



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

FIRST SECTION

CASE OF BETAYEV AND BETAYEVA v. RUSSIA

(Application no. 37315/03)

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 Betayev and Betayeva 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 Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *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. 37315/03) 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 two Russian nationals, Mr Isa Yunusovich Betayev and Mrs Rosa Betayeva (“the applicants”), on 25 October 2003.

2. The applicants were represented by lawyers of the Memorial Human Rights Centre (Moscow) and the European Human Rights Advocacy Centre (London). The Russian Government (“the Government”) were represented by Mr P. Laptev, former 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 23 May 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 applicants were born in 1957 and 1958 respectively and live in the village of Goyty, the Urus-Martan District, the Chechen Republic.

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

A. Disappearance of Lecha and Ibragim Betayev

1. The applicants' account

7. The applicants and their two sons, Lecha Betayev, born in 1981, and Ibragim Betayev, born in 1983, lived together in their three-room family house at 52 Kagermanova Street in the village of Goyty.

8. On the night of 25 to 26 April 2003 the applicants and both their sons were at home. The applicants were sleeping in one room and their sons in separate rooms.

9. At about 1.30 a.m. a group of around twenty armed men in camouflage uniforms arrived at the Betayevs' house. Some of them stayed outside, while others forcibly entered the house. All but three of them were wearing balaclava masks. They did not identify themselves and offered no explanation for their visit. Their commander had no mask on, and the applicants observed that he had fair hair, blue eyes, a straight nose and Slavic features. The applicants inferred that the armed men were federal military or security servicemen because they spoke Russian without an accent and their uniform was similar to that of the federal armed forces.

10. The servicemen went to all rooms at once and three of them entered the room where the applicants were sleeping. They turned on the light and shouted at the applicants while pointing their machine guns at them. The first applicant tried to get up, but one serviceman hit him on the shoulder with the butt of his machine gun to push him down. Then he grabbed the first applicant by the collar of the shirt, pulled him down and ordered him to lie face down on the floor. The first applicant obeyed. The second applicant was told to face the wall and stand still without turning her head.

11. The applicants could hear from the next room that Ibragim Betayev was asked his full name and replied. The first applicant could also see that Lecha Betayev was woken up, ordered to get out of bed and then taken outside by two servicemen. The applicants and their sons were not requested to show their identity papers.

12. One of the servicemen, who appeared to be in charge of the others, told the first applicant that one of his fellow Chechen villagers had reported that the first applicant had had a machine gun and a radio station at home. The first applicant replied that he had not had any weapon. The servicemen started searching the house; the applicants were not presented with a search warrant and no witnesses were asked to observe the scene.

13. During the search the first applicant was permitted to sit on the bed, but was ordered not to turn his head and not to follow the search.

14. The servicemen searched the house, including the attic, the courtyard and the sheds outside, turning everything upside down. They were going to take up the floor of the house, but the first applicant asked them not to do so because, given the poor condition of the house, it might have been problematic, and the commander decided not to. The search took about one hour; after that the applicants heard the noise of an armoured personnel carrier ("APC") revving up outside. Two or three minutes later the man who was in charge of the other servicemen told them that they were leaving. He ordered the applicants to remain in the house, threatening to shoot if they went outside before the servicemen had left.

15. Only then did the applicants discover that Lecha and Ibragim Betayev had been taken away.

16. The second applicant went into the courtyard and saw five military vehicles. When the vehicles started driving off the APC went first, followed by two UAZ vehicles and then two Ural vehicles. The applicants could hear that the vehicles were moving in the direction of the village centre of Goyty and then towards Grozny without stopping or slowing down at the military checkpoint on the bridge across Argun channel, although they could not avoid it driving in that direction.

17. Having looked around, the applicants discovered that the servicemen had taken away some of their belongings, such as mechanical tools, an electric battery charger and some other domestic hardware. According to the written statements by Ms M. and Ms D., villagers of Goyty, in the morning of 26 April 2003, the applicants' house was in chaos after the search and the marks of military boots could be seen everywhere.

18. The applicants waited until the dawn and then inspected the traces of the military vehicles. They found that all the vehicles, apart from the APC, had been parked some thirty or fifty metres away from their house, while the APC must have been parked right in the river bed of Goytinka, which flows about twenty metres from the applicants' house. They could see the traces clearly because it had drizzled that night. According to the written statement by Ms M., she saw the APC traces at the same spot as well. She also discovered that her fence had been broken through on that same night, so as to allow access into the courtyard of the Betayevs' house.

