



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

FIRST SECTION

CASE OF GEKHAYEVA AND OTHERS v. RUSSIA

(Application no. 1755/04)

JUDGMENT

This version was rectified on 27 March 2009
under Rule 81 of the Rules of the Court

STRASBOURG

29 May 2008

FINAL

01/12/2008

This judgment may be subject to editorial revision.

In the case of Gekhayeva 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. 1755/04) 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 five Russian nationals (“the applicants”), on 11 November 2003.

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, 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 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 applicants are:

- 1) Ms Rumani Sulimovna Gekhayeva, who was born in 1947 and lives in the village of Ulus-Kert, the Shatoyskiy District, the Chechen Republic;
 - 2) Ms Zlikhat Ismailovna Dugayeva, who was born in 1950 and lives in the village of Rubezhnoye, the Naurskiy District, the Chechen Republic;
 - 3) Ms Subani Saydkhasanovna Akhyadova, who was born in 1965 and lives in the village of Dachu-Borzoy, the Chechen Republic;
 - 4) Ms Zubidat Saydkhasanovna Gekhayeva, who was born in 1971 and lives in the village of Chechen-Aul, the Chechen Republic; and
 - 5) Ms Aynet Saydkhasanovna Malsagova¹, who was born in 1975 and lives in the village of Dachu-Borzoy, the Chechen Republic.
6. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Disappearance of Kurbika Zinabdiyeva and Aminat Dugayeva

1. The applicants' account

7. The applicants are members of one family. The first applicant is the mother of Ms Kurbika Zinabdiyeva, who was born in 1968. The third, the fourth and the fifth applicants are sisters of Kurbika Zinabdiyeva. The second applicant is the mother of Ms Aminat Dugayeva, who was born in 1988.

8. Since childhood Kurbika Zinabdiyeva had suffered from chronic brain conditions, a brain tumour and epilepsy, and was often bedridden due to migraines and sickness.

9. At the material time Kurbika Zinabdiyeva was assisting her mother, who worked as a house painter. Aminat Dugayeva, then fifteen years old, was attending the 9th grade of secondary school. Kurbika Zinabdiyeva lived with the first applicant at 12 Shkolnaya Street, the village of Ulus-Kert. Aminat Dugayeva had come to visit and was staying with them.

10. On the night of 15 to 16 May 2003 the first applicant, Kurbika Zinabdiyeva and Aminat Dugayeva slept at home. The first applicant slept in a separate room while the two other women shared another room. At about 3 a.m. the first applicant heard the noise of a vehicle engine coming from outside. Kurbika Zinabdiyeva woke up and looked out of the window; she told the first applicant that “Russians” were around their house. The women opened the door and saw around twenty men wearing blue uniforms and balaclava masks at their doorstep. One of them ordered the women not to move in Russian. The first applicant and her daughter inferred that the men belonged to the Russian military.

¹ Rectified on 27 March 2009: the text was “5) Ms Aynet Saydkhasanovna Malgasarova,...”

11. The servicemen ordered both women to lie on the floor. They wrapped adhesive tape around the first applicant's head so that her face, eyes, nose and mouth were fully covered; she could see nothing and could barely breathe. Her wrists and ankles were also tied up with adhesive tape. Some time later the first applicant heard one of the servicemen order another one to check on her to see whether she was still alive, and the tape was then slightly loosened. However, it was still hard for her to breathe and she was making a wheezing noise. One of the servicemen shouted at her, threatening to shoot her unless she kept quiet. After that the first applicant heard their footsteps disappearing and the vehicles leaving.

12. The first applicant remained lying tied up on the floor for some forty minutes until neighbours and the head of the village administration arrived. They had all seen the military coming and had heard the noise and the shouting from the first applicant's house. Before approaching the first applicant they checked that no bomb had been planted under her, and then they untied the tape and released her. Having been freed from the restraints, the first applicant and her neighbours searched the house, but neither Kubrika Zinabdiyeva nor Aminat Dugayeva was there.

