



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

FIRST SECTION

CASE OF UTSAYEVA AND OTHERS v. RUSSIA

(Application no. 29133/03)

JUDGMENT

This version was rectified on 26 March 2009
under Rule 81 of the Rules of the Court

STRASBOURG

29 May 2008

FINAL

01/12/2008

This judgment may be subject to editorial revision.

In the case of Utsayeva and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Giorgio Malinvernì,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 May 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in application no. 29133/03 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 eight Russian nationals, listed below.

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.

3. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their new representative, Mrs V. Milinchuk.

4. The applicants alleged that their four relatives had disappeared after being detained by State agents in June 2002.

5. By a decision of 15 February 2007 the Court declared the applications admissible.

6. 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

7. The applicants are:

- (1) Mrs Satsita Utsayeva, born in 1954;
- (2) Mr Aslambek Utsayev, born in 1948;
- (3) Mrs Khava Muslimova, born in 1986;
- (4) Mrs Belita Dadayeva¹, born in 1952;
- (5) Mrs Yakhita Taysumova, born in 1985;
- (6) Mrs Zulay Abdulazimova, born in 1943;
- (7) Mrs Birlant Tovmerzayeva, born in 1943;
- (8) Mrs Larisa Tovmerzayeva, born in 1968.

8. They are Russian nationals and residents of the village of Novye Atagi, Shali district, Chechnya.

9. The facts of the case are linked to the application *Imakayeva v. Russia* (no. 7615/02, ECHR 2006-... (extracts)), in that the four relatives of the applicants in the present case were detained together with the husband of Marzet Imakayeva, Said-Magomed Imakayev, on 2 June 2002 in the village of Novye Atagi (see below). The facts of the present case, as submitted by the parties, may be summarised as follows.

1. Detention of the applicants' relatives on 2 June 2002

10. The applicants submitted that the village of Novye Atagi had been under the firm control of the Russian military since early 2000. Military checkpoints had been established at all roads leading into and out of the village.

11. The applicants submitted that early in the morning of 2 June 2002 a convoy including at least six armoured personnel carriers (APCs) and at least one other military vehicle - a UAZ all-terrain car - conducted a "sweeping" operation in the village of Novye Atagi. The local residents noted the hull numbers of three APCs: 569, 889 and 1252, and partially of the UAZ vehicle as "344". The hull numbers of the other vehicles were obscured. The servicemen went to six houses during the operation and detained five men. The applicants submitted numerous affidavits about the events of 2 June 2002, produced by the family members of the detained and the neighbours. They also submitted a hand-drawn map of the village, indicating the location of the roadblocks and of the houses of the five persons detained on 2 June 2002.

1. Rectified on 26 March 2009: the applicant's name was spelled "Dadyeva" in the original version of the judgment.

(a) Detention of Islam Utsayev

12. The first and second applicants are husband and wife. They were residents of Grozny, but have lived for several years at 22 Nizhnaya Street, Novye Atagi, as internally displaced persons. Their son Islam Utsayev, born in 1976, had lived with them in Novye Atagi since 1999. He had previously been a student at the Grozny University philological faculty, but in October 1999 he was seriously injured during a rocket attack on the Grozny central market. Following that injury he underwent several operations and left the university. He worked as a car mechanic and supported his parents, who were unemployed. The couple's second son had died during the hostilities of 1994–1996, and a third son had been detained by security services and ill-treated in 2001, following which he suffered from poor health. The third applicant is Islam Utsayev's wife.

13. On the morning on 2 June 2002 the first two applicants, Islam Utsayev and his wife (the third applicant), their other son Bislán U. and his wife Liza Kh., were at their home at 22 Nizhnaya Street. At that time the third applicant and Liza Kh. were both pregnant. It was still dark outside and the family was sleeping when, at about 5.30 a.m., an APC knocked down the fence and drove into the courtyard. A group of about twenty heavily armed servicemen in uniform entered the house and woke up the family. Four of the servicemen were masked, the rest were not. The applicants described them as “contract soldiers”, aged between 30 and 40. They had Slavic features and spoke unaccented Russian. More servicemen remained outside on the hull of the APC, while others took positions around the house.

14. Without producing any warrant or explanation, the soldiers forced the Utsayev family members into the courtyard and onto the ground. They surrounded Islam Utsayev and beat him. The second and third applicants were also beaten when they asked for explanations, and the third applicant, Islam Utsayev's pregnant wife, submitted that she had a miscarriage later that day. Islam Utsayev, who was taken from his bed barefoot and wearing only a light T-shirt, was hooded, his hands were tied behind his back and he was forced into an APC. The first applicant tried to climb onto the APC to give her son footwear, but was pushed away and hit by several soldiers. The soldiers fired into the air from automatic rifles in order to scare away those neighbours who tried to intervene.

15. In support of their allegations the first and the second applicants submitted detailed statements to the SRJI, produced in 2003 and in March 2007. The third applicant also produced a statement in 2003. In particular, they explained that the third applicant had been in the first month of pregnancy and that after the miscarriage they had not applied to any medical institution, nor had they complained anywhere about this incident.

16. In their observations the Government submitted that no information about the alleged beatings of the second and third applicants or a

miscarriage by the third applicant had been recorded in the medical institutions of the Shali district. They also stated that the third applicant's current place of residence was unknown and that her relatives had refused to give any evidence on the subject.

(b) Detention of Movsar Taysumov

17. The fourth and fifth applicants are the mother and sister of Movsar Taysumov, born in 1980. They lived at 1 Lenin Street in Novye Atagi. Movsar Taysumov worked as a guard at the local school and was not married. His brother Masud was killed by unknown persons in January 2002, along with two other men who had gone to gather firewood near the river Argun. In May 2002 his father, the fourth applicant's husband, died of a heart attack.

18. At about 6 a.m. on the morning on 2 June 2002 the fourth applicant and her son Movsar Taysumov were at their home when an APC pulled up outside the house. The fourth applicant was at her morning prayers, and her son Movsar was still asleep. The fifth applicant, Movsar's sister, was in hospital for a check-up. Four men in green uniform entered the house. They were not wearing masks and the fourth applicant reported that they had Slavic features and spoke unaccented Russian.

19. The military did not introduce themselves or give reasons for the visit. They woke up Movsar Taysumov and ordered him to dress quickly. They said they needed to question him, collected his passport and took him outside. The fourth applicant followed them and pleaded with them to question her son at home. An officer told her that if he was innocent he would soon return. The soldiers put Movsar Taysumov into an APC. The fourth applicant tried to climb onto the hull, but the soldiers swore at her and hit her with rifle butts until she fell. Several neighbours tried to come closer and intervene, but soldiers who had taken positions around the house shot in the air as a warning.

20. Once Movsar Taysumov was inside, the APC drove further along Lenina Street. The fourth applicant and her neighbours clearly noted its hull number as 569. The fourth applicant followed it along the street and witnessed from a distance how it stopped at the Tovmerzayevs' house and how another person (Masud Tovmerzayev) was put into it. The fourth applicant also noticed several other APCs along the street, though she did not notice their numbers.

(c) Detention of Idris Abdulazimov

21. The sixth applicant is the mother of Idris Abdulazimov, who was born in 1984. In 1997 he finished the seventh grade at school and thereafter helped his mother around the house. They lived at 19 Lenina Street with the sixth applicant's three other children.

22. On 2 June 2002 the sixth applicant, her daughter Louiza and three sons, Akhmad, Vakhid and Idris, were sleeping at their home. At about 6 a.m. an APC stopped at their house and a group of about 30 military servicemen surrounded the house, about half of them wearing masks. The applicant described them as heavily armed, wearing new camouflage uniforms and speaking unaccented Russian. Approximately ten servicemen entered the house, shouting and swearing. They pulled the sixth applicant's three sons onto the floor and asked their names. They then told Idris to dress. The applicant's oldest son asked them to take him instead of his 18-old brother, but one of the soldiers said "We don't need you". They took Idris Abdulazimov and placed him in an APC with an obscured number. The applicant tried to get onto the APC, but her eldest son pulled her off.

