



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

FIRST SECTION

CASE OF ISIGOVA AND OTHERS v. RUSSIA

(Application no. 6844/02)

This version was rectified on 16 March 2009
under Rule 81 of the Rules of the Court

JUDGMENT

STRASBOURG

26 June 2008

FINAL

01/12/2008

This judgment may be subject to editorial revision.

In the case of Isigova and Others v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 6844/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Russian nationals, Ms Tsalipat Shamilovna Isigova, Ms Aminat Abdurakhmanovna Isigova, Ms Khalisat Dayevna¹ Umkhanova, Ms Taisiya Magomedovna Musayeva and Mr Arbi Zelimkhanovich Umkhanov (“the applicants”), on 28 December 2001.

2. The applicants are represented before the Court by lawyers from the Stichting Russian Justice Initiative (“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 Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Ms V. Milinchuk.

3. The applicants alleged, in particular, that close relatives of theirs had disappeared following their apprehension by Russian servicemen in the Chechen Republic. They relied on Articles 2, 3, 5, 6 and 13.

4. By a decision of 12 December 2006, the Court declared the application admissible.

5. 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.

¹ Rectified on 16 March 2009: the text was “Ms Khalisat Umkhayevna Umkhanova...”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- 1) Ms Tsalipat Shamilovna Isigova, who was born in 1954;
- 2) Ms Aminat Abdurakhmanovna Isigova, who was born in 1976;
- 3) Ms Khalisat Dayevna¹ Umkhanova, who was born in 1948;
- 4) Ms Taisiya Magomedovna Musayeva, who was born in 1970;
- 5) Mr Arbi Zelimkhanovich Umkhanov, who was born in 1997.

1. Events of 2 July 2001

(a) “Sweeping” operation in Sernovodsk

7. On 2 July 2001 the federal armed forces carried out a large-scale “sweeping” operation (“*zachistka*”) in the village of Sernovodsk in Chechnya. According to the Government, interior troops of the Ministry of the Interior participated in the operation.

8. The applicants submitted numerous NGO and press reports on these events as well as statements by other villagers about the general circumstances of the sweeping operation and the detention of their relatives.

9. According to the applicants, a similar operation took place in the nearby village of Assinovskaya on 3 July 2001, where about 300 persons were detained.

(b) Detention of Apti Isigov

10. The first applicant is the mother of Apti Isigov, who was born in 1978. The second applicant is the first applicant's daughter and Apti Isigov's sister. They live at 34 Pervomayskaya Street in Sernovodsk. According to the applicants, at the material time Apti Isigov was planning to enrol in a law faculty in Moscow.

11. According to the first applicant, at about 12 noon on 2 July 2001 an armoured personnel carrier (“APC”) pulled up in front of their house. The first applicant noted that the APC identification number was Ch025. Several armed men in camouflage uniforms rushed into the courtyard, where the applicant's son Apti Isigov and his cousin Rustam Isigov, who lived in the same house, had been waiting for them with their passports in hand. The first applicant submitted that the documents were in order. Nevertheless, the soldiers had collected the passports without looking at them, pulled the Isigov cousins' shirts over their heads and forced them into the APC. In

¹ Rectified on 16 March 2009: the text was “3) Ms Khalisat Umkhavevna Umkhanova,...”

reply to the first applicant's question about the reasons for their arrest, the servicemen stated that they had orders to detain every man aged between 15 and 50.

12. The soldiers then searched the house and, according to the first applicant, took some money and household items.

13. Rustam Isigov later recalled that the APC into which they were put had stopped in a neighbouring street and they had been ordered to get out and to climb into a military truck. He had noticed a serviceman with five or six passports in his hand nearby. There were several people inside the truck, both detainees and servicemen. One of the servicemen had ordered Apti Isigov to climb into the far corner of the truck and to cover himself with a piece of canvas attached to the side. Apti had obeyed.

14. The detainees had then been taken to a passport checkpoint situated in a field near the village, where the basement of an unfinished building stood. Rustam Isigov and other detainees had been ordered out of the truck. Apti was ordered to stay in the vehicle but got out and sat on the ground with the rest of them. He was frightened and Rustam Isigov had tried to calm him down, even though the detainees were not allowed to talk. About 15 minutes later a man in camouflage uniform had arrived, had looked through a passport he had been holding and had ordered Apti Isigov to climb back into the truck.

15. The first applicant referred to the statements of other witnesses she had managed to collect which stated that Apti Isigov had then been brought to the APC no. Ch025 and had spent some time inside. Several witnesses among those detained that day stated that they had seen Apti in the APC in the afternoon of 2 July 2001, several hours after his apprehension. One of those witnesses was K. Ch. who had been taken to the passport checkpoint at about 7.40 p.m. and had seen Apti Isigov inside the APC.

(c) Detention of Zelimkhan Umkhanov

16. The third applicant is the mother of Zelimkhan Umkhanov, who was born in 1972. The fourth applicant is Zelimkhan Umkhanov's wife and the fifth applicant their son. Zelimkhan Umkhanov and his family used to live in Grozny, but after the resumption of hostilities moved to Sernovodsk to his mother's home because he thought they would be safer there.

17. The third and fourth applicants did not witness Zelimkhan Umkhanov's detention but referred to eye-witness statements submitted by them to the Court. According to those statements, at about 4 p.m. on 2 July 2001 Zelimkhan Umkhanov was detained in Groznensky Lane in Sernovodsk. The applicants submitted several statements of villagers who had witnessed Zelimkhan's detention in the street. Several witnesses, including K. Ch. (see above), stated that they had seen Zelimkhan Umkhanov in APC no. Ch025 in the afternoon of 2 July 2001.

(d) Detention at the passport checkpoint

18. The first, third and fourth applicants, along with other relatives of those detained during the “sweeping” operation, walked to the edge of the field where the men had been detained and remained there until about midnight. The guards did not allow them to approach any nearer.

19. According to the applicants, at about 6 p.m. an officer with the rank of major came out and reassured them that all the detainees would be released 30 minutes later. He also told them that he shared their indignation and that he had already talked to his superiors about the events. Later that evening he came out once again and repeated his comments.

20. At about 8 p.m. the women saw some of the detainees being put into two buses. When the buses drove off, the women tried to block them, but the soldiers started to shoot at the ground in front of the crowd and dispersed them.

21. The men from Sernovodsk remained detained at the passport checkpoint in the field until the early hours of 3 July 2001. At about 11 p.m. the military started to release them in small groups, and by 2 a.m. there was no one left in the field. About forty men were not released, however, and their relatives were eventually told that they had been taken to the Temporary Office of the Interior of Achkhoy-Martán District (“the Achkhoy-Martán VOVD”). Apti Isigov and Zelimkhan Umkhanov were not released that night, and the applicants have had no news of them since.

2. The applicants' search for their relatives

22. Early in the morning on 3 July 2001 the fourth applicant went to the military camp in an attempt to obtain information about her husband from the major who had talked to them the night before, but the military were already leaving and she was unable to speak to anyone.

23. Later in the morning on 3 July 2001 the first, third and fourth applicants, along with other relatives who had not seen their detained family members since the previous day, went to the Achkhoy-Martán VOVD. There they were shown a list of about forty names of persons from Sernovodsk, including Apti Isigov and Zelimkhan Umkhanov, who had been brought to the Achkhoy-Martán VOVD. According to the applicants, during the day detainees were gradually released from the Achkhoy-Martán VOVD, but they told the applicants that they had not seen their relatives inside. In the evening of 3 July 2001 the head of the Sernovodsk village administration joined the applicants at the Achkhoy-Martán VOVD. In reply to their enquiries the officials there denied that the two men had ever been brought there, contrary to what they had said in the morning.

24. On 4 July 2001 the applicants went to the village of Assinovskaya, in which a similar “sweeping” operation was being carried out. They saw the APC with the identification number Ch025 there and the same truck in

which their two relatives had been taken away from Sernovodsk two days earlier, a Ural with identification no. O 10 03 KSh.

25. On the same date the applicants also talked to R. Kh., who had attended the same school as Apti Isigov and knew him quite well. He stated that on 3 July 2001 he had seen Apti Isigov and Zelimkhan Umkhanov in a military Ural truck in Assinovskaya. R. Kh. said that he had heard someone asking for water from inside the truck saying that “we have not had any water since yesterday” and when one of the military lifted the canvas to give him some water, the witness had seen two men, one of whom he had immediately recognised as Apti Isigov. Both men had traces of beatings on their faces, and Zelimkhan's hand was hurt, probably broken. R. Kh.'s written statement was submitted to the Court.