13. The house was in a state of disorder, apparently because it had been searched. Some valuables and cash had disappeared, and so had the identity papers of the first applicant and her daughter and the latter's medical documents. The neighbours and the head of the village administration told the first applicant that the servicemen had come with two armoured personnel carriers ("APCs") and two UAZ all-terrain military vehicles. The head of the village administration, moreover, had overheard one serviceman shout to another to move quickly and call him "Misha".

2. The Government's account

14. The Government submitted that, according to the Prosecutor General's Office, on 19 May 2003 the Shatoy District Department of the Federal Security Service ("FSB") and the Shatoy District Department of the Interior ("ROVD") had received complaints from the first applicant concerning the kidnapping of Kubrika Zinabdiyeva and Aminat Dugayeva by unidentified persons on the night of 15 to 16 May 2003.

B. Search for Kurbika Zinabdiyeva and Aminat Dugayeva and investigation

1. The applicants' account

15. Since 16 May 2003 the applicants, primarily the second applicant, have been searching for Kurbika Zinabdiyeva and Aminat Dugayeva. The first applicant joined the search with a slight delay, as she was ill after the

events of 16 May 2003. Both in person and in writing they applied to various official bodies, trying to find out the whereabouts and fate of those missing. The applicants retained copies of some of their letters to the authorities and the replies, which they submitted to the Court. Their attempts to find out the whereabouts of Kurbika Zinabdiyeva and Aminat Dugayeva and the ensuing criminal proceedings can be summarised as follows.

16. Immediately after the disappearance of Kurbika Zinabdiyeva and Aminat Dugayeva had been discovered, the head of the village administration and the village policeman went to the town of Shatoy and visited the prosecutor's office of the Shatoy District ("the district prosecutor's office"), the department of interior of the Shatoy District ("the ROVD") and other official bodies. Later on the same day the second, third, fourth and fifth applicants also visited the same authorities in person and filed applications requesting a search for the missing women to be ordered.

17. The arrest of Kurbika Zinabdiyeva and Aminat Dugayeva was reported in the media, with reference to official sources, as carried out by the federal forces. The regional TV channel broadcasted an interview with an official of the district prosecutor's office and with a representative of the Regional Operative Quarters of the Anti-Terrorism Department for the Northern Caucasus (*региональный оперативный штаб Управления контр-террористической операции на Северном Кавказе*); both of them stated that the women had been arrested by the federal forces.

18. On an unspecified date the neighbours and the head of the village administration were questioned by the officers of the ROVD who came to Ulus-Kert. They made statements about the circumstances of the night when Kurbika Zinabdiyeva and Aminat Dugayeva had disappeared.

19. On an unspecified date the applicants wrote to the Office of the Special Envoy of the Russian President for Rights and Freedoms in the Chechen Republic. On 30 May 2003 the latter agency enquired about the applicants' case to the prosecutor's office of the Chechen Republic.

20. On 30 May 2003 the first applicant wrote to the acting President of the Chechen Republic, to a deputy of the State Duma and to the military prosecutor of the Chechen Republic complaining about the detention of her daughter and demanding assistance in establishing her whereabouts. On 4 June 2003 the second applicant filed a request with the same authorities for a search for her daughter to be carried out, demanding that urgent measures be taken and that she be given access to her daughter who, as she pointed out, was still under legal age.

21. On 7 June 2003 the district prosecutor's office opened criminal investigation file no. 54016 into the kidnapping of Kurbika Zinabdiyeva and Aminat Dugayeva.

22. On 9 June 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office.

23. On 24 June 2003 the prosecutor's office of the Chechen Republic informed the applicant and the Office of the Special Envoy of the Russian President for Rights and Freedoms in the Chechen Republic that the investigation in the applicants' case was underway.

24. On 26 June 2003 the military prosecutor of military unit no. 20102 forwarded the applicants' complaint to the military prosecutor of military unit no. 20119.

25. On 15 July 2003 the second applicant was granted victim status in the criminal proceedings in respect of the kidnapping of Kurbika Zinabdiyeva and Aminat Dugayeva.

26. On 28 July 2003 the second applicant requested from the military prosecutor of the Shatoy District a detailed update on the progress of the investigation.

27. On 6 August 2003 the second applicant wrote to the Prosecutor General of Russia requesting assistance in the search for Kurbika Zinabdiyeva and Aminat Dugayeva. On 8 August 2003 the letter was forwarded to the prosecutor's office of the Chechen Republic.

