



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

FIRST SECTION

CASE OF AKHIYADOVA v. RUSSIA

(Application no. 32059/02)

JUDGMENT

STRASBOURG

3 July 2008

FINAL

01/12/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Akhiyadova v. Russia,

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

Christos Rozakis, *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 12 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 32059/02) 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 a Russian national, Ms Esila Sultanovna Akhiyadova (“the applicant”), on 12 August 2002.

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

3. The applicant alleged that her relatives had disappeared after being detained by servicemen in Chechnya on 13 February 2002. She complained under Articles 2, 3, 5, 13 and 14.

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

5. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1981 and lives in the village of Makhkety, the Veden District, in the Chechen Republic.

A. Disappearance of Magomed and Kharon Khumaidov

1. The applicant's account

7. The applicant was married to Mr Magomed Khumaidov, born in 1977. They had a daughter, Ms Seda Khumaidova, born in 2002. The couple and their daughter, as well as Magomed Khumaidov's father, Mr Kharon Khumaidov, born in 1932, lived at 28 Klubnaya Street, the village of Makhkety.

8. At about 11 a.m. on 13 February 2002 a group of armed men wearing military camouflage uniforms and masks forcibly entered the Khumaidovs' house. The applicant concluded that they were federal servicemen.

9. The Khumaidovs were inside the house at the time. The servicemen did not produce identity papers or any documents justifying their actions. They searched the house and apprehended the applicant's husband and father-in-law without any explanations. Although Magomed and Kharon Khumaidov were only wearing trousers and shirts, they were not allowed to take their overcoats. The men forced them into a military UAZ vehicle that had no registration numbers and took them to a base of the Federal Security Service ("the FSB") in the village of Khatuni.

10. A number of residents of Makhkety witnessed the detention of the first applicant's husband and father-in-law.

11. On 29 July 2002 a national newspaper *Novaya Gazeta* reported the above events in an article 'Streamlined production of enemies'.

2. The Government's account

12. According to the Prosecutor's Office of Russia, it was established that at about 11 a.m. on 13 February 2002 unknown armed men wearing military camouflage uniforms had arrived at the Khumaidovs' household and kidnapped Magomed and Kharon Khumaidov. The whereabouts of the missing men was unknown.

B. The search for Magomed and Kharon Khumaidov and the investigation

1. The applicant's account

13. Immediately after the detention of Magomed and Kharon Khumaidov the applicant and other relatives arrived at the FSB base in Khatuni, enquired about the Khumaidovs and attempted to provide them with warm clothes. Several FSB officers who had the names or nicknames Damir, Shamil, Dima and Timur Yarulin spoke to them. They refused to take the clothes but promised that the Khumaidov men would be released soon. Later the same officers told that Magomed and Kharon Khumaidov had been sent to the federal military base in Khankala, but refused to give further explanation.

14. From 13 February 2002 onwards the applicant repeatedly applied in person and in writing to various public bodies, including prosecutors at various levels, federal and regional departments of interior, administrative authorities of the Chechen Republic, the Special Envoy of the Russian President in the Chechen Republic for Rights and Freedoms and the Representative for Rights and Freedoms in Russia. She was supported in her efforts by Human Rights Watch (“HRW”) and the SRJI. In their letters to the authorities the applicant and the NGOs described in detail the circumstances of the detention of Magomed and Kharon Khumaidov, referred to the fact that a number of eyewitnesses had seen the Khumaidov men taken to the federal base in Khatuni, and asked for assistance and details of the investigation. In most cases their enquiries remained unanswered, or only formal responses were given, by which the respective requests were forwarded to various prosecutors’ offices for examination.

15. In April 2002 the applicant spent a fortnight near the FSB base in Khatuni. Her attempts to get information about her missing relatives proved unsuccessful, as the federal servicemen refused to answer her queries.

16. On 5 July 2002 the district prosecutor’s office issued the applicant with a document confirming that on 18 June 2002 they had commenced an investigation in connection with the kidnapping of Magomed and Kharon Khumaidov by “unidentified servicemen” in the village of Makhkety.