23. The sixth applicant asked a soldier with Asian features on the hull of the APC where they were going, and he responded that they were going to the military commander's office. The APC drove along and stopped by a house further down the street to detain another person who was not at home. The sixth applicant followed the vehicle to the cemetery at the end of the village and then returned home.

(d) Detention of Masud Tovmerzayev

24. The seventh and eighth applicants are the mother and sister of Masud Tovmerzayev, born in 1974. He was unmarried and had worked at a shoe factory and at the market. They lived at 62 Lenina Street, together with the seventh applicant's other children and grandchildren.

25. On 2 June 2002 the seventh and eighth applicants and Masud Tovmerzayev were at home. At about 6 a.m. the applicants were awake, because the seventh applicant was planning to go to town and had to catch a bus; the eighth applicant had to take care of the family's cattle. Masud Tovmerzayev was still in bed.

26. The seventh applicant opened the gate and at that point an APC stopped outside their house. The woman was surprised and asked them if they were going to conduct a "sweeping" operation, but they did not answer. One of the soldiers on the APC asked "Which gate?" and another pointed to the applicant's. Immediately 20-25 armed servicemen entered the courtyard. The applicants and neighbours described them as well armed and wearing green camouflage uniforms; some of them were masked. The seventh applicant noted several men with Asian features among the servicemen.

27. The eighth applicant asked the seventh applicant to go into the house and watch to ensure that the soldiers did not "plant" anything there. The soldiers asked the eighth applicant where her brother was and went to his room. One of them had a piece of paper and asked her "Is that Masud?" When she answered in the affirmative they put him on the floor and handcuffed him. One of the servicemen asked about weapons, while others were searching the house and the car. They then placed Masud

Tovmerzayev in APC no. 569, without permitting him to dress or to put on footwear, and drove away. The neighbours were not allowed to approach because the soldiers shot into the air. Masud Tovmerzayev's aunt, who came to the house because of the noise and tried to intervene, was pulled by the hair and hit by a soldier.

(e) Detention of Said-Magomed Imakayev

28. Finally, at around 6.20 a.m. on 2 June 2002 servicemen on APCs 889 and 1252 and UAZ 344 drove to Ordzhonikidze Street, two blocks away from the Tovmerzayevs' house. At 11 Ordzhonikidze Street they detained Said-Magomed Imakayev, husband of Marzet Imakayeva. After the stop at the Imakayevs' house the APCs and other military vehicles left Novye Atagi. Some of the military vehicles apparently drove towards Grozny, while others went in the direction of the 70th regiment stationed near Shali. The families of the five men detained on 2 June 2002 in Novye Atagi have had no news of them since.

(f) The Government's account

29. In their observations the Government did not dispute most of the facts as presented by the applicants. They accepted as established that “on 2 June 2002 at about 5.30 a.m. unidentified persons wearing camouflaged uniforms and masks and armed with automatic weapons, supported by armoured vehicles, arrived in Novye Atagi and detained Utsayev I.A., Taysumov M.M., Abdulazimov I.A., Tovmerzayev M.E. and Imakayev S.-M.U. These men were subsequently taken by the unidentified persons in an unknown direction.”

2. Search and investigation into the “disappearances”

30. Immediately after the detention of their family members the applicants started to search for them. The search was primarily carried out by the mothers of the detained men, together with Marzet Imakayeva, the applicant in application no. 7615/02. On numerous occasions, both in person and in writing, they applied to prosecutors at various levels, to the Ministry of the Interior, to the Special Envoy of the Russian President in the Chechen Republic for rights and freedoms, to military commanders, the Federal Security Service (FSB), to the administrative authorities in Chechnya, to the media and to public figures. The applicants also personally visited detention centres, police stations, military bases and prisons in Chechnya as well as further afield in the Northern Caucasus.

31. On 2 June 2002, immediately after the arrests, the four mothers, together with Marzet Imakayeva and Abdula D., the head of the Novye Atagi administration, drove in the Abdulazimovs' family minibus to Shali, the district centre, to inquire about the whereabouts of their relatives. At the

military commander's office in Shali the applicants unsuccessfully sought to meet with the commander, General N. They were told by the staff at the military commander's office that they had not received any detainees that morning. They received a similar answer at the police station.

32. The next day, on 3 June 2002, the applicants again travelled to Shali. Abdula D., the head of the village administration, was permitted to meet with General N., who allegedly confirmed to him that the men had been detained at the military commander's office and would be released in three days.

33. Having waited for three days, the applicants again visited the commander's office in Shali, accompanied by the head of the village administration. About ten days later the commander's office staff denied that the detainees had been there.

34. At some point in August 2002 the applicants managed to meet with General N., who denied that his servicemen had participated in a military operation in Novye Atagi on the date in question. At that time the applicants spotted APC no. 569 in the courtyard of the commander's office. At their insistence the commander questioned the driver of the vehicle about the events of 2 June 2002. The driver confirmed that two men had been detained and driven away in the APC on 2 June 2002, but claimed that they had been handed over to other military servicemen at a checkpoint.

35. The applicants unsuccessfully tried to meet with the officers of the military prosecutor's office in Shali in order to have the drivers of the APCs and other servicemen questioned.

36. In addition to personal visits, the applicants addressed numerous letters to the prosecutors and other authorities, in which they set out the facts of their relatives' detention and asked for assistance and details about the investigation. The applicants have submitted copies of the more or less standard letters they wrote.

37. The applicants received hardly any substantive information from official bodies about the investigation into the disappearances. On several occasions they were sent copies of letters forwarding their requests to the different prosecutors' services. Below is a summary of letters retained by the applicants and the replies they received from the authorities.

(a) Correspondence maintained by the first applicant

38. On 3 June 2002 the first applicant wrote to the head of the Shali district administration in relation to Islam Utsayev's detention and requested assistance in finding him. She also mentioned the "rough" treatment meted out to herself and other family members in the course of her son's arrest.

39. Either on the same day or immediately after, in three identically worded complaints, the applicant wrote to the military commander of the Shali district General N., the military prosecutor of the Shali district and the head of the Shali temporary district police department (VOVD).

40. On 5 June 2002 the first applicant wrote to the military prosecutors of military units nos. 20116 and 20102, based in Shali and Khankala (Grozny), stating details of her son's detention and requesting their help in finding him. Also on 5 June 2002 the first applicant wrote a similar letter to the head of the Novye Atagi village administration, Abdula D.

41. On 8 June 2002 the first applicant wrote to the State Duma member for Chechnya and to the Special Envoy of the Russian President in the Chechen Republic for rights and freedoms.

42. On 20 June 2002 the first applicant wrote a complaint to the Shali district prosecutor's office ("the district prosecutor's office"), with copies to the head of administration of Chechnya and the commander of the federal forces in Chechnya. She stated the facts of her son's detention and asked for assistance in finding him. She submitted that the servicemen had thrown her son on the floor and taken him away undressed, beaten her husband on the head with a rifle butt and had treated the women of the house "rudely and incorrectly".

43. On 1 July 2002 the applicant received a reply from the member of the State Duma for Chechnya, in which he informed her that her letter had been forwarded to the Chechnya Prosecutor's Office and that he would try to establish whether her son had been detained by the authorities.

44. On 17 September 2002 the first applicant again wrote to the military prosecutor of military unit no. 20116 and the heads of administration of Novye Atagi and the Shali district, with requests for information about Islam Utsayev.

45. On 30 September 2002 the district prosecutor office informed the applicant that the investigation into her son's kidnapping had been suspended. The letter did not give reasons for the suspension, but informed her that she could appeal against the decision to the district prosecutor or to a court.

46. On 3 October 2002 the first applicant received a copy of a letter from the Chechnya Prosecutor's Office, forwarding her complaint to the district prosecutor's office.

47. On 7 October 2002 the Chechnya Prosecutor's Office informed the first applicant that the investigation into her son's kidnapping had been suspended on 30 September 2002 due to a failure to identify the culprits (Article 208 part 1 of the Code of Criminal Procedure). The applicant was invited to address further queries to the district prosecutor's office.

