemetery.

37. On 1 May 2002 the second applicant, who had been informed of the discovery by her neighbours, went to the cemetery. She was accompanied by her husband's grandmother. The second applicant immediately recognised the clothes her husband had been wearing on the day of his apprehension. The body, which had been buried, was exhumed and reburied in the family grave the same day. The second applicant said that it consisted of little more than bones. The right leg was broken, the upper half of the skull was missing and there were bullet holes in the clothes in the chest area. The second applicant collected the clothes and they are still in her possession.

38. The first applicant did not see her son's body, as at that time she was out of Chechnya for medical reasons.

39. After the discovery of Shamil Akhmadov's body, the applicants continued their attempts to obtain further investigations into the circumstances of his death.

40. According to the Government, on 23 May 2002 the military prosecutor of military unit no. 20102 resumed the investigation into Mr Akhmadov's abduction.

41. On 8 June 2002 the Argun Prosecutor's Office issued a certificate to the second applicant to confirm that their office had opened criminal investigation no. 45031 into the abduction of her husband. It further confirmed that "on 1 May 2002 a skeletal corpse of an unknown man was discovered at the southern edge of Argun. Relatives identified him by the remaining items of clothing as Shamil Akhmadov, born on 17 December 1975 in Argun, who had been kidnapped by unidentified persons on 12 March 2001 in Argun. Examination of the body showed that Akhmadov's death had been caused by violence, judging by bullet holes in the skull and the upper part of the neck-bone and fractures of the ribs. Taking into account the absence of any soft tissue on the bones, death probably occurred in March 2001".

42. On 21 August 2002 the civil registration office of Argun issued a death certificate for Shamil Akhmadov, and indicated that the death had occurred on 22 March 2001 in Argun.

43. On 5 May 2003 the SRJI, acting on the applicants' behalf, wrote to the Argun Prosecutor's Office, asking him for news about the investigation in criminal case no. 45031. They inquired if the investigation, which had been suspended in March 2002, had been reopened after the discovery of Mr Akhmadov's body. They also made requests for the second applicant and the person who had discovered the body to be questioned, for a forensic analysis to be ordered and for the clothes in which the body had been found to be collected from the second applicant for examination. They further inquired if any documents had been obtained relating to the operation in Argun on 11-14 March 2001, if the commanding officers and the servicemen who had conducted the passport checks had been identified and questioned, if the officers responsible for the supervision of the detainees had been questioned and if other detainees had been interviewed. Finally, they inquired what investigative measures had been carried out at the spot where Shamil Akhmadov's body had been found.

44. On 14 June 2003 the Argun Town Prosecutor's Office replied that following the discovery of four bodies near the military base in Khankala on 13 March 2001 and the opening of an investigation by the military prosecutor of military unit no. 20102, criminal case no. 45031 had been transferred to the military prosecutor, since the cases were interrelated. It added that the request for information had been forwarded to the military prosecutor of military unit no. 20102, which would reply on the substance of the case.

45. On 25 July 2003 the military prosecutor of military unit no. 20102 replied to the SRJI that his office was investigating the kidnapping of Mr Akhmadov. However, the investigation had been suspended owing to an inability to identify the culprits. The letter stated that "the servicemen of the Federal Security Service and of the Ministry of the Interior of Chechnya were continuing to take investigative measures to find those responsible for the said crime, so that they could be taken into custody and prosecuted by the military prosecutor's office".

46. In their observations, the Government did not dispute the information concerning the investigation into the abduction and killing of Shamil Akhmadov as presented by the applicants. Relying on information obtained from the General Prosecutor's Office, they referred to a number of other procedural steps taken by the investigation which were not mentioned by the applicants. However, despite specific requests from the Court and two reminders, the Government did not submit copies of the documents to which they referred (see below).

47. According to the information submitted by the Government, in November 2005 the investigation was adjourned on 23 July 2002 owing to a failure to identify the culprits. On 17 March 2004 the investigation was resumed and transferred to the military prosecutor of the United Group

Alliance in the Northern Caucasus (UGA), where it was assigned file no. 34/00/0010-04D.

48. The Government also submitted to the Court a decision dated 10 May 2004 to open a new criminal investigation file no. 34/00/016-04 against persons unknown for the kidnapping of Mr Akhmadov. This file had become separated from the investigation file no. no. 34/00/0010-04. The order of the military prosecutor of the UGA summarised the information and documents from criminal investigation file no. 34/00/0010-04 in the following manner:

“On 12 March 2001 in Argun, Chechnya, unknown persons detained Mr. Shamil Said-Khasanovich Akhmadov, born on 15 December 1975. On 23 March 2001 investigator I. of the Argun District Prosecutor's Office opened criminal investigation file no. 45031 under Article 126 part 2 (a), (g) of the Criminal Code.

On 16 May 2001 the criminal investigation file was forwarded to the military prosecutor's office of military unit no. 20102, where it was accepted for further investigation and combined with criminal investigation file no. 14/33/0132-01 D. This investigation was subsequently transferred to the military prosecutor of the UGA and assigned case file number no. 34/00/0010-04 D.

