



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

FIRST SECTION

CASE OF LYANOVA AND ALIYEVA v. RUSSIA

(Applications nos. 12713/02 and 28440/03)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Lyanova and Aliyeva v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 September 2008,

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

PROCEDURE

1. The case originated in two applications (nos. 12713/02 and 28440/03) 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 Asiyat Khusainovna Lyanova and Ms Rashan Mayrbekovna Aliyeva (“the applicants”), on 15 February 2002 and 16 July 2001 respectively.

2. The first applicant was represented before the Court by lawyers from Memorial, a human-rights NGO based in Moscow. The second applicant was represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their representative, Mrs V. Milinchuk.

3. The applicants alleged that their sons had disappeared after being detained by servicemen in Chechnya on 28 June 2000. They complained under Articles 2, 3, 5, 8 and 13.

4. By a decision of 28 June 2007, the Court declared the applications partly admissible.

5. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1956 and 1958 respectively. The first applicant lives in the town of Karabulak, the Republic of Ingushetia, the second applicant lives in Grozny.

A. Detention of the applicants' sons

7. The first applicant used to live in Grozny, at 10 Lyapidevskogo Street. She has six children, three sons and three daughters. Her son Murad Lyanov was born in 1983.

8. The second applicant lives in Grozny, at 2 S. Dudayev Boulevard, apt. 51. Her son Islam Dombayev was born in 1984. She has two other sons born in 1980 and 1997. Before the hostilities she worked for the Ministry of Defence, as did her husband and several close relatives. In 1996 they were forced to leave Chechnya because of separatist attacks on their family, and lived in Ingushetia for several years as internally displaced persons. They returned to Grozny on 29 May 2000.

9. On 28 June 2000 the first applicant and her son Murad Lyanov were at home. That evening two friends of Murad, T. (born in 1982) and Islam Dombayev, came to their house. Murad asked the applicant's permission to go with them and to spend the night at T.'s home. The applicant agreed because she knew the boys, who lived nearby.

10. The second applicant submitted that her son Islam Dombayev, the first applicant's son Murad Lyanov and T. had been good friends. The second applicant's son had a guitar and they often played it in the courtyard of the applicant's house. They did not normally go out on the street after 9 p.m. because of the curfew imposed by the military. On 28 June 2000 at about 11 p.m. they had gone to T.'s house at 53 Sadovaya Street (also referred to as Pervaya Sadovaya Street), adjacent to their street, to spend the night there. Islam Dombayev had his guitar with him.

11. On 29 June 2000 in the morning the first applicant went to the passport desk of the Leninskiy District Department of the Interior (VOVD) in order to obtain a new passport for her son. She returned home at about 3 p.m. and her daughter told her that Murad had not come home. The first applicant went to see T.'s mother, who told her that her son was not at home either.

12. On 29 June 2000 in the morning the second applicant, worried about her son, asked a group of servicemen in Sadovaya Street if they had seen three young men. The soldiers replied that they had detained them and sent them to Khankala, the main Russian military base in Chechnya. The women

found the commander of the unit in an armoured personnel carrier (APC), but he denied knowing anything about the three teenagers.

13. On 30 June 2000 the applicants and T.'s mother went to the Leninskiy VOVD and submitted an application concerning the alleged detention of their sons. On the same day an investigator from that office came to T.'s house and questioned the three women.

14. According to the applicants, in the first few days after the three boys' disappearance it became clear from the soldiers' answers that the boys had been detained late at night on 28 June 2000 by a joint group of servicemen of the special police forces (OMON) from Pskov and special mission brigade no. 8 of Interior Ministry troops (referred to below as Obron-8) stationed in the district. The soldiers had detained the teenagers during a night raid, brought them to the headquarters of Obron-8 and the next morning had taken them to the Khankala military base.

15. The applicants submitted a copy of the report dated 29 June 2000 sent by the commander of the Pskov OMON unit, Yu. G., to the head of the Leninskiy VOVD. It read as follows:

"I can report that during the night of 28 to 29 June 2000, [a group of servicemen], together with a reconnaissance unit of Obron-8, staged an ambush in Sadovaya Street, where explosive devices had previously been found, in order to prevent the planting of mines and explosive devices.

At about 11.30 p.m. the group detained three persons covertly moving in the area. A search revealed a number of components and parts of explosive devices, notably:

- a warhead from a 152-mm shell with an opening for a detonator;
- a round for a portable anti-tank gun, also prepared as an explosive device;
- some wires.

One of the detainees attempted to flee. The detainees had no identity documents in their possession. They were taken to Obron-8 headquarters where they were brought to the special [counter-intelligence] unit for questioning. One of the detainees resembled the description of a rebel fighter ("*boyevik*") who had attacked roadblock no. 17 on 24 June 2000 using a flamethrower. ... On the morning of 29 June 2000 the individuals concerned were taken to "Pamir" by the servicemen of Obron-8. No shots were fired during their arrest."

16. On 1 July 2000 an investigator from the Leninskiy VOVD brought the second applicant her son's guitar. He told her it had come from the commander of Obron-8, G., who alleged that his servicemen had found it in the street.

17. On 8 July 2000 the same investigator told the second applicant that the three boys had been transferred to Khankala and that the Main Intelligence Service (GRU) of the army was in charge of them. He also

allegedly told her that he could do nothing in the circumstances and that she should instead contact the military commander of Grozny.

18. The applicants have had no news of their sons since this time.

B. The search for the applicants' sons and the authorities' replies

19. Immediately after the detention of their sons, the applicants and other members of their families started to search for them. On numerous occasions, both in person and in writing, they applied to the prosecutors at various levels, the Ministry of the Interior, the Special Envoy of the Russian President in the Chechen Republic for rights and freedoms, military commanders, the administrative authorities, the media and public figures.

20. The applicants personally visited detention centres, police stations, military bases and prisons in Chechnya as well as further afield in the north Caucasian area. The second applicant also went to look at the bodies discovered in a mass burial site in February 2001 in the village of Dachnoye, near the Khankala military base.

21. Besides personal visits, the applicants sent numerous letters to the prosecutors and other authorities, in which they stated the facts of their sons' arrest and asked for assistance and details of the investigation. The applicants submitted copies of letters they had written, all conforming to roughly the same model.