28. On 25 September 2003 the prosecutor's office of the Chechen Republic forwarded the applicant's letter to the district prosecutor's office.

29. On 29 September 2003 the district prosecutor's office informed the second applicant, upon her enquiry, that the criminal investigation into the kidnapping had been suspended for failure to identify those responsible. It was also stated that the whereabouts of the missing women were unknown.

30. On 30 September 2003 the second applicant requested assistance in the search for her kidnapped relatives from the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office").

31. On 28 October 2003 the prosecutor's office of the Chechen Republic forwarded the applicant's letter to the prosecutor's office of the Naurskiy District for review and action as appropriate.

32. On 10 November 2003 the second applicant filed a number of petitions with military and civil prosecutors of all levels, with the military commander of the Chechen Republic and with the acting President of the Russian Federation, calling for urgent measures to be taken in the case of her missing relatives.

33. On 29 November 2003 the district prosecutor's office informed the first and second applicants that the investigation in case no. 54016 had been suspended.

34. On 5 December 2003 the second applicant was informed by the administration of the President of the Russian Federation that her letter would be examined by the President's Human Rights Commission.

35. On 8 December 2003 the prosecutor's office of the Chechen Republic forwarded the second applicant's complaint to the district prosecutor's office.

36. On 14 December 2003 the district prosecutor's office sent the applicants a letter reproducing the letter of 29 November 2003 verbatim.

37. On 15 December 2003 the UGA prosecutor's office informed the first and second applicants that there were no grounds to claim the involvement of the military in the kidnapping of their daughters and made a general reference to criminal case no. 54016.

38. On 23 December 2003 the prosecutor's office of the Chechen Republic forwarded another complaint by the second applicant to the district prosecutor's office and indicated that the investigation should be pursued more actively. On the same date they informed the second applicant that it was impossible to identify the persons who had kidnapped her relatives and that the investigation had been suspended.

39. On 6 January 2004 the ROVD informed the first and second applicants that all possible measures were being taken to find their kidnapped relatives and to identify the perpetrators.

40. On 31 January 2004 the ROVD wrote to the second applicant that all questions concerning criminal proceedings in the case were to be addressed to the district prosecutor's office.

41. On 4 March 2004 the President's Human Rights Commission forwarded the first applicant's letter to the prosecutor's office of the Chechen Republic with a request that they keep her informed about the measures taken in the case.

42. On 13 March 2004 the Ministry of Interior of the Chechen Republic informed the first applicant that the investigative measures taken in the search for Kurbiya Zinabdiyeva and Aminat Dugayeva and to identify those responsible had so far been fruitless.

43. On 1 April 2004 the prosecutor's office of the Chechen Republic forwarded the first applicant's letter received from the President's Human Rights Commission to the district prosecutor's office. It was endorsed with an order to take measures to accelerate the search for those kidnapped.

44. On 8 April 2004 the UGA prosecutor's office informed the applicants that an inquiry had been carried out but had not established any involvement of the military in the kidnapping of their relatives.

45. On 21 April 2004 the prosecutor's office of the Chechen Republic ordered the district prosecutor's office to take measures further to the applicants' complaints, in particular to intensify the search for their kidnapped relatives.

46. On 15 May 2004 the military prosecutor of military unit no. 20102 forwarded the applicants' complaint to the military prosecutor of military unit no. 20119.

47. On 20 May 2004 the district prosecutor's office resumed the investigation in case no. 54016. The decision stated that Kurbiya Zinabdiyeva and Aminat Dugayeva had been kidnapped by unidentified

persons in camouflage uniforms who had arrived in four APCs. On 27 May 2004 the applicants were informed of that decision.

48. On 27 June 2004 the military prosecutor of military unit no. 20119 informed the second applicant that an inquiry had been carried out but had not revealed any involvement of army servicemen in the abduction of her relatives. The letter also referred to the criminal investigation in case no. 54016.

49. On 27 June 2004 the district prosecutor's office suspended the investigation.

50. On 5 July 2004 the prosecutor's office of the Chechen Republic forwarded the applicants' complaint to the district prosecutor's office and ordered that it be considered on the merits.