2. The Government's account

19. The Government submitted that, according to the Prosecutor General's Office, on 26 April 2003 the first applicant had reported to the Urus-Martan District Department of the Interior ("ROVD") that at about 2.30 a.m. unidentified persons armed with machine guns had broken into his house and taken away his sons, Lecha and Ibragim Betayev.

B. Search for Lecha Betayev and Ibragim Betayev and investigation

1. The applicants' account

20. On 26 April 2003 the applicants started searching for Lecha and Ibragim Betayev. Both in person and in writing, they applied to various official bodies trying to find out the whereabouts and the fate of their sons. It was the first applicant who made all the written submissions to various authorities on behalf of both applicants because the second applicant was illiterate. The applicants retained copies of some of the letters to the authorities and their answers, which they submitted to the Court.

21. The applicants also kept up a constant search for traces of their sons through informal channels, by contacting officials and other people. They took part in the identification of numerous dead bodies found in all parts of Chechnya, but in vain.

22. Their attempts to find out the whereabouts of Lecha and Ibragim Betayev and the criminal proceedings can be summarised as follows.

23. In the morning of 26 April 2003 the first applicant went to the local police station in Goyty and asked Mr Kh., the officer on duty, about the abduction of his sons. Mr Kh. told the applicant that at about 1.30 a.m. on 26 April 2003 he had seen two UAZ vehicles and an APC with men wearing camouflage uniforms sitting on it. The vehicles had been heading towards the applicants' house. Mr Kh. and his colleague had unsuccessfully tried to stop them. Mr Kh. had informed the ROVD of this, but received an order from the latter not to intervene. The applicants provided Mr Kh.'s detailed written testimony of those events.

24. After going to the police station in Goyty, the first applicant went to the district centre, the town of Urus-Martan. There he visited the prosecutor's office of the Urus-Martan District ("the district prosecutor's office"), the ROVD and the local administration. With all of them he lodged complaints concerning the abduction of his sons, in which he also mentioned that the perpetrators had broken his furniture and wrecked the floors and the ceiling. An investigator from the district prosecutor's office interviewed him and the first applicant related in detail the circumstances of his sons' abduction.

25. On the following days the applicants regularly went to Urus-Martan to visit all district authorities and find out whether there had been any news of their sons. However, no authority acknowledged any involvement in the abduction of Lecha and Ibragim Betayev and all of them denied knowledge of their whereabouts.

26. Four days later the applicants were visited by an officer from the ROVD. He briefly inspected the site, which was still in a state of disorder after the search; he also questioned the applicants and two neighbours, who confirmed the use of military vehicles by the armed servicemen.

27. On 5 May 2003 the district prosecutor's office informed the first applicant that an investigation into the kidnapping of Lecha and Ibragim Betayev had been opened in case no. 34053.

28. On 8 May 2003 the district prosecutor's office granted the first applicant victim status in the criminal proceedings.

29. On 1 July 2003 the district prosecutor's office suspended the investigation in case no. 34053 for failure to identify those responsible.

30. On an unspecified date the applicants requested the expert of the European Union in respect of the Southern Federal Circuit, Mr Lyuboslavskiy, to assist them in the search for their sons. On 21 July 2003 the latter wrote to the Prosecutor General of Russia describing the circumstances of the search of the applicants' house and of Lecha and Ibragim Betayev's abduction and asking for information about the measures taken to investigate the unlawful arrest of the Betayev brothers.

31. On 21 July 2003 the district prosecutor's office resumed the investigation in case no. 34053.

32. On 25 August 2003 the prosecutor's office of the Chechen Republic notified the first applicant that the criminal investigation into the kidnapping of his sons had been suspended and subsequently resumed.

33. On 29 September 2003 the first applicant wrote to the district prosecutor's office once again complaining of the unlawful search and of his sons' arrest and setting out all the details he considered relevant to the investigation, such as the description of the military vehicles and the reasons why he thought that the armed men had belonged to the federal forces. He also complained of lack of information on the progress in the investigation and requested an update.

34. On 7 October 2003 the first applicant wrote the Urus-Martan District Department of the Federal Security Service ("FSB") asking whether his sons had been detained by the FSB or whether they had been wanted or suspected of any criminal activity.

