



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

FIRST SECTION

CASE OF SANGARIYEVA AND OTHERS v. RUSSIA

(Application no. 1839/04)

JUDGMENT

STRASBOURG

29 May 2008

FINAL

01/12/2008

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

In the case of Sangariyeva and Others v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 1839/04) 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 nine Russian nationals (“the applicants”), on 5 January 2004.

2. The applicants, who had been granted legal aid, were represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2005 the President of the Chamber decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

4. On 7 June 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. The applicants are:

- 1) Ms Aset Alikovna Sangariyeva, who was born in 1974;
- 2) Mr Abubakar Khamidovich (also spelled Khamitovich) Gaytayev, who was born in 1971;
- 3) Mr Adam Khamidovich (also spelled Khamitovich) Gaytayev, who was born in 1977;
- 4) Mr Israil Khamitovich Gaytayev, who was born in 1964;
- 5) Ms Khaza Gaytayeva, who was born in 1939;
- 6) Mr Mansur Musayevich Gaytayev, who was born in 1995;
- 7) Mr Muslim Musayevich Gaytayev, who was born in 1997;
- 8) Ms Makka Musayevna Gaytayeva, who was born in 2001;
- 9) Ms Roza Musayevna Sangariyeva, who was born in 2003.

7. The first applicant was married to Mr Musa Gaytayev, who was born in 1972. The fifth applicant is the mother of Musa Gaytayev and of the second, third and fourth applicants. The first applicant and Musa Gaytayev are the parents of the sixth, seventh, eighth and ninth applicants.

8. In 1999-2000 Musa Gaytayev worked as an ambulance driver for a state hospital and the Red Cross in Alkhan-Kala, Chechnya. In 2000 he was arrested in company with all the medical personnel of the Red Cross working in Alkhan-Kala. Between April and June 2000 he was detained in Chernokozovo and other detention facilities. At some point he was released on the basis of an amnesty law but was not given his identity papers back.

9. At the material time Musa Gaytayev lived with his family in a house which was a part of the family household located at 11 Svobody Street in the village of Martan-Chu, Urus-Martan District in the Chechen Republic. He worked as a carpenter in a construction yard run by the fourth applicant. By 2003 he was due to be issued with new identity papers by the local department of the interior.

A. Disappearance of Musa Gaytayev

1. The applicants' account

10. On the night of 23 to 24 January 2003 the applicants and Musa Gaytayev were sleeping at home. At about 2 a.m. around twenty men parked two "Ural" trucks about 150 metres away and came to the house on

foot. They were all in camouflage uniform and some were also wearing balaclava masks; they were armed with machine guns. The applicants inferred that the men belonged to the Russian military. The servicemen knocked at the door and demanded access to carry out a check. As soon as the applicants opened the door, the men rushed into the rooms without identifying themselves or giving any explanations and forced all the adult male members of the Gaytayev household outside, into the courtyard. The second applicant was ordered to lean against the wall while standing barefoot in the snow; the third applicant was told to lie down. Their documents were checked; some of them were seized, including the identity papers of the second and third applicants and their vehicle documents. At the same time the servicemen apprehended Musa Gaytayev and, pushing his relatives aside, took him away. He was barefoot, wearing a leather jacket and sports trousers. When the servicemen were leaving, the third applicant asked them to give his documents back, but was hit with the butt of a gun for his pains.

11. On the same night another of the applicants' relatives, Magomed Gaytayev, a cousin of Musa Gaytayev, was also apprehended. At the material time he worked as a police officer in Gudermes and was in possession of a duty pistol and a machine gun. Although he produced an official authorisation for the weapons to the servicemen, they seized both the pistol and the machine gun.

12. The fourth applicant, who slept in the building across the courtyard, rushed out on hearing the noise to see what was happening, just in time to see the servicemen loading Musa Gaytayev into one of the trucks. He also saw their cousin, Magomed Gaytayev, being loaded into another truck. The fourth applicant ran after the trucks for some distance and saw them leaving in the direction of Urus-Martan and passing the military checkpoint without being stopped. The checkpoint was located about 500 metres from the applicants' house and the fourth applicant could see the lights of torches used by the servicemen on duty at the check-point.