48. On 9 October and on 23 October 2002 the district prosecutor's office acknowledged receipt of the applicant's complaints and informed her that the investigation into Islam Utsayev's "disappearance" had been suspended.

49. On 14 November 2002 the Chief Military Prosecutor's Office requested the military prosecutor's office of the United Group Alignment in the Northern Caucasus (UGA) to investigate the "disappearance" of the first applicant's son and of the other men detained on 2 June 2002.

50. On 5 March 2003 the applicant submitted a complaint (dated 10 December 2002) to the military prosecutor of the UGA, summarising the facts of her son's disappearance and the efforts to find him and requesting assistance.

51. On 6 February 2003 the Chechnya Prosecutor's Office forwarded complaints by three applicants (Mrs Utsayeva, Mrs Tovmerzayeva and Mrs Abdulazimova) to the district prosecutor's office. On 12 February and 14 March 2003 the three women were informed by the district prosecutor's office that their complaints would be looked into.

52. On 28 February 2003 the Chechnya Prosecutor's Office informed the first applicant that they had forwarded her letter to the military prosecutor of the UGA. The letter stated that investigation file no. 59140 had been sent to the military prosecutor's office on 29 October 2002.

53. In March 2003 the Government of Chechnya twice informed the first applicant that her complaints had been forwarded to the military prosecutors, to the Chechnya Prosecutor's Office and to the local department of the Ministry of the Interior.

54. On 19 April 2003 the first applicant asked the district prosecutor's office to give her an update on the progress of the investigation and to grant her victim status in the proceedings.

55. On 25 April 2003 the military prosecutor of the UGA forwarded the applicant's complaint to the military prosecutor of military unit no. 20116.

56. On 23 May 2003 the Chechnya Ministry of the Interior replied to the deputy head of the investigative department of the Southern Federal Circuit, stating that the criminal case opened into Islam Utsayev's disappearance had been forwarded to the military prosecutors on 1 August 2002.

57. On 27 May 2003 the military prosecutor of military unit no. 20102 informed the first applicant that the materials of the case file did not prove the involvement of military servicemen in the crime under investigation.

58. On 2 June, 6 June and 25 June 2003 the Chechnya Prosecutor's Office informed the applicant in similarly worded letters that the decision of 30 September 2002 to suspend the investigation into her son's kidnapping had been quashed and that the investigation had been reopened on 29 May 2003.

59. On 18 June 2003 the military commander of the Shali district informed the applicant that the district prosecutor's office was investigating her son's "disappearance".

60. On 12 August 2003 the military prosecutor of military unit no. 20116 replied to the first applicant's complaints of December 2002 and March and May 2003. The letter stated that the criminal investigation opened in relation to the kidnapping of four men in June 2002 was pending with that office. The letter did not say whether the investigation was suspended or ongoing, but invited the applicant to come to the office to take part in procedural steps and to obtain access to the case file. The letter also

stated that no evidence had been obtained which could link the kidnapping to any military servicemen.

61. At some point the applicant wrote to the all-Russian NTV channel, addressing their programme "Attention: Search!" She asked the journalists to help in finding her son Islam Utsayev. In reply the NTV stated that work in Chechnya was too dangerous for journalists.

(b) Correspondence maintained by the fourth applicant

62. On 2 July 2002 the fourth applicant received a copy of a letter from the military prosecutor of military unit no. 20116 to the Chechnya Prosecutor's Office, stating that there was no evidence to conclude that the criminal acts in question had been committed by UGA servicemen.

63. On 16 July 2002 the district prosecutor's office informed the fourth applicant that an investigation had been opened by their office, under Article 126 part 2 of the Criminal Code, in relation to the kidnapping of Movsar Taysumov.

64. On 25 July and 10 September 2002 the Chechnya Government informed the fourth applicant that her complaints had been forwarded to the district prosecutor's office.

65. On 16 September 2002 the district prosecutor's office informed the applicant that the investigation into her son's kidnapping (file no. 59155) had been suspended. The letter did not give reasons for the suspension, but informed her that she could appeal against the decision to the Shali District Prosecutor or to a court.

66. On 2 October 2002 the military prosecutor for the Northern Caucasus Military Circuit forwarded the applicant's complaint to the military prosecutor of military unit no. 20116.

67. On 15 November the district prosecutor's office informed the fourth applicant that her complaint of 12 November 2002 about her son's disappearance could not be considered, because it had not been signed by her. The applicant was invited to the prosecutor's office to obtain information concerning the criminal investigation.

68. On 5 March 2003 the applicant's complaint dated 15 December 2002 was accepted by the military prosecutor of the UGA. The complaint summarised the applicant's efforts to find her son and requested urgent assistance.

69. On 19 February 2003 the district prosecutor's office informed the fourth applicant, in reply to a request from Amnesty International made on her behalf, that criminal case no. 59155 had been opened by that office in relation to her son's kidnapping. All necessary and possible measures had been taken, but on 15 September 2002 the investigation had been suspended due to the failure to identify the culprits. The letter further informed the applicant that measures to find her son were continuing and that she could challenge the decision to suspend the investigation.

70. On 26 March 2003 the military prosecutor of military unit no. 20116 informed the fourth applicant that troops under their jurisdiction had not detained her son. The letter advised her to approach the local police.

71. On 5 April 2003 the applicant complained to the district prosecutor's office. She stated that she had not received any information about the course of the investigation and requested updated information about its progress, and asked that she be granted victim status.

72. On 15 April 2003 the district prosecutor's office informed the fourth applicant that criminal case no. 59155 had been suspended. Actions aimed at locating Movsar Taysumov's whereabouts would continue. The applicant was also informed that she had been granted victim status.

73. On an unspecified date Abdula D., the head of the Novye Atagi village administration, addressed the Special Envoy of the Russian President in the Southern Federal Circuit, asking him to intervene and help to find Movsar Taysumov.

74. On 25 November 2004 the fourth applicant was granted victim status in criminal investigation no. 59155 into her son's abduction.

(c) Correspondence maintained by the sixth applicant

75. On 5 June 2002 the sixth applicant prepared a letter to the military prosecutor of military unit no. 20116 about the detention of her son, Idris Abdulazimov. The complaint was submitted on 19 June 2002.

76. On 5 June 2002 the sixth applicant complained about her son's detention and requested his release and information about his whereabouts from the district prosecutor's office, the military commander and the head of the VOVD.

77. On 2 July 2002 the sixth applicant received a copy of the letter from the military prosecutor of military unit no. 20116 to the Chechnya Prosecutor's Office, which stated that there was no evidence to conclude that the criminal acts had been committed by UGA servicemen.

78. On 16 July 2002 the district prosecutor's office informed the applicant that an investigation had been opened by their office in relation to the kidnapping of her son under Article 126 part 2 of the Criminal Code.

79. On 8 August 2002 the applicant was informed by the district prosecutor's office that the file number allocated to the investigation into her son's kidnapping was 59159.

80. On 23 August 2002 the Chechnya Prosecutor's Office forwarded the applicant's complaint to the district prosecutor's office.

81. On 3 September 2002 the Chechnya Government informed the sixth applicant that her complaints had been forwarded to the Chechnya Department of the Interior, the district prosecutor's office and the VOVD, the military prosecutor's office and the Chechnya Prosecutor's Office.

82. On 4 September 2002 the district prosecutor's office informed the applicant that they were investigating criminal case no. 59159 and taking steps to establish her son's whereabouts.

83. On 16 September 2002 the district prosecutor's office informed the sixth applicant that the investigation into her son's kidnapping had been suspended.

84. On 2 October 2002 the military prosecutor for the Northern Caucasus military circuit forwarded the applicant's complaint to the military prosecutor of military unit no. 20116.

85. On 22 November 2002 the military prosecutor of military unit no. 20116 informed the applicant that they had requested information about Idris Abdulazimov from the Chechnya department of the FSB, the commander of the UGA and the head of the operative headquarters for coordination of the anti-terrorist operation in the Northern Caucasus.