35. On 13 October 2003 the first applicant again wrote to the district prosecutor's office reiterating his allegations that the State agencies had been involved in the detention of his sons. He expressed concern that their lives could be in danger, or that they may have been tortured, and asked for urgent and effective measures to be taken in the search for them. He also requested to be allowed access to case file no. 34053.

36. On 24 October 2003 the first applicant lodged a complaint with the prosecutor's office of the Chechen Republic requesting that the district prosecutor's office be compelled to take urgent steps to investigate the disappearance of his sons.

37. On 31 October 2003 the district prosecutor's office suspended the investigation in case no. 34053.

38. On 10 November 2003 the district prosecutor's office resumed the criminal proceedings in case no. 34053 and notified the first applicant at once of the suspension and resumption of the investigation.

39. On 9 December 2003 the first applicant wrote to the Department of the FSB of the Chechen Republic reiterating his enquiry of 7 October 2003.

40. On 19 January 2004 the first applicant complained to the Prosecutor General of Russia of the failure to investigate the disappearance of his sons.

41. On an unspecified date in January 2004 the first applicant received a reply from the Department of the FSB of the Chechen Republic. He was informed that Lecha and Ibragim Betayev had not been arrested by the Urus-Martan District Department of the FSB and had never been brought to its premises. He was also informed that no criminal proceedings had been instituted against his sons and that their arrest had not been ordered.

42. On 9 March 2004 the prosecutor's office of the Chechen Republic informed the first applicant that, further to his complaint to the Prosecutor General of Russia, his case had been reviewed and that some investigative actions were being taken. He was invited to address all his queries to the district prosecutor's office.

43. On 5 November 2004 the first applicant requested the district prosecutor's office to resume the investigation in case no. 34053. On 14 November 2004 the district prosecutor's office replied that all requisite investigative measures had been taken to solve the crime and that the search for the perpetrators was under way.

44. On 2 June 2006 the Prosecutor General's Office informed the first applicant that his complaint had been forwarded to the prosecutor's office of the Chechen Republic.

2. Information submitted by the Government

45. On 1 May 2003 the district prosecutor's office instituted a criminal investigation in case no. 34053 into the disappearance of Lecha and Ibragim Betayev by unidentified armed persons under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping).

46. On 8 May 2003 the first applicant was granted victim status and questioned. He submitted that at about 1.30 a.m. around twenty unknown armed men had entered his house and searched it. They had taken away his sons. The second applicant was questioned on an unspecified date and made a statement identical to that by her husband.

47. The district prosecutor's office questioned nine neighbours of the Betayevs. They submitted that they had not eyewitnessed the abduction of the applicants' sons and had heard no noise of engines on the night of 25 to 26 April 2003.

48. A number of other witnesses were questioned in the course of the investigation. However, the identities of the perpetrators were not

established. No proof was found supporting the allegation that servicemen of the federal forces had been involved in the crime.

49. On several occasions the district prosecutor's office instructed the ROVD to establish the whereabouts of Lecha and Ibragim Betayev. They also sent requests to remand prisons of the Chechen Republic and adjacent regions, military units of the United Group Alignment, the military commander's office of the Urus-Martan District and the departments of the FSB. Those bodies had no information on Lecha and Ibragim Betayev's whereabouts.

50. The headquarters of a military unit located not far from the village of Goyty informed the district prosecutor's office that their servicemen had not carried out any special operations on 26 April 2003.

51. Between 1 July 2003 and 16 January 2004 the investigation was suspended four times for failure to identify those responsible and then resumed. The first applicant was promptly notified of the decisions suspending and resuming the investigation.

52. On 16 February 2004 the district prosecutor's office once again suspended the investigation and notified the first applicant accordingly.

53. On 11 July 2006 the prosecutor's office of the Chechen Republic quashed the decision of 16 February 2004 because certain requisite investigative measures had not been taken; in particular, the servicemen of the ROVD had not been questioned. The proceedings were resumed.

54. On 17 August 2006 the district prosecutor's office rejected a request by the applicants to institute criminal proceedings on account of unlawful intrusion into their home on the night of 25 to 26 April 2003 for failure to comply with a two-year statutory limitation period. On the same date they extended the scope of the charges against the unidentified persons who had kidnapped the applicants' sons to an offence under Article 158 § 2 (aggravated theft) and allowed the first applicant to join the criminal proceedings as a civil party.

