



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

FIRST SECTION

CASE OF AKHMADOVA AND AKHMADOV v. RUSSIA

(Application no. 20755/04)

JUDGMENT

This version was rectified on 8 July 2009
under Rule 81 of the Rules of the Court

STRASBOURG

25 September 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Akhmadova and Akhmadov 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 4 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 20755/04) 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 two Russian nationals, Ms Aysyat Khamidovna Akhmadova¹ and Mr Yusup Said-Akhmedovich Akhmadov² (“the applicants”), on 14 April 2004.

2. The applicants, who had been granted legal aid, were represented by Mr D. Itslyayev, a lawyer practising in Nazran. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the Representative of the Russian Federation at the European Court of Human Rights.

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.

¹ Rectified on 8 July 2009: the text was “Ms Ayset Khamidovna Akhmadova...”

² Rectified on 8 July 2009: the text was “Mr Yusup Sayd-Akhmetovich Akhmadov...”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1957 and 1953 respectively and live in Urus-Martan. They are spouses and the parents of four children. Their elder son, Adnan Yusupovich Akhmadov, was born in 1982.

A. Disappearance of Adnan Akhmadov

1. The applicants' account

7. Between 28 and 29 September 2002 the applicants, their two sons, two daughters and two minor grandchildren were at their family home at 90 Sportivnaya Street, Urus-Martan.

8. At about 3 a.m. on 29 September 2002 a group of five masked men in camouflage uniforms broke into the applicants' house. The men did not identify themselves. They were armed with machine guns, which were equipped with silencers used by Russian troops. The men conversed among themselves in Russian without any accent. The applicants inferred that they were Russian servicemen.

9. The applicants' younger daughter cried. The servicemen put machine guns to the second applicant's chest, told him to calm the children down and ordered him to awaken his elder son. When he did so, they took Adnan Akhmadov to the courtyard, forced him to his knees and tied his arms behind his back with adhesive tape.

10. The servicemen pushed the second applicant with a machine-gun butt into a room and ordered him not to move. Then the armed men left the house taking Adnan Akhmadov with them. The second applicant tried to follow the servicemen, but the door was blocked from the outside. The second applicant then looked out the window and noticed more masked men. The whole group drove away in a UAZ vehicle, a Ural truck and an armoured personnel carrier ("APC").

11. In support of their account of the events the applicants submitted written statements from four neighbours who had witnessed the scene in the courtyard.

2. The Government's account

12. According to the Prosecutor General's Office, at 3 a.m. on 29 September 2002 unidentified persons armed with machine guns entered the house at 90 Sportivnaya Street, Urus-Martan, kidnapped Adnan Akhmadov and took him away in an unknown direction.

B. Search for Adnan Akhmadov and investigation into his disappearance

1. The applicants' account

13. In the morning of 29 September 2002 the applicants reported in person their son's disappearance to the district department of the interior, the temporary district department of the interior, the military commander's office, the prosecutor's office of the Urus-Martan District ("the district prosecutor's office") and the local administration. None of the officials provided any information as to Adnan Akhmadov's whereabouts. On the same date the applicants lodged written complaints with all the aforesaid bodies. The applicants retained copies of some of these complaints and submitted them to the Court.

14. From 1 October 2002 onwards the first applicant repeatedly wrote to various official bodies, such as the Prosecutor General's Office, the prosecutor's office of the Chechen Republic, the military prosecutor of military unit no. 20102, the Administration of the Chechen Republic, the Special Envoy of the Russian President in Chechnya for Rights and Freedoms, the Russian Ministry of Justice and the Russian State Duma. She also contacted the Memorial Human Rights Centre. In her applications she described in detail the circumstances of her son's abduction and asked for assistance in establishing his whereabouts. Most of the complaints were eventually forwarded to the district prosecutor's office.

15. The first applicant also addressed numerous penitentiary institutions requesting information on her son's possible detention. In reply, she was informed that Adnan Akhmadov had not been held in any of them.