17. On 18 July 2002 the prosecutor’s office of the Chechen Republic forwarded the applicant’s complaint concerning her relatives’ disappearance to the district prosecutor’s office.

18. By a letter of 22 July 2002 the administration of the Chechen Republic informed the applicant that her complaint had been forwarded to the district prosecutor’s office, the prosecutor’s office of the Chechen Republic, the department of interior of the Vedeno District (“ROVD”) and the Department of Interior of the Chechen Republic.

19. On 15 August 2002 the prosecutor's office of the Chechen Republic informed the applicant that on 18 June 2002 case no. 73040 had been opened in connection with the kidnapping of Magomed and Kharon Khumaidov by "unidentified servicemen".

20. By a letter of 20 August 2002 the district prosecutor's office notified the applicant that the investigation had established that servicemen of the 45th regiment had been involved in the abduction of her husband and father-in-law, and therefore on 22 July 2002 the criminal case had been transferred to the military prosecutor of military unit no. 2011 in the town of Shali for a further investigation. The letter stated that the criminal proceedings had subsequently been suspended as it was impossible to identify the perpetrators.

21. On 23 August 2002 the ROVD informed the applicant that on 18 June 2002 criminal case no. 73040 had been opened in connection with the abduction of Magomed and Kharon Khumaidov by unidentified servicemen.

22. By a letter of 4 September 2002 the Office of the Representative for Rights and Freedoms in Russia notified the applicant that her complaint of ineffective investigation of the abduction of her relatives had been transferred to the Prosecutor General's Office. The latter forwarded the applicant's complaint to the Southern Federal Circuit Department of the Prosecutor General's Office on 17 September 2002.

23. On 8 October 2002 the prosecutor's office of the Chechen Republic informed the applicant of the main procedural steps taken in connection with the disappearance of her husband and father-in-law and, notably, stated that the criminal proceedings instituted on 18 June 2002 and then suspended on 18 August 2002 had been resumed on 30 August 2002 and that the case had been transmitted to the district prosecutor's office for a further investigation. The applicant was invited to address any subsequent queries to the district prosecutor's office.

24. On 18 November 2002 the SRJI, acting on the applicant's behalf, enquired with the district prosecutor's office about the investigation of the abduction of Magomed and Kharon Khumaidov. In reply, the SRJI received a handwritten note stating that case no. 73040 had been opened on 18 June 2002 and suspended on 18 August 2002.

25. On 11 March 2003 the Vedeno District Court of the Chechen Republic, on the applicant's request, declared Magomed Khumaidov missing, having confirmed that on 13 February 2002 he had been taken away by masked servicemen and had then disappeared. The court based this finding on, *inter alia*, statements of witnesses Mr A. and Ms S., residents of Makhkety and relatives of the Khumaidovs.

26. On 17 April 2003 the SRJI requested the district prosecutor's office to grant the applicant victim status in case no. 73040 and to furnish her with a copy of the relevant decision. In a reply of 10 June 2003 the district

prosecutor's office stated that it was impossible to send the requested document to the SRJI, as they did not belong to a category of those entitled under national law to receive procedural documents, and that the applicant could apply to the district prosecutor's office for a copy of the decision granting her victim status. The letter continued that the file of criminal case no. 73040 had been destroyed as a result of a fire in December 2002, and that measures were being taken to recreate it.

27. On 14 February 2004 the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office") forwarded the applicant's complaint to the military prosecutor's office of military unit no. 20116 ("the unit prosecutor's office") and ordered that the matters complained of be verified. In the absence of any reply to the letter of 14 February 2004, the UGA prosecutor's office sent further copies of the applicant's complaint on two occasions, 9 and 27 April 2004, and enquired about the results of its examination.

28. By two identical letters, of 8 May and 4 June 2004, the unit prosecutor's office informed the applicant that they had carried out an inquiry in connection with her complaints and had established that at the material time military personnel of the military units supervised by the said prosecutor's office had not conducted any special operations and had not detained any individuals nor taken them to law enforcement agencies. The letters invited the applicant to address any further queries to the district department of interior or the district prosecutor's office.