The investigation established that on 1 May 2002 local residents discovered skeletal human remains on the southern outskirts of Argun. From the remaining items of clothing he was identified by A. and [the second applicant] as their relative Akhmadov Sh. and buried without a forensic report.

A., [the second applicant], D. and Kh., and [the first applicant], who had been granted victim status in the proceedings, were questioned about the circumstances of the case and confirmed the above stated events.

In addition, [the first applicant] stated that the body bore injuries to the upper part of the skull and the ribs resembling bullet wounds. However, it is impossible to verify the fact of Akhmadov's death in view of the relatives' absolute refusal to exhumate the body.

Taking into account the above established circumstances of detention of Akhmadov and the finding of a male body on the outskirts of Argun, identified by relatives as Akhmadov, the conclusion is that these events are not linked to the events that are the subject of inquiry in file no. 34/00/0010-04 D. A new criminal investigation should be carried out, with copies of the documents from the initial investigation.”

49. The document further listed, without indicating the dates, several orders of the prosecutors to open, transfer, adjourn and resume the investigation. It also listed two records of questioning of the first and second applicants, three records of questioning of A. (Akhmadov's grandmother), three records of questioning of D. and Kh. (neighbours), and a report on the examination of the site dated 29 March 2004. The document then listed a number of requests for information that had been sent to various departments of the Ministry of the Interior and their replies, without specifying the subject matter of these documents. The order concluded that

the new investigation was to be carried out under Article 126 of the Criminal Code (kidnapping) by the military prosecutor of the UGA.

50. In their observations the Government further stated that a forensic report on the person who had been buried as Shamil Akhmadov listed severe trauma to the head and the fracture of skull bones, which could have resulted from heavy blows or from bullet wounds. They also referred to the relatives' refusal to exhume the body, which had made it impossible to conclude with certainty whether Shamil Akhmadov had indeed died and of what cause.

51. On 2 June 2004 the military prosecutor forwarded the case file to the Chechnya Prosecutor's Office for further investigation, because the involvement of military personnel in Mr Akhmadov's abduction could not be established. On 18 June 2004 the file was returned to the military prosecutors.

52. On 9 August 2004 the investigators collected documents relating to the participation of interior troops in the special operation in Argun on 10 – 14 March 2001 from the central archives of the Ministry of the Interior. These documents were reviewed by the investigators on 18 October 2004.

53. On 18 November 2004 the military prosecutor of the UGA issued an order to close the investigation in respect of servicemen from the Ministry of Defence and the Ministry of the Interior under Article 24 part one (1) of the Code of Criminal Procedure (CCP), owing to the absence of a *corpus delicti* in their actions. On the same day the investigation was again forwarded to the Chechnya Prosecutor's Office, which accepted it for further investigation in December 2004. It was assigned file no. 61802.

54. According to information supplied by the Government, the investigation was adjourned and reopened at least six times. On five occasions the case file was transferred between various military and civil prosecutors. In November 2005 the investigation into Mr Akhmadov's kidnapping was still pending at the Chechnya Prosecutor's Office.

4. Harassment of the applicants

55. The applicants submitted that after Akhmadov's apprehension they were subjected to constant pressure and harassment by the military, who regularly arrived with APCs, and proceeded to surround and enter the house. According to the applicants, 10-12 servicemen dressed in camouflage, armed with automatic weapons and guns, sometimes wearing balaclava masks and bullet-proof vests would enter the house. During these raids they would break or take away the applicants' property, burn furniture, and search the house and garden in an apparent attempt to find weapons. They also threatened the applicants and their children, said that Shamil Akhmadov was probably "fighting in the mountains" and at some point in March 2002 took away the documents file and the diary with the list of

letters to various authorities concerning the disappearance kept by the first applicant.

56. The applicants also submitted that they were subjected to physical assaults. At some point in the summer of 2001 soldiers dropped the second applicant's youngest son, Fattakh, on the floor causing him to break a tooth. On the same day they pushed her daughter Layusa down the stairs and she broke a wrist.

57. They submitted that in December 2002 the second applicant was beaten so badly by the soldiers that she had to go to hospital and have six stitches in her head.

58. At some point the applicants moved to Ingushetia, to an IDP camp in Nazran. In late August 2003 the second applicant travelled to Argun to visit her relatives. She first visited her husband's paternal grandfather, and then her husband's maternal grandmother where she spent the night. Upon returning the next day to her husband's paternal grandmother, she saw that the windows and doors of the house had been broken. The grandmother told her that dozens of servicemen had broken into the house the night before, looking for her and asking: "Where is Larisa? Why are you writing these letters? What are you looking for?" The applicants understood the reference to the letters to mean the letters that had been written on their behalf by the SRJI to the prosecutors, asking for information about the investigation.

59. The second applicant returned to Argun on around 20 October 2003. After leaving Argun she went to another village to attend the burial of a relative before returning to Argun a few days later. On her way back she was told by neighbours that the house of her husband's paternal grandmother had again been stormed by soldiers who were looking for her.