22. The applicants received very little substantive information from official bodies about the investigation into the disappearances. On several occasions they were sent copies of letters stating that their requests had been forwarded to various prosecutors' offices. The summary below is based on the letters retained by the applicants and the replies they received from the authorities.

23. On 10 August 2000 both applicants were informed by the Grozny Prosecutor's Office that it had opened a criminal investigation under Article 126 of the Criminal Code into the abduction of their sons.

24. On 18 August 2000 an investigator from the Grozny Prosecutor's Office informed the applicants that a criminal investigation file (no. 12113) had been opened following their applications. The investigation had established that the three teenagers had been detained by officers from the Pskov OMON and Obron-8 during an ambush in Sadovaya Street and that they had been taken to Obron-8 headquarters the same night. The servicemen from Obron-8 had refused to appear when summoned and could not be questioned; the whereabouts of the three teenagers therefore remained unknown. A special request had been forwarded to the military prosecutor's office.

25. On 23 August 2000 a lawyer from the NGO Memorial wrote to the Prosecutor General on the first applicant's behalf and asked him to ensure

that a proper investigation would be conducted into the disappearance of the three minors.

26. On 29 August 2000 an investigator from the Grozny Prosecutor's Office requested the military prosecutor of military unit no. 20102, based in Khankala, to comply with the request of 9 August 2000 and to ensure that G., the commander of Obron-8, and the other servicemen who had detained three minors in Sadovaya Street on 28 June 2000 would be questioned.

27. On 28 September 2000 the Military Prosecutor's Office for the north Caucasian area instructed the military prosecutor of military unit no. 20102 to "carefully verify the allegations of involvement by servicemen of Obron-8 in the boys' disappearance".

28. On 14 November 2000 the military prosecutor of military unit no. 20102 replied to the first applicant that there were no reasons to conclude that servicemen stationed in the Leninskiy district of Grozny had been involved in the detention of her son and two other men. The lists of detainees maintained by the military prosecutors, the Federal Security Service (FSB), the Ministry of the Interior and the Ministry of Justice contained no reference to the three missing persons. The contingent of Obron-8 (military unit no. 3723) had returned to their home station on expiry of their period of service in Chechnya, and measures were being taken to establish their whereabouts and to question them about the circumstances of the alleged detention.

29. On 9 December 2000 a lawyer from the NGO Memorial wrote to the Chief Military Prosecutor on the first applicant's behalf. She referred to the latest letter from the military prosecutor and asked why the requests to question the servicemen of Obron-8 had not been acted upon while they were still in Chechnya. The letter asked the Chief Military Prosecutor to intervene and to ensure that a proper investigation would be carried out.

30. On 9 January 2001 the office of the Chief Military Prosecutor replied to Memorial, stating that the investigation was being carried out by the local prosecutor in Chechnya, to whom all requests should be forwarded. The involvement of military servicemen in the disappearance had not been established, and the military prosecutors therefore had no responsibility for the case.

31. On 12 February 2001 the military prosecutor of military unit no. 20102 informed the second applicant that his office was in charge of investigating the criminal case concerning the abduction of her son and two others. He stated that she would be informed of any progress in the investigation.

32. On 19 March 2001 the military prosecutor of military unit no. 20102 forwarded the first applicant's complaint to the Grozny Prosecutor's Office and asked that it be included in case file no. 14/33/0065-01, which had been forwarded to that office on 7 March 2001. The letter further stated that the investigation had established no connection between military servicemen

and the abduction of the three men, and had been closed under Article 5 § 2 of the Code of Criminal Procedure [absence of *corpus delicti*].

33. At the end of 2001 and beginning of 2002 the second applicant wrote to the Russian President, the Prosecutor General, members of the State Duma, other public figures and the media. She stated the facts of her son's detention and disappearance and commented on the lack of progress in the investigation despite the fact that the names and positions of the persons who had detained the three minors were known. She listed the authorities she had previously applied to with her requests. She referred to her family's ties with the Ministry of Defence and explained that her son could have had no links with the "Wahhabists", or illegal armed groups. She asked them to help her establish her son's whereabouts.

34. On 1 June 2002 the Prosecutor's Office of the Chechen Republic replied to the second applicant. The letter stated that following her request, which had been forwarded by the Security Council, criminal case no. 12113 had been re-examined. The investigation in that case had been twice suspended under Article 195 § 3 of the Code of Criminal Procedure for failure to identify the culprits. Each time these decisions had been quashed by a supervising prosecutor. In November 2000 the investigation had concluded that the kidnapping of Islam Dombayev, Murad Lyanov and [T.] had been committed by the servicemen of Obron-8, and the case had been transferred to the military prosecutors. On 6 March 2001 a military investigator had closed the proceedings on the ground that no servicemen had been involved in the kidnapping, and on 7 March 2001 the file had been transferred back to the Grozny Prosecutor's Office. The letter further stated that the submissions of Yu. G. and G., commanders of the OMON unit and of Obron-8 respectively, had contained substantial discrepancies which the investigation had failed to clarify "for a number of objective reasons". On 29 May 2002 the decision of 28 April 2001 by the investigator from the Grozny Prosecutor's Office to suspend the investigation had been quashed and the case file had been forwarded to that office for further investigation.

35. On 7 June 2002 the second applicant received a similar reply signed by the acting Prosecutor of the Chechen Republic, who added that he would personally supervise progress in the investigation.

C. Official investigation

36. On 8 August 2000 a criminal investigation (no. 12113) was instituted into the disappearance of the applicants' sons on the night of 28-29 June 2000.

37. The Government submitted that on 22 August 2000 the second applicant had been granted the status of victim in the criminal proceedings; on 28 March 2001 the first applicant had been granted the same status. The second applicant had been questioned by an investigator from the

prosecutor's office on 22 August 2000 and 25 March 2005. She stated that on the night of 28 June 2000 her son, together with the first applicant's son, had gone to the house of their friend T., who lived at 53 Pervaya Sadovaya Street in Grozny, where they had intended to spend the night. They had not returned home the next day. The first applicant and T.'s mother made similar statements.

38. On 30 June 2000 an inspection carried out at 53 Pervaya Sadovaya Street showed no evidence that a crime had been committed.