86. On 16 January 2003 the Chechnya department of the FSB replied to the applicant that they had no information about the whereabouts or activities of her son. It further informed the applicant that her complaint had been forwarded to the military prosecutors.

87. On 6 February 2003 the Chechnya Prosecutor's Office forwarded complaints by three applicants (Mrs Utsayeva, Mrs Tovmerzayeva and Mrs Abdulazimova) to the district prosecutor's office. On 12 February and 14 March 2003 the three women were informed by that office that their complaints would be taken into account.

88. On 5 April 2003 the applicant wrote to the district prosecutor's office. She stated that she had not received any reliable information about the course of the investigation, requested updated information about its progress and asked that she be granted victim status.

89. On 6 June 2003 the district prosecutor informed the sixth applicant that the criminal investigation into the kidnapping of her son had been suspended. Actions aimed at locating Mr Abdulazimov's whereabouts were continuing.

90. On an unspecified date Abdula D., the head of the Novye Atagi village administration, addressed the Special Envoy of the Russian President in the Southern Federal Circuit, asking him to intervene and help find the sixth applicant's son.

(d) Correspondence maintained by the seventh applicant

91. On 2 July 2002 the seventh applicant received a copy of a letter from the military prosecutor of military unit no. 20116 to the Chechnya Prosecutor's Office, stating that there was no evidence to conclude that the criminal acts had been committed by UGA servicemen.

92. On 16 July 2002 the district prosecutor's office informed the applicant that an investigation had been opened by their office, under

Article 126 part 2 of the Criminal Code, in relation to the kidnapping of Masud Tovmerzayev.

93. On 2 August 2002 the district prosecutor's office informed the applicant that a criminal investigation into her son's kidnapping had been opened under file no. 59154.

94. On 4 September 2002 the Chechnya Prosecutor's Office informed the seventh applicant that the district prosecutor's office was investigating criminal case no. 59154 and taking steps to establish her son's whereabouts.

95. On 10 September 2002 the Government of Chechnya informed the seventh applicant that her complaints had been forwarded to the district prosecutor's office.

96. On 16 September and on 23 September 2002 the district prosecutor's office informed the seventh applicant that the investigation into her son's kidnapping had been suspended and that she could appeal against the decision to a prosecutor or to the court.

97. On 17 September 2002 the applicant wrote to the head of the Novye Atagi administration and asked for his help in finding her son.

98. On 2 October 2002 the military prosecutor for the Northern Caucasus military circuit forwarded the seventh applicant's complaint to the military prosecutor of military unit no. 20116.

99. On 6 November 2002 the military prosecutor of military unit no. 20116 informed the seventh applicant that they were not aware of Masud Tovmerzayev's detention and had not issued any documents in that respect. The letter further stated that a question about the applicant's son's whereabouts had been put to the UGA headquarters and that she should contact the local department of the interior in connection with all issues related to the search for the missing persons.

100. On 16 January 2003 the Chechnya department of the FSB replied to the applicant that they had no information about the whereabouts of her son. It further informed the applicant that her complaint had been forwarded to the military prosecutors.

101. On 6 February 2003 the Chechnya Prosecutor's Office forwarded complaints by three applicants (Mrs Utsayeva, Mrs Tovmerzayeva and Mrs Abdulazimova) to the district prosecutor's office. On 12 February and 14 March 2003 the three women were informed by that office that their complaints would be taken into account.

102. On 5 March 2003 the seventh applicant's letter, bearing the date of 5 June 2002, was accepted by the military prosecutor of the UGA. The letter stated the circumstances of her son's detention and requested information about his whereabouts and the reasons for his detention.

103. On 5 April 2003 the applicant wrote to the district prosecutor's office. She stated that she had not received any reliable information about the course of the investigation, requested updated information about its progress and asked to be granted victim status.

104. On 16 April 2003 the district prosecutor's office responded that the investigation in criminal case no. 59154 had been suspended.

105. On an unspecified date Abdula D., the head of the Novye Atagi administration, addressed the Special Envoy of the Russian President in the Southern Federal Circuit, asking him to intervene and help in finding the seventh applicant's son.

(e) Summary of the above proceedings

106. The applicants were thus informed that criminal investigations had been opened in respect of the kidnappings of their relatives: no. 59176 in respect of Islam Utsayev, no. 59155 in respect of Movsar Taysumov, no. 59159 in respect of Idris Abdulazimov and no. 59154 in respect of Masud Tovmerzayev. From the letters received from the different authorities, the applicants could also understand that at some point the investigations were joined under no. 59140, initially opened in relation to the kidnapping of Said-Magomed Imakayev. The applicants were not informed by the prosecutors which steps had been taken in order to find their relatives, nor were they allowed access to the case files. In June 2003 the first applicant was informed by the Chechnya Prosecutor's Office that the decision to suspend the investigation into her son's kidnapping had been quashed and that the investigation had been reopened. None of the applicants have received information on the progress of the investigation since that date.

107. The applicants also understood that in October 2002 the investigation had been transferred from the district prosecutor's office to the military prosecutors. At some subsequent point the case file was returned to the district office. However in August 2003 the military prosecutor of military unit no. 20116 invited the first applicant to visit the office and informed her that the file was with them. The letter did not indicate whether the proceedings were pending or suspended at that time.

(f) Information provided by the Government

108. In their observations submitted in December 2004 the Government did not dispute the information concerning the apprehension and investigation into the kidnapping of Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev. Referring to the information obtained from the General Prosecutor's Office, the Government stated:

“On 2 June 2002 at about 5.30 a.m. unidentified persons wearing camouflaged uniforms and masks and armed with automatic weapons, supported by armoured vehicles, had arrived to Novye Atagi and detained Utsayev I.A., Taysumov M.M., Abdulazimov I.A., Tovmerzayev M.E. and Imakayev S.-M.U. These men were subsequently taken by the unidentified persons to an unknown direction.

On 28 June, 15 July and 31 July 2002 the Shali district prosecutor's office opened five criminal investigation files into the kidnappings: nos. 59176, 59155, 59159, 59154 and 59140 under Article 126 part 2 (a) and (g) of the Criminal Code.

Criminal investigation file no. 59140 concerning the kidnapping of Imakayev S.-M.U. had been transferred for investigation to the military prosecutor of the UGA.”

109. The Government also stated that the investigation had not confirmed the involvement of federal servicemen in the kidnapping of the applicants' relatives. The indicated APC hull numbers were not listed in the relevant registers. The investigations were adjourned and reopened on several occasions and were most recently resumed on 30 September 2004. Their progress was monitored by the General Prosecutor's Office.

110. In their additional Memorandum submitted in April 2005 the Government submitted further details of the investigations. They stated that criminal case file no. 59176 had been opened on 31 July 2002 into the kidnapping of Islam Utsayev. On the same day the first applicant had been questioned and granted victim status. She was again questioned on 22 June 2003, 30 August 2003 and 18 October 2004. The second applicant was questioned on 18 October 2004 and confirmed the circumstances of his son's detention. Two neighbours were questioned but could not indicate the identity of the kidnappers. The site of the crime was inspected at some point, but no relevant evidence was discovered.

111. According to the Government, criminal case file no. 59155 into the abduction of Movsar Taysumov was opened on 15 June 2002. The fourth applicant was questioned on 16 July 2002, 30 August 2003 and 18 October 2004. She was also granted victim status. In September 2004 two neighbours were questioned by the local police, but they were not aware of the identity of the perpetrators of the crime.

112. The Government further specified that on 15 July 2002 criminal investigation file no. 59159 had been opened into the abduction of Idris Abdulazimov. The sixth applicant was questioned on 16 July 2002 and 27 September 2004. She was also granted victim status in the proceedings. Three of her neighbours and the former military commander of the Shali district, General N., had also been questioned. An inspection of the site of the crime had taken place, but had produced no results.