60. The applicants submitted that they feared to return to Argun even for a short time. They did not submit any documents in support of this part of the complaint.

61. In their submissions, the Government informed the Court that following the communication of the complaint a prosecutor had checked this information. On 2 April 2004 the second applicant had been questioned about the circumstances of the attacks and confirmed her allegations. However her statements were not supported by any other evidence. The local hospital did not have records of the second applicant's visits in December 2002. Her neighbours and Shamil Akhmadov's grandmother were questioned in March and April 2004 but did not confirm the information about the ill-treatment of the applicant or her children or the destruction of their property. The Government concluded that the second applicant's allegations of violence against her would be further investigated.

62. Despite specific requests from the Court (see below), the Government did not submit copies of any of the documents to which they referred in this respect. It is unclear whether the prosecutor's inquiries resulted in any procedural decision, but the Government referred to an order

by the deputy Prosecutor of Chechnya on 23 November 2005, by which time the investigation had been resumed.

5. Requests for the investigation files

63. In December 2003 the case was communicated to the Russian Government, who were requested to submit a copy of the investigation file opened in relation to the abduction of Shamil Akhmadov. In May 2004 the Government responded that they could not provide copies of the file because the case was still under investigation. They also stated that its submission would violate Article 161 of the CCP. The Court repeated its request in June 2004, but the Government again replied that the investigation was in progress and that no copies of documents could be submitted.

64. On 13 October 2005 the application was declared admissible. At the same time the Court again repeated its request to the Government to submit documents from the investigation files that had been opened in relation to Shamil Akhmadov's abduction, as well as documents relating to the verification by the prosecutor of the second applicant's allegations of harassment. The Government were also requested to present an outline of the investigations, including the timing of the major procedural steps and the bodies responsible.

65. In November 2005 the Government submitted nine documents from the criminal investigation file concerning Mr Akhmadov's abduction, mostly consisting of procedural decisions to open and to transfer the file and letters informing the first applicant of the procedural steps. The Government also presented an outline of the investigation (see paragraphs 47-54 above). They stated that the submission of further documents concerning Akhmadov's abduction was impossible because they contained State secrets. Their disclosure would also violate Article 161 of the CCP because they contained information relating to the location and the actions of the military and special forces, as well as the addresses and personal data of witnesses who had participated in counter-terrorist operations in Chechnya and of other participants in the proceedings.

66. The Government did not submit any documents relating to the investigation of the second applicant's complaints of harassment.

B. Relevant domestic law

67. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic. From 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (CCP).

68. Article 125 of the new CCP lays down a judicial procedure for the consideration of complaints. Orders of the investigator or prosecutor to

refuse to institute criminal proceedings or to terminate a case, and other orders and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede the citizens' access to justice may be appealed against to a local district court, which is empowered to check the lawfulness and grounds of the impugned decisions.

69. Article 161 of the new CCP prohibits the disclosure of information from the preliminary investigation file. Under part 3 of the Article, information from the investigation file may be divulged only with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the parties to the criminal proceedings or prejudice the investigation. Divulging information about the private lives of parties to criminal proceedings without their permission is prohibited.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION AS TO EXHAUSTION OF DOMESTIC REMEDIES

A. Arguments of the parties

1. The applicants

70. The applicants disagreed with the Government's objection. First, they argued that there was no suggestion that any remedy was available to them which could lead to the identification and punishment of those responsible.

71. Second, they considered that the potentially effective domestic remedies in their case were inadequate, ineffective and illusory. They alleged the existence of an administrative practice of non-compliance with the requirement to investigate effectively abuses committed by servicemen and members of the police in Chechnya. They referred to complaints submitted to the Court by other persons claiming to be victims of such abuses, to Council of Europe documents, and to NGO and media reports.

72. Further, they argued that an appeal to a court or a prosecutor's office would be ineffective in their case, because the investigation had not progressed significantly with the passage of time and the known investigative steps were inadequate.

73. In addition, they invoked the existence of special circumstances as a result of the harassment to which they had been subjected in response to their complaints. After the incidents of August and October 2003 they felt afraid and had lost faith in the effectiveness of the internal remedies.

74. They added that in any event they had requested the prosecutor to conduct an investigation into the disappearance and subsequently the death of Shamil Akhmadov. A criminal investigation should, in their opinion, be regarded as a proper remedy in view of the nature of their complaints and the relevant practice of the Court. Despite their efforts, no proper investigation had taken place. They had not been informed of progress in the investigation, or of the decisions to transfer the investigation file from one authority to another or to adjourn or reopen the investigation, and had been unable to familiarise themselves with the documents in the file. They had thus been deprived of any meaningful possibility to appeal.

2. The Government

75. The Government requested the Court to declare the case inadmissible as the applicants had failed to exhaust domestic remedies. Referring to Article 125 of the CCP, they submitted that the applicants had failed to appeal against the decisions in the investigation which they thought had violated their rights. The investigation into the circumstances of Shamil Akhmadov's detention was continuing and an examination of the complaint by the Court would be premature. The Government also referred to the Constitution and other legislation which permitted an appeal to the courts in respect of the acts of the administrative bodies which infringed a citizen's rights.