39. On 1 July 2000 the serviceman who had the second applicant's son's guitar submitted that he had found it in Pervaya Sadovaya Street on the night of 29 June 2000.

40. On 6 March 2001 the military prosecutor's office of the United Group Alignment (UGA) terminated the criminal proceedings against the officials of the Ministry of Defence on account of the lack of a *corpus delicti*.

41. According to the Government's submissions made prior to the Court's decision as to the admissibility of the present application, T.'s neighbours E. and A. and more than twenty officials of the Ministry of the Interior and the Ministry of Defence who had been serving in Grozny during the relevant period were questioned in the course of the investigation. They had no information concerning the whereabouts of the applicants' sons. Although investigative steps had been taken, no other witnesses had been found. The records of the units of the Ministry of Defence deployed in Grozny during the relevant period had been examined but no information had been found concerning the arrest of the applicants' sons and T. The investigative authorities had also obtained information from other State bodies concerning special operations conducted in Chechnya and had taken other measures in order to establish the applicants' sons' whereabouts. Relevant inquiries had been made on 9, 12 and 29 August 2000, 8 and 25 October 2000, 21 June 2002, 1 and 31 July 2002 and 28 March 2005. However, it had not been established that representatives of the State authorities had been involved in the abduction of the applicants' sons and T. They had not been held in detention facilities either.

42. The following information concerning the progress of the investigation was provided by the Government in their submissions following the Court's decision as to the admissibility of the present application.

43. The preliminary investigation in criminal case no. 12113 had been suspended a number of times, since the persons to be charged with the offence had not been identified. The applicants had been informed of all the decisions taken. After a number of suspensions and re-openings, the criminal investigation was resumed on 14 February 2005 by the Prosecutor's Office of the Leninskiy District of Grozny (the Leninskiy District Prosecutor's Office).

44. On 17 February 2005 the investigative authorities questioned investigator M., who submitted that in the night of 28-29 June 2000 T., Islam Dombayev and Murad Lyanov had disappeared and their relatives had filed an application on that subject with the Grozny Prosecutor's Office. Officers of the OMON unit presented documents to the effect that a joint group of the Pskov OMON and intelligence unit of Obron-8 had detained three persons who had not had their identification papers with them. The persons had been detained when installing a makeshift explosive device in Sadovaya Street and taken to the premises of Obron-8 in Grozny. There was no information to confirm that the persons detained had been T., Islam Dombayev and Murad Lyanov. In order to establish the whereabouts of the applicants' sons and T., M. had visited Khankala on several occasions and had met with various officials.

45. On 4 March 2005 the head of the FSB of the Chechen Republic replied that there was no information concerning T., Islam Dombayev and Murad Lyanov in either the register or the archives of the penitentiary system. Similar information was submitted by the penitentiary authorities of the Republic of Kabardino-Balkaria.

46. On 5 March 2005 the deputy head of the FSB of the Chechen Republic replied that the FSB had not conducted any operations aimed at detention of the applicants' sons and T.

47. On 9 March 2005 the head of the Urus-Martan District Office of the Interior (ROVD) replied that he had no information about either the institution of criminal or administrative proceedings against T., Islam Dombayev and Murad Lyanov or their detention in the temporary detention centre of the ROVD.

48. On 17 March 2005 the head of criminal police of the Shatoy ROVD submitted that the three disappeared persons had not been apprehended or placed in the temporary detention centre of the ROVD.

49. On unspecified dates the heads of the penitentiary authorities of the Krasnodar Region, the Perm Region, the Volgograd Region and the Republic of Ingushetia replied that T., Islam Dombayev and Murad Lyanov were not registered in detention facilities. According to replies from the prosecuting authorities of the Chechen Republic at various levels, criminal proceedings had not been instituted against the applicants' sons and T.

50. On 21 March 2005 the Leninskiy District Prosecutor's Office suspended the investigation on account of the failure to identify persons to be charged with the offence.

51. On 23 March 2005 the Prosecutor's Office of the Chechen Republic quashed the above decision and resumed the investigation.

52. On 28 May 2005 the investigation was suspended on account of the failure to identify the culprits. The applicants were informed accordingly.

53. On 11 June 2005 the deputy prosecutor of the Leninskiy District Prosecutor's Office quashed the above decision and resumed the investigation.

54. On 13 June 2005 the investigating authorities questioned S., who submitted that from May to September 2000 he had been seconded to the Chechen Republic and did not remember that the three men had been arrested. It is not clear who S. was.

55. On 27 June 2005 the senior investigator of the Pskov Prosecutor's Office questioned as a witness an officer of the Pskov OMON. The officer submitted that the order for the joint operation of the Pskov OMON and Obron-8 in Sadovaya Street had been given by the commander of the joint unit. Four officers of Obron-8 had taken part in the operation, however, he could not remember their names. In the course of the operation they had arrested three men. Following the instructions of the officer on duty they had taken them to Obron-8 headquarters. They had been received by the head of intelligence of Obron-8 in the rank of captain. The witness together with other officers of the OMON had spent the night at Obron-8 headquarters. In the morning the apprehended persons had been taken to Khankala.

56. On 14 July 2005 the investigation was suspended on account of the failure to identify the culprits. The applicants were informed accordingly.

57. On 1 November 2005 the Leninskiy District Prosecutor's Office resumed the investigation. The applicants were notified accordingly.

58. On an unspecified date the Information Centre of the Ministry of the Interior notified the investigating authorities that it had no information concerning the whereabouts of T., Islam Dombayev and Murad Lyanov.

59. On 7 November 2005 the investigator questioned the mother of T., who submitted that after her son's abduction she had spoken to the Obron privates, who had told her that they had apprehended three men who had been transferred to Khankala. K., the commander of the search group, had also said that the arrested persons had been held in Khankala.

60. On 8 November 2005 the investigator questioned Ms A., who submitted that she had known the Dombayev family since 1995. She had learned about Islam Dombayev's disappearance on the next day. She did not know who could have abducted him.

61. On 14 November 2005 the investigator questioned Ms N., who submitted that in the summer of 2000 she had heard screaming outside and had gone out into the street. There she had learned from her neighbours about the abduction of Islam Dombayev and his friends.