55. On 17 August 2006 the district prosecutor's office suspended the investigation in case no. 34053.

56. On 18 September 2006 the investigation was again resumed.

57. Despite specific requests by the Court the Government did not disclose most of the contents of criminal case no. 34053, 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 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 witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

59. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Lecha and Ibragim Betayev had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints about the allegedly unlawful detention of their sons or to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of that remedy.

60. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. Referring to the other cases concerning such crimes reviewed by the Court, they also alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in the Chechen Republic rendered any potentially effective remedies inadequate and illusory in their case.

B. The Court's assessment

61. 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).

62. The Court observes that the applicants complained to the law-enforcement agencies immediately after the abduction of Lecha and Ibragim Betayev and that an investigation has been pending since 1 May 2003. The applicants and the Government disputed the effectiveness of this investigation.

63. The Court considers that 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 relevant substantive provisions of the Convention.

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

A. The parties' submissions

64. The applicants maintained that it was beyond reasonable doubt that the men who had intruded into their home and taken away Lecha and Ibragim Betayev had been State agents. In support of their complaint they referred to the following facts. The village of Goyty had been under the total control of federal troops since December 1999. Only the military had had APCs. The armed men who had intruded into their house had passed by a federal checkpoint at the Argun channel. When the officer of the village police station had reported to the ROVD that armed men had been moving around the village, he had been ordered not to intervene, which proved that the ROVD had been aware of the special operation carried out in respect of the Betayev brothers. The armed men had spoken Russian without an accent using a lot of swearwords, which proved that they were not of Chechen origin. They had been well organised and respected subordination.

65. The Government submitted that on 26 April 2003 unidentified armed men had kidnapped Lecha and Ibragim Betayev. They further contended that the investigation into the incident was pending, that there was no evidence that the 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.

B. The Court's evaluation of the facts

66. 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, §§ 103-09, 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 the applicants' sons can be presumed dead and whether their death can be attributed to the authorities.

67. The applicants alleged that the persons who had taken Lecha and Ibragim Betayev away on 26 April 2003 had been State agents.

68. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. It finds that the fact that a large group of armed men in uniform driving an APC and other military vehicles was able to move freely through federal roadblocks during curfew hours strongly supports the applicants' allegation that these were State servicemen. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies were involved in the 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 to that end.

69. 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 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).

70. Taking into account the above elements, the Court is satisfied that the applicants have made out a *prima facie* case that their sons were apprehended 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 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 for the events in question, the Court considers that Lecha and Ibragim Betayev were apprehended on the night of 25 to 26 April 2003 at their home by State servicemen during an unacknowledged security operation.

71. There has been no reliable news of Lecha and Ibragim Betayev since 26 April 2003. Their names have not been found in any official detention facilities' records. The Government have not submitted any explanation as to what happened to them after their abduction.

72. 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); *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*, cited above; and *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 absence of Lecha and Ibragim Betayev or of any news of them for several years supports this assumption.

73. 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 57 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

74. Furthermore, in a case involving disappearance, the Court finds it particularly deplorable 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 more than three years and, if anything, show the incomplete and inadequate nature of those proceedings. Moreover, the stance taken by the district prosecutor's office after the news of Lecha and Ibragim Betayev's abduction had been communicated to them by the applicants contributed significantly to the likelihood of the disappearance, as no necessary steps were taken in the crucial first days after the kidnapping.

75. For the above reasons the Court considers that it has been established beyond reasonable doubt that Lecha and Ibragim Betayev must be presumed dead following their unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

76. The applicants complained under Article 2 of the Convention that their sons 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 parties’ submissions

77. The Government contended that the domestic investigation had obtained no evidence to the effect that Lecha and Ibragim Betayev were dead or that any servicemen of the federal law-enforcement agencies had been involved in their kidnapping or alleged killing. The Government claimed that the investigation into the disappearance of the applicants’ sons met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

78. The applicants argued that their sons had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. The applicants 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 pointed out that by October 2006 the district prosecutor’s office had not questioned the servicemen on duty at the checkpoint who had let the kidnappers pass in the military vehicles or the military commander’s office of the Urus-Martan District. The officer of the ROVD who had ordered the policeman of Goyty not to intervene had not been questioned. No steps had been taken to identify the APC or the Ural and UAZ vehicles. They noted that the investigation had been suspended and resumed a number of times – thus protracting the taking of the most basic steps – and that the applicants had not been properly informed of the most important investigative steps. They argued that the fact that the investigation had been pending for more than three years without producing any known results had been 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

79. The Court considers, in the light of the parties’ submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government’s objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits

of the complaint (see paragraph 63 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. *Merits*

(a) **The alleged violation of the right to life of Lecha and Ibragim Betayev**

80. 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, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar*, cited above, § 391).