26. That day the applicants waited near the passport checkpoint in the field near Assinovskaya until 3 a.m. hoping that their relatives would be released together with the detainees from that village, but in vain.

27. They and their other relatives continued to search for the two missing men. On numerous occasions, both in person and in writing, they applied to prosecutors at various levels, to the Ministry of the Interior, to the administrative authorities in Chechnya, to the Special Envoy of the Russian President for Rights and Freedoms in the Chechen Republic, to the media and to public figures. In their letters to the authorities the applicants gave details of the detention of Apti Isigov and Zelimkhan Umkhanov and asked for assistance and information about the investigation, but were given hardly anything of substance. On several occasions they and other relatives received copies of letters forwarding their requests to various prosecution services.

28. On 4 and 5 July 2001 the applicants and their relatives applied in person to the Prosecutor's Office of the Achkhoy-Martan District and submitted a written complaint. They also applied in person to the Achkhoy-Martan VOVD. They asked for assistance in searching for the two missing men, but the officials denied that they had ever been detained by the district authorities.

29. On 5 July 2001 the Prosecutor's Office of the Achkhoy-Martan District forwarded the applicants' complaints to the Achkhoy-Martan VOVD. The latter replied to the first applicant in a letter of 10 July 2001 that Apti Isigov had not been detained by the VOVD and that the local office of the Interior had no information about his whereabouts.

30. On 12 July 2001 the third applicant wrote to the head of the administration of the Sunzhenskiy District and asked for assistance in finding Zelimkhan Umkhanov and Apti Isigov. She referred to witness statements and submitted the known details of the two men's apprehension, including the identification numbers of the military vehicles and call-signs of the military involved.

31. On 12 July 2001 Rustam Isigov, who, as noted above, was Apti Isigov's cousin and a witness to his detention, wrote to the head of the Chechen Department of the Interior and on 13 August 2001 to the Prosecutor's Office of the Chechen Republic. He described in detail the events of 2 July 2001 and requested that his cousin be found.

32. On 17 July 2001 the Prosecutor's Office of the Achkhoy-Martan District informed the third applicant that her son had not been detained by personnel of the district department of the Interior and had not been brought to the Achkhoy-Martan VOVD.

33. On 13 August 2001 the second and fourth applicants wrote to the Prosecutor's Office of the Chechen Republic to complain that they had not been granted victim status in the criminal proceedings concerning the disappearance of their brother and husband respectively. On the same date the fourth applicant requested the Prosecutor's Office of the Chechen Republic to institute criminal proceedings in respect of her husband's abduction.

34. The applicants reiterated their requests for assistance in searching for their relatives and information on the progress of the investigation to the Prosecutor General's Office on 16 August 2001 and 2 October 2001, the Prosecutor's Office of the Chechen Republic on 16 August 2001, 12 and 23 September 2001 and the Minister of Defence on 1 October 2001.

3. Official investigation into the events of 2 July 2001

35. On 8 July 2001 the Prosecutor's Office of the Achkhoy-Martan District instituted criminal proceedings in connection with numerous complaints of the residents of Sernovodsk of abuse of authority by federal servicemen during a special operation of 2 July 2001. The case file was assigned number 27031.

36. On 10 September 2001 the Prosecutor's Office of the Chechen Republic informed the third applicant of the decision of 8 July 2001, stating that the disappearance of Apti Isigov and Zelimkhan Umkhanov was being investigated in the context of those proceedings. On 3 October 2001 the Prosecutor's Office of the Chechen Republic informed the applicants that the proceedings in criminal case no. 27031 were pending and that they would be informed of the outcome.

37. On 19 October 2001 the Ministry of the Interior replied to the applicants that their complaint had been forwarded to the Chechen Department of the Interior and that the search for their relatives would remain under the control of the Ministry.

38. On 22 November 2001 the Ministry of the Interior informed the applicants that a number of steps aiming at locating their relatives' whereabouts had been taken. In particular, the Achkhoy-Martan VOVD had opened "search files" (*розыскные дела*) and the two men had been included in the federal search database as well as in the system of identification of

unidentified bodies. However, those efforts had not brought any results thus far. The letter assured the applicants that they would be informed of any results of the search.

39. On 10 September 2002 the third applicant requested the Prosecutor's Office of the Chechen Republic to update her on the results of the investigation.

40. In similar letters dated 3 October 2002 the latter replied to each of the applicants that on 8 July 2001 the Prosecutor's Office of the Achkhoy-Martan District had opened criminal investigation no. 27031 in connection with the allegations of abuse of authority, unlawful use of violence and detention, theft and destruction of property during the special operation in Sernovodsk on 2-4 July 2001 and that the investigation was being conducted by the Prosecutor's Office of the Chechen Republic. It had established that at about 11.20 a.m. and 4 p.m. respectively on 2 July 2001, Apti Isigov and Zelimkhan Umkhanov had been detained and that their whereabouts had remained unknown since. APC no. Ch025 belonged to military unit no. 6783, which had participated in the operation. During questioning, the APC crew had stated that they had taken a number of people to the location of Ministry of Justice detachments which had been carrying out identity checks on the detainees. The investigating authorities had also questioned a number of servicemen from the Ministry of Justice who had stated that pursuant to an order of Lieutenant-Colonel G., the deputy commander of the operation, they had put two "Chechens" into a separate vehicle. On 5 July 2001, also upon the deputy commander's orders, the two men had been taken to the military base in Khankala (the main Russian military base in Chechnya) where they had been handed over to servicemen from the Ministry of the Interior. However, given that no record concerning their apprehension or detention had been drawn up, it had been impossible to establish their identities. The letters did not specify whether Lieutenant-Colonel G. had been questioned as a witness. It was further stated that the investigating authorities had been unable either to identify those responsible or to establish the whereabouts of Apti Isigov and Zelimkhan Umkhanov. The search had also involved verification of unidentified bodies in Chechnya and the neighbouring regions. The relatives of those missing had been granted victim status in the criminal proceedings. The letters concluded that on 12 June 2002 the investigation had been suspended owing to the failure to identify the alleged perpetrators.

41. According to the applicants, between July 2001 and May 2002 at least five investigators of the Prosecutor's Office of the Chechen Republic had been appointed in turn to deal with the case. The missing men's personal details, such as their height, shoe size and photographs, had only been collected from the applicants in the spring of 2002. The applicants also submitted that the investigators had complained to them that they had had

no answers or assistance from the military authorities of the Khankala base in establishing the whereabouts of Apti Isigov and Zelimkhan Umkhanov.

42. On 26 October 2002 the Prosecutor's Office of the Chechen Republic, in reply to a query from the first applicant, confirmed that her son was being searched for by the law-enforcement bodies and that the investigation in criminal case no. 27031 had been suspended on 12 June 2002, as it had been impossible to identify those responsible.

43. On 12 November 2002 similar information was sent to Zelimkhan Umkhanov's father.

44. In a letter of 20 March 2003 the Prosecutor's Office of the Chechen Republic informed the fourth applicant that the criminal proceedings in case no. 27031 had been resumed on 19 March 2003.

45. In a letter of 18 April 2003 the SRJI, on behalf of the first and third applicants, requested the Prosecutor's Office of the Chechen Republic to inform them of the developments in the investigation and to grant them victim status in the proceedings. On 24 July 2003 the SRJI sent a copy of its previous letter to the Prosecutor's Office of the Chechen Republic, as it had not received any reply. On the same date the applicants forwarded a similar letter to the Prosecutor General's Office.

46. On 19 April 2003 the investigation was suspended on account of the failure to identify the culprits.

47. On 25 August 2003 the Prosecutor's Office of the Chechen Republic replied to the SRJI's request lodged on the applicants' behalf that criminal case no. 27031 had been forwarded to the Southern Federal Circuit Department of the Prosecutor General's Office for examination.

4. Separate investigation into the disappearance of Apti Isigov and Zelimkhan Umkhanov

48. According to the Government, "having obtained reliable information that Apti Isigov and Zelimkhan Umkhanov had disappeared during the special operation", on 14 April 2003 the Prosecutor's Office of the Chechen Republic decided that a case in respect of the disappearance of the applicants' two relatives under Article 126 (2) of the Russian Criminal Code (aggravated kidnapping) should be opened and severed from criminal case no. 27031. It appears that the new case was first assigned number 59114 which was then changed to number 34/33/0506-03. It was sent for investigation to the military prosecutor's office of military unit no. 20102 in Khankala in order to check the possible involvement of military personnel in the alleged offence.

