



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

FIRST SECTION

CASE OF TAKHAYEVA AND OTHERS v. RUSSIA

(Application no. 23286/04)

JUDGMENT

STRASBOURG

18 September 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Takhayeva and Others v. Russia,

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

Christos Rozakis, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 August 2008,

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

PROCEDURE

1. The case originated in an application (no. 23286/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Russian nationals (“the applicants”), on 26 April 2004.

2. The applicants, who had been granted legal aid, were represented by lawyers of the Stichting Russian Justice Initiative (“the SRJI”), an NGO based in the Netherlands with a representative office in Moscow. 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. On 1 September 2005 the Court decided to apply Rule 41 of the Rules of Court.

4. On 9 March 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- 1) Ms Rabu Mutushovna Takhayeva, who was born in 1959;
- 2) Mr Khashim Nurdinovich Takhayev, who was born in 1952;
- 3) Ms Zaira Khashimovna Takhayeva, who was born in 1977;
- 4) Mr Islam Sultanovich Tumanov, who was born in 1998, and
- 5) Ms Razet Zayndiyevna Terkibayeva, who was born in 1934.

The applicants live in the village of Mesker-Yurt, in the Shalinskiy District of the Chechen Republic.

7. The first and second applicants are married. They are the parents of Mr Ayub Khashidovich Takhayev, born in 1982, and the third applicant. The fourth applicant is the third applicant's son and Ayub Takhayev's nephew. The fifth applicant is Ayub Takhayev's grandmother.

A. Disappearance of Ayub Takhayev

1. The applicants' account

8. On the night of 13 November 2002 the first, second, third and fourth applicants, Ayub Takhayev and his grandfather slept in their family home at 42 Shkolnaya Street, Mesker-Yurt. The house had a common courtyard with three other houses inhabited by the applicants' relatives. The fifth applicant slept in one of those houses.

(a) Abduction of Ayub Takhayev

9. At about 2.40 a.m. on 13 November 2002 the first applicant heard a noise coming from the courtyard. She looked out of the window and saw about ten to fifteen men wearing camouflage uniforms. A group of about five men headed towards the applicants' house and entered without identifying themselves. They were armed with machine guns and grenades. All but one of them wore masks. The unmasked man had Slavic features. The first applicant assumed that the men belonged to the Russian military.

10. The servicemen ordered the second applicant to rise, took him into the corridor, forced him down onto the floor, tied his arms behind his back and hit him several times. In the meantime they locked Ayub Takhayev's grandfather in one of the rooms.

11. Then the men entered the room where Ayub Takhayev and the third applicant were sleeping and woke them up with torch lights. They shouted

at Ayub Takhayev to get up and kicked him; then they took him to the kitchen and forced him down onto the floor.

12. The intruders kept the first and third applicants locked in their rooms. When the first applicant tried to break through the door, one of the servicemen entered her room and pushed her in the chest so that she fell down. Then the servicemen locked the first, third and fourth applicants in one room. The women cried and begged them not to take Ayub Takhayev away. The fourth applicant was scared and cried. The servicemen ordered the third applicant to calm the child down and demanded the identity papers of the second applicant and Ayub Takhayev. The unmasked man with Slavic features shouted at the women and gave orders to the other men in Russian. The first applicant gave the men two internal passports; they took away the one belonging to Ayub Takhayev.

13. As the servicemen were leaving, they ordered everyone to stay indoors, threatening to blow up the house, and took Ayub Takhayev with them. The second applicant enquired as to where his son would be taken, but received no answer. Instead he was told he should thank the armed men for not taking him as well.

14. When the first and third applicants managed to open the locked door and leave their room, they ran out into the street and saw that the armed men had left. Then they went back inside and untied the second applicant.

15. Early in the morning on 13 November 2002 the second applicant found tracks left by an armoured personnel carrier ("APC") about 100 metres from his house. Some neighbours confirmed that they had seen an APC on the night of 13 November 2002.

(b) The fifth applicant's account

16. On the night of 13 November 2002 the fifth applicant heard a noise outside and went out into the courtyard. Two men pointed machine guns at her and ordered her to stand still and keep quiet. She realised that the noise had been caused by the men's attempts to break the door down. The armed men did not allow the fifth applicant to go back inside the house although it was cold outside and she was wearing only a nightgown. The fifth applicant heard the armed men speaking Russian without an accent. One of them stood behind the fifth applicant's back with his machine gun pointed at her. After ten or fifteen minutes the armed men ordered the fifth applicant to go back inside the house. She did so and then watched through the window as the men ran out of the courtyard into the street.