B. The Court's assessment

76. In the present case, the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will now proceed to examine the arguments of the parties in the light of the Convention provisions and its relevant practice (for a recent summary see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

77. The Court observes 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.

78. 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 does not resolve the issue of effective remedies in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue

any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults, still less to establish their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 119-121, 24 February 2005; *Estamirov and Others v. Russia*, cited above, § 77). In the light of the above, the Court finds that the applicants were not obliged to pursue the civil remedies.

79. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement agencies immediately after Shamil Akhmadov's apprehension and that an investigation has been pending since March 2001. The applicants and the Government dispute the effectiveness of this investigation.

80. The Court considers that this limb of the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicants' complaints. Thus, it considers that these matters fall to be examined below under the substantive provisions of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

81. The applicants alleged that the first applicant's son and second applicant's husband had been unlawfully killed by agents of the State. They also submitted that the authorities had failed to carry out an effective and adequate investigation into the circumstances of his apprehension and death. They relied on Article 2 of the Convention, which 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 alleged failure to protect the right to life of Shamil Akhmadov

1. Arguments of the parties

82. The applicants maintained that there could be no reasonable doubt that Russian servicemen had detained Shamil Akhmadov on 12 March 2001 and then deprived him of his life. In support of their complaint they referred to the following evidence that was not challenged by the Government: the fact that a large scale “sweeping” operation had taken place in Argun on 11-14 March 2001, as a result of which more than a hundred persons were detained and eleven “disappeared”; the second applicant's eye-witness statement about her husband's detention by uniformed servicemen who had placed him in an APC; the letter of the Argun Town Prosecutor's Office dated 28 May 2001, stating that military servicemen had been involved in the abduction of Shamil Akhmadov; and, lastly, the fact that a military prosecutor had been in charge of the investigation. They also referred to the letter from the Argun Prosecutor's Office of 8 June 2002, which spoke of Shamil Akhmadov's violent death as a result of gunshot wounds, and to the death certificate issued on 21 August 2002. They argued that the State had failed to explain how Shamil Akhmadov had died while in custody.

83. The Government submitted that there was no conclusive evidence to support the applicants' allegations that the authorities were responsible for the detention of Shamil Akhmadov or that he was dead. They referred to the absence of a forensic report and the relatives' refusal to carry out an exhumation of the body that had been buried on 1 May 2002, as well to the difficult situation in Chechnya in general and the fact that the witnesses had left Chechnya.

2. The Court's assessment

(a) General considerations

84. As to the facts that are in dispute, the Court refers to its case-law confirming the standard of proof as “beyond reasonable doubt” in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (*Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

85. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance

tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, the *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, § 32; and *Avsar v. Turkey* cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

86. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions for lack of documents that are exclusively in the Government's possession, 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 it fails in its arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005; *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-... (extracts)).

(b) Application in the present case

87. The applicants submitted that Shamil Akhmadov was detained by servicemen during a security operation and then killed. In support of their version of events they referred to a number of factual elements, none of which has been disputed by the Government.

88. In particular, the parties do not contest that there was a large scale security operation in Argun on 11-14 March 2001. The Government also do not dispute that Shamil Akhmadov was detained on 12 March 2001 in Argun by armed men in camouflage uniform and military vehicles, such as APCs. The Government did not suggest that the persons who detained the applicants' relative were members of illegal paramilitary groups and there is no material available to the Court to support such a conclusion. It is further uncontested that a number of persons were detained during this operation, although it appears that no custody records have been produced in respect of Shamil Akhmadov or the other detained persons. The domestic investigation also accepted these factual elements and proceeded to verify the scope of the involvement of military servicemen in the events. The Court can therefore consider it established that Mr Akhmadov was apprehended as part of a special security operation carried out by State agents in Argun on 12 March 2001.

89. The applicants stated that Mr Akhmadov's body was discovered in late April 2002 on the outskirts of Argun bearing signs of a violent death and that on 1 May 2002 they had identified him by the clothes he had been wearing on the day of his detention and buried him. The Government expressed doubts as to whether Mr Akhmadov's death had been ascertained.

They cited the absence of a forensic report and the relatives' refusal to permit the exhumation of the body. However, the Court notes that in June 2002 the Argun Prosecutor's Office issued a note confirming that the body had been identified by the relatives as that of Shamil Akhmadov. The note concluded that his death had been violent in view of the extensive injuries, including bullet holes in the skull bones, and put the time of death at a point in March 2001, owing to the condition of the remains. In August 2002 the Argun civil registration office issued a death certificate for Shamil Akhmadov and indicated the date of death as being 22 March 2001. On the basis of these documents the Court accepts that, for the purposes of the domestic law, Shamil Akhmadov was killed in March 2001 and that his body was discovered in late April 2002.