29. On 10 November 2004 the SRJI enquired with the district prosecutor's office about the progress in the investigation and the steps taken.

30. On 24 December 2004 the prosecutor's office of the Chechen Republic replied that the SRJI's application had been examined and that criminal proceedings had been instituted in connection with the events described.

31. By a letter of 22 July 2005 the prosecutor's office of the Chechen Republic sent the applicant's request to establish her relatives' whereabouts to the district prosecutor's office for examination.

2. Information submitted by the Government

32. On 18 June 2002 the district prosecutor's office instituted a criminal investigation into the disappearance of Magomed and Kharon Khumaidov under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The file was given the number 73040.

33. On 18 August 2002 the investigation in case no. 73040 was suspended due to failure to identify those responsible.

34. On 17 December 2002 the investigation file in case no. 73040 was destroyed in a fire as a result of an attack by rebel fighters on the district

prosecutor's office and the temporary department of interior of the Vedeno District ("VOVD").

35. On 27 October 2003 the district prosecutor's office granted the applicant victim status in case no. 73040 and informed her accordingly.

36. On 18 October 2004 the district prosecutor's office ordered that the file in case no. 73040 be restored. The investigation was resumed on the same date and the applicant was notified accordingly.

37. On 20 October 2004 the district prosecutor's office ordered the ROVD to take certain investigative measures.

38. On 27 October 2004 the applicant was granted victim status and questioned.

39. The investigation was suspended on 18 November 2004 and 13 October 2005 and then resumed on 13 August and 20 October 2005.

40. From 15 to 17 August 2005 the district prosecutor's office questioned three witnesses, namely the head of the administration of Makhety, the applicant's sister-in-law and the applicant's neighbour.

41. On 18 August 2005 the investigator of the district prosecutor's office inspected the scene of the incident at the applicant's house, but did not find any relevant evidence. On the same date the applicant was again questioned.

42. The district prosecutor's office sent a number of queries to various State agencies on 20 October and 3 November 2004, as well as on 15 and 28 August 2005. The district military commander's office, the Vedeno District Department of the FSB and the Russian Ministry of Interior submitted that they had carried out no special operations in the vicinity of Makhety between 10 and 15 February 2002 and had not detained the Khumaidov father and son.

43. On 28 August 2005 the district prosecutor's office sent requests concerning Magomed and Kharon Khumaidov's detention to prisons in the Chechen Republic. No confirmation was obtained that the applicant's relatives had ever been detained in those facilities.

44. The case was being investigated by the district prosecutor's office. The investigation had failed to identify those responsible or to establish the whereabouts of the applicant's relatives. The applicant's hypothesis that Magomed and Kharon Khumaidov had been detained by servicemen of the 45th regiment was not substantiated or supported by any evidence.

45. Despite specific requests made by the Court on two occasions, the Government refused to submit a copy of the entire investigation file in case no. 73040, stating with reference to the information obtained from the Prosecutor General's Office that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses.

46. The Government only submitted a few documents, which included:

(a) a copy of a procedural decision of 18 June 2002 instituting criminal proceedings in connection with the kidnapping of the applicant's relatives on 13 February 2002;

(b) copies of procedural decisions of 18 August 2002 and 20 October 2005 suspending and reopening criminal proceedings in connection with the disappearance of the applicant's relatives;

(c) a copy of a procedural decision of 18 December 2002 on institution of criminal proceedings in connection with an explosion on the territory of the VOVD leading to the destruction of property;

(d) copies of investigators' decisions of 18 October 2004 and 13 August 2005 taking up case no. 73040;

(e) a copy of a letter of 18 October 2004 informing the applicant of the restoration of the file of case no. 73040;

(f) a copy of a letter dated 13 May 2005 notifying the applicant that on 15 August 2005 the investigation in case no. 73040 had been resumed.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

48. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the kidnapping of Magomed and Kharon Khumaidov had not yet been completed. They further argued that it had been open to the applicant to lodge court complaints about the allegedly unlawful detention of her relatives or to challenge in court any actions or omissions of the investigating or other law enforcement authorities, but that the applicant had not availed herself of any such remedy. They also argued that it was open to the applicant to pursue civil complaints, which she had failed to do.