49. In his decision of 14 April 2003 to open criminal case no. 59114, the deputy prosecutor of the Chechen Republic, "having examined the information on a criminal offence committed on 2 July 2001 during the special operation of the federal forces in Sernovodsk, which had been

submitted by an investigator of the Prosecutor's Office of the Chechen Republic on 14 April 2003", established that:

"On 2 July 2001, during a special operation in the village of Sernovodsk of the Sunzhenskiy District of the Chechen Republic, A.A. Isigov and Z.U. Umkhanov were detained and taken away in APC no. Ch025 by detachments of the federal forces. However, they were not delivered to the passport checkpoint situated on the outskirts of Sernovodsk. Their whereabouts remain unknown to date. The investigation has established that the APC belonged to [a detachment] of the Ministry of the Interior which, during the operation, was under the command of the commander of military unit no. 6785, Major [M.]. The crew of APC no. Ch025 was under the command of Senior Lieutenant [K.]."

50. The decision then made orders for a criminal case to be opened under Article 126 (2) of the Russian Criminal Code and criminal proceedings to be brought against M. and K. on suspicion of the abduction of the applicants' two relatives.

51. In a letter of 17 April 2003, the Prosecutor's Office of the Chechen Republic informed the first and third applicants "in reply to their numerous queries" that on 14 April 2003 criminal proceedings no. 59114 had been instituted under Article 126 (2) in connection with the abduction of their sons on 2 July 2001 by participants of the special operation carried out by the federal forces in Sernovodsk. The letter stated that the applicants would be notified of any results of the investigation.

52. On 21 May 2003 the Prosecutor's Office of the Chechen Republic transferred the criminal case to the Military Prosecutor's Office of the United Group Alignment (UGA, *Объединенная группировка войск*). The decision, submitted by the Government, read as follows:

"On 2 July 2001, during a special operation in the village of Sernovodsk of the Sunzhenskiy District of the Chechen Republic conducted by federal forces, Ministry of the Interior troops detained [A.A.] Isigov, who was born in 1978, and [Z.U.] Umkhanov, who was born in 1972, whose whereabouts have yet to be established.

On 2 July 2001 a special operation was conducted in the village of Sernovodsk in the Sunzhenskiy District of the Chechen Republic in accordance with the UGA commander's directive no. 3/01743 of 26 June 2001 and UGA order no. 3/01846 of 1 July 2001. The UGA deputy commander in respect of special operations, Colonel [B.], was the head of the operation. Detachments from the Ministry of Defence, the Ministry of the Interior, the Federal Security Service and the Temporary United Alignment of Agencies and Units of the Ministry of the Interior [*БОГО и П МВД – временная объединенная группировка органов и подразделений МВД*] took part in its conduct.

Units 99 DON, 352 ORB [*ОРЕ – отдельный разведывательный батальон*], 46 OBRON [*ОБРОН – отдельная бригада оперативного назначения*], special task units nos. 8 and 12 under the command of Colonel [V.] took part in the operation on behalf of Ministry of the Interior troops.

A passport checkpoint was established on the outskirts of Sernovodsk in order to check the passports of those detained. This work was carried out by 14 officials of the Department of Execution of Punishments of the Ministry of Justice under the command of Major [Vas.], who arrived in [two special vehicles for transporting the detainees] and a bus, and by four members of operations staff of the Temporary United Alignment of Agencies and Units of the Ministry of the Interior under the command of Major [Mos.].

Pursuant to an order by Colonel [B.], 15 joint search groups were formed of servicemen from special task units nos. 8 and 12, 352 ORB, military unit no. 6783, 46 OBRON... and policemen under the command of officers from Ministry of the Interior troops.

Cover for the groups was provided by armoured Ministry of the Interior units whose identifications numbers were concealed by mud on the orders of the operation commanders.

In the morning of 2 July 2001., one of the search groups under the command of the head of intelligence of 46 OBRON Lieutenant-Colonel [M.] detained [R.S.] Isigov and [A.A.] Isigov at 34 Pervomayskaya Street. They were both taken out of the house by subordinates of [M.] and put in APC-80 (identification no. Ch025), which was under the command of a head of platoon from military unit no. 6785 Senior Lieutenant [K.].

In the course of the preliminary investigation it has been established that in the morning of 2 July 2001 [A.A.] Isigov was held in APC-80 (identification no. Ch025) under the command of Senior Lieutenant [K.] and subsequently in a Ural military vehicle. In the afternoon [A.A.] Isigov returned to [the] APC, where he was held together with [Z.U.] Umkhanov.

During the conduct of the special operation in Sernovodsk on 2 July 2001 one of the search groups detained... [Z.U.] Umkhanov, who resided at 4 Kutalova Street, Sernovodsk. During the afternoon of 2 July 2001 he was also held in APC-80 [with the identification no.] Ch025.

After their detention by the Ministry of Interior troops on 2 July 2001 A.A. Isigov and Z.U. Umkhanov were not brought to the passport checkpoint or transferred to the police. Nor are they listed in the register of residents of Sernovodsk who were detained at the passport checkpoint.

R.S. Isigov, who was questioned as a witness, stated that some time after he and A. Isigov had been apprehended by the servicemen and placed in the APC they were transferred to a Ural vehicle in which other residents of the village had already been placed. That vehicle had taken them to the passport checkpoint where everybody except for his cousin had got out. A. Isigov had then been taken to an unknown destination. During the night between 2 and 3 July 2001 R.S. Isigov had been allowed to go home and his passport had been returned to him.

On the basis of the records of questioning of officials from the Department of Execution of Punishments of the Ministry of Justice it has been established that during the operation three residents of Sernovodsk of Chechen ethnic origin were held in [the special vehicle used for transporting detainees] without proper documents authorising their detention. The investigation has established that those persons were [Kud.],

[Gan.] and [Gad.], who on 3 July 2001 were brought to the village of Assinovskaya and then transferred to the Achkhoy-Martan VOVD.

On 3 July 2001 witnesses [R.Kh.] and [V.Kh.], who resided [in] the village of Assinovskaya, saw A.A. Isigov in a military vehicle ZIL-131 in which they were also placed by Ministry of the Interior troops and taken to the passport checkpoint on the outskirts of Assinovskaya for an [identity] control.

[V.Kh.] identified Senior Lieutenant [K.] as the head of the group that had detained them on 3 July 2001 and ordered them to be put in the military vehicle ZIL-131 where an acquaintance, A. Isigov from Sernovodsk, was already held. There was also another man in the vehicle, whom the witnesses had not been able to see clearly. Both men's arms were tied.

However, neither A.A. Isigov nor Z.U. Ukhmanov are mentioned in the records pertaining to the period from 3 to 5 July 2001 in the register kept at the passport checkpoint in the village of Assinovskaya. Therefore, it is established that between 2 and 5 July 2001 A.A. Isigov and Z.U. Ukhmanov were neither held in [the special vehicles used for transporting detainees] by the Department of Execution of Punishments of the Ministry of Justice nor brought to the [premises of the] Temporary United Alignment of Agencies and Units of the Ministry of the Interior.

On 5 July 2001 three persons of Chechen ethnic origin were brought to the Temporary United Alignment of Agencies and Units of the Ministry of the Interior in Khankala. However, they were residents of the village of Assinovskaya... and were released later at the request of [the head of the village administration].

On 14 April 2003 materials concerning the kidnapping of A.A. Isigov and Z.U. Ukhmanov on 2 July 2001 by participants of the special operation were separated from criminal case no. 27031, and criminal case no. 59114 was opened...

In the course of the preliminary investigation it has been established that servicemen from military units nos. 6783 and 6785 under the command of Lieutenant Colonel [M.] and Senior Lieutenant [K.] were involved in the abduction of A.A. Isigov and Z.U. Ukhmanov. This has been confirmed by the records of questioning of witnesses [D.], [K.] and [Gar.] and by reports of identification by [M.], [K.], [Gar.] and [D.] and by witnesses and victims.