90. The next point to be considered by the Court is whether there is a link between Shamil Akhmadov's arrest by State servicemen and his death. It remains unclear whether he was killed immediately after his apprehension or some time later. However, for official purposes he was presumed dead as of March 2001, several days after the date of his apprehension, as the prosecutor's note and the official death certificates indicate. The link between his kidnapping and death has furthermore been assumed in the domestic proceedings, at least up to a certain point, and the Court takes this into account. The fact that Mr Akhmadov was dressed in the same clothes as those he was wearing on the day of his detention provides further support for this conclusion. The Government have not given any version of events different from the one presented by the applicants.

91. Finally, and most disturbingly, it has not been disputed that the discovery of Shamil Akhmadov's body followed the finding of at least four other bodies of people who were detained in Argun on 12 March 2001, all of whom bore signs of a violent death. Three of them were discovered on the day following their apprehension within the security zone of a military unit. The Court finds that these facts strongly suggest that the deaths of these detainees were part of the same sequence of events as their apprehension and support the assumption that they were extra-judicially executed by State agents.

92. Having regard to the above, the Court considers that there exists a body of evidence that attains the standard of proof "beyond reasonable doubt", and thus makes it possible to hold the State authorities responsible for Shamil Akhmadov's death. In the absence of any reference to the legitimacy of that act, it follows that there has been a violation of Article 2 of the Convention in this respect.

B. The alleged inadequacy of the investigation into the abduction

1. Arguments of the parties

93. The applicants alleged that the authorities had failed to conduct an effective investigation into the circumstances of Shamil Akhmadov's detention and death, in violation of their procedural obligations under Article 2. They argued that the investigation fell short of the standards of the European Convention and of the national legislation. They pointed to the passage of considerable time – more than five years – without the investigation producing any known results. Relying on the Government's submissions they argued that the investigators had failed to take the necessary steps immediately after the detention occurred, and then again after the discovery of the body. A number of investigative actions had occurred only after the communication of the complaint to the Russian Government, and other important steps were never taken, such as the questioning of other witnesses of the detention, the identification and questioning of those in charge of the military operation and the ordering of a forensic examination. The authorities had systematically failed to inform the applicants of the proceedings and the applicants had been given no information about important procedural steps. Their own attempts to intensify the investigation had resulted in them being subjected to intimidation and violence.

94. The Government disagreed. They stressed that the investigation was being carried out in accordance with the domestic legislation, that the first applicant had been granted victim status and had had every possibility to participate effectively in the proceedings.

2. The Court's assessment

95. 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 requirements (for a recent summary see, for example, *Bazorkina v. Russia*, no. 69481/01, §§ 117-119, 27 July 2006).

96. In the present case, an investigation was carried out into the kidnapping and subsequent murder of the applicants' relative. The Court must assess whether that investigation met the requirements of Article 2 of the Convention. In this respect the Court notes that its knowledge of the proceedings at issue is limited as a result of the Government's failure to submit the materials from the investigation file (see paragraphs 63-65 above).

97. The Court notes that the Government did not request the application of Rule 33 § 2 of the Rules of Court, which permits a restriction on the principle of the public character of the documents deposited with the Court for legitimate purposes, such as the protection of national security and the private life of the parties, as well as the interests of justice. The Court further remarks that the provisions of Article 161 of the Code of Criminal Procedure, to which the Government refer, do not preclude disclosure of the documents from a pending investigation file, but rather set out a procedure for and limits to such disclosure. The Government failed to specify the nature of the documents and the grounds on which they could not be disclosed (see, for similar conclusions, *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006). The Court also notes that in a number of comparable cases that have been reviewed by or are pending before the Court, similar requests have been made to the Russian Government and the documents from the investigation files submitted without reference to Article 161 (see, for example, *Khashiyev and Akayeva v. Russia* cited above, § 46; and *Magomadov and Magomadov v. Russia* (dec.), no. 58752/00, 24 November 2005). For these reasons, the Court considers the Government's explanations concerning the disclosure of the case file insufficient to justify the withholding of the key information requested by the Court.

98. Drawing inferences from the respondent Government's behaviour when evidence is being obtained (see *Ireland v. the United Kingdom*, cited above, § 161), the Court will assess the merits of the complaint on the basis of the available information.

99. The Court first notes that the authorities were immediately made aware of Shamil Akhmadov's apprehension because the applicants personally visited the military commander's office and the prosecutor's offices in the days following 12 March 2001. The applicants also submitted that because of the large number of detainees the Prosecutor of Chechnya and other high-ranking officials had visited Argun (see paragraph 13 above) and thus the information about the detention of Shamil Akhmadov and other men by unidentified servicemen had been brought to their attention.

100. The investigation was opened on 23 March 2001, eleven days after the men were detained. This delay in itself was liable to affect the effectiveness of the investigation of a crime such as abduction, where crucial action has to be taken in the first days after the event.

101. When the investigation started, it was plagued by inexplicable delays in performing the most essential tasks. It appears that the second applicant, who had witnessed Mr Akhmadov's detention, was not questioned until much later in the proceedings. The scene was not inspected until March 2004, after the complaint had been communicated to the respondent Government. It also appears that the neighbours were questioned only in 2004. When Mr Akhmadov's body was found, no immediate action was

taken to obtain a proper forensic report, although it appears that at least some attempt was made to record the condition of the remains (see paragraph 50 above). Such delays and omissions in themselves compromised the effectiveness of the investigation and were bound to have a negative impact on the prospects of uncovering the truth.

