



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

FIRST SECTION

**CASE OF ELMURZAYEV AND OTHERS v. RUSSIA**

*(Application no. 3019/04)*

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

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 Elmurzayev 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 22 May 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 3019/04) 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 twelve Russian nationals, (“the applicants”), on 9 January 2004.

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

3. On 23 May 2006 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and 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**

4. The applicants are:

- 1) Mr Supian Khasanovich Elmurzayev, born in 1963;
- 2) Ms Zina Elmurzayeva, born in 1933;

- 3) Mr Khasan Katayevich Elmurzayev, born in 1933;
- 4) Mr Isa Khasanovich Elmurzayev, born in 1954;
- 5) Mr Aslambek<sup>1</sup> Khasanovich Elmurzayev, born in 1967;
- 6) Ms Zura Ismailovna Elmurzayeva, born in 1964;
- 7) Mr Beslan Musayevich Elmurzayev, born in 1984;
- 8) Mr Movsar Musayevich Elmurzayev, born in 1986;
- 9) Ms Larisa Shekhirzayevna (Shakhmirzayevna) Mukhtarova, born in 1978;
- 10) Ms Mariam Aptiyevna Elmurzayeva (Mukhtarova), born in 1999;
- 11) Mr Magomed Aptiyevich Elmurzayev (Mukhtarov), born in 2001;
- 12) Ms Ayshat Khasanovna Elmurzayeva, born in 1976.

5. The applicants live in the village of Martan-Chu, the Urus-Martan District, the Chechen Republic.

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

#### **A. Disappearance of Apti and Musa Elmurzayev and the ensuing investigation**

##### *1. The applicants' account*

###### **(a) Background of the case**

7. The second and third applicants are the parents of Mr Apti Khasanovich Elmurzayev, born in 1969, Mr Musa Khasanovich Elmurzayev, born in 1956, and of the first, fourth, fifth and twelfth applicants. The sixth applicant was the wife of Musa Elmurzayev; they are the parents of the seventh and eighth applicants. The ninth applicant was the wife of Apti Elmurzayev; they are the parents of the tenth and eleventh applicants.

8. At the material time several members of the Elmurzayev family lived at 23 Krasnoarmeyskaya Street in Martan-Chu. Their household consisted of three separate buildings with a common courtyard. Musa Elmurzayev's and the first applicant's families each occupied one building. Apti Elmurzayev and his family shared the third building with the second, third and twelfth applicants. Other applicants lived nearby in the same village.

9. Prior to 1999 Apti Elmurzayev worked as the head of the administration of the village of Martan-Chu and Musa Elmurzayev worked as his deputy. For some time in 1999 Apti Elmurzayev attended an Arabic school in the town of Gudermes, but then dropped out. Since the beginning

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<sup>1</sup> Rectified on 27 February 2009: the text was “5) Mr Aslanbek Khasanovich Elmurzayev,...”

of the hostilities in Chechnya Apti and Musa Elmurzayev had no regular employment.

10. On an unspecified date in May or June 2002 Apti Elmurzayev was questioned by local law enforcement agencies about his studies of the Arabic language in Gudermes. He was not charged with, or accused of, any wrongdoing.

**(b) Abduction of Apti Elmurzayev**

11. At about 2 or 3 a.m. on 9 July 2002 a group of men wearing masks and camouflage uniforms and armed with machine guns arrived at the Elmurzayevs' household and walked into its courtyard. About ten of the armed men climbed over the fence and entered Musa Elmurzayev's house. Without identifying themselves or producing any warrant, the armed men searched the house, turning everything upside down. According to the applicants, those men belonged to the Russian military because they spoke Russian without an accent. The servicemen asked Musa Elmurzayev to wake up his younger brother Apti, who lived in a separate building. Then four servicemen entered Apti Elmurzayev's house and searched his room. One of them pointed a machine gun at the ninth applicant. The servicemen allowed Apti Elmurzayev to get dressed, then tied his hands and blindfolded him with adhesive tape and took him to the door. One of the men told the ninth applicant that he would shoot her if she followed them. The servicemen and Apti Elmurzayev left; the ninth applicant managed to step outside the house and saw them walking in the direction of Urus-Martan.

12. At some point the first applicant walked out of his house and heard a muted sound. He realised that a sniper bullet fired by one of the armed men had just missed him. Later he found a bullet in the house.