49. The applicant contested that objection and insisted that there were no effective remedies at domestic level for her to use.

B. The Court's assessment

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

51. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

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

53. As regards criminal law remedies, the Court observes that the applicant complained to the law enforcement authorities immediately after the detention of Magomed and Kharon Khumaidov and that an investigation has been pending since 18 June 2002. The applicant and the Government dispute the effectiveness of this investigation.

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

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

A. Arguments of the parties

55. The applicant maintained that it was beyond reasonable doubt that the men who had taken away Magomed and Kharon Khumaidov had been State agents. In support of her complaint she referred to replies of State

officials confirming that her relatives had been apprehended by “unidentified servicemen”. The applicant also pointed out that the ground for the Government’s refusal to submit the file in case no. 73040 was that it contained “information of a military nature disclosing the location and nature of actions by military and special security forces”.

56. The Government submitted that on 13 February 2002 unidentified men in camouflage uniforms armed with machine guns had abducted Magomed and Kharon Khumaidov. They further contended that the investigation of the incident was pending, that there was no evidence that the men were State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicant’s rights. They further argued that there was no convincing evidence that the applicant’s relatives were dead, given that their whereabouts had not been established and their bodies had not been found.

B. The Court’s evaluation of the facts

57. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). In view of this, and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government’s conduct in respect of the well-foundedness of the applicant’s allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicant’s relatives can be presumed dead and whether their deaths can be attributed to the authorities.

58. The applicant alleged that the persons who had taken Magomed and Kharon Khumaidov away on 13 February 2002 were State agents.

59. The Court notes that the applicant’s version of the events is supported by her submissions, statements by some witnesses and the domestic investigation. In her applications to the authorities the applicant consistently maintained that her relatives had been detained by unknown servicemen and requested the investigation to look into that possibility (see paragraph 14 above). Furthermore, some witnesses referred to the use of military UAZ vehicles and alleged that immediately after their abduction Magomed and Kharon Khumaidov had been taken to the FSB base (see paragraph 13 above). The district prosecutor’s office found it established that the kidnapping had been committed by “unidentified servicemen” and

forwarded the investigation file to a military prosecutor's office pursuant to subject-matter jurisdiction rules (see paragraph 20 above).

60. The Court finds that the fact that a large group of armed men in uniform in broad daylight, equipped with military vehicles, was able to detain two persons at their home strongly supports the applicant's allegation that these were State servicemen. The domestic investigation also accepted factual assumptions as presented by the applicant and took steps to check the involvement of law enforcement bodies in the arrest. The investigation was unable to establish precisely which military or security units had carried out the operation, but it does not appear that any serious steps were taken to that end.

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

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

63. There has been no reliable news of the applicant's relatives since 13 February 2002. Their names have not been found in any official detention facilities' records. The Government did not submit any explanation as to what had happened to them after their abduction.

64. Having regard to the previous cases concerning disappearances of people in the Chechen Republic which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts)), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Magomed and Kharon Khumaidov or of any news of them for several years supports this assumption.

65. For the above reasons the Court considers that it has been established beyond reasonable doubt that the applicant's relatives must be presumed dead following unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

A. The alleged violation of the right to life of Magomed and Kharon Khumaidov

67. The applicant maintained her complaint and argued that her relatives had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years.

68. The Government referred to fact that the investigation had obtained no evidence that these persons were dead, or that representatives of the federal power structures had been involved in their abduction or alleged killing.

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

70. The Court has already found it established that the applicant’s relatives must be presumed dead following unacknowledged detention by State servicemen and that the deaths can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State

agents, the Court finds that there has been a violation of Article 2 in respect of Magomed and Kharon Khumaidov.