51. On 22 July 2004 the UGA prosecutor's office forwarded the applicants' complaint to the military prosecutor of military unit no. 20119.

52. On 27 July 2004 the deputy military prosecutor of military unit no. 20119 wrote to the second applicant a letter denying involvement of the military in the abduction of her relatives. It read in particular as follows:

“... the fact that the kidnappers had armoured personnel carriers does not in itself demonstrate involvement of the military in the crime, because the same type of military vehicles is also used by the services of [the Ministry of] the interior.”

53. On 30 July 2004 the UGA prosecutor's office ordered the military prosecutor of military unit no. 20119 to review the applicants' file.

54. On 9 August 2004 the UGA prosecutor's office forwarded the first and second applicants' complaint to the military prosecutor of military unit no. 20119 and indicated that the facts complained of should be reviewed and verified.

55. On 10 August 2004 the military prosecutor of military unit no. 20119 informed the administration of the Chechen Republic that the investigation in case no. 54016 had been suspended for failure to identify those responsible.

2. Information submitted by the Government

56. On 21 May 2003 the Shatoy District Department of the FSB forwarded the first applicant's complaint to the district prosecutor's office.

57. On 30 May 2003 the district prosecutor's office refused to institute criminal proceedings against unidentified persons in relation to the kidnapping of Kurbika Zinabdiyeva and Aminat Dugayeva for lack of evidence of a crime. In so far as relevant, the decision read as follows:

“It was established in the course of an inquiry that at about 3.40 a.m. on the night of 15 to 16 May 2003 men wearing military uniforms had entered [the first applicant's] house and taken away ... Kurbika Zinabdiyeva and ... Aminat Dugayeva.

... The actions of unidentified persons formally constitute a *corpus delicti* punishable under Article 126 of the Russian Criminal Code, that is, kidnapping. However, the

media, in particular special issue no. 28 of the newspaper *Schit i Mech* in Chechnya, [disseminated] an article concerning the arrest of two women implicated in the organisation of the terrorist attack at Dubrovka, Moscow, in October 2002.”

58. On 7 June 2003 the district prosecutor's office quashed the decision of 30 May 2003 as there had been no documents confirming the arrest of Kurbiya Zinabdiyeva and Aminat Dugayeva; further, there had been no information on special operations carried out in the village of Ulus-Kert on 15 and 16 May 2003. They instituted an investigation into the disappearance of Kurbiya Zinabdiyeva and Aminat Dugayeva under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 54016. On the same date the first applicant was informed of that decision.

59. On 19 June and 15 July 2003 the district prosecutor's office granted the first and second applicants victim status in case no. 54016 and questioned both women. The first applicant submitted that at about 3 a.m. on 16 May 2003 around ten unknown armed men wearing camouflage uniforms and masks had taken away Kurbiya Zinabdiyeva and Aminat Dugayeva. The second applicant submitted that at the time of her daughter's abduction she had been away from her home village.

60. On 7 August 2003 the district prosecutor's office suspended the investigation in case no. 54016 for failure to identify those responsible and ordered the ROVD to find the perpetrators. In so far as relevant, the decision read as follows:

“At about 3.40 a.m. on 16 May 2003 four APCs arrived at the house of [the first applicant]...; unidentified men wearing military uniforms got out of the APCs and, having used violence against [the first applicant], took away her daughter Kurbiya Zinabdiyeva and ... Aminat Dugayeva.

In the course of the preliminary investigation requests were sent to all districts of the Chechen Republic, as well as requests to the Shatoy, Sharoy and Itum-Kalinskiy districts, but none of the measures taken have produced any positive results in establishing the whereabouts of Zinabdiyeva and Dugayeva and those implicated in their kidnapping.”

61. On 20 May 2004 the prosecutor's office of the Chechen Republic quashed the decision of 7 August 2003 as the investigation had not been comprehensive and resumed the proceedings in case no. 54016. In so far as relevant, the decision read as follows:

“... It transpires from the minutes of [the second applicant's] interview that in July 2003 she learned from the head of the [village administration], Ms <V.> that her daughter A. Dugayeva and K. Zinabdiyeva were alive and in good health and that the head of the FSB had told [Ms <V.>] that he had helped to carry out their arrest.