[G.], who was questioned as a witness, submitted that Ministry of the Interior troops had, in breach of orders of the head of the operation Colonel [B.], independently carried out searches and apprehended persons on 2 July 2001 in Sernovodsk. [G.] had informed Colonel [V.] of this, but he had ignored the information.

Witness [K.] submitted that during the day of 2 July 2001 he had received by radio transmitter numerous orders [from M.] to take his APC-80 [with identification no.] Ch025 to specified addresses in Sernovodsk and to accept persons apprehended by intelligence units of the Ministry of the Interior troops. [Those arrested were] subsequently to be delivered to the passport checkpoint and transferred to offices used by troops from the Alignment [of Agencies and Units] of the Ministry of the Interior without any documents [authorising their detention]. He also submitted that he had witnessed a quarrel between [M.] and a local resident which had taken place in the afternoon of 2 July 2001 relating to the order requiring the identification numbers of

the armoured vehicles to be covered in mud. [M.] had ordered [K.] to cover the identification number Ch025 of the APC-80 in mud as well.

Therefore, it is established that Ministry of the Interior troops were involved in the abduction of A.A. Isigov and Z.U. Ukhmanov. Furthermore, the investigation has refuted false statements by the heads of the special operation, Colonels [B.] and [V.] [who stated that] the servicemen had not been involved in detentions during the special operation.

The lack of control by Colonel [V.] and Colonel [B.] over the conduct of the operation and their failure to perform their duties properly led to the commission of this premeditated crime by servicemen. In breach of the established order concerning the conduct of the special operation, the Ministry of the Interior troops independently carried out checks of private households and detained and searched people and took them to the passport checkpoint.

Furthermore, Colonels [V.] and [B.] concealed from the UGA command the abduction of A.A. Isigov and Z.U. Ukhmanov by Ministry of the Interior troops under the command of Lieutenant-Colonel [M.] and Senior Lieutenant [K.], who had participated in the special operation of 2 July 2001.

Since the preliminary investigation of this type of offence ... is carried out by the military prosecutor's office ... criminal case no. 59114 ... [shall be] transferred to the UGA Military Prosecutor's Office..."

53. On 25 August 2003 the UGA Military Prosecutor's Office said in reply to an enquiry from the fourth applicant that the case was being investigated by the military prosecutor's office of military unit no. 20102.

54. On 13 September 2003 the military prosecutor's office of military unit no. 20102 extended the term of the preliminary investigation until 14 October 2003. The decision described the investigative acts that had been performed, which included: the questioning of twenty-nine residents of Sernovodsk; the questioning of the first, third and fourth applicants and granting them victim status; the questioning of servicemen M., K., Kom., D. "and others" who had taken part in the operation. It was further stated that additional steps were required to complete the investigation.

55. On 23 September 2003 the military prosecutor's office of military unit no. 20102 informed the SRJI that they were in the process of investigating criminal case no. 34/33/0506-03, which had been instituted under Article 126 (2) of the Russian Criminal Code by the Prosecutor's Office of the Chechen Republic on 14 April 2003. It stated that it had received the case file in May 2003 and victim status in the proceedings had been granted to the first, third and fourth applicants. In that connection, the military prosecutor's office noted that copies of the decision granting victim status could only be served on the victims. In conclusion it was stated that the relatives of the missing men would be notified of the results of the investigation.

56. On 14 October 2003 the military prosecutor's office informed the applicants that the preliminary investigation had been suspended on 14 October 2003, in accordance with Article 208 (1) § 3 of the Russian Code of Criminal Procedure and that they could challenge that decision before a superior prosecutor or in court.

57. On 10 November 2003 the military prosecutor's office resumed the proceedings and notified the fourth applicant accordingly.

58. On 10 December 2003 it again suspended the investigation, on this occasion on account of the death of suspect M. and the fact that suspect K. had been transferred to a different region.

59. On 19 December 2003 the Leninskiy District Court of Grozny declared Zelimkhan Umkhanov a missing person as from 2 July 2001.

60. On 17 January 2005 the Moscow City Military Prosecutor's Office resumed the investigation.

61. On 25 January 2005 it suspended the investigation. The first and third applicants were notified accordingly. The decision read as follows:

“On 14 April 2003 the Prosecutor's Office of the Chechen Republic instituted criminal proceedings under Article 126 (2) of the Criminal Code against [M.], [K.] and other persons.

On 2 July 2001, during a special operation in the village of Sernovodsk of the Sunzhenskiy District of the Chechen Republic, A.A. Isigov and Z.U. Umkhanov were detained and taken away in APC no. Ch025. Their whereabouts have not been established.

On 17 January 2004 the Chief Military Prosecutor's Office transferred the criminal case to the Moscow City Military Prosecutor's Office with instructions to take additional investigative and other steps. On the same date the investigation was resumed.

In the course of the investigation it was established that APC no. Ch025 belonged to Ministry of the Interior troops [detachment] 46 OBRON, which during the special operation had been under the command of [K.], who was subordinate to [M.].

On 19 March 2003 [K.] was transferred ... to military unit no. 6702 in Moscow.

However, according to the extract from order no. 38 dated 27 February 2004 of the commander of military unit no. 6702, [K.] was no longer on the list of staff of the military unit as he had [retired].

On 16 March 2003 [M.] died in [a Ministry of the Interior hospital].

In view of the fact that all investigative measures possible in the absence of the suspects have been taken ... the preliminary investigation ... should be suspended until there is a real possibility of [K.] participating in it or until his recovery.”

62. On 4 March 2005 the military prosecutor's office of military unit no. 20102 resumed the criminal proceedings.

63. By a decision of 21 March 2005 it discontinued the criminal proceedings in case no. 34/33/0506-03. The first and the third applicants were informed accordingly. The decision stated that on 2 July 2001, during a special operation conducted by detachments of the federal armed forces and the Ministry of the Interior in the village of Sernovodsk, a group of servicemen under the command of Major M. from military unit no. 6783 had detained Apti Isigov and Zelimkhan Umkhanov and put them in APC no. Ch025 under the command of Senior Lieutenant K. from the same military unit. The two detainees had then been delivered to the passport checkpoint and transferred to officers of the Department of Execution of Punishments of the Ministry of Justice. On the same day Apti Isigov and Zelimkhan Umkhanov had been taken away from the passport checkpoint by unidentified persons in to an unknown destination and their location had remained unestablished since.

64. The decision went on to say that in the above connection on 14 April 2003 the Prosecutor's Office of the Chechen Republic had instituted criminal proceedings against M., K. and others on suspicion of their involvement in a criminal offence under Article 126 (2) (aggravated kidnapping) of the Russian Criminal Code. According to the decision, a number of witnesses had been questioned during the investigation. In particular, suspect K. had stated that during the special operation of 2 July 2001 in Sernovodsk he had been entrusted with the task of delivering those detained in the course of that operation to a passport checkpoint on the outskirts of Sernovodsk and that he had not taken them anywhere else. He had also stated that he had had no information concerning the fate of the applicants' two relatives. Witness M. and the driver of APC no. Ch025 had given similar oral evidence. The latter had also stated that there were no detainees left in the vehicle after the termination of the operation.

65. According to the decision, the investigating authorities had also questioned Colonel G., who was one of the senior officers in charge of the operation. He had stated that detachments from the Ministry of Defence, Ministry of the Interior troops, special police units from the city of Moscow and the Stavropol Region, a Ministry of the Interior mobile detachment in the Chechen Republic, officers of the Achkhoy-Martan VOVD and personnel from the Ministry of Justice had taken part in the operation. Those detained during the operation had been delivered to a passport checkpoint on the outskirts of Sernovodsk. The identity check had been carried out by Ministry of Justice personnel. Colonel G. had also referred to reports by his officers that during the operation unidentified persons, who were probably representatives of law-enforcement agencies, had disembarked from helicopters which had landed in the village. Some of these agents had been wearing masks, whilst the servicemen under his command had not worn masks that day.

66. The decision further referred to the statements of four residents of Sernovodsk, including Apti Isigov's cousin Rustam Isigov (who had been detained on 2 July 2001), all of whom had stated that they had seen the applicants' two relatives delivered to the passport checkpoint on the outskirts of Sernovodsk. The first applicant and Rustam Isigov, who were questioned during the investigation, had stated that they had seen the names of Apti Isigov and Zelimkhan Umkhanov on the list of detainees at the Achkhoy-Martan VOVD on 3 July 2001. The decision also stated that on 16 March 2003 Major M. had died and on 27 February 2004 Senior Lieutenant K. had been discharged from service.