62. On 16 November 2005 the investigator questioned Mr B., who made submissions similar to those of Ms N.

63. On 25 November 2005 the investigator questioned Ms Z., who submitted that in the summer of 2000 she had learned from the second applicant that her son had been abducted together with two other boys.

64. On an unspecified date an investigator of the Karabulak Prosecutor's Office questioned the first applicant, who submitted that in the summer of 2000 she had returned to Grozny together with her son Murad Lyanov to obtain a new passport. In the evening of 28 June 2000 T. and Islam Dombayev had come to their home and later had left for a walk together with her son. On the next day she had learned that her son had been abducted by unknown persons in camouflage uniforms.

65. On 16 December 2005 an investigator of the Sverdlovsk Prosecutor's Office questioned K., who submitted that since 5 May 2000 he had been in charge of the search for missing persons. Officers of the Pskov OMON had told him then that they had arrested three young men and transferred them to officers of Obron-8. After his repeated visits to the premises of Obron-8, a guitar was handed over to him. He had passed it on to the second applicant.

66. On an unspecified date an investigator of the Prosecutor's Office of the Mozdok District of Alania questioned P., who submitted that from June to August 2000 he had been seconded to the Temporary United Alignment of Agencies and Units of the Ministry of the Interior [*БОГО и П МБД – временная объединенная группировка органов и подразделений МБД*] located at Usanova Street in Mozdok. He had no information concerning the abduction of T., Islam Dombayev and Murad Lyanov in the night of 28-29 June 2000.

67. On 1 December 2005 the investigation was suspended on account of the failure to identify the culprits. The applicants were informed accordingly.

68. On 15 August 2007 the deputy prosecutor of the Leninskiy District of Grozny quashed the above decision and resumed the investigation. The applicants and T.'s mother were informed accordingly.

69. According to the Government, the possible involvement of servicemen of Obron-8 in the abduction of T., Islam Dombayev and Murad Lyanov had been investigated. To that end, the case file had been sent to the military prosecutor's office. However, neither the victims nor the witnesses questioned had stated from whom exactly they had learned that T., Islam Dombayev and Murad Lyanov had been "apprehended". Therefore, it appeared impossible to establish the exact circumstances of the event. Officers of the Pskov OMON confirmed their previous statements that on 28-29 June 2000, together with servicemen of Obron-8, they had apprehended three young men aged between 15 and 20 in Sadovaya Street in Grozny and had taken them to Obron-8 headquarters. However, it had not been established by the investigation that the three men were the applicants' sons and T. Since the involvement of servicemen in the abduction of T., Islam Dombayev and Murad Lyanov had not been confirmed, the investigation was suspended. The applicants and T.'s mother were informed accordingly, however, they did not appeal against the suspension.

70. According to the first applicant, following her request for information on the progress of the investigation of 13 August 2007, on 15 August 2007 the prosecutor of the Leninskiy District of Grozny unofficially provided her with a print-out of the outline of the investigative measures on five pages, the relevant parts of which read as follows:

“Criminal case no. 12113 was opened on 8 August 2000... into abduction of [T.], M. A. Lyanov and I. K. Dombayev in the night of 28-29 June 2000 around 12 midnight in First Sadovaya Street in Grozny... [by] unidentified persons in camouflage uniform...

Commander of [the Pskov OMON], [P. I.], who was questioned on this subject, submitted that on 28 June 2000 at around 9 p.m. servicemen of Obron-8 arrived at their location and informed them about the need to lie in ambush in Sadovaya Street where members of illegal armed groups used to install explosive devices... most frequently. ...[E]ight servicemen proceeded to the street indicated. There they split into two groups of four, concealed themselves and set up an ambush on both sides of the street... In a while a group of three young men passed by. Approximately one minute later the second group informed them by the portable radio transmitter that they had apprehended those young men. When [P. I.] approached them with his group, he noticed the three young men lying on the ground with an artillery shell... and a wire reel near them. After the arrest they had taken the young men to the Obron-8 headquarters and transferred [them] to the head of intelligence of Obron-8 whose name was Volodya. The latter told them that he had reported the arrest to Khankala. The apprehended [persons] did not have identification papers with them. [P. I.] had no information about their religious affiliations.

Similar statements were made by officers of [the Pskov OMON] [V.], [A.] and [K-v].

According to the report of [Yu. G.], the commander of [the Pskov OMON], ... in the night of 29 June 2000 officers of [the Pskov OMON] together with Obron-8 in the course of a special operation in Sadovaya Street apprehended three persons who had with them the components of an explosive device. They took the persons to Obron-8 headquarters and transferred [them] to a special unit. In the morning of 29 June 2000 [officers of] Obron-8 took [the apprehended persons] to “Pamir”... From the report of the head of Obron-8 headquarters [Yu. G.] knew that the apprehended persons had been transferred to Khankala.

The head of Obron-8 headquarters, [Kal-v.], when questioned denied that his servicemen had apprehended and sent to Khankala anybody in the night of 29 June 2000. [He also denied that] an ambush in Sadovaya Street had been set up that night.

[The second applicant submitted that]... official of the Leninskiy VOVD [*temporary office of the interior*], [K.], had told them that their sons had been apprehended by servicemen of Obron-8 and taken to Khankala. [K.] also handed over to them the guitar of I. Dombayev which, according to him, had been found at Obron-8 headquarters.

[T.’s mother and the first applicant] made similar statements.

[K.] submitted that on 30 June 2000 he formed a part of ... a group that searched for Dombayev and others who had disappeared in the night of 29 June 2000. ...[T]hey established that on 29 June 2000 Islam Dombayev, Murad Lyanov and [T.] had been detained by officers of [the Pskov OMON] and transferred to servicemen of Obron-8. In the beginning of July [K.] seized from private [O.] a guitar which belonged to I. Dombayev and handed it over to his mother. The latter recognised her son's guitar. Officers of the OMON explained to [K.] that the young men had been apprehended in Sadovaya Street [because they had an] explosive device. The servicemen refused to provide any explanations in this respect.

