



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

FIRST SECTION

CASE OF ATABAYEVA AND OTHERS v. RUSSIA

(Application no. 26064/02)

JUDGMENT

STRASBOURG

12 June 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 Atabayeva and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 26064/02) against the Russian Federation lodged with the Court on 28 June 2002 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Russian nationals, Ms Maryam Khasanovna Atabayeva, born in 1973, Ms Radima Ramzanovna Kukuyeva, born in 1993, Ms Makka Ramzanovna Kukuyeva, born in 1996, and Ms Markha Ramzanovna Kukuyeva, born in 1998, (“the applicants”).

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

3. The applicants alleged, in particular, that their relative, Ramzan Kukuyev, had disappeared after having been unlawfully detained by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation into the matter; that their right to respect for private and family life had been breached as a result of the unlawful detention and disappearance of their close relative; and that they had been deprived of effective remedies in respect of the aforementioned violations.

4. On 31 May 2005 the Court decided to apply Rule 41 of the Rules of Court.

5. By a decision of 7 June 2007, the Court declared the application partly admissible.

6. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants live in the village of Tsa-Vedeno, the Vedeno District, in the Chechen Republic. The first applicant was married to Mr Ramzan Kukuyev, born in 1966. They are the parents of the second, third and fourth applicants.

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

A. Disappearance of Ramzan Kukuyev

1. The applicants' account

9. The Kukuyev family lived, along with Ramzan Kukuyev's parents and his four brothers and their families, in a household comprising several houses in Tsa-Vedeno. Ramzan Kukuyev had worked as a construction worker; the first applicant was a housewife. On 16 April 2000 Ramzan Kukuyev joined the Chechen home guard organised by the Russian authorities. On 30 March 2001 he left the service on medical grounds. At the material time Ramzan Kukuyev was unemployed.

10. In the morning of 3 May 2001 the federal military commenced a "sweeping" operation in the village of Tsa-Vedeno.

11. Between 5 and 6 a.m. on 3 May 2001, when the first applicant and her husband were asleep at home, a group of about forty servicemen entered their house. Two or three of them were wearing masks. The servicemen did not introduce themselves and ordered Ramzan Kukuyev to show his identity papers. The latter produced his papers and a medical certificate confirming that he was unwell and was not fit for work.

12. The military then forced all male members of the Kukuyev family into the courtyard while keeping the women inside. The Kukuyev men were ordered to take off their shirts and were body searched. The military also searched the household. According to the first applicant, they broke things belonging to the house and took away a TV set, some clothes and a blanket.

13. Thereafter the servicemen forced Ramzan Kukuyev, his brother and two cousins into armoured personnel carriers (“APCs”) and took them away. The first applicant attempted to follow them but the servicemen threatened her with firearms. The then four-year-old fourth applicant ran after her father, but one of the soldiers threw her aside with the result that she fell and broke her collar bone.

14. Ramzan Kukuyev, along with other residents of Tsa-Vedeno arrested during the “sweeping” operation, was taken to a federal military base on the outskirts of the village.

15. According to a resident of Tsa-Vedeno detained on 3 May 2001, in the evening the military ordered detainees to stand in a row. Some of the detainees, including Ramzan Kukuyev, were ordered out of the line. They were blindfolded and taken to a military helicopter. The helicopter and the servicemen then left in the direction of the town of Shali. Since then Ramzan Kukuyev’s whereabouts have been unknown.

16. In the applicants’ submission, fifteen men from Tsa-Vedeno were apprehended during the “sweeping” operation on 3 May 2001. Some of them were released later the same day; several others were released and delivered by a military helicopter to the outskirts of Tsa-Vedeno four days later. Ramzan Kukuyev, his cousin and another resident of Tsa-Vedeno disappeared following their detention.

17. The events of 3 May 2001, including the detention and disappearance of Ramzan Kukuyev, were reported by a number of human rights NGOs, and in particular by Human Rights Watch in its report “Last seen...: continued ‘disappearances’ in Chechnya” (April 2002) and by the Memorial Human Rights Centre in June 2003.

2. The Government’s account

18. According to the Government, at about 11 a.m. on 3 May 2001 unidentified persons in masks and camouflage uniforms armed with machine guns arrived in armoured vehicles in the village of Tsa-Vedeno. They detained fourteen residents of the village and took them away to an unknown destination. Subsequently, all the detainees except for the applicants’ relative and two others were released. The latter three residents of Tsa-Vedeno went missing.