It transpires from the minutes of Ms <V.>'s interview that at about 3 a.m. on the night of 15 to 16 May 2003 she heard noise coming from the street and saw APCs driving through the village. 15 minutes later she went outside to the street and saw that the gates to [the first applicant's house] were open. Having entered the house, she

saw [the first applicant], tied up, sitting in the corner of the room. ... In the course of the interview the investigator did not clarify whether Ms <V.> had said that those kidnapped had been alive and in good health and, if so, who had told her so. No measures were taken to identify eye-witnesses to the crime.

[The investigators] did not establish the source of information of the article entitled "Recruiters of female suicide bombers have been arrested" published in issue no. 28 of the newspaper *Schit i Mech* and did not send requests to the prosecutor's office of Moscow to verify whether they had any data on implication of [Ms] Dugayeva and [Ms] Zinabdiyeva in the organisation of the terrorist attack at Dubrovka in October 2002..."

62. On 27 May 2004 the district prosecutor's office informed the first and second applicants that the investigation had been resumed.

63. On an unspecified date Ms <V.>, the head of the village administration, was questioned and submitted the following. On the night of 15 to 16 May 2003 she had come to the Gekhayevs' house and released the first applicant. The latter had informed her of Kurbika Zinabdiyeva and Aminat Dugayeva's abduction. Ms <V.> had not been acquainted with the head of the Shatoy District Department of the FSB and had never told the second applicant that she had heard from that official of Kurbika Zinabdiyeva and Aminat Dugayeva's arrest.

64. On unspecified dates the district prosecutor's office questioned a number of persons who submitted that they did not know anything of the kidnappers.

65. On several occasions the district prosecutor's office ordered the ROVD to establish Kurbika Zinabdiyeva and Aminat Dugayeva's whereabouts and to identify witnesses, but no positive results were achieved.

66. The district prosecutor's office requested information on Kurbika Zinabdiyeva and Aminat Dugayeva's arrest from the Shatoy District Department of the FSB, one of the military units located near Ulus-Kert, the military commander of the Shatoy District and all the prosecutors' offices of the various districts and towns of the Chechen Republic. It was established that Kurbika Zinabdiyeva and Aminat Dugayeva had not been arrested and that no criminal proceedings had been instituted against them. No dead bodies corresponding to the description of those missing had been found. The military commander of the Shatoy District submitted that no special operations with the use of military vehicles had been carried out in Ulus-Kert on the night of 16 May 2003.

67. The district prosecutor's office requested information on interviews by public officials referred to by the applicants from two local TV channels. No reply followed.

68. On 27 June 2004 the district prosecutor's office suspended the investigation in case no. 54016. They stated that a number of investigative measures had been taken, in particular, that requests had been sent to the

editor-in-chief of the *Schit i Mech* newspaper and to the prosecutor's office of Moscow and that the first applicant's neighbours and the head of the village administration had been questioned. On the same date they informed the first and second applicants of that decision.

69. On 11 August 2006 the district prosecutor's office quashed the decision of 27 June 2004 and resumed the investigation in case no. 54016, stating that it was necessary to take a number of additional investigative measures and informed the first and second applicants accordingly.

70. On 11 August 2006 the district prosecutor's office decided to grant the third applicant's request for victim status, but refused to allow her access to the case file because the investigation had not been completed. On 12 August 2006 the third applicant was admitted to the proceedings in case no. 54016 as a victim of the crime. She was questioned and submitted that she had learned of her sister's kidnapping from the first applicant.

71. On 14 August 2006 the district prosecutor's office dismissed the first applicant's request to institute criminal proceedings in relation to the events of 16 May 2003 under Article 139 § 2 (unlawful violent intrusion into one's dwelling) and Article 325 § 2 (theft of identity papers) of the Russian Criminal Code for failure to comply with statutory limitations. On the same date, at the first applicant's request, they instituted criminal proceedings on account of the theft of her money and a carpet under Article 158 § 2 of the Russian Criminal Code (aggravated theft). The case file was assigned number 65019 and then joined to case no. 54016.