67. It then concluded that Major M., Senior Lieutenant K. and servicemen of the federal armed forces who had participated in the special operation in Sernovodsk on 2 July 2001 had not been involved in the abduction of Apti Isigov and Zelimkhan Umkhanov and that therefore the criminal proceedings against them should be discontinued "in the absence of evidence of an offence".

68. On 31 March 2005 the Prosecutor's Office of the Chechen Republic resumed the criminal proceedings before suspending them on 4 April 2005 on account of the failure to identify the culprits.

69. On 7 March 2007 the Prosecutor's Office of the Chechen Republic resumed the criminal proceedings. The third and the fourth applicants were informed accordingly.

70. Despite specific requests by the Court on several occasions, the Government refused to submit a copy of the entire investigation file opened into the disappearance of Apti Isigov and Zelimkhan Umkhanov on the ground that they were prohibited from doing so by Article 161 of the Code of Criminal Procedure. After the application had been declared admissible they submitted an update on the progress of the investigation and materials from the case file running to some 92 pages. The materials contained information on the conduct of the special operation in Sernovodsk, the investigative measures taken and the interim findings of the investigation.

II. RELEVANT DOMESTIC LAW

71. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR. On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (the new CCP).

72. Article 125 of the new CCP provides for the judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

73. Article 161 of the new CCP stipulates that evidence from the preliminary investigation may not be disclosed. Part 3 of the same Article

provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator, but only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of participants in criminal proceedings without their permission.

74. Article 208 (1) § 3 lays down that the preliminary investigation must be suspended if the whereabouts of a suspect are known, but it is impossible to ensure his participation in criminal proceedings.

THE LAW

I. GOVERNMENT'S PRELIMINARY OBJECTION FOR FAILURE TO EXHAUST DOMESTIC REMEDIES

A. The parties' submissions

75. The Government contended that the application should be declared inadmissible as the applicants had failed to exhaust the domestic remedies available to them. With reference to the Constitution and other domestic legal instruments, they argued that it had been open to the applicants to lodge complaints, in courts in various regions of Russia or directly in the Supreme Court of Russia, about the allegedly unlawful detention of their relatives or about the acts or omissions of the investigating or other law-enforcement authorities, but they had not availed themselves of that remedy. The Government enclosed a number of letters from various courts in Russia, stating that the applicants had never lodged any such complaints with the courts in question.

76. The applicants contested the Government's objection. They claimed that an administrative practice consisting in the authorities' continuing failure to conduct adequate investigations into offences committed by representatives of the federal forces in Chechnya rendered any potentially effective remedies inadequate and illusory in their case. They argued that, in any event, they had repeatedly applied to law-enforcement bodies, including various prosecutors, and had attempted to participate in the investigation. That avenue, however, had proved futile, as the criminal investigation had been pending for several years but had failed to identify those involved in the illegal detention and disappearance of Apti Isigov and Zelimkhan Umkhanov, despite compelling evidence confirming the involvement of federal servicemen.

77. The applicants also stated that under domestic law a court could, when examining such a complaint, order the investigating authorities to resume the investigation or take certain investigative measures. In this connection, the applicants pointed out that the investigation into their relatives' abduction had been resumed on several occasions following their complaints to higher prosecutors, but without result. They therefore argued that lodging court complaints against the investigators would not have changed the situation, so that they had been under no obligation to make use of that remedy.

B. The Court's assessment

78. The Court notes that in its decision of 12 December 2006 it considered that the question of the exhaustion of domestic remedies was closely linked to the substance of the applicant's complaints and should be joined to the merits.

79. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above, p. 1211, § 68; and *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

80. Inasmuch as the Government's preliminary objection concerns the applicants' failure to complain of their relatives' unlawful detention, the Court observes that after their missing relatives were taken away by armed men on 2 July 2001, the applicants actively attempted to establish their whereabouts and applied to various official bodies, whereas the authorities denied all responsibility for their detention. In such circumstances, and in particular in the absence of any proof to confirm the very fact of 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 Isigov and Zelimkhan Umkhanov and the identification and punishment of those responsible.

81. To the extent that the Government argued that the applicant had not complained to a court about the acts or omissions of the investigating or other law-enforcement authorities, the Court notes that the Government referred to a number of domestic legal instruments guaranteeing a right to appeal against the acts or omissions of State authorities and officials to a court.

82. Inasmuch as this limb of the Government's preliminary objection concerns complaints that might be lodged by the applicant outside the framework of criminal proceedings, the Government have not submitted any evidence that this remedy was accessible to the applicant in practice or any explanation as to how it could have provided the applicant with adequate redress. Therefore, they have not substantiated their contention that the remedy the applicant had allegedly failed to exhaust was an effective one.

83. Inasmuch as this limb of the Government's preliminary objection concerns complaints that might be lodged by the applicant within the context of criminal proceedings, the Court notes that the accessibility and prospects of success of this remedy largely depended on whether the applicant had been duly informed about the progress of the investigation. The Court considers that these issues are closely linked to the question of the effectiveness of the investigation, and it would therefore be appropriate to address the matter in the examination of the substance of the applicant's complaints under Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

84. The applicants complained under Article 2 of the Convention of the violation of the right to life of Apti Isigov and Zelimkhan Umkhanov. Article 2 provides:

“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 Apti Isigov and Zelimkhan Umkhanov

1. Arguments of the parties

85. The applicants maintained their complaints. In their opinion, it was beyond reasonable doubt that the men who had apprehended and taken away their two relatives on 2 July 2001 were from the federal forces, given the fact that those forces had carried out a special operation in Sernovodsk on the date in question and that this had been confirmed by eyewitness statements, NGO and media reports submitted by the applicants and acknowledged by the Government in their observations. The applicants accordingly argued that following their arrest Apti Isigov and Zelimkhan Umkhanov had been under the control of the State. They stressed that their relatives had been apprehended in life-threatening circumstances and contended that the fact that Apti Isigov and Zelimkhan Umkhanov were not listed among those being held in detention centres proved that their lives had been endangered after their arrest, since it was widespread practice in Chechnya for people apprehended by State agents to be deprived of their lives either immediately, or shortly afterwards. Relying on Article 2 of the Convention, they thus argued that the fact that their relatives had remained missing since 12 May 2001 proved that they had been killed. They also claimed that the special operation carried out on the aforementioned date had not been properly planned and supervised by the authorities to ensure that it met the requirements of Article 2.

86. The Government, relying on a reply from the Prosecutor General's Office, submitted that on 2 July 2001 federal forces had conducted a special operation in Sernovodsk aimed at the detention of members of illegal armed groups. Officials from various departments and Ministry of the Interior troops had taken part in the operation. Since residents of Sernovodsk had complained of breaches of the law by those manning the operation, criminal investigation no. 27031 had been instituted. On 14 April 2003 after "reliable information" concerning the disappearance in the course of the special operation of Apti Isigov and Zelimkhan Umkhanov was received, the criminal proceedings concerning their disappearance were separated into a different file no. 34/33/0506-03. The military prosecutor's office of military unit no. 20101 had been in charge of the investigation. The Government stated that the investigation had not established the involvement of military personnel in the abduction of Apti Isigov and Zelimkhan Umkhanov. Further, there was no convincing evidence that the applicants' two relatives were dead, since their whereabouts had not been established or their bodies found.

2. *The Court's assessment*

(a) *General principles*

87. In cases in which there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information capable of corroborating or refuting an applicant's allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of those allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

88. The Court points out that a number of principles have been developed in its case-law for situations where it is faced with a task of establishing facts on which the parties disagree. As to the facts in dispute, the Court reiterates its jurisprudence confirming the standard of proof “beyond reasonable doubt” in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others*, cited above, § 160).

89. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 32; and *Avşar*, cited above, § 283), even if certain domestic proceedings and investigations have already taken place.

90. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Timurtaş v. Turkey*, no. 23531/94, § 82, ECHR 2000-VI).

91. These principles apply also to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation of what happened on the

premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Taniş and Others*, cited above, § 160).