102. However, the Court finds that the investigation can only be described as dysfunctional when it tried to establish the extent of the involvement of military or security personnel in Mr Akhmadov's abduction and subsequent death. By May 2001 it had already been established that Mr Akhmadov had been detained by military or security personnel and the file was transferred to the military prosecutor's office, which is responsible for the investigation of crimes committed by servicemen. It is unclear what steps were taken by the military prosecutors to solve the crime, but it was not until August 2004 that they collected documents relating to the participation of the interior troops in the "sweeping" operation in Argun. These documents were only reviewed in October 2004. It does not appear that the investigators questioned any of the servicemen who carried out the operation in Argun and were involved in the detention of Mr Akhmadov or his fellow detainees. The Government did not explain why on 18 November 2004 the investigation arrived at the conclusion of the absence of a *corpus delicti* and discontinued the prosecution of the still unidentified servicemen.

103. Furthermore, the Government submitted no explanation as to why on 10 May 2004 the military prosecutor of the UGA decided to separate the investigation into Mr Akhmadov's abduction from that carried out into the abduction and subsequent murder of the other men detained on 12 March 2001 during the same security operation in Argun. It is unclear if the investigation into these events, including the finding of three bodies within the security perimeter of a military unit, produced any results which might have shed light on what had happened to Shamil Akhmadov.

104. Finally, as to the manner in which the investigation was conducted, the Court notes that in a period of five and a half years the investigation was adjourned and reopened at least six times. It was transferred from one prosecutor's office to another on at least five occasions for no apparent reason. The second applicant, Mr Akhmadov's wife, was not granted victim status in the proceedings. The first applicant, notwithstanding her procedural status, was not duly informed of its progress, and the only information occasionally communicated to her concerned the adjournment and reopening of the proceedings.

105. The Court notes with great concern that a number of cases have come before it which suggest that the phenomenon of "disappearances" is well known in Chechnya (see *Bazorkina v. Russia*, no. 69481/01, 27 July 2006; *Imakayeva v. Russia*, no. 7615/02, 9 November 2006; and *Luluyev and Others v. Russia*, no. 69480/01, 9 November 2006). A number

of international reports point to the same alarming conclusion. Although in the present case the body of the “disappeared” person was eventually discovered, this was more than a year after his arrest and not in any way down to the efforts of the law-enforcement authorities.

106. Moreover, the stance of the prosecutor's office after the news of the detention was communicated to it by the applicants significantly contributed to the likelihood of the deceased's disappearance, as no necessary steps were taken either in the crucial first days or weeks after detention, or later. Their conduct in the face of the applicants' justified complaints creates a strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation. The Court finds that the law-enforcement machinery's failure to take the necessary steps effectively put the “disappeared” person outside the protection of the law, a situation which is totally unacceptable in a democratic society governed by the principles of respect for human rights and the rule of law.

107. In the light of the foregoing, and with regard to the inferences drawn from the respondent Government's presentation of the evidence, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance and death of Shamil Akhmadov. It accordingly dismisses the Government's preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation, and holds that there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

108. Referring to the Court's established case-law, the applicants claimed that they were victims of treatment falling within the scope of Article 3 of the Convention as a result of the anguish and emotional distress they had suffered as a result of the disappearance of their son and husband. They relied on Article 3, which provides:

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

109. The Court notes that while a family member of a “disappeared person” can claim to be a victim of treatment contrary to Article 3 (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, §§ 130-34; and *Bazorkina v. Russia*, cited above, §§ 139-141), the same principle would not usually apply to situations where the person taken into custody has later been found dead (see, for example, *Tanli v. Turkey*, no. 26129/95, § 159, ECHR 2001-III (extracts)). In the latter cases the Court would limit its findings to Article 2. However, if a period of initial disappearance is long it may in certain circumstances give rise to a separate issue under Article 3 (see *Gongadze v. Ukraine*, no. 34056/02, §§ 184-186,

ECHR 2005-...; *Luluyev and Others v. Russia*, no. 69480/01, §§ 114-115, ECHR 2006-... (extracts)).

110. In the present case, the news about Shamil Akhmadov's death was preceded by a period of more than one year during which he was deemed to have disappeared and the investigation into his kidnapping was conducted. There was thus a distinct period during which the applicants lived in the constant state of uncertainty, anguish and distress that inevitably attends the disappearance of a loved one. The Court will therefore proceed to examine whether the authorities' conduct in this period amounted to a violation of Article 3 in respect of the applicants.

111. It notes that the applicants are the mother and wife of the person who disappeared. The second applicant witnessed her husband's detention. Despite their applications to various authorities, no proper investigation into the abduction and subsequent death of their close relative has taken place. The applicants have never been given any plausible explanation or information as to what became of Shamil Akhmadov after his detention and the circumstances of his death. The Court also notes its findings concerning the failure to grant the second applicant victim status, the lack of access to the case-file and the scant information they received during the proceedings.