(c) Subsequent events

17. At about 4 a.m. on 14 November 2002 the first and second applicants saw four APCs driving down their street. Then they heard screaming coming from their neighbours' house. In the morning of 14 November 2002 the applicants learnt that two men, Mr V.M. and

Mr Kh.M., had been taken away from their neighbours' home by armed men in APCs. Mr V.M. and Mr Kh.M. went missing.

18. At 6.15 a.m. on 15 November 2002 the fifth applicant saw four APCs arriving in Mesker-Yurt. Later the applicants found out that on that night another villager, Mr A.I., had been abducted. Mr A.I. went missing.

2. Information submitted by the Government

19. At about 2.45 a.m. on 13 November 2002 unidentified persons armed with machine guns and wearing camouflage uniforms entered the house at 42 Shkolnaya Street, Mesker-Yurt, the Shali District, in the Chechen Republic, kidnapped Ayub Takhayev and took him away in an unknown direction.

B. The search for Ayub Takhayev and the investigation

1. The applicants' account

20. From 13 November 2002 onwards the applicants contacted, both in person and in writing, various official bodies. They described in detail the circumstances of their relative's disappearance and asked for assistance in establishing his whereabouts and fate. In particular, they applied to the prosecutors' offices at different levels, the military commander's office of the Shali District, the Shali District Department of the Interior, the Russian State Duma, the Special Envoy of the Russian President in Chechnya for Rights and Freedoms, the Russian President's Commission on Human Rights and the Administration of the Chechen Republic. Most of the complaints were filed by the first applicant, apparently on behalf of the whole family. The applicants retained copies of some of these complaints and submitted them to the Court. The official bodies forwarded the majority of the complaints to the prosecutors' offices for investigation.

21. On the morning of 13 November 2002 the applicants wrote to the prosecutor's office of the Shali District ("the district prosecutor's office"). They complained about their relative's abduction but did not challenge, as such, the intrusion into their home.

22. On 21 November 2002 the district prosecutor's office instituted an investigation into Ayub Takhayev's disappearance under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was given number 59259.

23. On 22 November 2002 the first applicant requested the district prosecutor's office to help her to establish her son's whereabouts.

24. On 23 November 2002 the first applicant was granted victim status in case no. 59259.

25. On 29 December 2002 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office.

26. On 21 January 2003 the investigation in case no. 59259 was suspended for failure to identify the alleged perpetrators.

27. On 25 March 2003 the military prosecutor's office of military unit no. 20116 informed the first applicant of the outcome of the inquiry conducted at her request. The inquiry had established that military personnel had not been implicated in Ayub Takhayev's disappearance.

28. On 8 April 2003 the first applicant wrote to the district prosecutor's office and the prosecutor's office of the Chechen Republic enquiring about progress in the investigation into her son's disappearance and requesting to be granted victim status. On 11 April 2003 the district prosecutor's office acknowledged receipt of her letter but did not reply as to the substance.

29. On 30 July 2003 the first applicant again wrote to the district prosecutor's office repeating the request of 8 April 2003.

30. On 15 August 2003 the prosecutor's office of the Chechen Republic ordered the district prosecutor's office to rescind the decision of 21 January 2003 on suspension of the investigation and informed the first applicant that the investigation had been opened on 21 November 2002 and then suspended on 21 January 2003.

31. On 20 August 2003 the South Federal Circuit Department of the Prosecutor General's Office informed the first applicant that her complaint had been forwarded to the prosecutor's office of the Chechen Republic.

32. On 22 August 2003 the district prosecutor's office rescinded the decision of 21 January 2003 and resumed the proceedings in case no. 59259.

33. In a letter of 25 August 2003 the district prosecutor's office informed the first applicant that the investigation in case no. 59259 had been resumed and that the search for Ayub Takhayev was currently under way. They further stated that the investigating authorities had checked detention centres and had requested various law enforcement agencies to establish the identities of those responsible for the kidnapping and those in charge of the special operation conducted in Mesker-Yurt on 13 November 2002, but those requests had remained unanswered and had been repeated. The first applicant was also asked to ensure that witnesses of the kidnapping visit the district prosecutor's office and make statements.

34. On 18 September 2003 the prosecutor's office of the Chechen Republic informed the first applicant that the district prosecutor's office had resumed the investigation on 22 August 2003.

35. On 19 September 2003 the military prosecutor of the United Group Alignment informed the first applicant that there were no grounds to presume any kind of implication of Russian federal troops in her son's kidnapping.