13. Magomed Gaytayev was released the same day, and gave the applicants the following account of his and Musa Gaytayev's arrest. The two men had been blindfolded by sacks pulled over their heads and loaded into separate trucks. When they stopped he had been pulled down from the truck and the sack had fallen from his head. At that point he had recognised the premises of the Urus-Martan military commander's office. He, but not Musa Gaytayev, had been put back into one of the trucks and taken towards the village of Gekhi in Urus-Martan District. On a country road strong alcohol had been forced down his throat and he had been left on the side of the road. He had returned home in the morning of 24 January 2003 under the influence of alcohol, his face bruised from having been hit with a machine-gun butt. After the events of that night Magomed Gaytayev had for safety reasons moved from his home to his office in Gudermes and had been

living there since. On an unspecified date servicemen of the Urus-Martán district department of the interior (“the ROVD”) had returned his duty pistol.

14. Musa Gaytayev has been missing since his apprehension on the night of 23-24 January 2003.

2. The Government’s account

15. The Government submitted that the Prosecutor General’s Office had established that at about 2 a.m. on 24 January 2003 unidentified persons had kidnapped Musa Gaytayev in the village of Martán-Chu, Urus-Martán District in the Chechen Republic, and that his whereabouts had not been established.

B. Search for Musa Gaytayev and the investigation

1. The applicants’ account

16. In the morning of 24 January 2003 the fourth applicant went to the local police station, the local administration, the prosecutor’s office and the military commander’s office to enquire about his brother. However, no officials acknowledged detaining or holding Musa Gaytayev, and no information was provided on his whereabouts and fate.

17. The applicants also wrote numerous letters to various State officials, copies of which, together with the replies from official bodies, have been provided to the Court. Their submissions concerning the search for Musa Gaytayev may be summarised as follows.

18. On 24 January 2003 the fourth applicant in person filed written complaints with the prosecutor’s office of the Urus-Martán District (“the district prosecutor’s office”) and the ROVD. He complained about Musa Gaytayev’s abduction and requested that his whereabouts be established and the persons responsible for his detention identified.

19. On 28 January 2003 the fifth applicant made a like complaint to the district prosecutor’s office.

20. On 29 January 2003 the first applicant also complained to the district prosecutor’s office about the incident.

21. On an unspecified date the fifth applicant wrote to the Special Envoy of the Russian President for Rights and Freedoms in Chechnya complaining about the forced disappearance of her son. On 12 February 2003 her letter was forwarded to the district prosecutor’s office for action.

22. On 14 February 2003 the district prosecutor’s office informed the fifth applicant of the institution of criminal proceedings in respect of the kidnapping of Musa Gaytayev.

23. On 16 February 2003 the first applicant was granted victim status in the proceedings.

24. On 1 April 2003 the first applicant filed requests with the district prosecutor's office, the Urus-Martan military commander's office and the head of the ROVD. She repeated the complaints about the forced disappearance of her husband and requested an effective investigation into the incident.

25. On 16 April 2003 the district prosecutor's office informed the first applicant that the investigation into Musa Gaytayev's kidnapping had been suspended on 14 April 2003.

26. On 4 June 2003 the SRJI on behalf of the applicants requested the district prosecutor's office to update them on progress in the investigation. No reply was received.

27. On 13 July 2003 the Department of the Federal Security Service ("the FSB") for the Chechen Republic informed the first applicant that the FSB had had no information on her husband's whereabouts. It stated that no arrest warrant had been issued against him and he was not suspected of any unlawful activities; her letter had been forwarded to the military prosecutor of the United Group Alignment for the Northern Caucasus.

28. On 28 July 2003 the first applicant complained to the Prosecutor's Office of the Chechen Republic of the failure on the part of the district prosecutor's office to conduct an effective investigation. She requested that the criminal proceedings be resumed and measures taken to establish the whereabouts of Musa Gaytayev and to find those responsible for his kidnapping. She also requested that, if necessary, the case be transferred to a military prosecutor's office for further investigation.