81. The Court has already found it established that the applicants' sons must be presumed dead following their unacknowledged arrest by State servicemen and that their 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 Lecha and Ibragim Betayev.

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

82. 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, §§ 117-19).

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

84. 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.

85. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation was opened five days after the kidnapping had occurred. This delay in itself was liable to affect the investigation of a crime such as kidnapping in life-threatening

circumstances, where crucial action has to be taken in the first days after the event. Within the following days the applicants were questioned and the first applicant was granted victim status. However, it appears that after that 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.

86. In particular, the Court notes that, as can be seen from the decision of the prosecutor's office of the Chechen Republic, as late as 11 July 2006 the investigators were requested to take the basic step of questioning the servicemen of the ROVD (see paragraph 53 above). It further points out that apparently the investigators have never questioned the servicemen on duty at the checkpoint who allowed the military vehicles with armed men through, or have failed to inform the applicants and the Court of such interviews.

87. 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).

88. The Court also notes that even though the first applicant was granted victim status, he 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.

89. Finally, the Court notes that the investigation was suspended and resumed a number of times and that no proceedings were pending for more than two years between 16 February 2004 and 11 July 2006. The Government mentioned the possibility for the applicants to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions of investigating authorities before a court. Furthermore, taking into account that the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the

applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

90. 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 Lecha and Ibragim Betayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. The parties' submissions

92. The Government disagreed with these allegations and argued that the investigation had not established that the applicants had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

93. The applicants maintained their complaint.

B. The Court's assessment

1. Admissibility

94. 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

95. 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).

96. In the present case the Court notes that the applicants are the parents of the two disappeared men. For more than three years they have not had any news of their children. During this period the applicants have applied to various official bodies with enquiries about their sons, both in writing and in person. Despite their requests, the applicants have never received any plausible explanation or information as to what became of Lecha and Ibragim Betayev following their kidnapping. The responses received by the applicants mostly denied that the State was responsible for their abduction 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.

97. 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 sons 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.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

99. The applicants further stated that Lecha and Ibragim Betayev 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

100. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Lecha and Ibragim Betayev had been deprived of their liberty in breach of the guarantees set out in Article 5 of the Convention.

101. The applicants reiterated their complaint.

B. The Court’s assessment

1. Admissibility

102. 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 domestic remedies should be joined to the merits of the complaint (see paragraph 63 above). It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

103. 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).

104. The Court has found it established that Lecha and Ibragim Betayev were apprehended by State servicemen on 26 April 2003 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).

105. 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 sons 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 them against the risk of disappearance.

106. Having regard to the Government's objection concerning the applicants' failure to complain of their relatives' unlawful detention to domestic authorities, the Court observes that after their sons had been taken away by armed men on 26 April 2003, the applicants actively attempted to establish their whereabouts and applied to various official bodies, whereas the authorities denied their responsibility for their sons' detention. In such circumstances, and in particular in the absence of any proof to confirm the very fact of the detention, even assuming that the remedy referred to by the Government was accessible to the applicants, it is more than questionable whether a court complaint of the unacknowledged detention of the applicants' sons by the authorities would have had any prospects of success. Moreover, the Government have not demonstrated that the remedy indicated by them would have been capable of providing redress in the applicants' situation, namely, that it would have led to the release of Lecha and Ibragim Betayev and the identification and punishment of those responsible. Accordingly, the Government's objection concerning non-exhaustion of domestic remedies must be dismissed.

107. In view of the foregoing, the Court finds that Lecha and Ibragim Betayev 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.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

108. The applicants stated that they could no longer enjoy family life with their sons following their abduction by the State authorities. They also claimed that the search carried out at their house on 26 April 2003 had been illegal, which constituted a violation of their right to respect for their home. It thus disclosed a violation of Article 8 of the Convention, which, in so far as relevant, provides:

“1. Everyone has the right to respect for his ... family life, his home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties' submissions

109. The Government objected and claimed that the Russian servicemen had not participated in the search of the applicants' house. They further stated that the alleged interference with the right to respect for family life of Lecha and Ibragim Betayev was not imputable to the State.