13. On the following morning the applicants learned from their neighbours that the Russian servicemen had arrived in Martan-Chu in two armoured personnel carriers (APCs) and two UAZ vehicles.

**(c) Search for Apti Elmurzayev and investigation of his kidnapping**

14. In the morning of 9 July 2002 Musa Elmurzayev went to the local police, the prosecutor's office of the Urus-Martan District ("the district prosecutor's office") and the military commander's office of the Urus-Martan District to enquire about his brother's whereabouts. However, no officials acknowledged detaining Apti Elmurzayev or provided any information on his whereabouts and fate.

15. Musa Elmurzayev and the applicants repeatedly wrote to various official bodies requesting assistance in the search for Apti Elmurzayev.

16. On 29 July 2002 the district prosecutor's office instituted criminal investigation file no. 61105 in relation to the kidnapping of Apti Elmurzayev.

17. On an unspecified date the first applicant was interviewed by the police.

18. On 20 August 2002 the prosecutor's office of the Chechen Republic forwarded a letter by the second applicant to the district prosecutor's office.

19. On 22 August 2002 the head of the administration of the Urus-Martan District informed the second applicant that the district prosecutor's office had opened an investigation of the kidnapping of her son, and that all possible steps were being taken to establish Apti Elmurzayev's whereabouts.

20. On 3 September 2002 the second applicant requested the Urus-Martan District Department of the Federal Security Service ("FSB"), the military commander's office of the Urus-Martan District, the district prosecutor's office and the Urus-Martan Department of the Interior ("ROVD") to take all possible steps in order to find Apti Elmurzayev.

21. On 29 September 2002 the district prosecutor's office suspended the investigation in case no. 61105 for failure to identify the perpetrators and informed the first applicant accordingly.

22. On 29 November 2002 an official of the Commission for the Investigation of Human Rights Violations in the North Caucasus wrote to the military prosecutor of the Northern Caucasus Circuit about the abduction of Apti Elmurzayev. The letter was forwarded to the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office").

23. On 4 December 2002 the Department of the FSB of the Chechen Republic informed the second applicant that the FSB had no information on Apti Elmurzayev's whereabouts and that no arrest warrant had been issued against him and that he had not been suspected of any unlawful activities.

24. On 28 December 2002 the prosecutor's office of the Chechen Republic informed the second applicant that despite the suspension of the investigation in case no. 61105 the search for Apti Elmurzayev was under way.

**(d) Abduction of Musa Elmurzayev**

25. At about 2 a.m. on 27 January 2003 a group of armed men arrived at the Elmurzayevs' household and knocked at the door of Musa Elmurzayev's house. The sixth applicant opened the door; one of the armed men pointed a machine gun at her without saying a word. Three other men entered a room in which Musa Elmurzayev was sleeping. They did not identify themselves or produce a search warrant. The sixth applicant inferred that the armed men belonged to the Russian military as they spoke Russian without an accent. The three servicemen pointed their machine guns at Musa Elmurzayev and ordered him to identify himself. The latter obeyed and then was told to get dressed. The sixth applicant asked the servicemen where they intended to take her husband; she received no reply but was told to keep quiet. The servicemen took Musa Elmurzayev's identity papers and proceeded to the

door. Then they ordered everybody to be quiet and left the house taking Musa Elmurzayev with them. They locked the entrance door from the outside so that Musa Elmurzayev's family could not go out.

26. The twelfth applicant heard some noise and stepped out of her house to the courtyard. She saw the servicemen, who ordered her to keep quiet, and Musa Elmurzayev. The twelfth applicant asked the servicemen where they were taking her brother but received no reply. The men blindfolded Musa Elmurzayev and tied his hands with adhesive tape and took him out of the courtyard.

27. The following morning the sixth applicant told the first applicant about her husband's abduction. The applicants found many footprints in their courtyard and concluded that the servicemen had arrived in a large group. They learned from their neighbours that the servicemen had driven two UAZ vehicles.

**(e) Search for Aпти and Musa Elmurzayev and investigation of their kidnapping**

28. Following Musa Elmurzayev's abduction, the first applicant took the lead in the search for his brothers. The family immediately contacted various officials trying to establish the whereabouts of their missing relatives.