Officers of [the Pskov OMON] [A.], [K-v], [V.] and [G-v] confirmed that together with servicemen of... Obron-8 in the night of 28-29 June 2000 they had apprehended three [persons] and taken them to Obron-8 headquarters. They had not known the personal particulars [of the persons concerned], and the apprehended persons had not had their identification papers with them. However, while they were being questioned witness [K-v] noted the surnames of the apprehended persons – [T.], Lyanov and Dombayev. They had learned from the servicemen that the apprehended persons had had an explosive device. They had provided explanations concerning the circumstances of the arrest of three persons in the night of 29 June 2000 to the Grozny Prosecutor's Office...

Witness [G.] (Volodya)... submitted that... since 1998 he had been serving in military unit no. 3723... From June to August 2000 he had been seconded to Grozny as a head of [intelligence unit]. Their unit, [Obron-8] had been located not far from Sadovaya Street... Because of the nature of his post he had always remained at headquarters, had not planned any special operations, and had not previously heard the surnames Dombayev, Lyanov and [T.]...

Taking into account the evidence obtained and having sufficient grounds to believe that servicemen of Obron-8 had been involved in the abduction of Dombayev, [T.] and Lyanov, on 5 November 2000 the Prosecutor's Office of the Chechen Republic transferred the present criminal case to the Prosecutor's Office of military unit no. 20102 for further investigation.

The investigation conducted by the military prosecutor's office established the following.

According to the inspection report of the register of military actions of Obron-8... the entries of 27, 28, 29 and 30 June 2000 contained no information that any persons had been arrested...

According to the extract of the register of military actions of military unit no. 3723 on _8.06 (the year is not indicated, the digit before 8 is missing...), in the course of [an intelligence operation] in Sadovaya Street the mine clearing group had found a mine. The mine was destroyed. A joint operation on passport check had been conducted between 5 and 7 [*it is not clear a.m. or p.m.*]... Three persons had been apprehended upon suspicion of participation in an illegal armed group.

[Eight servicemen of military unit no. 3723, including [G.], submitted that they did not know anything about the arrest of Dombayev, Lyanov and [T.]. Two of the servicemen added that it had not been within the responsibilities of their unit to effect arrests and that they had not conducted any joint operations with OMON.]

[B.], the commandant of military unit no. 3723's headquarters submitted that from May to August 2000 he had served as a commander of the military operational reserve of military unit no. 3723 in Grozny [VOrez]. The responsibilities of [VOrez] had included accompanying officials of the Ministry of the Interior during passport checks and "sweeping" operations [*зачистка*]. Effecting arrests had not been within their responsibilities. Every special operation had been organised according to a military instruction from the headquarters in Khankala. The instructions had been kept at [VOrez's archives]. Results of the special operations had been reflected in the register of military actions... Not less than fifteen servicemen had participated in every such operation together with a similar number of officials of the Ministry of the Interior. His servicemen had never taken part in an ambush... [The Pskov OMON] had been located not far from them. [However, [B.'s]] servicemen had never interacted with it. He had never met [Yu. G.]. No OMON officers had ever spent a night at his unit's headquarters. In the end of June 2000 an investigator of the Grozny Prosecutor's Office of Chechen origin and a woman of Chechen origin had arrived at his unit. They had alleged that his servicemen had apprehended three young men on 28 June 2000, which had been proved by a guitar [at unit headquarters]. He offered him access to all the premises of the unit, but they had refused [to examine them]. However, the investigator had seized a guitar from a serviceman [B. did not remember his surname], which, according to the woman, had belonged to her son. According to the serviceman, he had found this guitar in the street in the course of engineering intelligence... [B.'s] servicemen had not arrested anybody with an explosive device on 28-29 June 2000 and had not taken anybody to their headquarters either... After [B.] had seen the report of the commander of [the Pskov OMON] [Yu. G.] concerning the arrest together with servicemen of Obron-8 of three persons in the night of 29 June 2000, [B.] said that the information contained in the report was not accurate.

The inspection report of the register of encrypted telegrams from [VOrez] of military unit no. 3723 contained no information concerning the arrest of three persons by servicemen on 28-29 June 2000 ...

Following the results of the preliminary investigation, on 6 March 2001 the military prosecutor's office suspended the present criminal case... in the part related to involvement in the offence of servicemen of [VOrez] of military unit no. 3723 and on 7 March 2001 transferred the case to the Prosecutor's Office of the Chechen Republic.

In the course of the additional investigation the Grozny Prosecutor's Office instructed the Prosecutor's Office of the Pskov Region to take additional investigative steps with officers of [the Pskov OMON], who had apprehended the applicants' sons, so as to clarify discrepancies between [their] statements and those of Obron-8 servicemen.

Witnesses [P. I.], [Yu. G.] and [D. I.] confirmed their previous statements as well as the fact that on 28-29 June 2000 in Sadovaya Street in Grozny they had arrested together with servicemen of Obron-8 three young men of [Chechen] origin aged between 15 and 20. [Yu. G.] also confirmed the contents of his report concerning the arrest in the course of [the operation described].

[Neither the Ministry of the Interior nor other law-enforcement agencies] had any information on the applicants' sons whereabouts. Requests had also been sent to [detention facilities and law-enforcement agencies of other regions], however, it appeared impossible to establish the whereabouts of the disappeared persons. The

investigating authorities had no information that the applicants had visited [detention facilities] in the north Caucasian area.

The preliminary investigation in the criminal case had been suspended on numerous occasions, most recently on 26 March 2002, on account of the failure to identify persons to be charged with the offence...

On 14 February 2005 the decision to suspend the investigation... was quashed, the investigation was resumed. ...[A]t present the investigation is under way.”

D. Proceedings against law-enforcement officials

71. On 19 June 2003 the second applicant filed a complaint with the Leninskiy District Court of Grozny concerning the inactivity of the Grozny Prosecutor’s Office and the prosecutor’s office of military unit no. 20102.

72. On 22 July 2003 the Leninskiy District Court of Grozny dismissed the complaint. No appeal was lodged against this decision and on 4 August 2003 it entered into force. According to the second applicant, she was not provided with a copy of the decision and had therefore been unable to lodge an appeal.