113. Finally, they submitted that on 15 July 2002 criminal case no. 59140 [this should probably be no. 59154] had been opened into the abduction of Masud Tovmerzayev. The seventh and eighth applicants were questioned and granted victim status on 16 July 2002 and 18 November 2004 respectively. The investigation also questioned five of their neighbours and relatives, the head of the Novye Atagi administration, General N. and a serviceman from the military commander's office. An inspection of the site of the crime had produced no results.

114. No other witnesses to the crimes were identified by the investigation.

115. According to the Government, in the period 2002-2004 a number of information requests were forwarded to the relevant bodies concerning special operations carried out by the military forces. Despite these efforts, no information was obtained which would imply that the four men had been detained by federal forces. Their names were not found in the registers of persons detained on suspicion of committing a criminal offence or arrested by way of administrative procedure.

116. The Government conceded that the four investigations had been repeatedly suspended and reopened, on account of a failure to identify the culprits. They alleged that the victims had been informed of all the decisions made. The proceedings in criminal case no. 59176 had been reopened on 24 March 2005 and, in criminal cases nos. 59154, 59155 and 59159 – on 1 April 2005.

117. In their latest submissions of June 2007 the Government informed the Court that on 6 May 2005 criminal investigation files nos. 59176, 59154, 59155 and 59159 had been joined under no. 59176. The reason for the joinder was the establishment by the investigation of the fact that Mr Utsayev, Mr Abdulazimov, Mr Tovmerzayev and Mr Taysumov had been kidnapped by the same group of unidentified persons, who had travelled around in an APC with hull number 569.

118. The Government also submitted that the investigation had been reopened on 8 December 2006. In December 2006 and January 2007 the investigators questioned four female witnesses and the first, second and sixth applicants, who had victim status in the criminal proceedings. The Government also stated that in December 2006 the investigation requested the Ministry of Defence and the Ministry of the Interior to submit information from their archives about the participation of their personnel in the special operation in Novye Atagi on 2 June 2002.

119. Among the documents submitted by the Government, in a decision of 8 December 2006 the deputy prosecutor of Chechnya ordered that the proceedings be reopened and summarised the information available by that date. According to that document, the investigation had established that the four men had been kidnapped by a group of unidentified persons who had used an APC with hull number 569 and three other APCs.

120. On the same day the prosecutor issued written directions for the investigation. The prosecutor ordered that the bullets and cartridges left behind when the kidnappers had shot in the air to prevent relatives from interfering with the abduction be found, and that ballistic and other expert reports be carried out. He also ordered that information be collected about any special identification marks on the bodies of the missing men, so that a search could be organised through the register of unidentified corpses. He further directed information to be collected from the FSB central archives about the special operations carried out in Novye Atagi in June 2002; for it to be confirmed whether the APC with hull number 569 had indeed been

attached to the Shali military commander's office and the crew of that vehicle to be questioned. The document referred to a witness statement by D. who had served in June 2002 in the military commander's office of Shali district and who had been a crew member of APC 569. According to the prosecutor, D. testified that in early June 2002 he and other members of the crew had been involved, using the APC, in a special operation in Novye Atagi and had detained three civilians. After their arrests he had returned to the military commander's office. The three detainees had been taken in three other APCs towards the village of Belgotoy. In view of this testimony, the prosecutor ordered that N., the military commander of Shali district, be questioned and that all details relevant to the special operation of 2 June 2002 in Novye Atagi be obtained from him (establishment of the units that had carried out the special operation, identification and questioning of the officers-in-charge; finding the persons who had been in charge of the detainees and establishing where they had been taken). The document concluded by stating that if sufficient evidence of the involvement of military servicemen in the abduction was obtained, the investigation should be transferred to the military prosecutor's office.

121. On 16 January 2007 the district prosecutor's office decided not to open a criminal investigation into an allegation by the sixth applicant that money and jewellery had been stolen from her home. The decision stated that, in her application of 5 June 2002, the sixth applicant had alleged that during the arrest of her son Idris Abdulazimov the perpetrators had also taken money and valuables. On 16 January 2007 the sixth applicant was questioned and stated that the money and valuables had been found afterwards, but that she had forgotten to inform the investigation of this. On this basis the investigator ordered not to open criminal proceedings into the theft. The decision was countersigned by the sixth applicant.

122. On 20 January 2007 the investigation was adjourned. On 11 May 2007 it was again reopened with instructions to carry out the steps as listed in the prosecutor's decision of 8 December 2006.

123. Despite specific requests by the Court on two occasions, the Government did not submit copies of the documents to which they referred, providing only several copies of decisions to suspend and resume the investigation and to grant victim status, all issued after December 2006, as well as copies of several notifications to the relatives of the adjournment and reopening of the proceedings. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants of criminal proceedings.

3. Information concerning the kidnapping of Said-Magomed Imakayev

124. Marzet Imakayeva, the wife of Said-Magomed Imakayev, the fifth man detained on 2 June 2002 in Novye Atagi, applied to the European Court of Human Rights (see *Imakayeva v. Russia*, no. 7615/02, 9 November 2006). Within these proceedings the Government first denied that Said-Magomed Imakayev had been apprehended by law-enforcement or security bodies and suggested that he had been abducted by members of a terrorist organisation with a view to discrediting the federal forces.

125. Later both parties submitted to the Court that on 9 July 2004 the criminal investigation into the abduction of Said-Magomed Imakayev had been closed on the ground that no criminal offence had been committed. On 9 July 2004 the applicant's victim status in the criminal proceedings related to the kidnapping of her husband was withdrawn. She was informed at that stage that her husband had been detained by military servicemen and he had been subsequently released. The detention had been carried out in accordance with the Federal Law on the Suppression of Terrorism and the Federal Law on the Federal Security Service. According to the Government, on 2 June 2002 military servicemen, acting in accordance with section 13 of the Suppression of Terrorism Act, had detained Said-Magomed Imakayev on suspicion of involvement in one of the bandit groups active in the district. However, his involvement had not been established, and he had been transferred to the head of the Shali administration (who had subsequently died) with a view to being returned home. Thus, no abduction had been committed and the actions of the servicemen who had detained Mr Imakayev had not constituted any offence. Mr Imakayev's further absence from his place of residence was not connected to his detention by military servicemen, so the applicant had suffered no pecuniary or non-pecuniary damage. The Government did not submit any documents of substance from the investigation file concerning Said-Magomed Imakayev's abduction.

126. In its judgment the Court found it established to the standard of proof "beyond reasonable doubt" that Said-Magomed Imakayev had been detained by the security forces on 2 June 2002. No records had been drawn up in respect of his detention, questioning or release. After that date he "disappeared" and his family had had no news of him. He could thus be presumed dead following unacknowledged detention and the responsibility for his death lay with the State.

4. Alleged harassment of the applicants

127. In August 2004 the applicants informed the Court about two incidents in respect of the second applicant. According to the applicants' representatives, on 4 July 2004 and 30 July 2004 a large group of military personnel arrived at the first and second applicants' house at 22 Nizhnyaya Street in Novye Atagi. On both occasions the servicemen arrived in the

early hours of the morning in several APCs, broke into the house without identifying themselves or giving any reasons for the intrusion, conducted an unsanctioned search and confiscated a number of items.

128. According to the applicants, on 4 July 2004 the servicemen severely beat the second applicant, who is a pensioner and disabled (he is blind in one eye), on his head and torso, knocking him unconscious. They also threatened to shoot the first applicant, her daughter-in-law and two-year old granddaughter. When leaving they took with them household items of some value and a copy of the application to the Court, as well as a file containing correspondence with various authorities maintained by the first applicant in relation to her son's disappearance.

129. The second applicant submitted that he had been severely physically traumatised by the beatings and had difficulty in walking. He submitted that he had visited three hospitals where doctors performed X-rays and confirmed concussions to the ribs and spinal column, but refused to issue him with any medical documents, fearing reprisals. The first applicant also submitted that immediately after the incident she had applied to the prosecutor's office, but they refused to accept her complaint or to conduct an investigation into it.

130. On 30 July 2004 the masked servicemen who arrived at the Utsayevs' family house again searched the house, hit the second applicant in the back several times, dragged him into the garden and dropped him face down.