36. On 21 February 2005 the first applicant requested the district prosecutor's office to update her on progress in the investigation into her son's kidnapping.

37. On 14 April 2006 the district prosecutor's office informed the first applicant that her complaint to the prosecutor's office of the Chechen Republic had been included in the case file and that the investigation had been suspended on 3 July 2005.

38. On 31 May 2007 the prosecutor's office of the Chechen Republic informed the first applicant that Ayub Takhayev had been kidnapped by "unidentified men armed with machine guns and wearing camouflage uniforms who had arrived in APCs". They also noted that the investigation in case no. 59259, suspended on 3 July 2005, had been resumed on 8 May 2007 and was under way.

39. After the investigation resumed in May 2007, the investigators visited the applicants' house and questioned the first, second, third and fifth applicants, as well as the applicants' neighbours. According to the first applicant, it was the first time the investigators had visited the village of Mesker-Yurt since the summer of 2003.

2. Information submitted by the Government

40. The investigation in case no. 59259 did not establish any involvement of special units of law enforcement and security forces in the kidnapping of Ayub Takhayev.

41. The law enforcement agencies of the Chechen Republic did not institute any criminal proceedings against Ayub Takhayev.

42. According to the district department of the interior and the military commander's office, Ayub Takhayev was not arrested; none of the detachments of the military commander's office had left their premises at the time of his abduction.

43. The investigators sent requests for information to the Department of the Federal Security Service of the Chechen Republic and the military prosecutor's office of the United Group Alignment. The information received in reply confirmed that Ayub Takhayev had not been arrested or charged with any crime.

44. Requests for information were also sent to remand prisons in the Chechen Republic, the Stavropol Region and other adjacent regions of Russia.

45. In numerous letters of recommendation Ayub Takhayev was described in a positive manner, which proved that the institution of criminal proceedings against him was improbable.

46. Ayub Takhayev was not admitted to the Central Hospital of the Shali District.

47. The investigation had not identified the perpetrators and was currently under way. Investigative measures aimed at resolving Ayub Takhayev's kidnapping were being taken.

48. Despite specific requests by the Court the Government did not disclose any documents from the investigation file in case no. 59259. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

49. Article 125 of the Russian Code of Criminal Procedure 2001 ("CCP") provides that the decision of an investigator or prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a district court, which is empowered to examine the lawfulness and grounds of the impugned decisions.

50. Article 161 of the CCP establishes the rule that data from the preliminary investigation cannot 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 and only in so far as it does not infringe the rights and lawful interests of 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.

51. Article 1069 of the Russian Civil Code provides that damage sustained by an individual because of unlawful actions or inaction of State and municipal agencies or their officials is to be indemnified by a State or municipal treasury.

THE LAW

I. THE GOVERNMENT'S OBJECTION AS TO ABUSE OF PETITION

52. The Government submitted that the application had not been lodged in order to restore the allegedly violated rights of the applicants. The actual

object and purpose of the application was clearly of a political nature as the applicants wanted to “incriminate the Russian Federation of allegedly adopting a policy of violating human rights in the Chechen Republic”. They concluded that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

53. The Court considers that the Government may be understood to be suggesting that there was an abuse of the right of petition on the part of the applicants. It observes in this respect that the complaints the applicants brought to its attention concerned genuine grievances. Nothing in the case file reveals any appearance of abuse of their right of individual petition. Accordingly, the Government’s objection must be dismissed.

II. THE GOVERNMENT’S OBJECTION AS TO NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties’ submissions

54. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Ayub Takhayev had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints about the allegedly unlawful detention of their relative or to challenge in court any actions or omissions of the investigating or other law enforcement authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to bring civil claims for damages pursuant to Article 1069 of the Civil Code but they had failed to do so.

55. The applicants stated that the criminal investigation had proved to be ineffective.

B. The Court’s assessment

56. 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. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should

have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, §§ 65-67; and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

57. 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, or *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

58. The Court first notes, having regard to the Government's objection concerning the applicants' failure to complain of their relative's unlawful detention to the domestic authorities, that after Ayub Takhayev had been taken away by armed men, the applicants actively attempted to establish his whereabouts and applied to various official bodies, whereas the authorities denied responsibility for the detention of the missing person. In such circumstances, and in particular in the absence of any proof to confirm the very fact of the detention, even assuming that the remedy referred to by the Government was accessible to the applicants, it is more than questionable whether a court complaint about the unacknowledged detention of Ayub Takhayev 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 Ayub Takhayev and the identification and punishment of those responsible (see *Musayeva and Others v. Russia*, no. 74239/01, § 69, 26 July 2007). Accordingly, the Government's objection concerning non-exhaustion of domestic remedies in respect of Ayub Takhayev's unlawful deprivation of liberty must be dismissed.