E. Request for information

73. Despite specific requests made by the Court on several occasions, the Government did not submit copies of any documents from the file in criminal case no. 12113. 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 Russian 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. At the same time, the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted, with the exception of “the documents [disclosing military information and the personal particulars of the witnesses], and without the right to make copies of the case file and transmit it to others”.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

75. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies since the investigation of the disappearance of Murad Lyanov and Islam Dombayev had not yet been completed.

76. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect, including the application to the court, had been futile. They also alleged the existence of an administrative practice of non-investigation of crimes committed by State servicemen in Chechnya and referred to the other cases concerning such crimes reviewed by the Court, and also to reports of various NGOs and international bodies. This, in their view, had rendered any potentially effective remedies inadequate and illusory in their case.

B. The Court's assessment

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

78. The Court observes that the applicants complained to the law enforcement authorities immediately after the disappearance of Murad Lyanov and Islam Dombayev and that an investigation has been pending since 8 August 2000. The applicants and the Government disputed the effectiveness of this investigation.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

A. The alleged violation of the right to life of Murad Lyanov and Islam Dombayev

1. Arguments of the parties

81. The applicants submitted that since their sons had been missing for almost eight years it could be presumed that they were dead. Furthermore, the replies from the State authorities provided conclusive evidence that their sons had been arrested by armed servicemen.

82. The Government submitted that the circumstances of the applicants’ sons’ disappearance were under investigation. It had not been established that they were dead or that any State agents had been involved in their abduction. Although three young men had indeed been apprehended in Sadovaya Street in the night of 28-29 June 2000, there was no evidence that they had been the applicants’ sons and T.

2. The Court’s assessment

(a) General principles

83. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the

treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, 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 *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

(b) Establishment of the facts

84. The applicants submitted that in the evening of 28 June 2000 Islam Dombayev and T. had come to the first applicant's house to see Murad Lyanov with whom they had been friends. At around 11 p. m. the three of them had gone to T.'s house at 53 Sadovaya Street. They had never been seen again. The applicants alleged that their sons had been arrested by servicemen and that this, according to them, was supported by witness statements and replies from the investigating authorities.

85. The Government submitted that although three young men had been apprehended in the night of 28-29 June 2000 in Sadovaya Street, there was no evidence that they had been the applicants' sons and T.

86. The Court notes that despite its repeated requests for a copy of the investigation file concerning the abduction of Murad Lyanov and Islam Dombayev, the Government have failed to produce it. The Government did not furnish any documents to corroborate their submissions and referred to Article 161 of the Code of Criminal Procedure in this respect. 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-...). In view of the foregoing and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect.

87. The Court further notes that there were no eye-witnesses to the applicants' sons' arrest. The applicants' submissions concerning oral statements of various State agents to the effect that their sons had been apprehended by servicemen are not corroborated by any evidence. At the same time, the applicants enclosed a number of official reports and replies from law-enforcement authorities which confirmed the fact that three persons had been apprehended in the night of 28-29 June 2000 in Sadovaya Street. Furthermore, the first applicant furnished an outline of investigative actions which, according to her, had been unofficially provided by the prosecutor of the Leninskiy District of Grozny. The Court notes that this

document is neither printed beneath a letterhead nor signed by any official. However, it contains information that could only have been available to the investigating authorities and, furthermore, it is consistent with both the authorities' replies presented by the applicants and the Government's submissions. Accordingly, the Court finds no reason to doubt the authenticity of this document and will rely on it in the subsequent analysis.

88. The Court observes that according to the report of Yu. G., the commander of the Pskov OMON, dated 29 June 2000, at approximately 11:30 p.m. on 28 June 2000 his officers together with servicemen of Obron-8, after having staged an ambush in Sadovaya Street, had apprehended three persons with an explosive device and taken them to Obron-8 headquarters. According to the reply of an investigator from the Grozny Prosecutor's Office of 18 August 2000, the investigation established that three teenagers had been detained by officers from the Pskov OMON and Obron-8 during an ambush in Sadovaya Street and that they had been taken to Obron-8 headquarters on the same night. On 1 and 7 June 2002 the Prosecutor's Office of the Chechen Republic informed the second applicant of the interim results of the investigation, according to which Islam Dombayev, Murad Lyanov and T. had been abducted by servicemen of Obron-8, and told her that the case had been transferred to the military prosecutors. On 6 March 2001 the latter had closed the proceedings on the ground that no servicemen had been involved in the abduction and transferred the file back to the Grozny Prosecutor's Office. It was further stated that the investigation had failed to clarify substantial discrepancies contained in the submissions of Yu. G. and G., commanders of the OMON unit and of Obron-8 respectively.

89. According to the information on investigative actions submitted by the Government, on 27 June 2005 an unspecified officer of the Pskov OMON confirmed that during a joint operation with Obron-8 in Sadovaya Street they had apprehended three men and taken them to Obron-8 headquarters. Furthermore, both M., an investigator, and K., who had been in charge of the search for missing persons at the relevant time, when questioned in 2005, confirmed that officers of the Pskov OMON had told them that they had apprehended three persons without identification papers together with servicemen of Obron-8 and taken them to Obron-8 headquarters.

90. It appears from the outline of the investigation submitted by the first applicant that six officers of the Pskov OMON, including the commanders P. I. and Yu. G., confirmed that in the evening of 28 June 2000 they had conducted a joint operation with servicemen of Obron-8 in the course of which they had arrested three young men without identification papers and taken them to Obron-8 headquarters. After the operation Yu. G. had submitted an official report on it. At the same time nine servicemen of military unit no. 3723, of which Obron-8 had been a subdivision, denied

that they had ever conducted a joint operation with the Pskov OMON and submitted that effecting arrests had not been within their responsibilities. No information on the joint operation was contained in either the register of military actions of military unit no. 3723 or the register of encrypted telegrams.

91. The Court must first establish whether a special operation conducted by State agents did indeed take place in Sadovaya Street in the night of 28-29 June 2000. It notes that on 29 June 2000 the commander of the Pskov OMON Yu. G. filed an official report to the head of the Leninsky VOVD, which contained a detailed description of a special operation conducted the previous night together with servicemen of Obron-8 and of three persons who had been apprehended with an explosive device and then taken to Obron-8 headquarters. The description of the operation was then consistently confirmed by five other OMON officers. Despite the fact that servicemen of military unit no. 3723 denied that they had been involved in any special operations on the relevant dates, the Court finds it inconceivable that OMON officers should submit an official report and then provide the investigation with consistent and detailed information about an operation that had never taken place. Furthermore, the fact that an operation had been conducted and had resulted in three persons being apprehended was acknowledged by the Government in their submissions before the Court. Accordingly, the Court is satisfied that in the night of 28-29 June 2000 State agents conducted an operation in Sadovaya Street and apprehended three persons.