(b) Establishment of the facts

92. The applicants submitted that during a special operation conducted in Sernovodsk at around 12 noon on 2 July 2001 federal servicemen had entered the household where Apti Isigov lived, put him and his cousin Rustam Isigov in the APC with identification no. Ch025 and driven off. At around 4 p.m. on the same date federal servicemen had entered the household where Zelimkhan Umkhanov lived, put him in the APC with identification no. Ch025 and driven off. Unlike other persons apprehended in the course of the special operation, Apti Isigov and Zelimkhan Umkhanov were not transferred to the passport checkpoint. The next day they had been seen in another military vehicle in the neighbouring village of Assinovskaya. The applicants produced witness statements to corroborate their submissions.

93. The Government submitted that on 2 July 2001 Apti Isigov and Zelimkhan Umkhanov had disappeared during a special operation in Sernovodsk. However, the involvement of servicemen in their disappearance had not been established.

94. The Court notes that in the decision to institute criminal proceedings of 14 April 2003 the deputy prosecutor of the Chechen Republic stated that it was established that Apti Isigov and Zelimkhan Umkhanov had been detained and taken away in APC no. Ch025 by detachments of the federal forces and had not been brought to the passport checkpoint on the outskirts of Sernovodsk. The investigation had established that APC no. Ch025 was under the command of Senior Lieutenant K. and belonged to military unit no. 6785 under the command of Major M. These findings were subsequently confirmed by the Prosecutor's Office of the Chechen Republic in the decision of 21 May 2003 to transfer the file to the military prosecuting authorities, by the Moscow City Military Prosecutor's Office in the decision of 25 January 2005 to resume the investigation and by the military prosecutor's office of military unit no. 20102 in the decision of 21 March 2005 to discontinue the criminal proceedings.

95. The Court observes that from the body of evidence submitted by the parties it thus unequivocally follows that Apti Isigov and Zelimkhan Umkhanov were detained by servicemen on 2 July 2001 in the course of the special operation in Sernovodsk.

96. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Apti Isigov and Zelimkhan Umkhanov were apprehended by federal servicemen on 2 July 2001.

(c) Compliance with Article 2

97. The Court takes note of the applicants' submission that their relatives should, in the circumstances, be presumed dead, and of the Government's argument that since their deaths have not been confirmed by the domestic courts there are no grounds for such a presumption.

98. The Court observes that there has been no reliable news of the applicants' relatives since July 2001. Having regard to its finding in paragraph 96 above that Apti Isigov and Zelimkhan Umkhanov were detained by federal servicemen, it notes with concerns that their names were not found in the records of any of the detention facilities. Furthermore, the Government did not submit any plausible explanation as to what happened to them after they were apprehended by servicemen and placed in the APC.

99. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva v. Russia*, no. 7615/02, 9 November 2006 and *Luluyev and Others v. Russia*, no. 69480/01, 9 November 2006), 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 Isigov and Zelimkhan Umkhanov or any news of them for almost seven years corroborates this assumption. Furthermore, the Government have failed to provide any explanation for the disappearance of Apti Isigov and Zelimkhan Umkhanov and the official investigation, which has been dragging on for almost seven years, has produced no tangible results.

100. For the above reasons the Court considers that Apti Isigov and Zelimkhan Umkhanov must be presumed dead following their unacknowledged detention. Consequently, the responsibility of the respondent State is engaged. Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, it follows that liability for their presumed deaths is attributable to the respondent Government.

101. Accordingly, there has been a violation of Article 2 on that account in respect of Apti Isigov and Zelimkhan Umkhanov.

B. The alleged inadequacy of the investigation into the disappearance of Apti Isigov and Zelimkhan Umkhanov

1. Arguments of the parties

102. The applicants claimed that the authorities had failed in their obligation to carry out an effective investigation into the circumstances of their relatives' disappearance. They argued that the investigation had fallen

short of the requirements of domestic law and the Convention standards. In particular, it had been pending for several years but had not brought any tangible results thus far, having been repeatedly suspended and reopened. Furthermore, the investigating authorities had failed to inform the applicants of the decisions concerning the adjournment and reopening of the investigation or its progress. The applicants' numerous requests to the authorities throughout the investigation had remained unanswered or only produced standard replies. The applicants had not been granted access to the case file. In support of their argument regarding the ineffectiveness of the investigation, the applicants also referred to the Government's refusal to submit a copy of the file in the criminal case concerning their relatives' disappearance. The applicants also argued that the investigation could not have met the requirements of Article 2 of the Convention since civilian prosecuting authorities were not competent to conduct investigations involving the military and military prosecuting authorities could not be considered to be independent from the military.

103. The Government submitted that the investigation was pending and it was therefore premature to claim that it was ineffective.

2. *The Court's assessment*

104. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [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 (see, *mutatis mutandis*, *McCann and Others*, cited above, p. 49, § 161; and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001; and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

105. The Court notes that the applicants informed the domestic authorities of the disappearance of their relatives on 3 July 2001, the day following their apprehension. However, the official investigation was not

instituted until five days later. There was thus a delay in instituting the investigation in a situation where prompt action was vital.

106. The Court further notes that initially, on 8 July 2001, investigation no. 27031 was instituted following numerous complaints from residents of Sernovodsk, including the applicants, of abuse of authority by federal servicemen during the conduct of the special operation. The investigation was suspended on 12 June 2002 and resumed on 19 March 2003. On 14 April 2003 the materials concerning the abduction of Apti Isigov and Zelimkhan Umkhanov were separated into a different case file no. 59114 (no. 34/33/0506-06). According to the decision to sever the proceedings, the investigation had established that the applicants' relatives had been taken away in APC no. Ch025 by detachments of federal forces under the command of K. and M.

107. The Court observes that from the materials available to it is not clear whether the investigation established the above facts before or after the severance of the criminal proceedings relating to the abduction of the applicant's relatives. If they were established shortly after the institution of investigation no. 27031, the Court has no reasonable explanation as to why the investigation was then suspended for almost a year on the ground of a failure to identify the alleged perpetrators. If they were established shortly before or after the severance of the proceedings into the abduction of Apti Isigov and Zelimkhan Umkhanov, the Court has no explanation as to why the required investigative measures were not taken at an earlier stage, given that the information concerning the detachments involved in the special operation on 2 July 2001 had been available to the competent domestic authorities and must have been made accessible to the investigators.

108. As to the subsequent progress of the investigation, the Court notes that the decision of 21 May 2003 to transfer the case from the Prosecutor's Office of the Chechen Republic to the UGA Military Prosecutor's Office contained very detailed information concerning the conduct of the special operation and described the investigative measures taken and findings made. The decision stated that it had been established that Ministry of Interior troops, in particular, detachments of federal forces under the command of K. and M., had been involved in the abduction of Apti Isigov and Zelimkhan Umkhanov (see paragraph 52 above). However, following the transfer of the investigation to the military prosecuting authorities, the investigation was suspended a number of times on the ground that it was impossible to ensure the participation of the suspects in criminal proceedings. The Court notes that M. died on 16 March 2003. As for K., it appears that he has retired from military service and continues to reside in Russia. The Court was not provided with a satisfactory explanation as to why it appeared impossible to the military prosecuting authorities to ensure his participation in the investigation or with any information concerning the attempts they had made to do so. The case was then transferred back to the Prosecutor's Office

of the Chechen Republic, which on 31 March 2005 suspended the investigation on account of the failure to identify the alleged perpetrators, before resuming it on 7 March 2007 but with no meaningful outcome.

109. The Court considers that in the circumstances of the present case where the identities of the detachments and their commanders involved in the abduction of the applicants' relatives were established by the domestic investigation, the failure to bring charges may only be attributed to the negligence of the prosecuting authorities in handling the investigation and their reluctance to pursue it. The Court finds it appalling that after the commander of the detachment that had apprehended Apti Isigov and Zelimkhan Umkhanov had been identified, the investigation was repeatedly suspended on the grounds of the failure to identify the alleged perpetrator or to ensure the suspect's participation in the proceedings. Such a manner of proceeding offered no prospect of bringing those responsible for the offence to account or of establishing the fate of the applicants' relatives.

110. As to ensuring the interests of the next-of-kin, the Court notes that the first, third and fourth applicants were granted victim status in the proceedings; however, it is not entirely clear how long after the institution of the investigation the victim status was granted. In any event, the applicants were not duly informed of the progress of the investigation. Although they were informed of a number of suspensions and resumptions of the investigation, almost no information concerning the important investigative actions was provided to them.

111. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, the Court observes that the applicants, who had no access to the case file and were not properly informed of the progress of the investigation, could not have effectively challenged the acts or omissions of the investigating authorities before a court. Accordingly, it 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.

112. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance and presumed deaths of Apti Isigov and Zelimkhan Umkhanov. Accordingly, there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

113. The applicant submitted that they had reason to believe that their relatives had been subjected to treatment contrary to Article 3 of the Convention and that there had been no effective investigation into the matter. They also complained that as a result of their close relatives'

disappearance and the lack of an adequate response from the authorities they had suffered severe mental distress and anguish amounting to ill-treatment falling within the scope of Article 3 of the Convention, which reads as follows:

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

A. Alleged violation of Article 3 in respect of Apti Isigov and Zelimkhan Umkhanov

1. Arguments of the parties

114. The applicants insisted that there were serious reasons to believe that Apti Isigov and Zelimkhan Umkhanov had been ill-treated after being detained. They referred to applications submitted to the Court by other individuals claiming to have been victims of similar violations, and to documents by human-rights NGOs and the Council of Europe reporting numerous instances where people detained in Chechnya had been found dead, or had returned from custody, with signs of torture or ill-treatment.

115. The Government contended that there was no evidence that Apti Isigov or Zelimkhan Umkhanov had been subjected to treatment prohibited by Article 3 of the Convention. They added that the investigation into the alleged abuses committed during the special operation of 2 July 2001 in Sernovodsk had commenced in accordance with the procedural rule and within the statutory time-limit and therefore had not breached the requirements of Article 3.

2. The Court's assessment

116. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161 *in fine*).

117. The Court has found it established that the applicants' relatives were detained on 2 July 2001 by federal forces and that no reliable news of them has been received since. It has also found that, in view of all the known circumstances, they can be presumed dead and that the responsibility for their deaths lies with the State authorities (see paragraphs 97-101 above). However, the questions of the exact way in which they died and whether they were subjected to ill-treatment while in detention have not been elucidated.

118. The Court considers that the witness statement of R. Kh. submitted by the applicants does not enable it to find beyond all reasonable doubt that Apti Isigov and Zelimkhan Umkhanov were ill-treated in detention. Accordingly, it cannot conclude that there has been a violation of Article 3 of the Convention on this account.

119. In the absence of any reliable information about the alleged ill-treatment or about the manner in which Apti Isigov and Zelimkhan Umkhanov died, the Court does not deem it necessary to make a separate finding under Article 3 in respect of the alleged deficiencies of the investigation, since it examines this aspect under the procedural aspect of Article 2 (above) and under Article 13 of the Convention (below).

B. Alleged violation of Article 3 in respect of the applicants

1. Arguments of the parties

120. The applicants also maintained that they had endured severe mental suffering falling within the scope of Article 3 of the Convention in view of the State's indifference to their relatives' disappearance and its repeated failure to inform them of the progress of the investigation.

121. The Government averred that there was no evidence that the applicants had been subjected to treatment prohibited by Article 3 of the Convention.

2. The Court's assessment

122. The Court reiterates 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 *Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, § 152, 21 June 2007).

123. In the present case, the Court notes that the applicants are family members of the two missing men. For almost seven years they have not had any news of them. During this period the applicants have made enquiries of various official bodies about their missing relatives, both in writing and in person. Despite their efforts, they have never received any plausible explanation or information as to what became of them following their detention on 2 July 2001. The responses received by the applicants mostly denied the State's responsibility for their apprehension despite the fact that the involvement of federal servicemen in the abduction of their relatives had been established by the domestic investigation. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here (see paragraphs 104-112 above).

124. As an additional element contributing to the applicants' sufferings, the Court notes the sparse information they received about the investigation throughout the domestic proceedings. It follows that the applicants' uncertainty about the fate of Aпти Isigov and Zelimkhan Umkhanov was aggravated by their inability to monitor the progress of the investigation.

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

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

127. The applicants claimed that the provisions of Article 5 of the Convention as a whole, relating to the lawfulness of detention and guarantees against arbitrary detention, had been violated in respect of Aпти Isigov and Zelimkhan Umkhanov.

Article 5 of the Convention provides:

“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:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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.”

128. The applicants reiterated their argument that it was beyond reasonable doubt that Apti Isigov and Zelimkhan Umkhanov had been detained by the representatives of the federal forces and argued that their relatives' detention had not satisfied any of the conditions set out in Article 5 of the Convention, had had no basis in national law, had not been in accordance with a procedure established by law or formally registered and had not been justified.

129. In their observations submitted before the decision as to admissibility, the Government argued that it could not be excluded that the applicants' two relatives had been deprived of their liberty by an individual rather than by State bodies. Nevertheless, having regard to the particular circumstances of the case, the authorities were investigating the possible involvement of State bodies in the detention of the applicants' relatives. The Government also stated that in July 2001 the law-enforcement bodies had had formal grounds for checking the identities of the residents of Sernovodsk with a view to verifying their possible participation in illegal armed groups.

130. In their observations submitted after the decision as to admissibility, the Government stated that Apti Isigov and Zelimkhan

Umkhanov had not been deprived of their liberty in the territory of the Russian Federation. They had not been held in either remand prisons or facilities for administrative detention. Accordingly, there had been no breach of Article 5 of the Convention.

131. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 for securing 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).

132. The Court has found it established that on 2 July 2001 Apti Isigov and Zelimkhan Umkhanov were apprehended by servicemen and have been missing since. Their detention 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).

133. 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, its 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 Apti Isigov and Zelimkhan Umkhanov against the risk of disappearance.

134. Consequently, the Court finds that Apti Isigov and Zelimkhan Umkhanov were held in unacknowledged detention without any of the safeguards contained in Article 5. Accordingly, there has been a violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

135. The applicants also alleged that they had had no access to a court, contrary to Article 6 § 1 of the Convention, as they had been unable to bring a civil action for compensation for their relatives' disappearance since the investigation had produced no results. Article 6 § 1 of the Convention reads, in so far as relevant, as follows:

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

1. Arguments of the parties

136. In their submissions made before the Court's decision on the admissibility of the application, the applicants averred that they were unable to seek compensation in the courts for their relatives' unlawful detention until the investigation into the events had been completed, a fact which, in their view, breached their right of access to court under Article 6 § 1 of the Convention.

137. In their submissions made after the Court had declared the application admissible, the applicants stated that they did not insist on the Court's examination of their complaint under Article 6 of the Convention.

138. The Government contended that the applicants had had access to a court, as required by Article 6 § 1 of the Convention.

2. The Court's assessment

139. Having regard to the applicants' submission made after the Court's decision on the admissibility of the application, the Court does not consider it necessary to examine the complaint under Article 6 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

140. The applicants alleged that there were no effective remedies in respect of the violations of their rights under Articles 2, 3 and 5 of the Convention, 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.”

141. The applicants maintained their allegations that in this case the domestic remedies usually available had proved to be ineffective, given that the investigation had been pending for several years without any progress, that they had never been granted access to the case file of the investigation and that all their applications to public bodies had remained unanswered or had only produced standard replies.

142. The Government contended that the applicants had had access to effective domestic remedies, as required by Article 13 of the Convention. They submitted that during the period when the events invoked by the applicants' had taken place the judicial system in the Chechen Republic was already operational and that applications of the residents of Sernovodsk concerning those events had been properly examined by the authorities and criminal proceedings had been instituted. The Government insisted that the applicants, as participants in criminal proceedings, had had the right to challenge any actions of the investigating or other law-enforcement authorities before a court. Accordingly, in the Government's opinion, effective domestic remedies in respect of the applicants' complaints existed.

143. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV; *Assenov and Others*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3293, § 117; 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 *Orhan*, cited above, § 384; and *Khashiyev and Akayeva*, cited above, § 183).

144. 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.

145. It follows that in circumstances where, as here, the criminal investigation into a person's disappearance and death 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.

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

147. As regards the applicant's 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 family members, their inability to find out what had happened to them and the way the authorities had handled their complaints. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 read in conjunction with Article 3 of the Convention.

148. As regards the applicant's reference to Article 5 of the Convention, the Court notes that in accordance with 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 (see *Dimitrov v. Bulgaria* (dec.), no. 55861/00, 9 May 2006) and in view of its above findings of a violation of Article 5 of the Convention on account of Apti Isigov's and Zelimkhan Umkhanov's 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. OBSERVANCE OF ARTICLE 34 AND ARTICLE 38 § 1 (a) OF THE CONVENTION

149. The applicants argued that the Government's failure to submit the documents requested by the Court at the communication stage disclosed a failure to comply with their obligations under Article 34 and Article 38 § 1 (a) of the Convention. The relevant parts of those Articles provide:

Article 34

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

Article 38

“1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

...”