29. On 27 January 2003 the second applicant requested the military commander of the Urus-Martan District, the district prosecutor's office and the ROVD to establish Musa Elmurzayev's whereabouts and release him.

30. On 1 February 2003 the military prosecutor's office of military unit no. 20102 ("the unit prosecutor's office") informed the second applicant that military servicemen of the United Group Alignment, servicemen of the Ministry of the Interior of the Chechen Republic and the FSB agents had not detained Aпти Elmurzayev, and that the latter's whereabouts were unknown.

31. On 5 February 2003 the prosecutor's office of the Chechen Republic forwarded the second applicant's letter concerning Musa Elmurzayev's abduction to the district prosecutor's office and recommended that criminal proceedings be instituted if necessary.

32. On 12 February 2003 the district prosecutor's office instituted criminal proceedings in case no. 32017 in relation to the kidnapping of Musa Elmurzayev.

33. On an unspecified date the first applicant was invited to the local police station where he was interviewed about the circumstances of Musa Elmurzayev's abduction. He testified that he had not seen the abduction himself, but indicated the person in their family who had. The fourth applicant was then interviewed, although he only saw the abduction from across the street. He produced a written statement for the police. Other family members were not questioned.

34. On 5 and 22 April 2003 the UGA prosecutor's office forwarded the second applicant's letters to the unit prosecutor's office.

35. On 24 April 2003 the prosecutor's office of the Chechen Republic informed the second applicant that the investigation of Musa Elmurzayev's kidnapping had been suspended on 12 April 2003 due to failure to identify those responsible.

36. On 23 May 2003 the unit prosecutor's office informed the second applicant that involvement of the military in Musa Elmurzayev's kidnapping had not been proven and noted that, should such involvement be established in the future, the case would be transferred for investigation to a military prosecutor's office.

37. On 24 July 2003 the Urus-Martan Town Court ("the town court"), acting on the ninth applicant's request, declared Apti Elmurzayev missing since 9 July 2002.

38. On 28 July 2003 the first applicant requested the prosecutor's office of the Chechen Republic to resume the investigation in case no. 34017. He expressed confidence that the official "power structures" (*силовые структуры*) had been involved in the abduction and complained that the district prosecutor's office had failed to take all possible investigative measures, notably to question relatives of the missing and other villagers; to question officials on duty at checkpoints between Urus-Martan and Martan-Chu on the night of the kidnapping; to question officials who could have authorised the unhindered entry and exit from Urus-Martan into Martan-Chu of the armed men; and to examine the traces left by the UAZ vehicle on the night of the kidnapping.

39. On 14 August 2003 the prosecutor's office of the Chechen Republic informed the first applicant that the investigation in case no. 34017 had been resumed.

40. On 22 August 2003 the first applicant requested the prosecutor's office of the Chechen Republic to resume the investigation in case no. 61105. He argued that the district prosecutor's office had not searched for two APCs and two UAZ vehicles used during the abduction of Apti Elmurzayev, and had not verified how they had passed through the checkpoints between Urus-Martan and Martan-Chu. He also alleged that servicemen on duty at checkpoints between Urus-Martan and Martan-Chu on the night of the detention and other officials of law-enforcement agencies had not been questioned.

41. On an unspecified date an investigator of the district prosecutor's office visited the Elmurzayevs' house and questioned the first and sixth applicants about the circumstances of Musa Elmurzayev's abduction. The investigator told the first applicant that the servicemen who had been on duty at the checkpoint had not been questioned, and that they could not be questioned because they would have left the Chechen Republic by then.



42. On 29 August 2003 the Department of the FSB of the Chechen Republic informed the second applicant that the FSB had not detained her sons because there had been no legal basis for their detention as they had not been suspected of any criminal offences.

43. On 10 September 2003 the prosecutor's office of the Chechen Republic informed the first applicant that the decision to suspend the investigation in case no. 61105 had been quashed and overturned and that the proceedings had been resumed.

44. On 3 January 2004 the first applicant informed the local administration, the district prosecutor's office, the Department of the FSB of the Chechen Republic and the ROVD district that it had been rumoured that he might be abducted himself and emphasised that he was willing to appear for questioning if he was suspected of any crime.

45. On 13 January 2004 the Department of the FSB of the Chechen Republic informed the first applicant that he was not suspected of any unlawful activities and that there was still no information on the whereabouts of Apti and Musa Elmurzayev.