B. The search for Ramzan Kukuyev and the investigation of his disappearance

1. The applicants’ account

19. On 3 May 2001 the federal military sealed off the village of Tsa-Vedeno.

20. On 4 May 2001, after restrictions had been lifted, the first applicant went to a military commander's office in Vedenov to find out about her husband's whereabouts. According to her, Mr Sh., the military commander, refused to speak to her that day, as well as on 5 and 6 May 2001.

21. On 7 May 2001 Mr Sh. met the first applicant and told her that he knew where the Kukuyev brothers were being held but would not tell her, as the Kukuyev brothers were bandits. Later, however, Mr Sh. told the first applicant that the "sweeping" operation of 3 May 2001 had been conducted by the Samara special police unit and that the Kukuyev brothers were being held at the federal military base in Khankala.

22. The first applicant attempted to speak to officials of the prosecutor's office of the Vedenov District ("the district prosecutor's office"), but in vain.

23. The first applicant managed to speak to two residents of Tsa-Vedenov detained on 3 May 2001 and released four days later. They had been severely beaten and one of them had burns on his chest, back and legs and his arms were swollen. The men told the first applicant that they must have been detained at the military base between Shali and Serzhen-Yurt, since that was the only base, apart from the military base in Khankala, where military helicopters could land. They had been kept in a basement and severely beaten and tortured with electricity. One of them told the first applicant that he had seen her husband on 4 or 5 May 2001 when the latter had been taken for interrogation. He had also seen Ramzan Kukuyev in the basement. The released men refused to make written statements as they feared for their security.

24. Since 4 May 2001 the first applicant applied repeatedly to various public bodies, including the military commander's office, the prosecutor's office of the Vedenov District ("the district prosecutor's office"), other prosecutors' offices at different levels, the Office of the President of Russia and the Special Envoy of the Russian President for Rights and Freedoms in the Chechen Republic. She referred to how her husband had been detained and asked for assistance and details of the investigation. In most cases the enquiries remained unanswered or only formal replies were given indicating that her requests had been forwarded to various prosecutors' offices.

25. The first applicant also visited the federal military bases in Shali and Khankala, but received no information concerning her husband.

26. The first applicant was not informed promptly of the decision to institute criminal proceedings in relation to her husband's abduction. Later the criminal proceedings were suspended on several occasions, but she never received the respective decisions. The investigating authorities questioned the first applicant on several occasions, but no other members of the Kukuyev family or neighbours were ever questioned.

27. At some point in December 2001 the first applicant was informed that Ramzan Kukuyev had been detained at the Khankala federal military base. The investigator declined her request to verify that hypothesis.

28. On 22 January 2002 the head of the Temporary Office of the Interior of the Vedeno District (“VOVD”) issued the first applicant with a progress report confirming that on 3 May 2001 unidentified servicemen armed with machine guns had broken into the household of the Kukuyev family and that Ramzan Kukuyev had been taken in an APC to an unknown destination and his location had not been established. The report further stated that an investigation of the crime had been instituted.

29. By a letter of 7 June 2002 the VOVD notified the first applicant that the investigation of her husband’s kidnapping in case no. 37061 had been transferred to the military prosecutor’s office of military unit no. 20116 (“the unit prosecutor’s office”).

30. By letters of 25 July and 9 August 2002 the military prosecutor’s office of the Northern Caucasus Military Circuit (“the circuit prosecutor’s office”) transmitted the first applicant’s queries concerning the investigation of her husband’s abduction to the unit prosecutor’s office and to the military prosecutor’s office of military unit no. 20102 for a thorough examination.

31. On 29 July 2002 the Plenipotentiary Representative of the Russian President in the Southern Federal Circuit forwarded the first applicant’s application to the circuit prosecutor’s office and the Department of the Interior of the Chechen Republic for investigation. The latter transmitted the first applicant’s application to the VOVD on 19 August 2002.

32. On 19 November 2002 the district prosecutor’s office issued a progress report for the unit prosecutor’s office, stating that the investigation in case no. 37061 had been suspended for failure to identify those responsible.

33. By a letter of 5 January 2003 the circuit prosecutor’s office informed the first applicant that any further correspondence should be addressed to the military prosecutor of the United Group Alignment (“the UGA prosecutor’s office”).