B. The alleged inadequacy of the investigation of the abduction

71. The applicant argued that the investigation had not met the requirements that it should be effective and adequate, as required by the Court's case-law on Article 2. She noted that the investigation had been opened belatedly, that it had been adjourned and reopened a number of times and thus the taking of the most basic steps had been protracted, and that the applicant had not been informed properly of the most important investigative steps. She argued that the fact that the investigation had been pending for such a long period of time without producing any known results had been a further proof of its ineffectiveness. The applicant invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to her or to the Court.

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

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

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

75. The Court notes at the outset that most of the documents from the investigation were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

76. The Court notes that the investigating authorities were immediately made aware of the crime through the applicant's submissions. However, the investigation was opened only four months after the kidnapping. This delay in itself was liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action must be taken in the first days after the event.

77. It can be seen from the few documents provided by the Government that a number of essential investigative steps were delayed and were eventually taken only after the communication of the complaint to the

respondent Government, or not at all. In particular, the applicant was granted victim status some twenty months after the crime. Some witnesses were questioned and the crime scene was inspected only in August 2005, that is more than three years after Magomed and Kharon Khumaidov's kidnapping. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

78. The Court notes that even though the applicant was eventually granted victim status, she was only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

79. The Government raise the possibility for the applicant to make use of judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicant, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions of investigating authorities before a court. Furthermore, taking into account that the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

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

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

81. The applicant further relied on Article 3 of the Convention, submitting that as a result of her relatives' disappearance and the State's

failure to investigate those events properly, she had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

82. The Government disagreed with these allegations and argued that, in the absence of any evidence suggesting that the applicant’s relatives had been abducted by representatives of the State, there were no grounds for alleging a violation of Article 3 of the Convention on account of the applicant’s mental suffering. As to the level of suffering allegedly caused to the applicant by the fact of her relatives’ disappearance, that, in the Government’s view, was beyond the evaluation of the law enforcement authorities and could not be objectively measured, as it related to psychological aspects, such as the emotions and personalities of the individuals concerned.

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

84. In the present case the Court notes that the applicant is a close relative of the disappeared men. She witnessed their abduction. For more than five years she has not had any news of them. During this period the applicant has applied to various official bodies with enquiries about her family members, both in writing and in person. Despite her attempts, the applicant has never received any plausible explanation or information as to what became of her family members following their abduction. The responses received by the applicant mostly denied that the State was responsible for their arrest or simply informed her that an investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

85. In view of the above, the Court finds that the applicant suffered, and continues to suffer, distress and anguish as a result of the disappearance of her family members and her inability to find out what happened to them. The manner in which her complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

87. The applicant further stated that Magomed and Kharon Khumaidov had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

88. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Magomed and Kharon Khumaidov had been detained in breach of the guarantees set out in Article 5 of the Convention. They were not listed among the persons being held in detention centres.

89. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and

discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev*, cited above, § 122).

90. The Court has found it established that Magomed and Kharon Khumaidov were detained by State servicemen on 13 February 2002 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

92. Consequently, the Court finds that Magomed and Kharon Khumaidov were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

93. The applicant complained that she had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

94. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The Government also noted that the investigation of the abduction of the applicant's relatives had not yet been completed. They referred to Article 125 of the Code of Criminal Procedure, which allowed participants in criminal proceedings to complain to a court about measures taken during an investigation. This was

an effective remedy to ensure the observation of her rights. The applicant had never made use of this possibility, which required the initiative of the participants in criminal proceedings, and thus the absence of court action could not constitute a violation of Article 13.

95. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheylya Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

96. It follows that in circumstances where, as here, the criminal investigation into the kidnapping in life-threatening circumstances was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

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

98. 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 applicant's mental suffering as a result of the disappearance of her husband and father-in-law, her inability to find out what had happened to them and the way the authorities had handled her 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 applicant. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

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

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

100. The applicant complained that she had been discriminated against in the enjoyment of her Convention rights, because the violations of which she complained had taken place because of her ethnic background as a Chechen. This was contrary to Article 14 of the Convention, which reads as follows:

“The enjoyment of the right and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

101. The Government contended that the applicant had never been discriminated against in the enjoyment of her Convention rights on any ground.