29. On 2 September 2003 the SRJI on behalf of the applicants wrote to the district prosecutor's office requesting an update on the criminal proceedings and putting specific questions about the measures taken to investigate the kidnapping. In particular, they asked whether any of the eye-witnesses to Musa Gaytayev's abduction had been questioned, such as family members, neighbours or fellow villagers; whether any servicemen of the Urus-Martan military commander's office had been questioned; and whether any servicemen on duty at the checkpoint between Martan-Chu and Urus-Martan on the night of 23 to 24 January 2003 had been questioned. No reply was received to that letter.

30. On 5 September 2003 the military prosecutor's office of military unit no. 20102 informed the first applicant that further to her request a number of enquiries concerning the security raids of 23 to 24 January 2003 had been sent to the official "power structures" (*силовые структуры*) of the Urus-Martan District. She was informed that Musa Gaytayev had not been arrested during those raids and that the involvement of the federal servicemen in the kidnapping of her husband had not been confirmed. Her request was forwarded to the Urus-Martan military commander's office.

31. On 22 June 2005 the SRJI on behalf of the first applicant requested the district prosecutor's office to update them on progress in the investigation. On 8 July 2005 the district prosecutor's office replied that investigative measures were being taken to solve the crime.

2. Information submitted by the Government

32. On 13 February 2003 the district prosecutor's office opened criminal investigation file no. 34018 into the kidnapping of Musa Gaytayev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping).

33. On 16 February 2003 the first applicant was granted victim status. She was repeatedly questioned and stated that on the night of 23 to 24 January 2003 unknown masked persons armed with machine guns had entered her family home, kidnapped Musa Gaytayev and taken his brothers' documents. She had also seen Magomed Gaytayev being taken away.

34. On 18 February 2003 the second, third and fifth applicants were also questioned and made statements similar to that of the first applicant.

35. On 18 February 2003 the district prosecutor's office questioned Magomed Gaytayev, who stated that at about 2 a.m. on 24 January 2003 armed and masked men wearing camouflage uniforms with no insignia had burst into his house and ordered him to lie down on the floor. They had taken his duty pistol and machine gun, told him to get dressed, put a hood over his head and placed him in a vehicle. After a ten-minute ride they had put him face down on the ground, tied his arms behind his back with a piece of wire and left. He did not know the men's identities.

36. The fourth applicant and Musa Gaytayev's father were also questioned and had made statements identical to those mentioned above.

37. In order to verify the hypothesis of the involvement of the security forces in the kidnapping, the district prosecutor's office repeatedly requested information from State agencies and took other investigative measures to solve the crime.

38. The head of the Urus-Martan District Department of the FSB informed the district prosecutor's office on 18 February 2004 that his subordinates had not apprehended Musa Gaytayev and that no criminal proceedings had been instituted against him.

39. The Urus-Martan military commander's office, the heads of district departments of the interior and various prosecutors' offices replied to the queries of the district prosecutor's office that no special operation had been carried out in respect of Musa Gaytayev, that the latter had not been apprehended by servicemen from their agencies or held in any temporary detention facility.

40. In the course of the investigation it was established that the law-enforcement agencies of the Chechen Republic had not instituted any criminal proceedings against Musa Gaytayev. His abductors had not been

identified and the hypothesis of the involvement of special forces was not proved.

41. On 14 April 2003 the district prosecutor's office suspended the investigation for failure to identify those responsible.

42. On 25 April 2005 the district prosecutor's office quashed the decision of 14 April 2003 and resumed the investigation. On 26 April 2005 they notified the first applicant accordingly.

43. The investigation in case no. 34018 was several times suspended for failure to identify those responsible and then resumed. The first applicant was promptly informed of all decisions.

44. On 21 July 2006 the investigation was once again resumed. It was being supervised by the Prosecutor General's Office.