72. The investigation in case no. 54016 was supervised by the Prosecutor General's Office.

73. Despite specific requests by the Court the Government did not disclose most of the contents of criminal case file no. 54016, providing only copies of decisions to suspend and resume the investigation and to grant victim status, as well as 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 the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

74. For a summary of 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

75. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They argued that it had been open to the applicants to lodge court complaints about the allegedly unlawful detention of Kurbika Zinabdiyeva and Aminat Dugayeva 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 those remedies. They also argued that it was open to the applicants to pursue civil proceedings for damages, which they had failed to do.

76. The applicants contested that objection. They stated that the criminal investigation, which had lasted for more than three years and five months, had proved to be ineffective. The investigation had only been reopened after the communication of the present application to the Government. The applicants also alleged the existence of an administrative practice of non-investigation of crimes committed by State servicemen in the Chechen Republic and referred to the other cases concerning such crimes reviewed by the Court, and also to reports of various NGOs and international bodies. This, in their view, had rendered any potentially effective remedies inadequate and illusory in their case.

B. The Court's assessment

77. 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).

78. 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.

79. 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.

80. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities immediately after the detention of Kurbika Zinabdiyeva and Aminat Dugayeva and that an investigation has been ongoing since 7 June 2003. The applicants and the Government disputed the effectiveness of that investigation.

81. 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.

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

A. The parties' arguments

82. The applicants maintained that it was beyond reasonable doubt that the men who had intruded into their home and taken Kurbika Zinabdiyeva and Aminat Dugayeva away had been State agents. In support of their complaint they referred to the following. The domestic investigation had confirmed that those missing had been taken away in four APCs, and such vehicles were only used by military or law-enforcement units. The district prosecutor's office had refused to open an investigation on 30 May 2003 as they had believed that Kurbika Zinabdiyeva and Aminat Dugayeva had been arrested by members of the federal troops. The fact that the applicants had had no news from their missing relatives for more than three years and five months proved that Kurbika Zinabdiyeva and Aminat Dugayeva had been killed while in the hands of the servicemen.

83. The Government submitted that on 16 May 2003 unidentified armed men had kidnapped Kurbika Zinabdiyeva and Aminat Dugayeva. They further contended that the investigation into the incident was ongoing, 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

84. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 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. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relatives can be presumed dead and whether their deaths can be attributed to the authorities.

85. The applicants alleged that the persons who had taken Kurbika Zinabdiyeva and Aminat Dugayeva away on 16 May 2003 had been State agents.

86. The Court finds that the fact that a large group of armed men in uniform was able to move freely in four APCs 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 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 had been taken in that direction.

87. 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).

88. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were apprehended by State servicemen. The Government's statement that the investigation did not reveal any evidence to support 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 of the events in question, the Court considers that Kurbika Zinabdiyeva and Aminat Dugayeva were apprehended on the night of 15 to 16 May 2003 by State servicemen during an unacknowledged security operation.

89. There has been no reliable news of Kurbika Zinabdiyeva and Aminat Dugayeva since 16 May 2003. Their names have not been found in any official detention facility's records. The Government did not submit any explanation as to what had happened to them after their abduction.

90. 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 absence of Kurbika Zinabdiyeva and Aminat Dugayeva or of any news of them for more than three years and five months supports this assumption.

91. 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 73 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

92. 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 more than forty months 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 Kurbika Zinabdiyeva and Aminat Dugayeva's abduction had been communicated to them by the applicants contributed significantly to the likelihood of their disappearance, as no necessary steps were taken in the crucial first days after the kidnapping.

93. For the above reasons the Court considers that it has been established beyond reasonable doubt that Kurbika Zinabdiyeva and Aminat Dugayeva must be presumed dead following their unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

94. The applicants complained under Article 2 of the Convention that their relatives had disappeared after having been detained by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation 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

95. The Government contended that the domestic investigation had obtained no evidence to the effect that Kurbika Zinabdiyeva and Aminat Dugayeva 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' relatives met the Convention requirement of effectiveness, as numerous investigative measures were being taken to identify the perpetrators.