112. The Court therefore finds that the applicants suffered distress and anguish as a result of the disappearance of their son and husband and of their inability to find out what had happened to him or to receive up-to-date information on the investigation. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment within the meaning of Article 3. The Court concludes that there has been a violation of Article 3 in respect of the applicants.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

113. The applicants submitted that Shamil Akhmadov had been subjected to unacknowledged detention, in violation of the principles defined by Article 5 of the Convention, which provides:

“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:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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.”

114. The Government stressed that the authorities had possessed legal grounds for detaining Shamil Akhmadov, as an arrest warrant had been issued by the district court in Krasnodar on 13 February 2001 (see paragraph 14 above). They noted, however, that the investigation had failed to establish that he had in fact been detained by law-enforcement bodies. The identity of those responsible remained unknown.

115. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 for securing 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 *Luhuyev v. Russia* cited above, § 122).

116. The Court has found it established that Shamil Akhmadov was detained by State servicemen on 12 March 2001 during a security operation in Argun and was not seen alive thereafter (see paragraphs 87-92 above). The Government have not furnished any explanation for his detention and any documents of substance from the domestic investigation into his apprehension. The Court thus concludes that he was a victim of unacknowledged detention.

117. 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 Mr Akhmadov against the risk of disappearance.

118. Consequently, the Court finds that Shamil Akhmadov 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 6 OF THE CONVENTION

119. The applicants stated that they had been deprived of access to a court, contrary to the provisions of Article 6 of the Convention, the relevant parts of which provide:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

120. The applicants alleged that they had been denied effective access to a court because a civil claim for damages would have depended entirely on the outcome of the criminal investigation into the disappearance. In the absence of any findings by the investigators, they could not effectively apply to a court.

121. The Government disputed this allegation.

122. The Court finds that the applicants' complaint under Article 6 concerns essentially the same issues as those discussed under the procedural aspect of Article 2 and under Article 13. It should also be noted that the applicants submitted no information to prove their alleged intention to apply to a domestic court to claim compensation. In these circumstances, the Court finds that no separate issues arise under Article 6 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLES 2, 3 AND 5

123. The applicants complained that they had had no effective remedy in respect of the violations alleged under Articles 2, 3 and 5 of the Convention. They referred 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.”

124. The Government disagreed. They stated that the investigation was being conducted in accordance with the domestic legislation, and that the first applicant had been granted victim status and had every means of participating effectively in the proceedings.

125. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV; *Assenov and Others*, cited above, § 117; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Orhan v. Turkey*, no. 25656/94, § 384, 18 June 2002, and *Khashiyev and Akayeva*, cited above, § 183).

126. In view of the Court's findings above with regard to Articles 2 and 3, these complaints are clearly “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13.

127. It follows that in circumstances where, as here, the criminal investigation into the disappearance and death was ineffective (see paragraphs 95-107 above) and the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

128. Consequently, there has been a violation of Article 13 of the Convention in connection with Articles 2 and 3 of the Convention.

129. As regards the applicants' reference to Article 5 of the Convention, the Court refers to its findings of a violation of this provision set out above. In the light of this it considers that no separate issues arise in respect of Article 13 read in conjunction with Article 5 of the Convention, which itself contains a number of procedural guarantees related to the lawfulness of detention.

VII. OBSERVANCE OF ARTICLES 34 AND 38 § 1 (a) OF THE CONVENTION

A. Hindrance of the right to individual application

130. The applicant complained that she has been subjected to harassment in reprisal for her application to the Court. This complaint will be examined under Article 34 of the Convention, which reads:

“The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

131. The Government submitted that these allegations were unsubstantiated and not supported by anything other than the second applicant's statements. The investigation of her complaint would continue.

132. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual application instituted by Article 34 that applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from using a Convention remedy. The issue of whether or not contacts between the authorities and an applicant amount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In the context of the questioning of applicants about their applications under the Convention by authorities exercising a domestic investigative function, this will depend on whether the procedures adopted have involved a form of illicit and unacceptable pressure which may be regarded as hindering the exercise of the right of individual application (see, for example, *Aydin v. Turkey*, cited above, §§ 115-117; and *Salman v. Turkey* [GC], no. 21986/93, § 130, ECHR 2000-VII).

133. In the present case, the second applicant referred to serious incidents that had occurred in retaliation for her application to the Court. The Court notes with regret the Government's failure to submit documents relating to the investigation of this complaint (see paragraphs 61-62 above). It notes, however, that the Government cited the absence of any medical records to corroborate the second applicant's allegations concerning the injuries she and her children had sustained. It further notes that the Government referred to the record of the questioning of the second applicant's neighbours and relatives, all of whom denied the incidents as presented by the second applicant. Finally, it notes that the applicant herself

has not submitted any evidence of her allegations other than her statements, which have not been corroborated by other evidence in the domestic proceedings.