59. As to the alleged violation of Ayub Takhayev's right to life, 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.

60. 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 v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

61. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement authorities immediately after the abduction of their relative and that the criminal proceedings have been pending since 21 November 2002. The applicants and the Government disagree about the effectiveness of the investigation of the kidnapping.

62. Furthermore, the Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints under Article 2. Thus, it considers that these matters fall to be examined below under that provision of the Convention.

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

A. The parties' submissions

63. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Ayub Takhayev had been State agents. In support of that affirmation they referred to the following facts. The armed men who had abducted Ayub Takhayev had moved freely around the village in APCs, vehicles that were only in the possession of the military. They had spoken Russian without an accent, which proved that they were not of Chechen origin. The applicants also pointed out that the ground given for the Government's refusal to submit the file in criminal case no. 59259 was that it contained "information of a military nature disclosing the location and nature of actions by military and special security forces".

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

B. The Court's evaluation of the facts

(a) General principles

65. 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 able to corroborate or refute the applicants' 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 the applicant's allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-...).

66. The Court points out that a number of principles have been developed in its case-law when it is faced with the task of establishing facts on which the parties disagree. As to the facts that are 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 (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted 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).

67. 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, for example, *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 v. Turkey*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

68. 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 *Tomasi v. France*, 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11; *Ribitsch*, cited above, § 34; and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

69. 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).

70. Finally, when there have been criminal proceedings in the domestic courts concerning those same allegations, it must be borne in mind that criminal-law liability is distinct from international-law responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions, which are to be interpreted and applied on the basis of the objectives of the Convention and in light of the relevant principles of international law. The responsibility of a State under the Convention, for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Avsar*, cited above, § 284).

(b) Establishment of the facts

71. The Court notes that despite its requests for a copy of the investigation file into the abduction of Ayub Takhayev, the Government produced no documents from the case file. The Government 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 *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

72. In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relative can be presumed dead and whether his death can be attributed to the authorities.

73. The applicants alleged that the persons who had apprehended Ayub Takhayev on 13 November 2002 had been State agents.

74. The Court notes that this allegation is supported by the witness statements collected by the applicants. It finds that the fact that a large group of armed men in uniform, equipped with military armoured vehicles, was able to move freely around the village at night and proceeded to check identity papers and apprehend several persons at their homes strongly supports the applicants' allegation that these were State servicemen.

75. According to the applicants, three other villagers of Mesker-Yurt were abducted in circumstances similar to those of their relative's kidnapping (see paragraphs 17 and 18 above). The Court considers that such a series of events bears strong resemblance to a special operation carried out by law enforcement agencies or the military. However, it cannot clarify

whether the investigators have ever tried to establish any possible links between the abductions owing to the Government's failure to produce a copy of the investigation file.

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

77. Taking into account the above elements, the Court is satisfied that the applicants have made out a prima facie case that Ayub Takhayev was apprehended by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court considers that Ayub Takhayev was apprehended on 13 November 2002 by State servicemen during an unacknowledged security operation.

78. There has been no reliable news of Ayub Takhayev since the date of the kidnapping. His name has not been found in any official detention facilities' records. The Government have not submitted any explanation as to what happened to him after his abduction.

79. Having regard to previous cases concerning disappearances of people in Chechnya which have come before the Court (see, among others, *Bazorkina v. Russia*, no. 69481/01, 27 July 2006; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Ayub Takhayev or of any news of him for more than five years supports this assumption.

80. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Ayub Takhayev must be presumed dead following his unacknowledged detention by State servicemen.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

A. The parties’ submissions

82. The Government contended that the domestic investigation had obtained no evidence to the effect that Ayub Takhayev was dead or that any servicemen of the federal law-enforcement agencies had been involved in his kidnapping or alleged killing. The Government noted that the applicants had reported Ayub Takhayev’s kidnapping to the district prosecutor’s office only on 20 November 2002 and that the investigation had been opened on the following day. They further claimed that the investigation into the kidnapping of the applicants’ relative met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

83. The applicants argued that Ayub Takhayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy as required by the Court’s case-law on Article 2. The applicants invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

84. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies provided for by criminal law should be joined to the merits of the complaint (see paragraph 62 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Ayub Takhayev

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

86. The Court has already found it established that Ayub Takhayev must be presumed dead following his unacknowledged detention by State servicemen and that his death can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Ayub Takhayev.