16. On 3 October 2002 the first applicant visited the head of the Chechen Department of the Federal Security Service ("the FSB"), Mr K., and told him that Adnan Akhmadov was not sufficiently fluent in Russian. Mr K. interrupted her saying that her son spoke Russian better than her. As evidence, the first applicant provided written statements from her two relatives who heard Mr K.'s reply.

17. On 31 October 2002 the investigation into Adnan Akhmadov's kidnapping was opened in case no. 61145.

18. On 18 June 2003 the Chechen Department of the FSB informed the first applicant that Adnan Akhmadov had not been detained by the FSB and that there had been no legal grounds for his detention. The letter also stated that measures were being taken to establish his whereabouts.

19. On 5 August 2003 the prosecutor's office for the Southern Federal Circuit informed the first applicant that her complaint about ineffective investigation into her son's disappearance had been forwarded to the prosecutor's office of the Chechen Republic.

20. On 18 August 2003 the prosecutor's office of the Chechen Republic informed the first applicant that her complaint about the suspension of the criminal proceedings concerning her son's disappearance had been examined.

21. On 1 October 2003 the first applicant wrote to the Chechen Department of the FSB asking for assistance and mentioned her conversation with Mr K. of 3 October 2002. Later an FSB official informed the first applicant that her letter had been forwarded to the district prosecutor's office.

22. On 7 April 2004 the district prosecutor's office informed the first applicant that the investigation in case no. 61145 had been resumed on 16 April 2004 and that no suspects had been found yet.

23. On 16 May 2004 the investigation was again stayed, apparently for a failure to identify suspects.

24. On 1 July 2004 the first applicant complained to the Urus-Martan Town Court of the Chechen Republic ("the town court") about the authorities' failure to carry out an effective investigation and namely to take a number of essential steps. She requested that the investigation be reopened and that she be allowed access to the case file.

25. On 20 September 2004 the military prosecutor's office of military unit no. 20102 informed the first applicant that military personnel had not taken part in her son's abduction.

26. On 8 November 2004 four policemen of the district department of the interior visited the applicants and interrogated witnesses of Adnan Akhmadov's apprehension. The witnesses reassured the policemen that the applicants' son had not participated in any illegal armed groups.

27. On 2 June 2005 the first applicant complained to the prosecutor's office of the Chechen Republic about inactivity of the district prosecutor's office. On 29 June 2005 she was informed in reply that investigative measures were being taken to resolve her son's kidnapping.

28. On 19 July 2005 the first applicant was invited for an interview at the district prosecutor's office. Once there, she was told by an investigator that she should have ensured that witnesses to her son's abduction visited him. The first applicant replied that she needed guarantees for safety in respect of herself and the witnesses. The investigator said that he himself had no guarantees for his own safety. The first applicant inferred from the investigator's remark that her life was in danger and requested the district prosecutor's office to take security measures pursuant to Article 11 of the Code of Criminal Procedure in respect of her family members and the witnesses to her son's abduction.

29. On 13 October 2005 the district prosecutor's office informed the first applicant that her request for application of security measures had been dismissed.

30. On 24 October 2005 the first applicant complained about the decision of 13 October 2005 to the prosecutor's office of the Chechen Republic. On 22 November 2005 she was informed that there were insufficient grounds for the application of security measures in her case.

31. On 13 June 2006 the first applicant requested the district prosecutor's office to update her on the progress in the investigation in case no. 61145 and to resume the proceedings if they had been suspended.

2. Information submitted by the Government

32. On 31 October 2002 the district prosecutor's office instituted criminal proceedings related to the disappearance of Adnan Akhmadov under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned the number 61145.

33. On 31 December 2002 the first applicant was granted victim status in case no. 61145. On the same date the district prosecutor's office suspended the investigation for failure to identify those responsible.

34. Between 26 February 2003 and 15 September 2003 the investigation in case no. 61145 was resumed three times and then suspended by the district prosecutor's office.