45. Despite specific requests by the Court the Government did not disclose most of the contents of criminal case no. 34018, providing only copies of decisions to suspend and resume the investigation and to grant victim status, and of several notifications to the relatives of the suspension and resumption of the proceedings. Relying on 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 in the criminal proceedings.

C. Court proceedings against the investigators

46. On 15 February 2005 the SRJI complained on behalf of the first applicant to the Urus-Martan Town Court ("the town court") of the investigators' failure to carry out an effective investigation into Musa Gaytayev's disappearance. In particular, it was submitted that the district prosecutor's office had not questioned all members of the Gaytayev family and their neighbours; or questioned servicemen of the Urus-Martan military commander's office and servicemen on duty at the check-point on the night of the abduction. Furthermore, the district prosecutor's office had not updated the first applicant on progress in the investigation. The town court was also requested to take measures to ensure the safety of the Gaytayev family.

47. On 25 March 2005 the town court found that the district prosecutor's office had not taken all requisite investigative measures to solve the crime. It upheld the first applicant's complaint regarding the effectiveness of the investigation and ordered the district prosecutor's office to carry out a comprehensive investigation in criminal case no. 34018. It dismissed the request to ensure the Gaytayevs' safety as unsubstantiated.

II. RELEVANT DOMESTIC LAW

48. For a summary of the relevant domestic law see *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, § 67-69, 10 May 2007.

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING THE VALIDITY OF THE APPLICANTS' OBSERVATIONS

49. The Government doubted the validity of the applicants' observations dated 15 November 2006 because they bore the stamp of the applicants' representative and had not been signed by hand.

50. Having examined the observations in question, the Court notes that they bear the handwritten signature of one of the applicants' representatives. In such circumstances, it finds no grounds to question the validity of the observations. Accordingly, the Government's objection must be dismissed.

II. THE GOVERNMENT'S OBJECTION REGARDING THE EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' arguments

51. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Musa Gaytayev had not yet been completed. They further argued that it had been open to the applicants to challenge any acts or omissions of the investigating authorities in court and that their complaint had been granted in part by the town court. They also argued that the applicants could have pursued civil complaints but had failed to do so.

52. The applicants contested that objection. They stated that the criminal investigation had proved ineffective and that their complaints to that effect, including their application to the town court, had been futile. They also alleged the existence of an administrative practice of not investigating crimes committed by State servicemen in the Chechen Republic and referred to other cases concerning such crimes which have been reviewed by the Court, and also to reports of various NGOs and international bodies. This, in their view, has rendered any potentially effective remedies inadequate and illusory in their case.

B. The Court's assessment

53. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

54. 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.

55. 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 Government's objection in this regard is thus dismissed.

56. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement authorities immediately after the detention of Musa Gaytayev and that an investigation has been pending since 13 February 2003. The applicants and the Government dispute the effectiveness of this investigation.

57. The Court considers that this limb of the Government's 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

58. The applicants maintained that it was beyond reasonable doubt that the men who had intruded into their home and taken away Musa Gaytayev were State agents. In support of their complaint, they referred to the fact that the men had arrived in military vehicles late at night, which indicated that they had been able to circulate freely during the curfew. The applicants

further referred to Magomed Gaytayev's submissions that following his abduction he had been brought to the Urus-Martan military commander's office and to the fact that the police had returned him the duty pistol seized on the night of 23 to 24 January 2004. The applicants also pointed out that the ground given for the Government's refusal to submit the file in criminal case no. 34018 was that it contained "information of a military nature disclosing the location and nature of actions by military and special security forces".

59. The Government submitted that on 23 January 2003 "unidentified masked men in camouflage uniforms armed with machine guns" had kidnapped Musa Gaytayev. They further contended that the investigation into the incident was pending, that there was no evidence that the men had been State agents and therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relative was dead.

B. The Court's evaluation of the facts

60. 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). It 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*, judgment of 18 January 1978, Series A no. 25, 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. It will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicant's relative can be presumed dead and whether his death can be attributed to the authorities.