150. The applicants invited the Court to conclude that the Government's refusal to submit a copy of the entire investigation file in response to the Court's requests was incompatible with their obligations under Article 38 of the Convention. In the applicants' view, through their handling of the Court's request for documents, the Government had additionally failed to comply with their obligations under Article 34 of the Convention.

151. In their observations made before the decision on admissibility the Government stated that the submission of the entire case file would be contrary to Article 161 of the Code of Criminal Procedure. In their observations made after the decision on admissibility the Government reiterated their refusal to submit a copy of the entire investigation file. However, they provided an update on the progress of the investigation and submitted 92 pages of materials from the case file. These materials

contained detailed information on the conduct of the special operation in Sernovodsk, the investigative measures taken and the interim findings of the investigation.

152. The Court reiterates that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and 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.

153. 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. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their possession without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's 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. In a case where the application raises issues of the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

154. The Court notes that the Government refused to submit a copy of the entire investigation file opened into the disappearance of the applicants' relatives in response to the communication of the complaints. They referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see, among other authorities, *Imakayeva*, cited above, § 123).

155. The Court reiterates that Article 38 § 1 (a) of the Convention is applicable to cases which have been declared admissible. The Court cannot find that the delay in submitting the information requested prior to the admissibility decision gave rise to issues under this provision or otherwise prevented the proper examination of the present case. It further notes that after the application had been declared admissible the Government submitted a large part of the investigation file containing detailed information on the detachments which had participated in the special operation in Sernovodsk, the questioning of witnesses and the interim

findings of the investigation concerning the involvement of federal servicemen in the abduction of Apti Isigov and Zelimkhan Umkhanov.

156. While it is true that some documents were not submitted by the Government with reference to Article 161 of the Code of Criminal Procedure, the Court notes that they submitted a significant part of the case file containing key elements that considerably facilitated the examination of the present case by the Court. Overall, the Court does not consider that the Government's conduct has been such as to obstruct the conduct of an effective investigation in the present case and thus contrary to Article 38 § 1 (a).

157. In view of the above finding, the Court considers that no separate issues arise under Article 34.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

158. 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

159. The first applicant claimed damages in respect of Apti Isigov's lost earnings from the time of his apprehension and subsequent disappearance. She submitted that, as he had been unemployed at the time, he had been entitled to unemployment benefit which could not be below the subsistence level provided for in the legislation. She claimed that she would have benefited from her son's financial support in the amount of 1,382,376 roubles (RUR) (approximately 37,731.81 euros (EUR)), that is 30% of his earnings. Her calculations were based on the average life expectancy for women in Russia and the amount of the subsistence level in 2006.

160. The third, fourth and fifth applicants claimed damages in respect of Zelimkhan Umkhanov's lost earnings from the time of his apprehension and subsequent disappearance. They submitted that each of them could have counted on 30% of his earnings. Having regard to the subsistence level provided for in the legislation, the average life expectancy for women in Russia and the period until the fifth applicant would come of age they claimed RUR 553,441 (approximately EUR 15,100) for the third applicant, RUR 2,919,862 (approximately EUR 79,800) for the fourth applicant and RUR 249,120 (approximately EUR 6,800) for the fifth applicant.

161. The Government regarded the claim as excessive and based on conjecture since it was impossible to predict what age Apti Isigov and

Zelimkhan Umkhanov would have reached, until when they would have had to support the applicants or the subsistence levels in the future.

162. The Court points out that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in appropriate cases, include compensation for loss of earnings (see, among other authorities, *Çakici*, cited above). Having regard to its above conclusions, there is indeed a direct causal link between the violation of Article 2 in respect of the applicants' family members and the loss by the applicants of the financial support which they could have provided for them. The Court finds that the loss of earnings also applies to dependants and considers it reasonable to assume that the applicants' family members would eventually have had some earnings and that the applicants would have benefited from these. Having regard to the applicants' submissions, the Court awards the first applicant EUR 5,000 and the third, fourth and fifth applicants jointly EUR 15,000 in respect of pecuniary damage, plus any tax that may be chargeable on those amounts.

B. Non-pecuniary damage

163. As to non-pecuniary damage, the applicants stated that they had lost their family members and endured years of stress, frustration and helplessness in relation to their disappearance and death, aggravated by the authorities' inactivity in the investigation of those events. They made the following claims:

- (i) the first applicant claimed EUR 80,000 in respect of non-pecuniary damage caused by the death of her son, Apti Isigov;
- (ii) the second applicant claimed EUR 40,000 in respect of non-pecuniary damage caused by the death of her brother, Apti Isigov;
- (iii) the third, fourth and fifth applicants claimed EUR 80,000 each in respect of non-pecuniary damage caused by the death of their son, husband and father, Zelimkhan Umkhanov.

164. The Government found the amounts claimed to be excessive.

165. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and deaths of the applicants' family members. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention in relation to the emotional distress and anguish they endured. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the first and the second applicants jointly EUR 35,000 and the third, fourth and fifth applicants jointly EUR 40,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

166. The applicants were represented by the SRJI. They submitted a schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 18,934.21, which comprised:

- EUR 200 for the preparation of documents submitted to the domestic authorities in relation to the present proceedings;
- EUR 16,900 for the preparation of the initial application and subsequent submissions before the Court;
- EUR 524.74 for translation expenses;
- EUR 112.47 postal expenses;
- EUR 1,197 (corresponding to 7% of the legal fees) for administrative costs, such as telephone, fax and e-mail, photocopying and paper expenses and other items.

167. The Government did not dispute the details of the calculations submitted by the applicant, but contended that the sum claimed was excessive, taking into account the average advocate's fees in Russia. They further pointed out that the applicant had not enclosed any documents supporting the amount claimed. The Government also objected to the representatives' request to transfer the award for legal representation directly into their account in the Netherlands.

168. According to the Court's case-law, an applicant is entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *McCann and Others*, cited above, § 220).

169. The Court notes that, under a contract entered into by the applicants in October 2006, they agreed to pay the SRJI's representative the costs and expenses incurred for their representation before the Court, subject to delivery by the Court of a final judgment concerning the present application and to payment by the Russian Federation of the legal costs should these be granted by the Court. The applicants enclosed an invoice from the SRJI for the amount of EUR 18,934.21 with the billing sheet, the invoice for the translating services and DHL invoices relating to correspondence with the Court. Having regard to the rates for the work of the SRJI lawyers and senior staff, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant in relation to the legal services. It is further satisfied that the translation and postal expenses, supported by relevant documents, were also actually incurred. However, no

documents were enclosed to support the amount claimed in relation to administrative costs.

170. Further, the Court has to establish whether the costs and expenses incurred for legal representation were necessary and reasonable. The Court notes that this case was relatively complex and required a substantial amount of research and preparation.

171. The Court notes, furthermore, that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicants' representatives' accounts (see, for example, *Toğcu v. Turkey*, no. 27601/95, § 158, 31 May 2005; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; and *Imakayeva*, cited above).

172. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them EUR 17,737, plus any tax that may be chargeable to the applicants.

D. Default interest

173. 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 violation of Article 2 of the Convention in respect of Apti Isigov and Zelimkhan Umkhanov;
3. *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 Isigov and Zelimkhan Umkhanov disappeared;
4. *Holds* that there has been no violation of Article 3 of the Convention in respect of Apti Isigov and Zelimkhan Umkhanov;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Apti Isigov and Zelimkhan Umkhanov;

7. *Holds* that there is no need to examine the complaint under Article 6 of the Convention;
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* that there has been no failure to comply with Article 38 § 1 (a) of the Convention;
11. *Holds* that no separate issues arise under Article 34 of the Convention;
12. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 5,000 (five thousand euros) to the first applicant and EUR 15,000 (fifteen thousand euros) jointly to the third, fourth and fifth applicants in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 35,000 (thirty five thousand euros) jointly to the first and second applicants and EUR 40,000 (forty thousand euros) jointly to the third, fourth and fifth applicants in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) EUR 17,737 (seventeen thousand seven hundred and thirty-seven euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicants, to be paid to the applicants' representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
13. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President