35. On 16 April 2004 the investigation was resumed.

36. On 16 May 2004 the district prosecutor's office again suspended the investigation.

37. On 6 August 2004 the Urus-Martan Town Court ("the town court") examined the first applicant's complaint concerning the suspension of the investigation into her son's kidnapping. It noted that the investigators had taken certain measures to resolve the crime. In particular, they had questioned witnesses and sent requests to law-enforcement agencies. The department of the Federal Security Service of the Urus-Martan District, the military commander's office, the department of the interior and some other law-enforcement agencies had replied that their officers had not detained Adnan Akhmadov. The investigators had tried to establish which State agency had owned an armoured intelligence vehicle ("AIV", «боевая разведывательно-дозорная машина», БРДМ) and a Ural vehicle. Nevertheless, the town court found that the investigators had not taken all the measures indicated by the prosecutor's office of the Chechen Republic in a decision of 13 April 2004. In particular, they had not questioned the former head of the district department of the FSB and the former military commander of the Urus-Martan District. The town court concluded that the first applicant's complaint was well-founded and ordered that the district prosecutor's office resume the investigation in case no. 61145.

38. On 24 August 2004 the Supreme Court of the Chechen Republic upheld the first-instance judgment.

39. On 28 October 2004 the district prosecutor's office resumed the proceedings and informed the first applicant accordingly.

40. On 28 November 2004 the investigation was again suspended.

41. On 29 June 2005 the prosecutor's office of the Chechen Republic quashed the decision of 28 November 2004 for the reason that the investigation had not been comprehensive. They indicated that it was necessary to verify the first applicant's hypothesis of involvement of FSB servicemen in her son's kidnapping and to perform the measures indicated by the prosecutor's office of the Chechen Republic and the town court. The proceedings in case no. 61145 were resumed.

42. On 6 August 2005 the district prosecutor's office again suspended the investigation.

43. On 13 June 2006 the district prosecutor's office resumed the investigation into Adnan Akhmadov's kidnapping for one day as it was necessary to decide upon a request by the first applicant. On 14 June 2006 the investigation was suspended.

44. On 17 May 2007 the district prosecutor's office decided to resume the investigation in case no. 61145 for the reason that a number of investigative measures had not been taken.

45. Despite specific requests by the Court the Government did not disclose most of the material from case no. 61145, providing only copies of decisions to suspend and resume the investigation and to grant victim status, as well as of several notifications to relatives of the adjournment and reopening of the proceedings. In particular, they did not provide a copy of the decision of the prosecutor's office of the Chechen Republic of 13 April 2004 referred to by the town court. 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

46. Article 11 § 3 of the Russian Code of Criminal Procedure 2001 ("CCP") provides that if there are sufficient reasons to conclude that a victim, witness or other person involved in an investigation, as well as their close relatives, are being threatened with murder, violence, destruction of property or other crimes, a court, prosecutor or investigator shall provide the aforementioned persons with security measures. Such measures, mentioned in Articles 166 § 9, 186 § 2, 193 § 8, 241 § 2 and 278 § 5 of the CCP, include granting anonymity, wiretapping in case of threats by telephone, guaranteeing that witnesses' faces are hidden during an identification parade, holding court hearings in camera and questioning witnesses at a trial in such a way that they are not seen by other persons present in the courtroom.

47. Article 124 of the CCP provides that a prosecutor can examine a complaint concerning actions or omissions of various officials in charge of a criminal investigation. Once a complaint is examined, the complainant should be informed of its outcome and of possible avenues of appeal against the prosecutor's decision.

48. Article 125 of the 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.

49. Article 161 of the CCP enshrines 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 the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of participants in criminal proceedings without their permission.