46. On 5 October 2005 the SRJI acting on the first applicant's behalf requested the district prosecutor's office to provide an update on the progress in the investigation in cases nos. 61105 and 34017 and to allow the first applicant access to the investigation files. No reply followed.

47. On 30 November 2006 the first applicant studied the investigation file in case no. 61105. He discovered that some witnesses had been questioned only in 2006, that servicemen on duty at the checkpoint between Urus-Martan and Martan-Chu on the night of Apti Elmurzayev's kidnapping had not been questioned and that no steps had been taken to find the APCs and UAZ vehicles.

## *2. Information submitted by the Government*

### **(a) Disappearance of Apti Elmurzayev**

48. According to the Prosecutor General's Office, at 2 a.m. on 9 July 2002 unidentified armed persons entered the house at 24 Krasnoarmeyskaya Street, Martan-Chu, kidnapped Apti Elmurzayev and took him away in an unknown direction.

### **(b) Investigation into Apti Elmurzayev's kidnapping**

49. On 29 July 2002 the district prosecutor's office instituted an investigation into Apti Elmurzayev's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 61105.

50. On 29 July 2002 the district prosecutor's office granted Musa Elmurzayev victim status in case no. 61105 and questioned him. He

submitted that on the night of 8 to 9 July 2002 unknown masked men had entered his parents' house and taken away his brother.

51. On 9 September 2002 the district prosecutor's office granted the first applicant victim status in case no. 61105.

52. On 29 September 2002 the district prosecutor's office suspended the investigation in case no. 61105 for failure to identify the perpetrators and informed the first applicant accordingly.

53. On 23 January 2004 the district prosecutor's office quashed the decision of 29 September 2002 and resumed the criminal proceedings.

54. On 25 January 2004 the first applicant was questioned. He submitted that at about 2 a.m. on 9 July 2002 he had heard some noise, walked out to the courtyard and seen around ten masked men armed with machine-guns. The men had taken Musa Elmurzayev to the courtyard and then walked to their parents' house. Later they had brought Apti Elmurzayev outside and driven him away in the direction of Urus-Martan.

55. On 23 February 2004 the investigation was again suspended and the first applicant was notified accordingly.

56. On 8 November 2005 the district prosecutor's office quashed the decision of 23 February 2004 for the reason that the first applicant had made a formal request and resumed the investigation for one day, until 9 November 2005. On the following day the investigation was again suspended.

57. On 31 July 2006 the district prosecutor's office quashed the decision of 9 November 2005 because some newly obtained information required verification and resumed the investigation in case no. 61105.

58. On 1 August 2006 the third applicant was questioned. He submitted that on the night of 9 July 2002 he had been woken by Musa Elmurzayev and seen four armed men wearing camouflage uniforms and masks. Those men had entered Apti Elmurzayev's room, told him to get dressed and taken him away. The third applicant had not heard any noise of vehicle engines.

59. On 2 August 2006 the district prosecutor's office refused to institute criminal proceedings under Articles 139 (unlawful intrusion into a dwelling) and 325 (theft of official documents) of the Russian Criminal Code on account of the invasion in the applicants' home on 9 July 2002 and the theft of Apti Elmurzayev's identity papers for expiration of the statutory limitation period. On the same date the district prosecutor's office extended the charges against unidentified persons in case no. 61105 to aggravated kidnapping with the use of weapons.

#### **(c) Disappearance of Musa Elmurzayev**

60. At about 3 a.m. on 27 January 2003 unidentified masked persons armed with machine guns entered the house at 27 Krasnoarmeyskaya Street, Martan-Chu, kidnapped Musa Elmurzayev and took him away in an unknown direction.

**(d) Investigation into Musa Elmurzayev's kidnapping**

61. On 12 February 2003 the district prosecutor's office instituted an investigation of Musa Elmurzayev's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 34017.

62. On 22 February 2003 the fourth applicant was granted victim status in case no. 34017 and questioned. He submitted that the sixth applicant had told him that her husband had been taken away by unknown men.

63. On 12 April 2003 the district prosecutor's office suspended the investigation in case no. 34017 for failure to identify the perpetrators and notified the fourth applicant accordingly.