34. On 22 February 2003 the unit prosecutor’s office forwarded the first applicant’s application to the district prosecutor’s office for investigation. In the same letter the first applicant was advised to apply to the police.

35. On 28 April 2003 the first applicant requested the UGA prosecutor’s office to inform her which prosecutor’s office was in charge of the investigation of the kidnapping of her husband, to notify her of the latest developments in the case and to grant her victim status.

36. On 23 May 2003 the first applicant arrived at the district prosecutor’s office and was told that the criminal proceedings had been suspended.

2. Information submitted by the Government

37. On 25 November 2001 the district prosecutor’s office instituted a criminal investigation into the disappearance of Ramzan Kukuyev and two other residents of Tsa-Vedeno under Article 126 § 2 of the Russian

Criminal Code (aggravated kidnapping). The file was assigned number 37061.

38. The investigation in case no. 37061 was suspended on 25 January 2002.

39. On 17 December 2002 the investigation file in case no. 37061 was destroyed in a fire as a result of an attack by rebel fighters on the district prosecutor's office.

40. On 25 August 2004 the district prosecutor's office ordered that the file in case no. 37061 be restored.

41. On 28 August 2004 the district prosecutor's office ordered the unit prosecutor's office to carry out certain investigative measures and requested the police to establish the place of residence of Ramzan Kukuyev's relatives, as well as those of the witnesses to the events of 3 May 2001.

42. On 14 September 2004 Ramzan Kukuyev's mother was granted victim status in case no. 37061; she was questioned the following day.

43. On 24 September 2004 the district prosecutor's office granted the first applicant victim status and questioned her. During the interview the first applicant did not allege that her husband had been kept at the Khankala military base, that her property had been stolen or that the military commander's office had ignored her requests for information.

44. The district prosecutor's office suspended the investigation on 25 September 2004 and then resumed it on 10 August 2005. The investigation was again suspended on 10 October 2005 and resumed on 20 October 2005.

45. In August 2005 the district prosecutor's office questioned a number of witnesses of the events of 3 May 2001.

46. On unspecified dates the investigators questioned several residents of Tsa-Vedeno who had been detained on 3 May 2001 and released later. The latter stated that they were unable to identify the persons who had detained them.

47. On 13 August 2005 the district prosecutor's office requested the military commander's office of the Vedeno District, the VOVD and the Department of the Federal Security Service ("FSB") of the Vedeno District to inform them whether any special operations had been carried out in the village of Tsa-Vedeno on 3 May 2001. On 15 and 16 August 2005 the district prosecutor's office received negative replies.

48. The investigating authorities sent a number of queries to various State bodies on 28 August, 15 September 2004 and 24 August 2005. The bodies in question replied that no criminal proceedings had ever been brought, nor any special measures ever been taken against Ramzan Kukuyev and that he had never been arrested or detained by any of them.

49. On 24 August 2005 the district prosecutor's office requested the police to find out whether Ramzan Kukuyev and other missing residents of Tsa-Vedeno had been kept in any detention facilities of the Chechen

Republic and adjacent regions. According to the replies received, the applicants' relative had not been listed among detainees of any detention centres in Chechnya.

50. On 20 October 2005 the district prosecutor's office resumed the investigation in case no. 37061.

51. On an unspecified date the district prosecutor's office questioned Mr D., who submitted the following. At about 5 a.m. on 3 May 2001 ten armed and masked men had broken into his home in Tsa-Vedeno, taken him outside and put him into a Ural vehicle. There had been six other villagers and one man unknown to Mr D. in the Ural vehicle. They had been driven in the direction of the town of Shali. Near the turn to the village of Elistanzhi the vehicle had stopped. Mr D. and other men had been taken out of the vehicle; the armed men had tied their arms, blindfolded them with adhesive tape and again put them into the Ural vehicle. Mr D. had been kept for the next two days in an unknown place and then taken, with other villagers, to a forest near the village of Agishty and released.

52. Five other villagers detained on 3 May 2001 were also questioned and made statements similar to those of Mr D. None of them had seen Ramzan Kukuyev in the Ural vehicle.

53. A son of Mr M. who had been detained on 3 May 2001 and had not been seen since was granted victim status in case no. 37061 and questioned.

54. The applicants' house was examined as a crime scene and photographed.

55. On 8 October 2006 the investigation in case no. 37061 was suspended for failure to identify those responsible.

56. On 5 September 2007 the district prosecutor's office resumed the investigation and informed the victims accordingly.

57. In the course of the investigation the hypothesis of involvement of the Russian military in the crimes was not proven.