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

87. 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).

88. In the present case the kidnapping of Ayub Takhayev was investigated. The Court must assess whether the investigation met the requirements of Article 2 of the Convention.

89. The Court notes at the outset that all the documents from the investigation file 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 applicants and the scarce information about its progress presented by the Government.

90. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation in case no. 59259 was instituted eight days after Ayub Takhayev's abduction. The Court is not persuaded by the Government's argument that the delay in instituting the criminal proceedings was a result of the applicants' failure to lodge a complaint with the district prosecutor's office immediately after the incident. The Government did not dispute that the applicants had reported Ayub Takhayev's abduction to the police in the morning of 13 November 2002. In such circumstances the Court considers that the applicants were not obliged to lodge their complaints directly with the district prosecutor's office. Once the law enforcement authorities were duly and promptly made aware of the crime, it was incumbent on them to organise co-operation between the various State agencies in such a manner that would guarantee the effectiveness of a criminal investigation. Therefore, in the Court's opinion, the investigating authorities failed to promptly commence the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

91. As it can be seen from the letter of the district prosecutor's office of 25 August 2003, the investigators attempted to obtain information on the special operation carried out in Mesker-Yurt in November 2002 and the identities of those in charge of it from the military and law enforcement agencies (see paragraph 33 above). It appears that their attempt was futile.

92. The Court notes that it appears that the applicants and their neighbours were questioned for the first time only in 2007, that is, five years after the incident. Furthermore, it appears that the investigating authorities

have not questioned any servicemen of law enforcement agencies or the military at all. These failures alone compromised the effectiveness of the investigation and could not but have had a negative impact on the prospects of arriving at the truth. It appears that no real effort was made by the authorities to establish the whereabouts and fate of Ayub Takhayev.

93. As to the manner in which the investigation was conducted, the Court notes that in a period of five years it was suspended and resumed a number of times. There were lengthy periods of inactivity and, in particular, no proceedings whatsoever were pending between 3 July 2005 and 8 May 2007.

94. The Court also notes that even though the first applicant was granted victim status in case no. 59259, she was only informed of some decisions on 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.

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

96. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Ayub Takhayev, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

97. The applicants relied on Article 3 of the Convention, submitting that as a result of Ayub Takhayev's disappearance and the State's failure to investigate it properly, they 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."

A. The parties' submissions

98. The Government disagreed with these allegations and argued that the investigation had not established that the applicants had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. They also insisted that the investigative authorities had replied to the applicants' queries with due diligence.

99. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

100. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

101. 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).

102. In the present case the Court notes that the applicants are the close relatives of the missing person who witnessed his abduction. For more than four years they have not had any news of Ayub Takhayev. During this period the applicants have applied to various official bodies with enquiries about Ayub Takhayev, both in writing and in person. Despite their requests, they have never received any plausible explanation or information as to what became of Ayub Takhayev following his abduction. The responses

received by the applicants mostly denied that the State was responsible for the abduction or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

105. The applicants further stated that Ayub Takhayev had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

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

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

...

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

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

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

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

A. The parties' submissions

106. In the Government's opinion, no evidence was obtained by the investigators to confirm that Ayub Takhayev had been deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention.

107. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

108. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

109. 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).

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

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

112. In view of the foregoing, the Court finds that Ayub Takhayev was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

113. The applicants complained, relying on Article 8 of the Convention, that their house was unlawfully searched on the night of 13 November 2002. Article 8 of the Convention, in so far as relevant, provides:

“1. Everyone has the right to respect for ... his home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

114. The Court reiterates that while, in accordance with Article 35 § 1 of the Convention, those seeking to bring their case against the State before the Court are required to use first the remedies provided by the national legal system, there is no obligation under the said provision to have recourse to remedies which are inadequate or ineffective. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/00 et seq., 10 January 2002). There is no evidence that the applicants properly raised before the domestic authorities their complaints alleging a breach of their right to respect for their home. But even assuming that in the circumstances of the present case no remedies were available to the applicants, the events complained of took place on 13 November 2002, whereas their application was lodged on 26 April 2004. The Court thus concludes that this part of the application was lodged outside the six-month limit (see *Musayeva and Others v. Russia* (dec.), no. 74239/01, 1 June 2006; and *Ruslan Umarov v. Russia* (dec.), no. 12712/02, 8 February 2007).

115. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. The parties’ submissions

117. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had not brought any complaints in relation to Ayub Takhayev’s kidnapping to courts of the Chechen Republic, Kabardino-Balkaria and Ingushetia or to the courts of the Stavropol, Krasnodar and Rostov Regions. Furthermore, the applicants could have brought civil claims for damages pursuant to Article 1069 of the Civil Code. In sum, the Government submitted that there had been no violation of Article 13.

118. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

119. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

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

121. As regards the complaint of lack of effective remedies in respect of the applicants’ complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13

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

122. 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.

123. It follows that in circumstances where, as here, the criminal investigation into the disappearance of Ayub Takhayev has been ineffective and the effectiveness of any other remedy that may have existed, including civil claims for damages, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

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

125. As regards the applicants' reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on account of the applicants' mental suffering as a result of the disappearance of Ayub Takhayev, their inability to find out what happened to him and the way the authorities handled their complaints. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

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

IX. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

127. In their initial application form the applicants complained that they had been discriminated against in the enjoyment of the Convention rights, arguing that the violations complained of had taken place because of their residence in Chechnya and their ethnic background as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

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

128. In the observations on admissibility and merits of 11 September 2007 the applicants stated that they no longer wished their complaint under Article 14 of the Convention to be examined.

129. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character, affecting respect for human rights as defined in the Convention, which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

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

X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

131. 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

132. The first and second applicants claimed damages in respect of the lost wages of their son from the time of his kidnapping. They submitted that, even though Ayub Takhayev 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 first and second applicants insisted that each of them would have received 20 % of their son’s earnings. The first and second applicants claimed 387,430.40 and 295,035.67 Russian roubles (RUB), respectively (approximately 10,760 and 8,200 euros (EUR)).

133. The Government regarded these claims as unfounded.

134. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

135. 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 applicants’ son and the loss by the applicants of the financial support which he could have provided. Having regard to the applicants’ submissions and the fact that Ayub Takhayev was not employed at the time of his apprehension, the Court awards EUR 3,000 to the first and second applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

136. The first, second and third applicants claimed EUR 25,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relative. The fourth and fifth applicants claimed EUR 5,000 each under this heading.

137. The Government found the amounts claimed exaggerated.

138. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants’ relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the first and second applicants EUR 25,000 jointly, the third and fourth applicants EUR 5,000 jointly and the fifth applicant EUR 5,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

139. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews, 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, totalling EUR 6,300. They also claimed administrative expenses in the amount of 7 % of the above amount. The applicants claimed RUR 1,662.89 in translation fees and EUR 55.15 in international courier mail fees. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,245.33.

140. The Government pointed out that the applicants were only entitled to reimbursement of costs and expenses that had actually been incurred and had been reasonable. They also noted that two of the SRJI's lawyers who had signed the applicants' observations on admissibility and merits had not been named in the powers of attorney.

141. The Court has to establish first whether the costs and expenses indicated by the applicants were actually incurred and, second, whether they were necessary (see *McCann and Others*, cited above, § 220).

142. Having regard to the details of the information submitted by the applicants, the Court is satisfied that these rates are reasonable. Turning to the Government's argument concerning the number of lawyers who signed the applicants' observations, it points out that the powers of attorney were issued first and foremost in the name of the SRJI, not in that of its employees, and, accordingly, the NGO had a right to assign any of its collaborators to deal with the applicants' case. Therefore, the Court finds no ground of objection.

143. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time that, due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives. Moreover, the case involved little documentary evidence, in view of the Government's refusal to submit the case file. The Court thus doubts that research was necessary to the extent claimed by the representatives.

144. 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 4,500, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 14 of the Convention;
2. *Dismisses* the Government's objection as to the abuse of the right of petition;
3. *Dismisses* the Government's objection as to non-exhaustion of civil domestic remedies, as well as non-exhaustion of domestic remedies in respect of Ayub Takhayev's unlawful deprivation of liberty;
4. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
5. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of Ayub Takhayev;
7. *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 Ayub Takhayev disappeared;
8. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
9. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ayub Takhayev;
10. *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;
11. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;

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 3,000 (three thousand euros) in respect of pecuniary damage to the first and second applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;

(ii) EUR 25,000 (twenty-five thousand euros) to the first and second applicants jointly, EUR 5,000 to the third and fourth applicants jointly and EUR 5,000 to the fifth applicant in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

(iii) EUR 3,650 (three thousand six hundred and fifty euros) in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 18 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President