64. On 15 August 2003 the prosecutor's office of the Chechen Republic quashed the decision of 12 April 2003 as the district prosecutor's office had not taken all requisite investigative measures. The decision stated that, in order to carry out a comprehensive investigation, it was necessary to question the relatives of Musa Elmurzayev, his neighbours and acquaintances, to draw up a report on examination of the crime scene, to request information on any special operations carried out near the crime scene from the Department of the FSB of the Chechen Republic, the Ministry of the Interior and the Russian military, to send requests on eventual arrest and detention of Musa Elmurzayev to a number of law enforcement agencies, to verify whether any corpses corresponding to his description had been found and to take any other steps that might be required.

65. On 20 August 2003 the investigation in case no. 34017 was resumed.

66. The district prosecutor's office questioned the ninth and first applicants on 22 August and 1 September 2003 respectively. They submitted that the sixth applicant had informed them of Musa Elmurzayev's abduction.

67. On 1 September 2003 the sixth applicant was questioned and submitted that on 27 January 2003 she had heard someone knocking and opened the door. She had seen a group of armed men wearing camouflage uniforms and masks. Three of them had entered the house, told her husband to get dressed and taken him away.

68. On 20 September 2003 the investigation in case no. 34017 was again suspended.

69. On 31 July 2006 the district prosecutor's office quashed the decision of 20 September 2003 and resumed the investigation of Musa Elmurzayev's kidnapping as some newly discovered information required verification.

70. The neighbours of Musa Elmurzayev submitted that they had not witnessed his abduction and had not heard vehicle engines on 27 January 2003.

**(e) Information concerning investigation in cases nos. 61105 and 34017**

71. The investigation of the kidnappings of Apti and Musa Elmurzayev did not establish the identities of the perpetrators. The implication of special units of State agencies and federal forces in those crimes was not proven. Neither was it proven that the perpetrators had been driving APCs and UAZ vehicles. According to the information obtained by the district prosecutor's office from the Department of the FSB of the Urus-Martan District, various departments of the interior and military unit no. 90567, Apti and Musa Elmurzayev had not been charged with any crimes or arrested and their whereabouts were unknown; no APCs had driven by the checkpoint between Urus-Martan and Martan-Chu on 9 July 2002. The head of penitentiary facility no. IZ-20/3 informed the district prosecutor's office that Apti and Musa Elmurzayev had not been detained in that facility. They were not in any other detention facility in the Chechen Republic.

72. The FSB had no information on the circumstances of the kidnapping of Apti and Musa Elmurzayev.

73. Following the resumption of the criminal proceedings on 31 July 2006 the investigation in cases nos. 61105 and 34017 was supervised by the Prosecutor General's Office.

74. Despite specific requests by the Court the Government did not disclose most of the contents of criminal cases nos. 61105 and 34017, providing only copies of decisions to suspend and resume the investigation and to grant victim status and of several notifications to the relatives of the suspension and resumption of the proceedings. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation of the kidnappings of Apti and Musa Elmurzayev was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the case files contained information of a military nature and personal data concerning witnesses or other participants in the criminal proceedings.

**B. Court proceedings against the investigators**

75. On 15 June 2006 the first applicant complained to the town court of inaction by the district prosecutor's office under Article 125 of the Russian Criminal Procedure Code. He alleged that the investigation in cases nos. 61105 and 34017 had lasted an unreasonably long time and had been erroneously suspended. He also complained that his request for access to the case files had been declined.

76. On 9 August 2006 the town court examined the first applicant's complaint. It stated that the investigators had not taken all measures to establish Apti Elmurzayev's whereabouts. In particular, they had failed to identify and question federal servicemen on duty at the checkpoint between Urus-Martan and Martan-Chu on the night of Apti Elmurzayev's

kidnapping. Neither had they identified and questioned heads of law-enforcement agencies of the Urus-Martan District who had authorised movement of military vehicles during curfew hours. The investigators had not identified “power structures” that had owned APCs and UAZ vehicles and had not studied records on the use of military vehicles and on the organisation of special operations. The town court granted the first applicant's complaint in the part concerning the access to the investigation file in case no. 61105 but did not allow him to make copies of documents and dismissed his request for resumption of the proceedings in that case as the district prosecutor's office had reopened them on 1 August 2006. The request for access to the investigation file in case no. 34017 was dismissed because the first applicant had not been granted victim status in that case.