61. The applicants alleged that the persons who had taken Musa Gaytayev away on 24 January 2003 and subsequently killed him were State agents.

62. The Court finds that the fact that a large group of armed men in uniform was able to move freely through military roadblocks during curfew hours strongly supports the applicants' allegation that they were State servicemen. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check the involvement of law-enforcement agencies in the kidnapping. 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 in that direction.

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

64. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was detained by State servicemen. The Government's statement that the investigation had not found any evidence to support the involvement of special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Musa and Magomed Gaytayev were apprehended on the night of 23 to 24 January 2003 at their homes by State servicemen during an unacknowledged security operation.

65. There has been no reliable news of Musa Gaytayev since 24 January 2003. His name has not been found in any official detention facility's records and the Government have not submitted any explanation as to what happened to him after his abduction.

66. 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 the Chechen Republic (see, among others, *Bazorkina*, cited above; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-... (extracts); *Luhuyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, cited above; *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007). The Court has already found that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The fact that Musa Gaytayev has been missing and that there has been no news of him for several years supports this assumption.

67. The Court further notes that, regrettably, it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose most of the documents from the file (see paragraph 45 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

68. 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. The few documents submitted by the Government from the investigation file opened by the district prosecutor's office do not suggest any progress in almost four years and, if anything, show the incomplete and inadequate nature of those proceedings. Moreover, the stance of the district prosecutor's office after the news of Musa Gaytayev's detention was communicated to them by the applicants contributed significantly to the likelihood of his disappearance, as no necessary steps were taken in the crucial first days and weeks after the kidnapping.

69. For the above reasons, the Court considers that it has been established beyond reasonable doubt that Musa Gaytayev must be presumed dead following his unacknowledged detention by State servicemen.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

70. The applicants complained under Article 2 of the Convention that their relative had disappeared after having been detained by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation into the matter. Article 2 reads:

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

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

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

A. The parties' submissions

71. The Government contended that the domestic investigation had obtained no evidence to the effect that Musa Gaytayev was dead or that any servicemen of the federal law-enforcement agencies were involved in his kidnapping or alleged killing. The Government claimed that the investigation into the disappearance of the applicants' relative met the Convention requirement of effectiveness, as all measures envisaged by national law were being taken to identify those responsible.

72. The applicants argued that their relative had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. They also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court's case-law on Article 2. They noted that the investigation had been suspended and resumed a number of times so protracting even the most basic steps, and that the applicants had not been informed properly of the most important investigative steps. They argued that the fact that the investigation had been pending for almost four years without producing any known results was further proof of its ineffectiveness. The applicants invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

73. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of criminal-law remedies should be joined to the merits of the complaint (see paragraph 57 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life

74. The Court reiterates that 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. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).

75. The Court has already found it established that the applicants' relative must be presumed dead following his unacknowledged arrest by State servicemen and that the death 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 Musa Gaytayev.

(b) The alleged inadequacy of the investigation

76. 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).

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

78. 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.

79. The Court notes that the authorities were immediately made aware of the crime by the applicants' statements. The investigation was opened twenty days after the kidnapping occurred. This delay in itself was liable to affect the investigation of a crime such as kidnapping in life-threatening circumstances, where action has to be taken in the crucial first days after the abduction. In the days following the opening of the investigation the applicants were questioned and the first applicant was granted victim status. However, it appears that thereafter a number of crucial steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, if at all.

80. In particular, the Court notes that the investigators remained inactive for two years as there were no proceedings pending between 14 April 2003 and 25 April 2005. Further, as noted in the decision of the town court of 25 March 2005, during the first two years after Musa Gaytayev's abduction the district prosecutor's office did not question the servicemen of the Urus-Martan military commander's office where Magomed Gaytayev had allegedly been taken. Nor did they question the servicemen on duty at the check-point, who had allowed the Ural vehicles with armed men aboard through (see paragraphs 46 and 47 above).

81. 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).