96. The applicants argued that their relatives had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. The applicants also argued that the investigation had not met the requirements to be effective and adequate, as required by the Court's case-law on Article 2. They pointed out that the investigation had been instituted twenty-two days after the crime had been reported to the State authorities. The investigators had failed to take all requisite investigative measures. Criminal proceedings concerning the theft of the first applicant's property had been opened three years and three months after the crime. The applicants noted that the investigation had been suspended and resumed a number of times and thus the taking of the most basic steps had been protracted, and that they had not been informed properly of the most important investigative steps before the communication of the application. They argued that the fact that the investigation had been

ongoing for more than three years and five months 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

97. 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 81 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 Kurbika Zinabdiyeva and Aminat Dugayeva

98. 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).

99. The Court has already found it established that the applicants' relatives must be presumed dead following 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 Kurbika Zinabdiyeva and Aminat Dugayeva.

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

100. 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).

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

102. 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.

103. The Court notes that the authorities were immediately made aware of the crime through the applicants' submissions. However, the district prosecutor's office refused to investigate the kidnapping of Kurbika Zinabdiyeva and Aminat Dugayeva, arguing that they had possibly been arrested. The investigation was instituted only twenty-two days after the crime. 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 either eventually taken only after the communication of the complaint to the respondent Government, or not at all.

104. In particular, the Court notes that, as it appears from the decision of the prosecutor's office of the Chechen Republic, as late as on 20 May 2004 the investigating authorities were requested to take such basic steps as questioning of the head of the village administration who had discovered the first applicant tied-up at the scene of the incident and had allegedly had some information on the fate of those missing, verifying the sources of the information on two recruiters of suicide bombers that had appeared in the newspaper and sending requests to clarify whether the applicants' relatives had been implicated in terrorist activities (see paragraph 61 above). The Court also points out that the investigation failed to promptly establish whether any public officials had made, as alleged by the applicants, any comments broadcasted on the TV concerning the arrest of Kurbika Zinabdiyeva and Aminat Dugayeva.

105. 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).

106. 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.

107. Finally, the Court notes that the investigation was suspended and resumed a number of times and that no proceedings were ongoing for more than two years between 27 June 2004 and 11 August 2006. The Government raised the possibility for the applicants to make use of the 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 the actions or omissions of the 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.

108. 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 Kurbika Zinabdiyeva and Aminat Dugayeva, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

109. The applicants further relied on Article 3 of the Convention, submitting that their relatives had most likely been tortured after their abduction and that such a possibility had not been investigated. The applicants also claimed that as a result of their relatives' disappearance and the State's failure to investigate those events properly, they had endured mental suffering in breach of Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

110. The Government argued that the investigation had not established that Kurbika Zinabdiyeva and Aminat Dugayeva had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. They further submitted that the applicants' allegations of profound mental suffering were unsubstantiated.

111. The applicants maintained their complaints.

B. The Court's assessment

1. Admissibility

(a) The alleged ill-treatment of the applicants' relatives

112. In so far as the applicants complained about alleged ill-treatment of their relatives upon abduction, the Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161 *in fine*).

113. The Court has found it established that Kurbika Zinabdiyeva and Aminat Dugayeva were detained on 16 May 2003 by State agents. It has also found that, in view of all the known circumstances, they can be presumed dead and that the responsibility for their death lies with the State authorities (see paragraphs 88 and 93 above). However, the exact way in which they died and whether they were subjected to ill-treatment while in detention have not been established.

114. Since the information before it does not enable the Court to find beyond all reasonable doubt that the applicants' relatives were subjected to ill-treatment, the Court considers the applicants' allegations are unsubstantiated.

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.

(b) The violation of Article 3 in respect of the applicants

116. The Court notes that the complaint concerning the applicants' mental suffering 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

117. 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 missing 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).

118. In the present case the Court notes that the applicants are close relatives of the missing women. For more than three years they have not had any news of their missing relatives. During this period the applicants have applied to various official bodies with enquiries about their family members, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of their relatives following their detention. The responses received by the applicants mostly denied that the State was responsible for their arrest 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.

119. The Court also considers that the fact that the servicemen had tied the first applicant up with adhesive tape and left her lying on the floor contributed to her profound moral suffering.