77. On 14 August 2006 the first applicant lodged an appeal against the judgment of 9 August 2006 with the Supreme Court of the Chechen Republic. On 13 September 2006 the appeal was dismissed.

## II. RELEVANT DOMESTIC LAW

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

## THE LAW

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

#### A. The parties' submissions

79. 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 Apti and Musa Elmurzayev 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 relatives or to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil complaints but they had failed to do so.

80. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. Referring to the other cases

concerning such crimes reviewed by the Court, they also alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in the Chechen Republic rendered any potentially effective remedies inadequate and illusory in their case.

## **B. The Court's assessment**

81. 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).

82. 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.

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

84. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities immediately after the kidnappings of their two relatives and that those two sets of criminal proceedings have been pending since 29 July 2002 and 12 February 2003 respectively. The applicants and the Government dispute the effectiveness of the investigation of the kidnappings.

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

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

### A. The parties' submissions

86. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Apti and Musa Elmurzayev had been State agents. In support of their complaint they referred to the following facts. The village of Martan-Chu had been under the total control of federal troops since 1999. There had been Russian military check-points at the roads leading to and from the village. The armed men who had abducted Apti and Musa Elmurzayev had moved freely around the village past curfew established by the military commander of the Urus-Martan District on 25 September 2001. The armed men had spoken Russian without an accent, which proved that they were not of Chechen origin.

87. The Government submitted that unidentified armed men had kidnapped Apti and Musa Elmurzayev. They further contended that the investigation of the incident was pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relatives were dead.

### B. The Court's evaluation of the facts

88. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-09, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161). In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relatives can be presumed dead and whether their death can be attributed to the authorities.

89. The applicants alleged that the persons who had apprehended Apti Elmurzayev on 9 July 2002 and Musa Elmurzayev on 27 January 2003 had been State agents.

90. The Court notes that this allegation is supported by the witness statements collected by the applicants and by the investigation. It finds that

the fact that a large group of armed men in uniform was able to move freely through federal roadblocks during curfew hours strongly supports the applicants' allegation that these were State servicemen. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law enforcement agencies were involved in the kidnapping. The investigation was unable to establish which precise military or security units had carried out the operation, but it does not appear that any serious steps were taken to that end.

91. The Court observes that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a 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).

92. Taking into account the above elements, the Court is satisfied that the applicants have made out a *prima facie* case that their relatives were apprehended by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court considers that Apti and Musa Elmurzayev were apprehended on 9 July 2002 and 27 January 2003 respectively at their homes, by State servicemen during unacknowledged security operations.

93. There has been no reliable news of Apti and Musa Elmurzayev since the dates of their respective abductions. Their names have not been found in any official detention facilities' records. The Government have not submitted any explanation as to what happened to them after their abduction.

94. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, among others, *Bazorkina*, cited above; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-... (extracts); *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Apti and Musa



Elmurzayev or of any news of them for several years supports this assumption.

95. 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 74 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

96. For the above reasons the Court considers that it has been established beyond reasonable doubt that Apti and Musa Elmurzayev must be presumed dead following their unacknowledged detention by State servicemen.

### III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

#### A. The parties' submissions

98. The Government contended that the domestic investigation had obtained no evidence to the effect that Apti and Musa Elmurzayev 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 kidnappings of the applicants' relatives met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

99. 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 of effectiveness and adequacy, as required by the Court's case-law on Article 2. They pointed out that by December 2006 the district prosecutor's office had not taken some crucial investigative steps. They noted that the investigation in the cases concerning Apti and Musa Elmurzayev's respective kidnappings had been opened several days after the events and that the investigation in both sets of proceedings had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and that the applicants had not been properly informed of the most important investigative measures. They argued that the fact that the investigation had been pending for almost four years without producing any known results had been further proof of its ineffectiveness. The applicants invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

## **B. The Court's assessment**

### *1. Admissibility*

100. 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 85 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 Apti and Musa Elmurzayev**

101. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar*, cited above, § 391).

102. The Court has already found it established that the applicants' relatives must be presumed dead following their unacknowledged arrest by State servicemen and that their deaths can be attributed to the State. In the

absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Apti and Musa Elmurzayev.

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

103. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-19).

104. In the present case the kidnappings were investigated. The Court must assess whether both sets of investigation met the requirements of Article 2 of the Convention.

105. 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.

106. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation in case no. 61105 was instituted twenty days after Apti Elmurzayev's kidnapping, while criminal case no. 34017 was opened sixteen days after Musa Elmurzayev's kidnapping. These delays *per se* were liable to affect the investigation of crimes such as kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all.

107. As regards the investigation in case no. 61105, the Court notes that, as can be seen from the decision of the town court, by 9 August 2006 the investigators had not identified or questioned certain Russian federal servicemen and had not established the owner of the APCs and UAZ vehicles that had moved around Martan-Chu on the night of 9 July 2002 (see paragraph 76 above). As regards the investigation in case no. 34017, the Court points out that, according to the decision of the prosecutor's office of the Chechen Republic of 15 August 2003, during the first six months after Musa Elmurzayev's kidnapping the investigators did not question witnesses and did not request information on the missing person from law enforcement agencies (see paragraph 64 above).

108. 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.

Such 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).

109. The Court also notes that even though the first and fourth applicants were granted victim status in cases nos. 61105 and 34017 respectively, they were 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 in two cases received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

110. Finally, the Court notes that the investigation in case no. 61105 was suspended and resumed three times and that there were lengthy periods of inactivity of the district prosecutor's office when no proceedings were pending. The Court further points out that the investigators' efforts were even more feeble as regards the search for Musa Elmurzayev, since no proceedings whatsoever were pending in case no. 34017 between 20 September 2003 and 31 July 2006, that is, for two years, ten months and eleven days. The Government mentioned the possibility for the applicants to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants did make use of this remedy, which proved to be futile. In any event, the effectiveness of both sets of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures. In such circumstances the Court considers that the applicants could not be required to challenge in court every single decision of the district prosecutor's office. Accordingly, 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.

111. 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 respective disappearances of Apti and Musa Elmurzayev, in breach of Article 2 in its procedural aspect.

#### IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

112. The applicants relied on Article 3 of the Convention, submitting 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. They also complained under this

heading that Aпти and Musa Elmurzayev had probably been subjected to ill-treatment upon their respective abductions. Article 3 reads:

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

### **A. The parties' submissions**

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

114. In their observations on the admissibility and merits of the application the applicants submitted that they no longer wished to have their complaint regarding alleged ill-treatment of Aпти and Musa Elmurzayev examined. They further reiterated their complaint concerning the suffering they had endured.

### **B. The Court's assessment**

#### *1. Admissibility*

##### **(a) The complaint concerning Aпти and Musa Elmurzayev**

115. 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 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).

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

**(b) The complaint concerning the applicants**

117. The Court notes that this part of the complaint under Article 3 of the Convention 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*

118. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

119. In the present case the Court notes that the applicants are close relatives of the two disappeared men. For more than five years they have not had any news of Aпти and Musa Elmurzayev. During this period the applicants have applied to various official bodies with enquiries about their relatives, both in writing and in person. Despite their requests, the applicants have never received any plausible explanation or information as to what became of the Elmurzayev brothers following their respective kidnappings. The responses received by the applicants mostly denied that the State was responsible for the abductions 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.

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 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 Apti and Musa Elmurzayev 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 Apti and Musa Elmurzayev had been 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 85 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 Apti and Musa Elmurzayev were apprehended by State servicemen on 9 July 2002 and 27 January 2003 respectively 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 relatives had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation, leave no doubt that the authorities failed to take prompt and effective measures to safeguard them against the risk of disappearance.

129. Having regard to the Government's objection concerning the applicants' failure to complain of their relatives' unlawful detention to domestic authorities, the Court observes that after Apti and Musa Elmurzayev had been taken away by armed men, the applicants actively attempted to establish their whereabouts and applied to various official bodies, whereas the authorities denied responsibility for the detention of the two missing men. In such circumstances, and in particular in the absence of any proof to confirm the very fact of the detention, even assuming that the remedy referred to by the Government was accessible to the applicants, it is more than questionable whether a court complaint of the unacknowledged detention of the applicants' relatives by the authorities would have had any



prospects of success. Moreover, the Government have not demonstrated that the remedy indicated by them would have been capable of providing redress in the applicants' situation, namely that it would have led to the release of Apti and Musa Elmurzayev and the identification and punishment of those responsible. Accordingly, the Government's objection concerning non-exhaustion of domestic remedies must be dismissed.