102. The Court observes that no evidence has been submitted to it that suggests that the applicant was treated differently from persons in an analogous situation without objective and reasonable justification, or that she has ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated. Accordingly, the Court finds that there has been no violation of Article 14 of the Convention.

VIII. OBSERVANCE OF ARTICLE 34 AND ARTICLE 38 § 1 (a) OF THE CONVENTION

103. The applicant 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;

...”

104. 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.

105. 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 *Tanrıku v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV).

106. The Court notes that it has on several occasions requested the Russian Government to submit a copy of the investigation file opened into the disappearance of the applicant's husband and father-in-law. The evidence contained in the file was regarded by the Court as crucial for the establishment of the facts in the present case.

107. The Government submitted that they were unable to submit the entire investigation file in case no. 73040 because the initial file had been destroyed by fire. The Court accepts that in such circumstances the Government could not be held liable for their failure to submit the case materials requested in so far as they concerned the progress on the investigation between 18 June and 17 December 2002. Nevertheless, the fact that some documents were destroyed in 2002 does not explain why the materials, which should have necessarily been introduced in the case file during the following years of the investigation, have not been produced to the Court.

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

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

110. Referring to the importance of a respondent Government's cooperation in Convention proceedings and mindful of the difficulties associated with the establishment of facts in cases of such a nature, the Court finds that the Government fell short of their obligations under Article 38 § 1 of the Convention because of their failure to submit copies of the documents requested in respect of the disappearance of Magomed and Kharon Khumaidov.

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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

113. The applicant claimed damages in respect of Magomed Khumaidov's lost wages from the time of his abduction and subsequent disappearance. She submitted that her husband would have supported her and their minor daughter and that even though Magomed Khumaidov was unemployed at the time of his arrest it was reasonable to suppose that he would have found a job and earned at least the official minimum wage. The applicant claimed in total 765,265.54 Russian roubles (RUB) (approximately 21,000 euros (EUR)). Her calculations were based on the actuarial tables for use in personal injury and fatal accident cases published

by the United Kingdom Government Actuary's Department in 2004 ("Ogden tables").

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

115. The Court reiterates 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 an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicant's husband and the loss by the applicant of the financial support which he could have provided. Having regard to the applicant's submissions and the fact that Magomed Khumaidov was not employed at the time of his abduction, the Court awards EUR 5,000 to the applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

116. The applicant claimed EUR 80,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her husband and father-in-law, the indifference shown by the authorities towards them and the failure to provide any information about the fate of her close relatives.

117. The Government found the amounts claimed exaggerated.

118. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicant's relatives. The applicant herself has been found to have been victim of a violation of Article 3 of the Convention. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant EUR 70,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

119. The applicant was represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff, EUR 9,050 in total. They also claimed EUR 633.50 as administrative expenses, EUR 1,144.35 as translation fees and EUR 90.57 as fees for courier mail. The aggregate claim in respect of costs

and expenses related to the applicant's legal representation amounted to EUR 10,918.42.

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

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

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

123. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them the amount of EUR 6,000, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicant.

D. Default interest

124. 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 Magomed and Kharon Khumaidov;

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 Magomed and Kharon Khumaidov disappeared;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
5. *Holds* that there has been a violation of Article 5 of the Convention in respect of Magomed and Kharon Khumaidov;
6. *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;
7. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
8. *Holds* that there has been no violation of Article 14 of the Convention;
9. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
10. *Holds* that no separate issues arise under Article 34 of the Convention;
11. *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), in respect of pecuniary damage to the applicant, to be converted into Russian roubles at the at the rate applicable at the date of settlement, plus any tax that may be chargeable to that amount;
 - (ii) EUR 70,000 (seventy thousand euros), in respect of non-pecuniary damage to the applicant, to be converted into Russian roubles at the at the rate applicable at the date of settlement, plus any tax that may be chargeable to that amount;
 - (iii) EUR 5,150 (five thousand one hundred fifty euros), in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicant;
 - (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;

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

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

Søren Nielsen
Registrar

Christos Rozakis
President