131. On 18 August 2004 the Court, in accordance with Rule 40 of the Rules of Court, gave notice of the application and of the complaint about harassment to the Russian Government. In their observations the Government stated that a prosecutor's check had been conducted into these complaints. Within this check the first and the second applicants had been questioned but denied that they had submitted such complaints to the European Court. They allegedly stated that on the said dates military servicemen had conducted an identity check in their house, but that no unlawful actions had been committed. On 8 November 2004 the district prosecutor's office refused to initiate criminal proceedings due to an absence of *corpus delicti*. The Government did not submit any documents relating to these proceedings.

132. In her submissions of March 2005 the fourth applicant alleged that a number of checks had been carried at her house in December 2004 by security servicemen, who failed to identify themselves or to present her with reasons for the searches.

II. RELEVANT DOMESTIC LAW

133. 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. COMPLIANCE WITH THE SIX-MONTH RULE

A. General principles

134. The Court reiterates at the outset that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months from the final decision in the process of exhaustion. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), nos. 62566/00 et seq., 10 January 2002). Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period may be calculated from the time when the applicant becomes aware, or should have become aware, of those circumstances (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002).

135. The Court further points out that it is not open to it to set aside the application of the six-month rule solely because a respondent Government have not made a preliminary objection based on that rule, since the said criterion, reflecting as it does the wish of the Contracting Parties to prevent past events being called into question after an indefinite lapse of time, serves the interests not only of respondent Governments but also of legal certainty as a value in itself. It marks out the temporal limits of the supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

B. Application in the present case

1. Complaint under Article 3 brought by the first, second and third applicants

136. In so far as the complaint brought by the first, second and third applicants concerns the beating of Islam Utsayev and ill-treatment of the third applicant on 2 June 2002, the Court notes that from the materials in its possession it does not appear that the first, second and third applicants attempted to raise these issues properly before the domestic authorities. The

Court further finds it unnecessary to determine whether the first, second and third applicants had effective remedies in respect of the violations alleged, since, even assuming that in the circumstances of the present case no such remedies were available to them, the events complained of took place on 2 June 2002, whereas their application to this Court was lodged more than six months later on 29 August 2003.

137. It follows that the complaint brought by the first, second and third applicants concerning the beating of Islam Utsayev and the alleged ill-treatment of the third applicant was lodged out of time, and the Court is therefore unable to take cognisance of its merits.

2. Complaint under Article 8

138. The applicants alleged that the searches carried out at their houses on 2 June 2002 were illegal and constituted a violation of their right to respect for their home. In this respect the Court also notes that from the materials in its possession it does not appear that the applicants attempted to raise these issues properly before the domestic authorities. As stated above, the Court finds it unnecessary to determine whether they had effective remedies in respect of the violation alleged, since, even assuming that in the circumstances of the present case no such remedies were available to them, the events complained of took place on 2 June 2002, whereas their application to this Court was lodged on 29 August 2003.

139. It follows that the complaint brought by the applicants concerning the illegal searches at their homes was lodged out of time, and the Court is therefore unable to take cognisance of its merits.

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

A. Submissions by the parties

140. The Government contended that the application should be declared inadmissible as the applicants had failed to exhaust the domestic remedies available to them. With reference to the Constitution and other domestic legal instruments, the Government argued that it had been open to the applicants to lodge complaints with the courts in various regions of Russia or directly with the Supreme Court concerning the allegedly unlawful detention of their relatives or the actions or omissions of the investigating or other law-enforcement authorities, but that they had not availed themselves of that remedy. The Government enclosed a number of letters from various regional courts, stating that the applicants had never lodged any such complaints with the courts in question.

141. The applicants contested the Government's objection. They claimed that an application to a civil court would not be an effective remedy against the type of violations alleged. As to criminal-law remedies, the applicants argued that they had repeatedly applied to law-enforcement bodies, including various prosecutors, and had attempted to participate in the investigation. This avenue, however, had proved futile.

B. The Court's assessment

142. 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 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).

143. 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.

144. 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. 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 or disappearances, still less of establishing their responsibility (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 preliminary objection in this regard is thus dismissed.

145. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement authorities immediately after the detention of their relatives and that an investigation has been pending since 2002. The applicants and the Government dispute the effectiveness of this investigation.

146. 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.

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

A. The parties' arguments

147. In the applicants' opinion, it was beyond reasonable doubt that the men who had apprehended and taken away their four relatives on 2 June 2002 had represented the federal forces. In support of their complaint they referred to the evidence that was not challenged by the Government. They referred to the official acknowledgement of detention of Said-Magomed Imakayev and argued that their relatives had been detained within the same security operation. They underlined the non-disputed involvement of armoured vehicles, one of which had been later spotted by them at the local military commander's office, and which could not have been available to illegal armed groups. They questioned the credibility of the Government's assertion to the effect that the APCs' hull numbers were not included in the relevant registers, given that the Government had failed to explain how they had reached this conclusion and the absence of any relevant documents (see paragraph 109 above).

148. The Government submitted that on 2 June 2002 unidentified masked men in camouflage uniforms and armed with machine guns had abducted Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev. They further contended that the investigation into the crime was pending, that there was no evidence that the armed men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relatives were dead, given that their whereabouts had not been established and their bodies had not been found.

B. Article 38 § 1 (a) and consequent inferences drawn by the Court

149. The Court reiterates 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 (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). 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. 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 (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI).

150. In the present case the applicants alleged that their relatives had been illegally arrested by the authorities and had then disappeared. They also alleged that no proper investigation has taken place. In view of these allegations, the Court asked the Government to produce documents from the criminal investigation file opened in relation to the kidnapping. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the present case.

151. In their submissions the Government confirmed that on 2 June 2002 Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev had been taken away from their houses by unknown armed men, after which there had been no news of them. However, they argued that the perpetrators of this crime had not been found. They refused to disclose most of the documents of substance from the criminal investigation file, relying on Article 161 of the Code of Criminal Procedure.

152. 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 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 notes that it has already found on a number of occasions that the provisions of Article 161 of the Code of Criminal Procedure do not preclude disclosure of documents from a pending investigation file, but rather set out a procedure for and limits to such disclosure (see *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006, and *Imakayeva*, cited above, § 123). For these reasons the Court considers the Government's explanation insufficient to justify the withholding of the key information requested by the Court.

153. Referring to the importance of a respondent Government's cooperation in Convention proceedings, the Court notes that there has been a breach of the obligations laid down in Article 38 § 1 (a) of the Convention to furnish all necessary facilities to the Court in its task of establishing the facts.

C. The Court's evaluation of the facts

154. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties

when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161). In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev can be presumed dead and whether their deaths can be attributed to the authorities.

155. The applicants alleged that the persons who had taken the four men away had been State agents. The Government did not dispute any of the factual elements underlying the application and did not provide another explanation of the events.

156. The Court notes that the applicants' version of the events is supported by the witness statements collected by the applicants and by the investigation. The applicants and the neighbours stated that the perpetrators had acted in a manner similar to that of a security operation – they had checked the residents' passports, and they had spoken Russian among themselves and to the residents. Most importantly, the witnesses referred to the use of military vehicles such as APCs, which could not have been available to paramilitary groups, and had even noted their hull numbers. In their applications to the authorities the applicants consistently maintained that Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev had been detained by unknown servicemen and requested that the investigation look into that possibility.

157. The domestic investigation also accepted these factual assumptions as presented by the applicants and took steps to check the involvement of law-enforcement bodies in the arrests. The investigation was unable to establish which precise military or security units had carried out the operation, but it does not appear that any serious steps were taken for that purpose (see below).

158. Finally, the Court notes that the parties agree that the applicants' four relatives had been detained together with Said-Magomed Imakayev. It has already been established by the Court that Said-Magomed Imakayev was detained by military servicemen on suspicion of involvement in illegal armed groups, that he was delivered to the Shali district department of the FSB and that he had subsequently “disappeared” (see paragraph 125 above). The Court found it established that Said-Magomed Imakayev could be presumed dead and that his death is attributable to the Russian State (see *Imakayeva*, cited above, §§ 135 and 156).