134. In short, the Court does not have sufficient material before it to conclude that the respondent Government have violated their obligations under Article 34 of the Convention by putting undue pressure on the second applicant in order to dissuade her from pursuing her application to the Court.

B. Failure by the Government to submit documents requested by the Court

135. The Court reiterates, firstly, that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and, secondly, that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications.

136. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention. In a case where the application raises issues of the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility stage and at the merits stage (see *Tanrıku v. Turkey*, cited above, § 70).

137. The Court observes that it has on several occasions requested the Russian Government to submit copies of the investigation files opened into the disappearances of the applicants' relative. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the present case. The Court notes, further, that it has found insufficient the reasons cited by the Government for refusing to disclose the requested documents (see paragraph 97 above). Having regard to the importance of

cooperation by the respondent government in Convention proceedings and the difficulties associated with the establishment of the facts in cases such as the present one, the Court finds that the Russian Government fell short of their obligations under Article 38 § 1 of the Convention on account of their failure to submit copies of the documents requested in respect of Shamil Akhmadov's disappearance.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

138. 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

139. The applicants claimed damages in respect of Mr Akhmadov's lost wages from the time of his arrest and subsequent disappearance. They claimed a total of 1,524,202 Russian roubles (RUR) under this head (44,236 euros (EUR)).

140. They claimed that Shamil Akhmadov had worked as a butcher prior to 1999. They submitted that, even though he was unemployed at the time of his arrest, it was reasonable to suppose that he would have found a job and earned at least the official minimum wage until 2034, when he would have reached life expectancy age for men in Russia. The applicants assumed that both they and Mr Akhmadov's five minor children would have been financially dependent on him from March 2001 until the first applicant reached the age of 70 (that being the life expectancy for women in Russia) and their children reached the age of 18. They calculated his earnings for that period, taking into account an average 15% inflation rate and argued that each applicant could count on 30% and each child on 5% of the total of RUR 1,481,202.

141. The applicants also claimed the reimbursement of RUR 43,000 they had spent on Mr Akhmadov's funeral.

142. The Government regarded these claims as based on suppositions and unfounded.

143. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings (see, among other authorities, *Çakici* cited above). 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'

son and husband and the loss by the applicants of the financial support which he could have provided. The Court further finds that the loss of earnings also applies to the dependent children and that it is reasonable to assume that Mr Akhmadov would eventually have had some earnings from which the applicants would have benefited. Having regard to the applicants' submissions and the fact that Mr Akhmadov was not employed at the time of his apprehension, the Court awards EUR 15,000 to the applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

144. The applicants claimed EUR 20,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their son and husband, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their relative.

145. The Government found the amount claimed exaggerated.

146. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and death of the applicants' son and husband. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention in relation to the emotional distress and anguish they endured. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards each of the applicants EUR 20,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

147. The applicants were represented by the SRJI. They submitted a schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 12,074, which comprised:

- EUR 700 for the preparation of the initial application;
- EUR 3,488 for the preparation and translation of additional submissions;
- EUR 150 for the correspondence related to the security threat;
- EUR 6,085 for the preparation and translation of the applicant's reply to the Government's memorandum;

- EUR 850 in connection with the preparation of additional correspondence with the Court;
- EUR 47 for postal expenses.

148. The applicants also claimed EUR 754 for administrative costs (corresponding to 7% of the legal fees).

149. The Government did not dispute the details of the calculations submitted by the applicant, but contended that the sum claimed was excessive for a non-profit organisation such as the SRJI.

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

151. The Court notes that, under a contract entered into by the first applicant in November 2005, she agreed to pay the SRJI's representative the costs and expenses incurred for representation before the Court, subject to delivery by the Court of a final judgment concerning the present application and to payment by the Russian Federation of the legal costs should these be granted by the Court. Having regard to the rates for the work of the SRJI lawyers and senior staff and to the administrative costs, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

152. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was relatively complex and required a substantial amount of research and preparation. It notes, however, that the applicants did not submit any observations on the merits and that the case involved very little documentary evidence, in view of the Government's refusal to submit the case file. The Court thus doubts that research was necessary to the extent claimed by the representative.

153. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them the amount of EUR 8,000, less EUR 715 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable.

D. Default interest

154. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of Shamil Akhmadov;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Shamil Akhmadov died;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of both applicants;
5. *Holds* that there has been a violation of Article 5 of the Convention in respect of Shamil Akhmadov;
6. *Holds* that no separate issues arise under Article 6 of the Convention;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Articles 2 and 3 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Article 5;
9. *Holds* that there has been no failure to comply with Article 34 of the Convention, in so far as the second applicant's complains of undue pressure;
10. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
11. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement:
 - (i) EUR 15,000 (fifteen thousand euros) in respect of pecuniary damage to the applicants jointly;
 - (ii) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage to the first applicant;
 - (iii) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage to the second applicant;

- (iv) EUR 7,285 (seven thousand two hundred eighty five euros) in respect of costs and expenses;
- (v) any tax that may be chargeable on the above amounts;
- (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;

Done in English, and notified in writing on 10 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President