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

83. Finally, the Court notes that the investigation was suspended and resumed on a number of occasions and that the town court criticised deficiencies in the proceedings and ordered remedial measures. It appears that its instructions were not complied with.

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

85. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Musa Gaytayev, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

86. The applicants further relied on Article 3 of the Convention, submitting that as a result of the disappearance of their relative and the State's failure to investigate the events properly, they had endured mental suffering. Article 3 reads:

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

A. The parties' submissions

87. The Government disagreed with these allegations and argued that the investigation had not established that Musa Gaytayev and the applicants had been subjected to inhuman or degrading treatment prohibited by Article 3. As to the level of suffering allegedly caused to the applicants by the fact of their relative's disappearance, that, in the Government's view, was beyond the evaluation of the law-enforcement authorities and could not be objectively measured, as it related to psychological aspects, such as the emotions and personalities of the individuals concerned.

88. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

89. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

90. 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; *Imakayeva*, cited above, § 164).

91. In the present case, the Court notes that the applicants are close relatives of the missing man. They were eyewitnesses to his abduction. For almost four years they have not had any news of him. During this period they have made enquiries of various official bodies, both in writing and in

person. Despite their efforts, the applicants have never received any plausible explanation or information as to what became of their relative following his abduction. The responses they received mostly denied that the State was responsible for his arrest or simply informed them that an investigation was pending. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

94. The applicants further submitted that Musa Gaytayev had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. The parties' submissions

95. In the Government's submission, no evidence had been obtained by the investigators to confirm that Musa Gaytayev had been detained in breach of the guarantees set out in Article 5 of the Convention.

96. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

97. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of criminal-law remedies should be joined to the merits of the complaint (see paragraph 57 above). The complaint under Article 5 of the Convention must therefore be declared admissible.

2. Merits

98. 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).

99. The Court has found it established that Musa Gaytayev was apprehended by State servicemen on 24 January 2003 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

100. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relative had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave

no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

101. Consequently, the Court finds that Musa Gaytayev was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

102. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties’ submissions

103. 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 received reasoned replies to all their complaints lodged in the context of criminal proceedings. Besides, the applicants had had an opportunity to challenge the acts or omissions of the investigating authorities in court. In sum, they submitted that there had been no violation of Article 13.

104. The applicants reiterated their complaint.

B. The Court’s assessment

1. Admissibility

105. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

106. 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).

107. 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.

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

109. As regards the applicants' reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on account of the applicants' mental suffering as a result of the disappearance of their close relative, their inability to find out what had happened to him and the way the authorities had handled their complaints. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

110. As regards the applicants' reference to Article 5 of the Convention, the Court notes that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a violation of Article 5 of the Convention by unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

111. The applicants complained that they had been discriminated against in the enjoyment of their Convention rights, because the violations of which they complained had taken place because of their residence in Chechnya and their ethnic background as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

“The enjoyment of the right and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. The parties’ submissions

112. The Government contended that the applicants had never been discriminated against in the enjoyment of their Convention rights on any ground.

113. The applicants insisted that they had been discriminated against.

B. The Court’s assessment

114. The Court observes that no evidence has been submitted to it to suggest that the applicants were treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated.

115. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IX. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

116. In their initial application form 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...”

117. In their observations on admissibility and merits of 15 November 2006 the applicants withdrew this complaint.

118. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character, affecting respect for human rights, as defined in the Convention, which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, among other authorities, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unpublished; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

119. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. 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

121. The applicants claimed damages in respect of the lost wages of their missing relative from the time of his kidnapping and subsequent disappearance. They claimed a total of 2,367,857.10 Russian roubles (RUB) under this head (65,773.80 euros (EUR)).

122. They claimed that Musa Gaytayev had worked as a carpenter. In particular, between March and November 2002 he had worked for a cooperative society for RUB 15,000 per month; the cooperative society had ceased its activities in December 2002. From December 2002 until his disappearance Musa Gaytayev had been in the process of building a shop with his relatives and had expected to earn RUB 15,000 monthly once the construction works were completed. The applicants concluded that Musa Gaytayev’s annual wage would have amounted to RUB 180,000 and that between January 2003 and December 2032, when he would have reached retirement age, he would have earned RUB 5,220,000 (EUR 145,000).