58. The investigation did not identify the alleged perpetrators or establish Ramzan Kukuyev's whereabouts. The case was investigated by the district prosecutor's office under the supervision of the Prosecutor General's Office.

59. Despite specific requests made by the Court on two occasions, the Government refused to submit a copy of the entire investigation file in case no. 37061, stating with reference to the information obtained from the Prosecutor General's Office 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.

60. The Government only submitted a list of documents in the file of case no. 37061, from which it can be ascertained that there were at least 186 pages in the file and several documents. These included:

(a) a copy of a procedural decision of 25 November 2001 instituting criminal proceedings in connection with the disappearance of the applicants' relative and two other residents of Tsa-Vedeno on 3 May 2001;

(b) copies of procedural decisions of 18 December 2002 and 18 February 2003 on institution and suspension of criminal proceedings in connection with an explosion at the VOVD premises leading to the destruction of property;

(c) copies of decisions granting victim status in case no. 37061 to the first applicant and a relative of another missing person;

(d) copies of decisions of 25 August 2004 and 10 August and 19 September 2005 of investigators of the district prosecutor's office to take up case no. 37061;

(e) a letter of September 2004 (the date is unclear) informing the first applicant of the suspension of the investigation on 24 September 2004;

(f) a letter of 2005 (the date is unclear) notifying the first applicant that the investigation had been resumed;

(g) letters dated 10 October 2005 notifying the relatives of the other missing men, but not the first applicant, of the suspension of the investigation on the same date.

II. RELEVANT DOMESTIC LAW

61. 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 PRELIMINARY OBJECTION

A. Arguments of the parties

62. 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 Ramzan Kukuyev 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 relative 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 any such remedy. They also argued that it was open to the applicants to pursue civil complaints, which they had failed to do.

63. The applicants contested that objection. With reference to the Court's practice, they argued that they had not been obliged to apply to courts in order to exhaust domestic remedies. They claimed that an administrative practice consisting of the authorities' continuing failure to conduct adequate investigations into offences committed by representatives of the federal forces in the Chechen Republic rendered any potentially effective remedies inadequate and illusory in their case. The applicants also argued that a court complaint against the actions or omissions of the investigating authorities would not have been an effective remedy in their situation, as there were numerous examples where such complaints had produced no results, or merely had remained unanswered. The applicants further claimed that, in any event, they had repeatedly applied to law enforcement bodies, including various prosecutors, and had attempted to participate in the investigation. This avenue, however, had proved futile, given that the criminal investigation had been pending since November 2001 but had failed to identify those involved in the illegal detention and disappearance of Ramzan Kukuyev.

B. The Court's assessment

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

65. 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.

66. As regards a civil action to obtain redress for damage sustained through alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The preliminary objection in this regard is thus dismissed.

67. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities immediately after the detention of Ramzan Kukuyev and that an investigation has been pending since 25 November 2001. The applicants and the Government dispute the effectiveness of this investigation.

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

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

A. The parties' arguments

69. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Ramzan Kukuyev had been State agents. In support of their complaint they referred to the fact that a sweeping operation had taken place in Tsa-Vedeno and that the men who had apprehended Ramzan Kukuyev had driven APCs. The applicants further referred to witness statements of several male residents of Tsa-Vedeno to the effect that on the day of the incident they had been detained by armed men most likely belonging to the Russian military.

70. The Government submitted that on 3 May 2001 "unidentified masked men in camouflage uniforms armed with machine guns and driving armoured vehicles" had abducted Ramzan Kukuyev and fourteen other villagers. They further contended that the investigation into the incident had been 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' relative was dead, given that his whereabouts had not been established and his body had not been found.

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

71. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). This obligation requires the Contracting States to furnish

all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. Failure on a Government's part to submit information they possess without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI).

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

73. In their submissions the Government confirmed that on 3 May 2001 Ramzan Kukuyev had been taken away by unknown armed men, after which there had been no news of him. However, they argued that the perpetrators of this crime had not been found.

74. The Government submitted that they were unable to submit the entire investigation file in case no. 37061 because the initial file had been destroyed by fire. The Court accepts that in such circumstances the Government could not be held liable for their failure to submit the case materials requested in so far as they concerned the progress on the investigation between 25 November 2001 and 17 December 2002. Nevertheless, the fact that some documents were destroyed in 2002 does not explain why the materials, which should have necessarily been introduced in the case file during the following years of the investigation, have not been produced to the Court.