92. The second element the Court has to establish is whether the three men apprehended in the night of 28-29 June 2000 were the applicants' sons and T. According to the OMON officers' submissions, they had apprehended three young men of Chechen origin aged between 15 and 20 without identification papers. The Government's submissions before the Court contained similar information. They argued, however, that there was no evidence that the three men apprehended had been Islam Dombayev, Murad Lyanov and T. The Court notes that the Government provided no information as to the identities of the three men apprehended in the night of 28-29 June 2000. Furthermore, they failed to submit any documents to show what steps had been taken to establish their identities. Taking into account the fact that the description of the arrested men corresponded to that of the applicants' sons and T. and the fact that they had been apprehended precisely in the street where T. lived, 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 in the night of 28-29 June 2000 Islam Dombayev, Murad Lyanov and T. were arrested by State agents during a special operation in Sadovaya Street.

93. The Court further notes that there has been no reliable news of the applicants' sons since 29 June 2000. Their names have not been found in any official records of detention facilities. Lastly, the Government did not submit any explanation as to what had happened to them after their arrest.

94. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-...), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Islam Dombayev and Murad Lyanov or any news of them for over eight years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of their disappearance and the official investigation into their abduction, dragging on for eight years, has produced no tangible results.

95. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that in the night of 28-29 June 2000 Islam Dombayev and Murad Lyanov were apprehended by State servicemen and that they must be presumed dead following their unacknowledged detention.

(c) The State's compliance with the substantive obligation under Article 2

96. Article 2, which safeguards the right to life and sets out the circumstances in which 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 (extracts)).

97. The Court has already found it established that the applicants' sons must be presumed dead following unacknowledged detention by State servicemen. Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, it follows that liability for the presumed death of the applicants' sons is attributable to the respondent State.

98. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Murad Lyanov and Islam Dombayev.

B. The alleged inadequacy of the investigation into the abduction

1. Arguments of the parties

99. The applicants submitted that the investigation in the present case had been neither prompt nor effective. The investigating authorities had not questioned servicemen from the units deployed in the area, nor had they inspected their records. The investigation had been discontinued and resumed a number of times and had produced no tangible results. Furthermore, the investigating authorities had systematically failed to inform the applicants of the progress of the investigation and had failed to submit the criminal file even at the Court's explicit request.

100. The Government claimed that the investigation into the disappearance of the applicants' sons met the Convention requirement of effectiveness. They pointed out that, according to the Court's case law, the obligation under the procedural aspect of Article 2 is one of means not result. According to the Government, all due measures had been taken to identify the perpetrators: numerous witnesses had been questioned, various investigative measures had been carried out and different versions of the events had been cross-checked. They argued that the applicants had been granted victim status, had been notified about suspensions and resumptions of the investigation and had received detailed replies to their complaints, which had provided them with information on the progress of the investigation.

2. The Court's assessment

(a) General principles

101. 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).

(b) The State's compliance with the procedural obligation under Article 2

102. The Court notes at the outset that 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 information about its progress presented by the Government.

103. Turning to the facts of the case, the Court notes that on 30 June 2000 the applicants submitted an application concerning their sons' abduction to the Leninskiy VOVD. On the same day an investigator from the VOVD questioned the applicants and T.'s mother, inspected the crime scene and visited Obron-8 headquarters, as can be deduced from the fact that on 1 July 2000 he handed over to the second applicant her son's guitar which had been found there. Accordingly, although the criminal investigation was formally opened only on 8 August 2000, the Court is satisfied that the authorities' reaction was sufficiently prompt.

104. The Court further notes that during the first months of the investigation the prosecuting authorities obtained a report by Yu. G. concerning the joint operation of the Pskov OMON and Obron-8 conducted in the night of 28-29 June 2000. They also questioned several OMON officers who submitted consistent and detailed information concerning the operation and the circumstances in which they had arrested the three men. After the case was transferred on 5 November 2000 to the military prosecuting authorities several servicemen of military unit no. 3723, of which Obron-8 was a subdivision, were questioned. The officers consistently denied that they had ever taken part in any operations together with the Pskov OMON. No information concerning the operation was found in registers concerning the activities of military unit no. 3723. On 6 March 2001 military prosecuting authorities discontinued the investigation on the ground that no servicemen had been involved in the abduction and transferred the case file back to the Grozny Prosecutor's Office.

105. The Court observes that by March 2001 the investigating authorities had questioned numerous witnesses and gathered a considerable amount of information concerning the events of 28-29 June 2000. As a result they were faced with two conflicting versions of events from the Pskov OMON officers and Obron-8 servicemen. However, it appears that no meaningful efforts were made by the investigating authorities to clarify these discrepancies. In particular, it does not appear that any efforts were

made to identify Obron-8 servicemen who had allegedly taken part in the operation. Furthermore, there is no information that OMON officers were ever confronted with Obron-8 servicemen.

106. The Court considers that in the circumstances of the present case, where the OMON had provided consistent and detailed information concerning the arrest of the three men in the night of 28-29 June 2000, the failure to clarify discrepancies between their statements and those of Obron-8 servicemen may only be attributed to the reluctance of the prosecuting authorities to pursue the investigation. The Court notes in this respect that after 6 March 2001 the investigation was repeatedly suspended and resumed on account of the failure to identify the alleged perpetrators. Such a manner of proceeding could not be conducive to bringing those responsible for the offence to account or to establishing the fate of the applicants' sons.

107. As regards the accessibility of the investigation, the Court notes that the second applicant was granted victim status on 22 August 2000, whereas the first applicant was granted victim status with several months' delay on 28 March 2001. Furthermore, the applicants were not duly informed of the progress of the investigation. Although they were informed of a number of suspensions and resumptions of the investigation, no documents from the case file were ever made available to them and, apart from the unofficial outline of the investigation provided for the first applicant, they received very scarce information concerning the important investigative actions. Accordingly, the investigating authorities failed to ensure that the investigation received the required level of scrutiny, or to safeguard the interests of the next of kin in the proceedings.