120. 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 close relatives and their inability to find out what happened to them. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

121. 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

122. The applicants further stated that Kurbika Zinabdiyeva and Aminat Dugayeva 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

123. In the Government's opinion, no evidence was obtained by the investigators to confirm that Kurbika Zinabdiyeva and Aminat Dugayeva had been arrested or otherwise deprived of their liberty in breach of the guarantees set out in Article 5 of the Convention.

124. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

125. 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 81 above). It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

126. 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).

127. The Court has found it established that Kurbika Zinabdiyeva and Aminat Dugayeva were apprehended by State servicemen on 16 May 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).

128. 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 close relatives had been taken away and detained 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.

129. Consequently, the Court finds that Kurbika Zinabdiyeva and Aminat Dugayeva 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 13 OF THE CONVENTION

130. 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

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

132. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

133. 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

134. 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 *Süheyra 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).

135. It follows that in circumstances where, as here, the criminal investigation into the disappearance 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.

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

137. 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 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.

138. 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 on account 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.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

139. 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

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

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

B. The Court's assessment

142. The Court observes that no evidence has been submitted to it that suggests 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.

143. 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.

VIII. ALLEGED VIOLATIONS OF ARTICLES 6 AND 8 OF THE CONVENTION

144. 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, and that the detention of their close relatives constituted an unlawful and unjustified interference with their family life, in breach of Article 8 of the Convention. The relevant parts of Article 6 of the Convention read as follows:

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

Article 8 of the Convention, in so far as relevant, provides:

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

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.”

145. In their observations on admissibility and merits of 15 November 2006 the applicants stated that they no longer wished their complaints under Articles 6 and 8 of the Convention to be examined.

146. 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, for example, *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).

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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

149. The applicants did not submit any claims for pecuniary damage. They claimed non-pecuniary damage for the suffering which they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives. Their worries had been aggravated by the facts that Kurbika Zinabdiyeva had suffered from a brain condition and that Aminat Dugayeva had been underage. The first and second applicants claimed 70,000 euros (EUR) each, while the third, fourth and fifth applicants claimed EUR 25,000 each.

150. The Government submitted that the applicants' claims had been unsubstantiated and excessive.

151. 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' relatives. 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. On an equitable basis it awards the second applicant EUR 35,000 and the first, third, fourth and fifth applicants EUR 35,000 jointly plus any tax that may be chargeable thereon.

B. Costs and expenses

152. The applicants were represented by the SRJI. They submitted an itemised list of costs and expenses that included collection of documents at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court at a rate of EUR 150 per hour, EUR 8,025 in total. They also claimed EUR 54.82 in translation fees, EUR 97.22 in fees for international courier mail and EUR 593.25 in administrative costs. The aggregate claim

in respect of costs and expenses related to the applicants' legal representation amounted to EUR 9,220.29.

153. The Government submitted that the applicants had not provided copies of their agreement with the SRJI. They further contended that the sum claimed was excessive for legal representation rates applicable in Russia and disputed the reasonableness and the justification of the amounts claimed under this heading. They also objected to the representatives' request to transfer the award for legal representation directly into their account in the Netherlands. The Government further pointed out that the applicants had not enclosed any documents supporting the amount claimed in administrative costs.

154. 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).

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

156. 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 preparation. It notes at the same time that, due 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. The Court also notes that the applicants did not submit any documents in support of their claim for administrative costs.

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

158. Having regard to the details of the claims submitted by the applicants' representatives, the Court awards them EUR 6,000, 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.

C. Default interest

159. 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 Articles 6 and 8 of the Convention;
2. *Decides* to join to the merits the Government's objection concerning non-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 Kurbika Zinabdiyeva and Aminat Dugayeva;
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 Kurbika Zinabdiyeva and Aminat Dugayeva had 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 Kurbika Zinabdiyeva and Aminat Dugayeva;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Articles 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 35,000 (thirty-five thousand euros) in respect of non-pecuniary damage to the second applicant and EUR 35,000 (thirty-five thousand euros) to the first, third, fourth and fifth applicants jointly, to be converted into Russian roubles at the date of settlement, plus any tax that may be chargeable to these amounts;
 - (ii) EUR 5,150 (five 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