THE LAW

I. THE GOVERNMENT'S OBJECTIONS

50. 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 had been of a clearly political nature as the applicants had sought to "incriminate the Russian Federation in allegedly adopting a policy infringing human rights in the Chechen Republic". They concluded that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

51. The Court considers that the Government may be understood to suggest that there was an abuse of the right of petition on the part of the applicants. It observes in this respect that the applicants brought to its attention their genuine grievances and nothing in the case file discloses any appearances of the abuse of their right of individual petition. Accordingly, the Government's objection should be dismissed.

52. Furthermore, the Court points out that the Government did not formally contend that the application should be declared inadmissible for non-exhaustion of domestic remedies or on the ground that the application

was premature. They did, however, note that criminal proceedings were still pending. The Court considers that these comments are to be considered as observations on the merits of the case, and not as an objection as to the non-exhaustion of domestic remedies (see *Imakayeva v. Russia* (dec.), no. 7615/02, 20 January 2005).

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

A. The parties' submissions

53. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Adnan Akhmadov had been State agents. In support of the complaint they referred to the fact that the men had arrived in an APC, a type of vehicle that had been available only to members of the Russian federal troops in the Chechen Republic. The applicants also pointed out that the ground given for the Government's refusal to submit the file in criminal case no. 61145 was that it contained "information of a military nature disclosing the location and nature of actions by military and special security forces".

54. The Government submitted that unidentified armed men had kidnapped Adnan Akhmadov. They further contended that the investigation into 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. The law-enforcement agencies had not instituted any criminal proceedings against Adnan Akhmadov. The Government also questioned the accuracy of the first applicant's submissions regarding her conversation with Mr K., the FSB official, because her statement and the statements of two women who had allegedly heard the conversation had been slightly different. They further argued that there was no convincing evidence that the applicants' son was dead. In sum, the Government insisted that the applicants' allegations about involvement of Russian servicemen in their son's kidnapping had been unfounded.

B. The Court's assessment of the facts

55. The Court observes that in its extensive jurisprudence 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, for example, *Bazorkina v. Russia*, no. 69481/01, §§ 103-09, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained

has to be taken into account (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161).

56. The Court notes that despite its requests for a copy of the investigation file concerning the abduction of Adnan Akhmadov, the Government produced only part of the material 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-...).

57. 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.

58. The applicants alleged that the persons who had apprehended Adnan Akhmadov on 29 September 2002 had been State agents.

59. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation.

60. In their applications to the authorities the applicants consistently maintained that Adnan Akhmadov had been detained by unknown servicemen most probably belonging to the FSB and requested the investigation to look into that possibility (see paragraph 21 above). Moreover, the town court indicated that the investigation should have interviewed the former head of the district department of the FSB to verify the first applicant's hypothesis (see paragraph 37 above). The Court notes in this respect that, according to the Government, the first applicant and the two witnesses did not give an identical description of the conversation with the FSB official. However, in the Court's view, this does not undermine the veracity of the first applicant's story as it is hardly reasonable to expect three different persons to describe an event in one and the same manner.

61. Furthermore, according to the applicants, the perpetrators drove military vehicles, including an APC. The latter could only have been owned by Russian servicemen. This allegation was not simply dismissed by the investigators as they tried to establish which military detachment had had an AIV in its possession (see paragraph 37 above). The Court notes that the applicants and the authorities referred to different types of vehicles. However, it considers that, even if APCs and AIVs have certain constructive dissimilarities, a civilian could confuse one type of armoured vehicle with another.

62. The Court thus finds that the fact that a large group of armed men in uniform and in military vehicles was able to move freely about the town past curfew strongly supports the applicants' allegation that these were State servicemen conducting a security operation.

63. 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).

64. Taking into account the above elements, the Court is satisfied that the applicants have made out a prima facie case that Adnan Akhmadov 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 Adnan Akhmadov was apprehended on 29 September 2002 by State servicemen.