110. The applicants reiterated their complaints.

B. The Court's assessment

1. Admissibility

111. The Court considers, in the light of the parties' submissions, that the applicants' complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 63 above). The complaints under Article 8 of the Convention must therefore be declared admissible.

2. Merits

(a) As to the alleged breach of the applicants' right to respect for their home

112. Turning to the Government's objection that the applicants failed to exhaust available domestic remedies, the Court points out that on several occasions the applicants reported the events of the night of 25 to 26 April

2003 to the domestic authorities and mentioned, in particular, the unlawful search of their house. The official bodies denied that those who had intruded into the applicants' home and apprehended Lecha and Ibragim Betayev had been State agents. In the absence of any domestic findings of State responsibility for the allegedly unlawful search, the Court is not persuaded that the court remedy referred to by the Government was accessible to the applicants and would have had any prospects of success (see, by contrast, *Chitayev and Chitayev v. Russia*, no. 59334/00, § 143, 18 January 2007). The Government's objection concerning non-exhaustion of domestic remedies must therefore be dismissed.

113. The Court further notes that the applicants have submitted to the Court their own testimonies, which described the search carried out at their home on the night of 25 to 26 April 2003, and the testimonies of their neighbours confirming that in the morning of 26 April 2003 the applicants' house had been in a mess. Furthermore, the information concerning the search was promptly communicated to the domestic law-enforcement authorities, which acknowledged, more than three years after the events in question, that the unlawful intrusion into the applicants' home constituted a crime punishable under domestic law but refused to investigate it. Although the Government denied their responsibility for the search, the Court has already found it established that the persons who entered the applicants' home and detained their relatives had belonged to the State military or security forces. Therefore, it finds that the search of the applicants' house carried out on the night of 25 to 26 April 2003 was imputable to the respondent State.

114. The Court notes that the servicemen did not show the applicants a search warrant. Neither did they indicate any reasons for their actions. Furthermore, it appears that no search warrant was drawn up at all, either before or after the events in question. In sum, the Court finds that the search in the present case was carried out without any, or any proper, authorisation or safeguards.

115. Accordingly, there was an interference with the applicants' right to respect for their home. In the absence of any reference on behalf of the Government to the lawfulness and proportionality of that measure, the Court finds that there has been a violation of the applicants' right to respect for their home guaranteed by Article 8 of the Convention.

(b) As to the alleged breach of the applicants' right to respect for family life

116. The Court does not deem it necessary to rule on the issue of exhaustion of domestic remedies as regards the alleged interference with the applicants' family life and that of their sons for the following reason.

117. The applicants' complaint concerning their inability to enjoy family life with their sons concerns the same facts as those examined above under Articles 2 and 3 of the Convention. Having regard to its above findings

under these provisions, the Court finds that no separate issue arises under Article 8 of the Convention in this connection.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

118. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13, taken in conjunction with Articles 2, 3, 5 and 8 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

119. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the actions or omissions of the investigating authorities in court, which they had failed to do. In sum, the Government submitted that there had been no violation of Article 13.

120. The applicants reiterated their complaint.

B. The Court’s assessment

1. Admissibility

121. 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

122. 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. According to the Court’s settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required

in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, judgment of 25 June 1997, *Reports of Judgments and Decisions* 1997-III, p. 1020, § 64).

123. As regards the applicants’ complaint of lack of effective remedies in respect of their complaint under Article 2, the Court emphasises that, 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, 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).

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

125. It follows that in circumstances where, as here, the criminal investigation into the disappearance of two persons has been ineffective and the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

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

127. Turning to the alleged lack of effective domestic remedies in relation to the unlawful search, the Court observes that the applicants had an “arguable” claim that the search of their home amounted to a violation of Article 8 of the Convention. Hence, they were entitled to an effective domestic remedy in that respect. The Court does not consider that in the circumstances the notion of effective remedy would always go as far as calling for the opening of criminal proceedings against the persons who had carried out the search. Therefore, the refusal of the district prosecutor’s office to investigate the unlawful intrusion into the applicants’ home due to the expiry of the statutory limitation period (see paragraph 54 above) did not in itself amount to a breach of Article 13 (see, *mutatis mutandis*, *Peev v. Bulgaria*, no. 64209/01, § 70, ECHR 2007-... (extracts)). However, the

Court notes that the Government did not point to any other avenue of redress which the applicants could have used to vindicate their right to respect for their home. They have thus failed to show that any remedies existed in respect of the unlawful search in issue (see, *mutatis mutandis*, *Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria*, judgment of 19 December 1994, Series A no. 302, p. 20, § 53, and *Yankov v. Bulgaria*, no. 39084/97, § 154, 11 December 2003).