75. The Government refused to disclose most of the documents of substance from the investigation file, relying on Article 161 of the Code of Criminal Procedure.

76. The Court notes that the Government did not request the application of Rule 33 § 2 of the Rules of Court, which permits a restriction on the principle of the public character of documents deposited with the Court for legitimate purposes, such as the protection of national security and the private life of the parties, as well as the interests of justice. The Court further notes that it has already found on a number of occasions that the provisions of Article 161 of the Code of Criminal Procedure do not preclude disclosure of documents from a pending investigation file, but rather set out a procedure for and limits to such disclosure (see *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006, and *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)). For these reasons the Court

considers the Government's explanation insufficient to justify the withholding of the key information requested by the Court.

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

C. The Court's evaluation of the facts

78. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161). In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relative can be presumed dead and whether his death can be attributed to the authorities.

79. The applicants alleged that the persons who had taken Ramzan Kukuyev away on 3 May 2001 and then killed had been State agents.

80. The Government suggested in their submission that the perpetrators could be members of paramilitary groups who had intended to take revenge on Ramzan Kukuyev for his activity while serving at the military commander's office of the Vedeno District. However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

81. The Court notes that, on the contrary, the applicants' version of events is supported by the witness statements collected by the applicants and by the investigation. The applicants and the neighbours stated that the perpetrators had acted in a manner similar to that of a security operation. In particular, the armed men had detained a number of male residents of the village and then, after a two-day detention, released the majority of them. They had used military vehicles, such as APCs, as well as helicopters. Moreover, the Government acknowledged that the kidnappers of Ramzan Kukuyev had driven APCs (see paragraph 18 above), which would not have been available to paramilitary groups.

82. The Court finds that the fact that a large group of armed men in uniform equipped with military vehicles was able to move freely in broad daylight and to arrest several persons at their homes strongly supports the applicants' allegation that these were State servicemen. The other detainees' accounts of the circumstances of their detention and release support this conclusion. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check the involvement of law enforcement bodies in the abduction. The investigation was unable to establish precisely which military or security units had carried out the operation, but it does not appear that any serious steps had been taken in that direction.

83. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

84. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof.

85. There has been no reliable news of the applicants' relative since 3 May 2001. His name has not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to him after his abduction.

86. Having regard to the previous cases concerning disappearances of people in the Chechen Republic which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts)), the Court considers 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 Ramzan Kukuyev or of any news of him for several years supports this assumption.

87. For the above reasons the Court considers that it has been established beyond reasonable doubt that Ramzan Kukuyev must be presumed dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

A. The alleged violation of the right to life of Ramzan Kukuyev

89. The Government referred to fact that the investigation had obtained no evidence to the effect that this person was dead, or that representatives of the federal power structures had been involved in his abduction.

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

91. 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, and *Avşar*, cited above, § 391).

92. The Court has already found it established that the applicants’ relative must be presumed dead following unacknowledged arrest by State servicemen and that the death can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Ramzan Kukuyev.

B. The alleged inadequacy of the investigation of the abduction

93. The applicants 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 noted that it had been adjourned and reopened a number of times and thus the taking of the most basic steps had been prolonged, and that the applicants had not been informed properly of the most important investigative steps. They argued that the fact that the investigation had been pending for such a long period of time without producing any known results had been a 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.

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

95. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

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

97. 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.

98. The Court observes that the authorities were immediately aware of the crime through the applicants' submissions. The investigation was opened on 25 November 2001 that is almost seven months after the abduction. 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.

99. The Court points out that the district prosecutor's office ordered the investigation file to be restored more than two years after it was destroyed by fire. The first applicant and Ramzan Kukuyev's mother were granted victim status and questioned only in September 2004, that is more than three years after the crime. The Government did not provide a detailed description of the investigative measures in case no. 37016 and the dates on which they

were taken. However, it appears from the Government's submissions that the crime scene was inspected and the residents of Tsa-Vedeno detained on 3 May 2001 were questioned for the first time as late as 2005. The district prosecutor's office sent requests for information to various State agencies only in 2004-05. 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).

100. The Court also notes that even though the first applicant was eventually 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.

101. The Government raise the possibility for the applicants to make use of 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.