159. The Court observes that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the

allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

160. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their four relatives were detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev were arrested at their homes by State servicemen in the course of an unacknowledged security operation.

161. There has been no reliable news of the applicants' relatives since 2 June 2002. Their names have not been found in the official records of any detention facilities. Finally, the Government did not submit any explanation as to what had happened to them after their arrest.

162. 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, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, 10 May 2007; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007). A number of international reports point to the same conclusion. The Court has already found that, in the context of the conflict in Chechnya, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev or of any news of them for more than five years supports this assumption. For the above reasons the Court considers that it has been established beyond reasonable doubt that the four men must be presumed dead.

163. The Court has already noted above that it has been unable to benefit from the results of the domestic investigation on account of the Government's failure to disclose most of the documents from the file. Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping. As follows from the documents submitted by the Government, as late as December 2006 and January 2007, four and a half years after the crime had occurred and the investigation had been

opened, the most basic investigation steps related to the establishment of the identity of the perpetrators, personal details of the victims and the identification of the military vehicles involved had not been taken (see paragraphs 120 and 122 above).

164. Furthermore, in a case involving disappearance, the Court finds it particularly regrettable that there should have been no thorough investigation of the relevant facts by the domestic prosecutors or courts. The few documents submitted by the Government from the investigation file opened by the district prosecutor do not suggest any progress in more than five years and, if anything, show the incomplete and inadequate nature of those proceedings. This is particularly striking in view of the substantial body of evidence relating to the participation of vehicles and servicemen available to the investigation. The authorities' behaviour in the face of the applicants' well-substantiated complaints gives rise to a strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation carried out by the district prosecutor's office.

165. For the above reasons the Court reiterates that Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev must be presumed dead following their unacknowledged detention by State servicemen. The Court also finds it established that no proper investigation into the abduction took place, which contributed to the eventual disappearance of the applicants' four relatives.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

166. The applicants complained under Article 2 of the Convention that their relatives had disappeared after having been detained 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 alleged violation of the right to life of Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev

167. The applicants maintained their complaint and argued that their relatives had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years.

168. The Government referred to fact that the investigation had obtained no evidence to the effect that these persons were dead, or that representatives of the federal power structures had been involved in their abduction or alleged killing.

169. 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, to which no derogation is permitted. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which a deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147). 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, *Avşar*, cited above, § 391).

170. The Court has already found it established that the applicants' four relatives must be presumed dead following their unacknowledged arrest by State servicemen and that the deaths can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev.

B. The alleged inadequacy of the investigation into the abduction of Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev

171. The applicants stated that the investigation into the disappearances had been inadequate and ineffective. They noted that they were unaware of any meaningful steps taken by the law-enforcement bodies to resolve the abductions. They referred to the delays in taking the most trivial steps, such as granting victim status to them and other family members. In support of their argument regarding the inefficiency of the investigation, the applicants

also referred to the Government's refusal to submit any documents from the files in the criminal cases concerning their relatives' disappearance.

172. The Government claimed that the investigation of the disappearance of the applicants' four relatives met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

173. 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).

174. In the present case, an investigation into the abductions was carried out. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

175. The Court notes at the outset that most of the documents from the investigation were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

176. Turning to the facts of the case, it has already established that no proper investigation has taken place into the disappearance of Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev. The following considerations are particularly relevant in assessing the applicants' complaint under the positive obligation of Article 2.

177. The Court notes that the authorities were immediately aware of the crime through the applicants' submissions. The investigations were opened in June and July 2002. However, despite the fact that the applicants brought their complaints collectively and complained about the kidnappings of their relatives by the same group of persons, the investigations were only joined in May 2005. It appears that, as a result, a number of crucial steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all.

178. In particular, the Court notes that, as it appears from the decisions of the Chechnya prosecutor of December 2006 and January 2007, four and a half years after the beginning of the proceedings the investigation was still being requested to take such basic steps as identifying the provenance of the APC with a known hull number and questioning the district military commander about the units and officers involved in the special operation of 2 June 2002 (see paragraphs 120 and 122 above).

179. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced.

These 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 *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

180. The Court also notes that although the applicants were eventually granted victim status, they were only informed of the adjournment and reopening of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

181. Finally, the Court notes that the investigation was adjourned and resumed several times and that on a number of occasions the supervising prosecutors criticised deficiencies in the proceedings and ordered remedial measures; however, it appears that these instructions were not complied with.

182. In the light of the foregoing, the Court 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 the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

183. The applicants claimed that as a result of their close relatives' disappearance and the State's failure to investigate those events properly, they had endured mental suffering in breach of Article 3 of the Convention. The second applicant also submitted that he had been ill-treated during the arrest of his son Islam Utsayev. Article 3 reads:

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

184. The Government disagreed with these allegations and argued that the investigation had not established that State agents had participated in the detention of the applicants' relatives. The Government further contended that there was no evidence that Islam Utsayev had been subjected to treatment prohibited by Article 3 of the Convention.

A. The violation of Article 3 in respect of the applicants in connection with their relatives' disappearance

185. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicant 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 v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

186. In the present case the Court notes that the applicants are the parents, wife and sisters of the disappeared men. They were eyewitnesses to the arrests, during which some of them tried to interfere and were forcibly prevented from doing so. For more than five years they have not had any news of their close relatives. During this period the applicants have applied to various official bodies with enquiries about their family members, both in person and in writing. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of their relatives following their detention on 2 June 2002. The responses received by the applicants mostly denied that the State was responsible for the arrests or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

187. In view of the above, the Court finds that the applicants suffered, and continue to suffer, distress and anguish as a result of the disappearance of their four close relatives and their inability to find out what happened to them. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

B. The alleged ill-treatment of the second applicant

188. In so far as the second applicant complained about alleged ill-treatment during Islam Utsayev's arrest, the Court reiterates that allegations

of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161 *in fine*).

189. The Court has found it established that Islam Utsayev was detained on 2 June 2002 by State agents. It has also found that, in view of all the known circumstances, he can be presumed dead and that the responsibility for his death lies with the State authorities (see paragraphs 154-165 above).

190. The Court notes that the fact that the second applicant was beaten during his son's arrest was confirmed by witness statements, including those of the first and the third applicants. The applicants also systematically informed the investigating authorities of the attack on him, having stated in their complaints that the second applicant had been struck by the kidnappers. In these circumstances, the Court finds it established that the second applicant was beaten and injured by the same persons who had taken away Islam Utsayev and whom it has found above to be State agents. Despite that, it does not appear that he was granted victim status within the proceedings related to the kidnapping of his son. For reasons similar to those set out above in relation to the procedural aspect of Article 2, the investigation was not able to identify these persons and no one has been charged with any crime.

191. The Court therefore concludes that the second applicant suffered inhuman treatment contrary to Article 3 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

192. The applicants further stated that Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev had been detained in violation of the guarantees of Article 5 of the Convention, which, in so far as relevant, 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:...

(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.”

193. In the Government's opinion, no evidence was obtained by the investigators to confirm that the four men were detained in breach of the guarantees set out in Article 5 of the Convention. They were not listed among the persons kept in detention centres.

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

195. The Court has found it established that Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev were detained by State servicemen on 2 June 2002 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their 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).

196. 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 relatives 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 the applicants' relatives against the risk of disappearance.

197. Consequently, the Court finds that Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev were 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.

VII. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

198. 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...”

199. The Government disputed this allegation.

200. 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.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

201. 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.”

202. 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. In particular, the applicants had had an opportunity to appeal against the actions or omissions of the investigating authorities in court.

203. 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, 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 *Khashiyev and Akayeva*, cited above, § 183).