65. There has been no reliable news of Adnan Akhmadov 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.

66. Having regard to the 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-... ; *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 Adnan Akhmadov or of any news of him for more than five years supports this assumption.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

68. The applicants complained under Article 2 of the Convention that Adnan Akhmadov 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

69. The Government contended that the domestic investigation had obtained no evidence to the effect that Adnan Akhmadov was dead or that any servicemen of the federal law-enforcement agencies had been involved in his kidnapping or alleged killing. They claimed that the investigation into the kidnapping of the applicants’ son met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

70. The applicants argued that Adnan Akhmadov 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 had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for five years without producing any known results had been further proof of its ineffectiveness. The investigation should have been carried out by a military prosecutor’s office as the district prosecutor’s office had no competence to investigate cases in which involvement of the FSB servicemen had been alleged. They also noted that the district prosecutor’s office had refused to guarantee their safety. They also submitted that three other relatives of theirs had been killed in 2001 and suggested that the Russian authorities had taken revenge on their family because prior to 1999 one of the killed relatives had worked for the self-proclaimed Chechen government.

B. The Court's assessment

1. Admissibility

71. 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. It must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Adnan Akhmadov

72. 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 v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII).

73. The Court has already found it established that Adnan Akhmadov 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 Adnan Akhmadov.

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

74. 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).

75. In the present case the kidnapping of Adnan Akhmadov was investigated. The Court must assess whether the investigation met the requirements of Article 2 of the Convention.

76. The Court notes 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.

77. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation in case no. 61145 was instituted on 31 October 2002, that is, more than a month after Adnan Akhmadov's abduction. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

78. Furthermore, the Court notes that, as can be seen from the decision of the town court, by 6 August 2004 the investigators had not questioned the former head of the Chechen Department of the FSB and the former military commander, that is, two officials who could have provided important information concerning the kidnapping of Adnan Akhmadov (see paragraph 37 above). According to the decision of the prosecutor's office of the Chechen Republic, by 29 June 2005 the investigators had not verified the first applicant's hypothesis of the FSB servicemen's involvement in the kidnapping (see paragraph 41 above). It is obvious that these investigative 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).

79. The Court also recalls that even though the first applicant was granted victim status in case no. 61145 two months after the commencement of the investigation 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.

80. Nevertheless, the Court does not regard the refusal of the district prosecutor's office to apply to the applicants and witnesses certain security measures as a failing contributing *per se* to the ineffectiveness of the investigation, because the applicants did not show that there were any particular threats to their life and limb and did not specify which security measures they had sought.

81. Lastly, the Court points out that, according to the Government, by November 2007 the investigation concerning Adnan Akhmadov was pending. Accordingly, the investigation was ongoing for more than five years without bringing any tangible results. During this time-period it was at least eight times suspended and resumed. Moreover, there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were being conducted. Both the town court and the prosecutor's office of the Chechen Republic criticised deficiencies in the proceedings and ordered remedial measures. It appears that its instructions were not complied with. In such circumstances the Court considers the length of the investigation to be yet another proof of its ineffectiveness.

82. 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 Adnan Akhmadov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

83. The applicants relied on Article 3 of the Convention, submitting that as a result of Adnan Akhmadov'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

84. 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.

85. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

86. 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

87. 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).

88. In the present case the Court notes that the applicants are the parents of the missing person and they witnessed his abduction. For more than five years they have not had any news of Adnan Akhmadov. During this period the applicants have applied to various official bodies with enquiries about Adnan Akhmadov, both in writing and in person. Despite their requests, they have never received any plausible explanation or information as to what became of Adnan Akhmadov following his kidnapping. 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.

89. In view of the above, the Court finds that the applicants have suffered distress and anguish as a result of the disappearance of their son 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.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

91. The applicants further stated that Adnan Akhmadov 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

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

93. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

94. 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

95. 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).

96. The Court has found it established that Adnan Akhmadov was apprehended by State servicemen on 29 September 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).

97. 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 son 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.