130. In view of the foregoing, the Court finds that Apti and Musa Elmurzayev 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

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

132. 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 had availed themselves of it. In sum, the Government submitted that there had been no violation of Article 13.

133. The applicants reiterated their complaint.

### B. The Court's assessment

#### *1. Admissibility*

134. 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

135. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, judgment of 25 June 1997, *Reports of Judgments and Decisions* 1997-III, p. 1020, § 64).

136. As regards the applicants' complaint of lack of effective remedies in respect of their complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

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

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

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

140. As regards the applicants' reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on

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

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

## VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

142. 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

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

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

### B. The Court's assessment

145. 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.

146. 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

147. 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.”

148. In their observations on admissibility and merits of 4 December 2006 the applicants stated that they no longer wished their complaints under Articles 6 and 8 of the Convention to be examined.

149. 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 *Stamatios Karagiannis*, cited above, § 28).

150. 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

151. 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. The Government's objection

152. The Government submitted that the document containing the applicants' claims for just satisfaction had been signed by Mr E. G. Ch. Wesselink, while, in the Government's opinion, the applicants had been represented by Mr Sakalov. They insisted therefore that the applicants' claims for just satisfaction were invalid.

153. The Court points out that the applicants issued powers of attorney in the name of the SRJI, an NGO that collaborates with a number of lawyers. Since the SRJI lists Mr E. G. Ch. Wesselink as a member of its Governing Board, the Court has no doubts that he was duly authorised to sign the claims for just satisfaction on behalf of the applicants. The Government's objection must therefore be dismissed.

### B. Damage

#### *1. Pecuniary damage*

154. The applicants argued that they would have regularly obtained some pecuniary support from their missing relatives if they had not disappeared. They alleged that Apti and Musa Elmurzayev had earned 12,000 and 15,000 Russian roubles (RUB) per month respectively, and claimed loss of earnings as pecuniary damage. They left the exact amount to be awarded under this heading to the Court's discretion. However, they did not provide any documents confirming the income of the two missing persons.

155. The Government pointed out that the applicants had not substantiated their claims for pecuniary damage.

156. The Court reiterates that, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised, “failing which the Chamber may reject the claim in whole or in part”. Since the applicants have failed to produce any calculations regarding the pecuniary damage claimed, the Court decides to make no award under this head (cf. *Öneryıldız v. Turkey* [GC], no. 48939/99, § 168, ECHR 2004-XII).

## 2. *Non-pecuniary damage*

157. The applicants claimed non-pecuniary damage for the suffering 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. The second and third applicants claimed 50,000 euros (EUR) each; the seventh, eighth, tenth and eleventh applicants claimed EUR 25,000 each; the first, fourth, fifth, sixth, ninth and twelfth applicants claimed EUR 20,000 each.

158. The Government submitted that the applicants' claims had been excessive.

159. 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 and third applicants EUR 15,000 jointly; the sixth, seventh and eighth applicants EUR 24,000 jointly; the ninth, tenth and eleventh applicants EUR 24,000 jointly; the first, fourth, fifth and twelfth applicants EUR 2,000 each, plus any tax that may be chargeable thereon.

## C. Costs and expenses

160. 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 11,625 in total. They also claimed EUR 85.55 in fees for international courier mail and EUR 813.75 in administrative costs. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 12,524.30.

161. 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.

162. 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).

163. 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.

164. 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.

165. 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).

166. 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.

#### **D. Default interest**

167. 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' complaint under Article 3 in relation to the presumed ill-treatment of Apti and Musa Elmurzayev and their 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, 5 and 13, as well as the complaint under Article 3 of the Convention as regards the applicants, 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 Apti and Musa Elmurzayev;
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 Apti and Musa Elmurzayev 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 Apti and Musa Elmurzayev;
8. *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;
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 15,000 (fifteen thousand euros) in respect of non-pecuniary damage to the second and third applicants jointly; EUR 24,000 (twenty-four thousand euros) in respect of non-pecuniary damage to the sixth, seventh and eighth applicants jointly; EUR 24,000 (twenty-four thousand euros) in respect of non-pecuniary damage to the ninth, tenth and eleventh applicants jointly; EUR 2,000 (two thousand euros) in respect of non-pecuniary damage to the first, fourth, fifth and twelfth applicants each, to be converted into Russian roubles at the rate applicable 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* 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