204. It follows that in circumstances where, as here, the criminal investigation into the violent death was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

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

206. As regards 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.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

207. 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

1. *The applicants' claims*

208. The applicants claimed damages in respect of the lost wages of their relatives from the time of their arrests and subsequent disappearances. They submitted that, although they could not obtain any official information about the earnings of their four relatives prior to their disappearance, it was reasonable to suppose that they would have found a job and earned at least some income. They referred to Article 1086 of the Civil Code, which stipulated that the estimate of earnings lost as a result of the impairment of health should be calculated on the basis of the “subsistence level” determined by the law for the able-bodied population of Russia. Taking the official figures for subsistence level adjusted for inflation, they calculated the amounts which, in their view, each of the disappeared persons could have earned. The applicants also based their calculations on the Ogden Actuarial Tables used to calculate personal injury and fatal accidents in the United Kingdom, with reference to the absence of any equivalent methods of calculation in Russia. They referred to the customary practice among

Chechen people for sons to provide material support not only for their own families, but also for their parents and unmarried sisters. The applicants made the following claims under this heading.

(a) Claims brought by the first, second and third applicants

209. The first and second applicants claimed a total of 631,867 Russian roubles (RUB) under this heading (17,306 euros (EUR)).

210. They claimed that they had both been pensioners at the time of Islam Utsayev's disappearance and could claim 40% of their son's income, calculated on the basis described above for the period they both remained alive, and on 30% of his income for the years when Islam Utsayev would have supported only the first applicant.

211. The third applicant claimed RUB 503,013 (EUR 13,781), which constituted 30% of her husband's income calculated in accordance with the above formulae.

(b) Claims brought by the fourth and fifth applicants

212. The fourth applicant claimed RUB 483,085 (EUR 13,234), which corresponded to 30% of her son's income, calculated as explained above (in paragraph 208).

213. The fifth applicant submitted that, as his unmarried sister, she too could count on Movsar Taysumov's income. She stipulated that 20% of his earnings up to the end of 2007, calculated as stated above, would constitute RUB 38,364 (EUR 1,051).

(c) Claims brought by the sixth applicant

214. The sixth applicant is the mother of the disappeared Idris Abdulazimov. She claimed that she could count on 30% of his income and that this sum would constitute RUB 373,043 (EUR 10,217), based on the above calculations.

(d) Claims brought by the seventh and eighth applicants

215. The seventh applicant claimed that she could claim 30% of her son's income, calculated as described above. She thus claimed RUB 369,888 (EUR 10,128).

216. The eighth applicant submitted that her brother would have supported her financially until her marriage in 2006 and that she could have claimed 20% of Masud Tovmerzayev's eventual earnings. Applying the method of calculations described above, the eighth applicant sought RUB 21,500 (EUR 589) as compensation for non-pecuniary damage.

2. The Government's position

217. The Government regarded these claims as based on suppositions and unfounded. They noted, in particular, that the applicants did not submit any proof of their relatives' earnings and therefore any amounts in this respect were unsubstantiated. They also stressed that the traditions invoked by the applicants could not be a legitimate source of awarding income and that they had no enforceable right to claim any part of their relatives' earnings solely on that basis.

3. The Court's assessment

218. 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. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in so far as the applicants complain about the disappearance of their sons and husband and the loss by them of the financial support which they could have provided (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, ECHR 1999-IV; *Imakayeva*, cited above, § 213). As to the claim brought by the fifth and eighth applicants in respect of their disappeared brothers' loss of future earnings, the Court notes that it has not been proven that they suffered the pecuniary loss alleged. The Court does not find it appropriate in the circumstances of this case to make any award to the fifth and eighth applicants under this head.

219. Having regard to the applicants' submissions, the fact that none of the disappeared men was receiving a salary at the time of their disappearance and the principles summarised above, the Court awards the following amounts, plus any tax that may be chargeable thereon:

- (a) EUR 8,000 to the first and second applicants jointly;
- (b) EUR 5,000 to the third applicant;
- (c) EUR 8,000 to the fourth applicant;
- (d) EUR 8,000 to the sixth applicant; and
- (e) EUR 8,000 to the seventh applicant.

B. Non-pecuniary damage

1. The applicant's claims

220. The applicants claimed that they had been victims of the suffering endured as a result of the loss of their sons, husbands and brothers, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives. They made

the following requests for compensation in respect of non-pecuniary damage:

- the first applicant claimed EUR 50,000;
- the second applicant claimed EUR 50,000;
- the third applicant claimed EUR 50,000;
- the fourth applicant claimed EUR 50,000;
- the fifth applicant claimed EUR 30,000;
- the sixth applicant claimed EUR 50,000;
- the seventh applicant claimed EUR 50,000;
- the eighth applicant claimed EUR 30,000.

2. The Government's position

221. The Government found the amounts claimed to be exaggerated.

3. The Court's assessment

222. The Court has found violations of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' four family members. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. In addition, the Court found that the second applicant had been subjected to beatings in violation of Article 3 of the Convention. The Court thus accepts that each of the applicants has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. Acting on an equitable basis, taking into account the degree of relationships between the applicants and the disappeared men and mindful of previous awards made in comparable cases (see *Imakayeva*, cited above, § 216; *Alikhadzhiyeva*, cited above § 111), the Court awards the following sums to the applicants, plus any tax that may be chargeable thereon:

- (a) EUR 40,000 to the first, second and third applicants jointly;
- (b) EUR 5,000 to the second applicant;
- (c) EUR 40,000 to the fourth and fifth applicant jointly;
- (d) EUR 40,000 to the sixth applicant;
- (e) EUR 40,000 to the seventh and eighth applicants jointly.

C. Costs and expenses

223. 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, 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. They claimed reimbursement of certain amounts for translation of documents, international postal costs, and office and

administrative expenses. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 13,935.

224. The Government did not dispute the details of the calculations submitted by the applicants, but contended that the sum claimed was excessive for legal representation rates applicable in Russia. They also objected to the representatives' request to transfer the award for legal representation directly into their account in the Netherlands.

225. 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).

226. The Court notes that, under contracts entered into by the first, fourth, sixth and eighth applicants, they 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.

227. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation, especially in view of the number of applicants and the number of persons who had disappeared.

228. Finally, the Court notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicant's representatives' accounts (see, for example, *Toğcu*, cited above, § 158; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; and *Imakayeva*, cited above).

229. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount as claimed, less EUR 715 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

230. 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. *Holds* that it is unable to consider the merits of the first, second and third applicants' complaint under Article 3 of the Convention concerning the ill-treatment sustained by Islam Utsayev and the third applicant on 2 June 2002, and the merits of the applicants' complaints under Article 8 concerning searches carried out in their homes on 8 June 2002, as they have been lodged out of time;
2. *Dismisses* the Government's preliminary objection as to non-exhaustion of domestic remedies;
3. *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;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev;
5. *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 the applicants' four relatives had disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants in respect of the disappearance of their close relatives;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the second applicant on account of the ill-treatment sustained by him on 2 June 2002;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Islam Utsayev, Movsar Taysumov, Idris Abdulazimov and Masud Tovmerzayev;
9. *Holds* that no separate issues arise under Article 6 of the Convention;
10. *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;
11. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Article 5;

12. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) in respect of pecuniary damage, the sums indicated below to be converted into Russian roubles at the date of settlement: EUR 8,000 (eight thousand euros) to the first and second applicants jointly; EUR 5,000 (five thousand euros) to the third applicant; EUR 8,000 (eight thousand euros) to the fourth applicant; EUR 8,000 (eight thousand euros) to the sixth applicant; and EUR 8,000 (eight thousand euros) to the seventh applicant;

(ii) in respect of non-pecuniary damage, the sums indicated below to be converted into Russian roubles at the date of settlement: EUR 40,000 (forty thousand euros) to the first, second and third applicants jointly; EUR 5,000 (five thousand euros) to the second applicant; EUR 40,000 (forty thousand euros) to the fourth and fifth applicant jointly; EUR 40,000 (forty thousand euros) to the sixth applicant; EUR 40,000 (forty thousand euros) to the seventh and eighth applicants jointly;

(iii) EUR 13,220 (thirteen thousand two hundred twenty euros) in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;

(iv) 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;

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

Done in English, and notified in writing on 29 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President