102. In the light of the foregoing, the Court dismisses the Government's preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation, and holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Ramzan Kukuyev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

103. The applicants further stated that Ramzan Kukuyev 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.”

104. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Ramzan Kukuyev was detained in breach of the guarantees set out in Article 5 of the Convention. He was not listed among the persons kept in detention centres or in the register of unidentified corpses.

105. The applicants reiterated their complaint.

106. 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).

107. The Court has found it established that Ramzan Kukuyev was detained by State servicemen on 3 May 2001 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for

the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

108. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relative had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

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

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

110. The applicants alleged that the disappearance of their relative after their detention by the State authorities caused them distress and anguish which had amounted to a violation of their right to family life in breach of Article 8 of the Convention, which provides, in so far as relevant:

“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. ”

111. In their submissions made after the Court had declared the application admissible the applicants stated that they did not insist on finding a violation of Article 8 of the Convention.

112. Having regard to the applicants' submission made after the Court's decision as to the admissibility of the application, the Court does not consider it necessary to examine the complaint under Article 8 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

113. 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.”

114. 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 Government referred to Article 125 of the Code of Criminal Procedure, which allowed participants in criminal proceedings to complain to a court about measures taken during an investigation. This was an effective remedy to ensure the applicants' rights. The applicants had never made use of this possibility, which required the initiative of the participants in criminal proceedings, and thus the absence of court action could not constitute a violation of Article 13.

115. The applicants maintained their complaint.

116. The Court reiterates that Article 13 of the Convention guarantees the availability at 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 an 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).

117. It follows that in circumstances where, as here, the criminal investigation into the disappearance in life-threatening circumstances 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.

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

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

121. The applicants claimed damages in respect of Ramzan Kukuyev’s lost wages from the time of his abduction and subsequent disappearance. They submitted that, even though Ramzan Kukuyev was unemployed at the time of his arrest, it was reasonable to suppose that he would have found a job and earned at least the official minimum wage. The applicants submitted that they would have benefited from his financial support. The applicants claimed in total 619,536.60 Russian roubles (RUB) (approximately 17,000 euros (EUR)). Their calculations were based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary’s Department in 2004 (“Ogden tables”).

122. The Government regarded these claims as unfounded because it had not been proven that Ramzan Kukuyev had been killed by State agents. They also submitted that the damage should have been calculated using the method provided for by Russian law, not by Ogden tables.

123. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants’ husband and father and the loss by the applicants of the financial support which he could have provided. Having regard to the applicants’ submissions and the fact that Ramzan Kukuyev was not employed at the time of his abduction, the Court awards EUR 10,000 to the applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

124. The first applicant claimed EUR 40,000, while the second, third and fourth applicants claimed EUR 25,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards him and the failure to provide any information about his fate.

125. The Government found the applicants' claims unsubstantiated and excessive.

126. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The 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 35,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

127. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff, EUR 8,175 in total. They also claimed EUR 572.25 in administrative expenses, EUR 487.80 in translation fees and 166.78 in fees for courier mail. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 9,401.83.

128. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. They also submitted that the applicants' claims for just satisfaction had been signed by six lawyers, while three of them had not been mentioned in the powers of attorney issued by the applicants.

129. The Court points out that the applicants issued the powers of attorney in the name of the SRJI and its three lawyers. The applicants' claims for just satisfaction were signed by six persons in total. The names of three of them appeared in the powers of attorney, while three other lawyers collaborated with the SRJI. In such circumstances the Court sees no reasons to doubt the validity of the applicants' claims for costs and expenses.

130. The Court has now to establish whether the costs and expenses indicated by the applicants' representatives were actually incurred and whether they were necessary (see *McCann and Others*, cited above, § 220). The Court notes that this case was rather complex and required a certain amount of research and preparation. It notes, however, that the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that research was necessary to the extent claimed by the representatives.

131. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them the amount of EUR 6,500, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be

chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Ramzan Kukuyev;
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 Ramzan Kukuyev disappeared;
5. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ramzan Kukuyev;
6. *Holds* that there is no need to examine the complaint under Article 8 of the Convention;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Article 5;
9. *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 10,000 (ten thousand euros), in respect of 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 to that amount;

(ii) EUR 35,000 (thirty-five 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 to that amount;

(iii) EUR 5,650 (five thousand six hundred 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;

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

Done in English, and notified in writing on 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President