128. There has therefore been a violation of Article 13 in conjunction with Article 8 of the Convention.

129. 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 relatives, their inability to find out what had happened to them and the way the authorities 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.

130. As regards the applicants' reference to Article 5 of the Convention, the Court reiterates 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 as a result of 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 VIOLATIONS OF ARTICLES 34 AND 38 OF THE CONVENTION

131. The applicants argued that the Government's failure to submit the documents requested by the Court, namely the entire criminal investigation file, disclosed a failure to comply with their obligations under Articles 34 and 38 § 1 (a) of the Convention. The Court finds that in the circumstances of the present case the above issue should be examined under Article 34 of the Convention, which provides as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

132. The Court points out that it has already taken note of the Government's failure to produce a copy of the investigation file and drawn

inferences from it. Nevertheless, it reiterates that the main objective of Article 34 of the Convention is to ensure the effective operation of the right of individual petition. There is no indication in the present case that there has been any hindrance of the applicants' right to individual petition, either in the form of interference with the communication between the applicants or their representatives and the Court, or in the form of undue pressure placed on the applicants.

133. It follows that this part of the application should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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. Damage

135. The applicants did not submit any claims for pecuniary damage. As regards non-pecuniary damage, they claimed 200,000 euros (EUR) for the suffering they had endured as a result of the loss of their two sons, the indifference shown by the authorities towards them and the failure to provide them with any information about the fate of their sons.

136. The Government found the amounts claimed exaggerated.

137. 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' sons. The applicants themselves have been found to have been victims of a violation of Articles 3 and 8 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicants jointly EUR 70,000, plus any tax that may be chargeable thereon.

B. Costs and expenses

138. The applicants were represented by lawyers from the NGO Memorial Human Rights Centre (Moscow) and the European Human Rights Advocacy Centre (London). The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 5,350 and 2,107.76 pounds sterling (GBP). They submitted the following breakdown of costs:

(a) EUR 4,450 for 89 hours of research in Chechnya and drafting legal documents submitted to the Court at a rate of EUR 50 per hour by the lawyer in Urus-Martan;

(b) EUR 900 for 18 hours of drafting legal documents submitted to the Court at a rate of EUR 50 per hour by the lawyer in Moscow;

(c) GBP 1,410 for the professional fees of a United Kingdom-based lawyer;

(d) GBP 537.76 for translation costs, as certified by invoices; and

(e) GBP 160 for administrative and postal costs.

139. The Government disputed the reasonableness and the justification of 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 UK. The Government further pointed out that the applicants had not enclosed any documents supporting the amount claimed in respect of administrative costs.

140. 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).

141. Having regard to the breakdown of costs and expenses, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

142. 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, however, that, in view of the Government's refusal to submit most of the investigation file, the case involved little documentary evidence and that, due to the application of Article 29 § 3, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that research and legal drafting were necessarily time-consuming to the extent claimed by the representatives. Besides, the Court notes that the applicants did not submit any documents in support of their claim for administrative costs.

143. 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).

144. Having regard to the details of the claims submitted by the applicants and making an award on an equitable basis, the Court awards them EUR 5,000 together with any value-added tax that may be chargeable, the net award to be paid in pounds sterling into the representatives' bank account in the UK, as identified by the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies;
2. *Declares* the applicants' complaints under Articles 2, 3, 5, 8 and 13 admissible, and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Lecha and Ibragim Betayev;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Lecha and Ibragim Betayev had disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Lecha and Ibragim Betayev;
7. *Holds* that there has been a violation of the applicants' right to respect for their home guaranteed by Article 8 of the Convention;
8. *Holds* that no separate issues arise under Article 8 of the Convention regarding the applicants' right to respect for their family life;
9. *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;
10. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of the applicants' right to respect for their home guaranteed by Article 8 of the Convention;
11. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 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) EUR 70,000 (seventy thousand euros) in respect of non-pecuniary damage to the applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(ii) EUR 5,000 (five thousand euros) in respect of costs and expenses, to be paid into the representatives' bank account in the UK, 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;

13. *Dismisses* the remainder of the applicants' claims 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