98. In view of the foregoing, the Court finds that Adnan Akhmadov 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.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

99. 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. Article 13 provides as follows:

“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

100. 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. They pointed out that the first applicant had made use of domestic remedies available pursuant to Articles 124 and 125 of the Code of Criminal Procedure as she had brought her complaints both to a higher prosecutor and to a court. The mere fact that the outcome of such complaints had not been favourable for her had not undermined the effectiveness of those remedies. The applicants had not brought any complaints in relation to Adnan Akhmadov’s kidnapping to courts of the Stavropol, Krasnodar and Rostov Regions or to the courts of Kabardino-Balkaria and Ingushetia. Furthermore, the applicants could have brought civil claims for damages. In sum, the Government submitted that there had been no violation of Article 13.

101. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

102. 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

103. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. According to the Court’s settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic

authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, judgment of 25 June 1997, *Reports of Judgments and Decisions* 1997-III, p. 1020, § 64).

104. As regards the complaint of a 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 *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).

105. 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.

106. The Court is not persuaded that complaints to courts of other regions of Russia could have been more effective for the applicants than the complaints they submitted to domestic authorities in the Chechen Republic, pursuant to territorial jurisdiction rules.

107. It follows that in the circumstances of the present case, where the criminal investigation into the disappearance of Adnan Akhmadov 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.

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

109. As regards the applicants’ reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on account of the applicants’ mental suffering as a result of the disappearance of their son, their inability to find out what had 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.

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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

112. The applicants claimed damages in respect of the lost wages of their son from the time of his arrest and subsequent disappearance. They submitted that, even though Adnan Akhmadov was unemployed at the time of his arrest, it was reasonable to suppose that he would have found a job and earned at least 15,000 Russian roubles (RUB) per month (approximately 420 euros (EUR)). The applicants who would reach their retirement age in 2012 and 2013 respectively assumed that they would have been financially dependent on their son for several years. The first and second applicants claimed EUR 15,600 and EUR 5,200, respectively.

113. The Government regarded these claims as unfounded.

114. 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 Adnan Akhmadov was not employed at the time of his abduction, the Court awards EUR 3,000 to the applicants jointly

in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

115. The first and second applicants claimed EUR 80,000 and EUR 70,000, respectively, as non-pecuniary damage for the suffering they had endured as a result of the loss of their son, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relative.

116. The Government found that the amounts claimed were exaggerated.

117. 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' son. 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 finding of violations. It awards EUR 35,000 to the applicants jointly, plus any tax that may be chargeable thereon.

C. Costs and expenses

118. The applicants were represented by Mr D. Itsleyev, a lawyer practising in Nazran. They submitted a contract with their representative and an itemised schedule of costs and expenses that included legal research and drafting, as well as travel, at a rate of EUR 80 per hour, making EUR 6,051 in total. Further, the applicants claimed EUR 418 in administrative costs, EUR 432 in translation fees certified by an invoice and RUB 467 in postal fees certified by receipts. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 6,901 plus RUB 467.

119. The Government disputed the reasonableness and the justification of the amounts claimed under this head. They further pointed out that it had not been shown that the applicants had actually incurred all the expenses claimed.

120. 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).

121. Having regard to the details of the contract, the Court is satisfied that these rates are reasonable.

122. 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, owing to the application of Article 29 § 3 in the present case, the applicants' representative submitted

the observations on admissibility and merits in one set of documents and, furthermore, 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 legal drafting was necessarily time-consuming to the extent claimed by the representative. Nor did the applicants submit any documents in support of their claim for administrative costs.

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 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.

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 objection as to the abuse of the right of petition;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Adnan Akhmadov;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Adnan Akhmadov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Adnan Akhmadov;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;

8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 3,000 (three thousand euros) in respect of pecuniary damage, to the applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (ii) EUR 35,000 (thirty-five thousand euros) in respect of non-pecuniary damage, to the applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (iii) EUR 3,650 (three thousand six hundred and fifty euros) in respect of costs and expenses, to be paid to the applicants' representative, plus any tax that may be chargeable to the applicants;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 25 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President