123. The first applicant claimed that her husband would have supported her until his retirement and that she would have received one seventh of his earnings until 2032, which amounted to RUB 745,714.3 (EUR 20,714.28).

124. Taking the average life expectancy for women in Russia to be 70 years, the fifth applicant assumed that she would have been financially dependant on her son and would have received one seventh of his earnings until 2010, which amounted to RUB 180,000 (EUR 5,000).

125. Musa Gaytayev’s children submitted that they would have been financially dependent on their father until they reached the age of 18. Each of them claimed one seventh of his earnings, which amounted to RUB 250,714.3 (EUR 6,964.28) in respect of the sixth applicant, RUB 308,571.4 (EUR 8,571.43) in respect of the seventh applicant, RUB 420,000 (EUR 11,666.66) in respect of the eighth applicant and RUB 462,857.10 (EUR 12,857.14) in respect of the ninth applicant.

126. The Government regarded these claims as unfounded.

127. 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. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

128. The Court finds that there is a direct causal link between the violation of Article 2 in respect of the applicants’ husband, son and father and the loss by the applicants of the financial support which he could have provided. However, it points out that the loss-of-earnings calculations submitted by the applicants are based on the assumption that Musa Gaytayev would have had a stable income for thirty years. Various eventualities, such as unemployment or incapacity to work, have not been taken into account. Furthermore, the applicants submitted that Musa Gaytayev could have expected to earn RUB 15,000 per month after the completion of the building works, but did not provide any documents confirming his wages for the period between November 2002 and January 2003. Accordingly, the Court finds that the amounts claimed as pecuniary damage are excessive.

129. It therefore considers it appropriate to award EUR 2,000 to the fifth applicant and EUR 10,000 to the first, sixth, seventh, eighth and ninth applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on those amounts.

B. Non-pecuniary damage

130. The applicants claimed they had sustained non-pecuniary damage as a result of the suffering they had endured as a result of the loss of their missing relative, the indifference shown by the authorities towards them and the failure to provide any information about their relative’s fate. They left the exact amount to be awarded under this head to the Court’s discretion.

131. The Government submitted that a symbolic amount would suffice as compensation for the non-pecuniary damage.

132. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants’ relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. Ruling on an equitable basis it awards to the second, third and fourth applicants EUR 2,000 each, EUR 6,000 to the fifth applicant and EUR 28,000 to the first, sixth, seventh,

eighth and ninth applicants jointly, plus any tax that may be chargeable thereon.

C. Costs and expenses

133. 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. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 10,066.86.

134. The Government contended that the sum claimed was excessive for legal-representation rates applicable in Russia and disputed the reasonableness of and justification for the amounts claimed under this head. They also objected to the representatives' request to transfer the award for legal representation directly into their account in the Netherlands.

135. 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).

136. Having regard to the information provided, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

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

138. Furthermore, 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).

139. Having regard to the details of the claims submitted by the applicants, the Court awards them EUR 7,000, less EUR 850 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

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaints under Article 6 of the Convention;
2. *Decides* to join to the merits the Government's objection concerning the exhaustion of domestic remedies;
3. *Declares* the complaints under Articles 2, 3, 5 and 13 admissible and the remainder of the application inadmissible;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Musa Gaytayev;
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 Musa Gaytayev disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Musa Gaytayev;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
10. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 2,000 (two thousand euros) in respect of pecuniary damage to the fifth applicant and EUR 10,000 (ten thousand euros)

to the first, sixth, seventh, eighth and ninth applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

(ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage to the second, third and fourth applicants, EUR 6,000 (six thousand euros) to the fifth applicant and EUR 28,000 (twenty-eight thousand euros) to the first, sixth, seventh, eighth and ninth applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

(iii) EUR 6,150 (six thousand one hundred and fifty euros) in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

11. *Dismisses* 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