108. Having regard to the Government's preliminary objection, which was joined to the merits of the complaint, the Court notes that the authorities' failure to take necessary investigative measures undermined the effectiveness of the investigation. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection.

109. 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 Murad Lyanov and Islam Dombayev, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

110. The applicants further relied on Article 3 of the Convention, submitting that their sons had most likely been tortured during and after their apprehension. They also claimed that as a result of their sons' disappearance and the State's failure to investigate those events 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.”

111. The applicants contended that their sons had been tortured during their detention by State agents and that the investigation in this respect had not been adequate. They referred to NGO reports concerning mass torture in Chechnya during that period to support this assertion. The applicants further submitted that they themselves had been suffering from fear, anguish and emotional distress caused by the detention and disappearance of their minor sons and the authorities’ indifference in this respect, which amounted to treatment contrary to Article 3 of the Convention.

112. The Government submitted that the investigation had been conducted in compliance with Article 3 of the Convention and had produced no evidence that either the applicants or their sons had been subjected to treatment prohibited by the above Convention provision.

A. Alleged ill-treatment of the applicants’ sons

113. In so far as the applicants complained about alleged ill-treatment of their sons after their arrest, the Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161 *in fine*).

114. The Court has found it established that Murad Lyanov and Islam Dombayev were apprehended on 28 June 2000 by State agents. It has also found that, in view of all the known circumstances, they can be presumed dead and that the responsibility for their death lies with the State authorities (see paragraphs 95 and 97 above). However, the exact way in which they died and whether they were subjected to ill-treatment while in detention have not been established.

115. Since the information before it does not enable the Court to find beyond all reasonable doubt that the applicants’ sons were subjected to ill-treatment, the Court cannot conclude that there has been a violation of Article 3 of the Convention on this account.

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

116. 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 applicants 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*, cited above, § 358 and *Imakayeva*, cited above, § 164).

117. In the present case the Court notes that the applicants are mothers of the individuals who have disappeared. For more than eight years they have not had any news of them. During this period the applicants have applied to various official bodies with enquiries about their sons, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of their sons following their detention. The responses received by the applicants mostly denied that the State was responsible for their disappearance 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.

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

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

120. The applicants further stated that Murad Lyanov and Islam Dombayev 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.”

121. The applicants submitted that their sons’ detention had not satisfied any of the conditions set out in Article 5 of the Convention. It had had no basis in national law, had not been in accordance with a procedure prescribed by law and had not been formally recorded.

122. The Government submitted that there was no evidence that the applicants’ sons had been deprived of their liberty in violation of Article 5 of the Convention. In particular, their names had not been found in the records of any detention facilities. Furthermore, it had not been established that the three persons apprehended by Obron-8 were the applicants’ sons.

123. 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).

124. The Court has found it established that Murad Lyanov and Islam Dombayev were apprehended by State servicemen on 28 June 2000 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

125. 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 sons had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard them against the risk of disappearance.

126. Consequently, the Court finds that Murad Lyanov and Islam Dombayev were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

127. The applicants alleged that the disappearance of their sons after their detention by the State authorities had caused them distress and anguish which amounted to a violation of their right to respect for their family life under Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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. ”

128. The applicants maintained their complaint.

129. The Government submitted that there had been no interference with the applicants' family life since it had not been established that State agents had been involved in the abduction of their sons.

130. The Court observes that this complaint concerns the same facts as those examined under Articles 2 and 3 and, having regard to its conclusion under these provisions, considers it unnecessary to examine it separately.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

131. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 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.”

132. The applicants contended that in their case the domestic remedies usually available had proved to be ineffective. In particular, they had never been granted access to the case file of the investigation and the very few documents which had been made available to them did not indicate any significant progress for more than seven years and only served to demonstrate the incomplete and inadequate nature of these proceedings.

133. The Government argued 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. In particular, the applicants had received reasoned replies to all their complaints lodged in the context of criminal proceedings. Besides, the applicants had had an opportunity to appeal against the actions or omissions of the investigating authorities in court.

134. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *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 v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

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

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

137. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the complaint under Article 3 that Murad Lyanov and Islam Dombayev had been ill-treated following their apprehension by State agents, the Court notes that the complaint under Article 3 was found unsubstantiated in this part in paragraph 115 above. In the absence of an "arguable claim" of a violation of a substantive Convention provision the Court finds that there has been no violation of Article 13 in this respect either.

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

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

140. As to the complaint under Article 13 in conjunction with Article 8, the Court notes that in paragraph 130 above it found that no separate issue arose under that provision. Therefore, it considers that no separate issue arises under Article 13 in this respect either.

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

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

Article 34

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

Article 38

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

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

...”

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

143. The Government reiterated that the submission of the case file would be contrary to Article 161 of the Code of Criminal Procedure. They also pointed out that it had been suggested that a Court delegation have access to the file at the place in the place where the preliminary investigation was being conducted. The Government further maintained that there had been no breach of the applicants’ rights under Article 34 of the Convention since their applications had been accepted for examination by the Court. As for the relevant domestic proceedings, they could have access to those materials of the investigation that could be produced to them at the present stage and, upon the completion of the investigation, to all the materials contained in the case file.

144. The Court reiterates that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications.

145. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting these allegations. A failure on a Government’s part to submit such information which is in their possession without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant’s allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention. In a case where the application raises issues as to the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court’s proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrıkul v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

146. The Court notes that despite its repeated requests for a copy of the investigation file opened into the disappearance of the applicants' sons, the Government refused to produce such a copy, invoking Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this reference insufficient to justify refusal (see, among other authorities, *Imakayeva*, cited above, § 123).

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

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

VIII APPLICATION OF ARTICLE 41 OF THE CONVENTION

149. 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

150. The first applicant claimed that she had sustained damage in respect of the lost wages of her son following his abduction and subsequent disappearance. She claimed a total of 29,458.99 pounds sterling (GBP) under this head (approximately 37,000 euros (EUR)).

151. The first applicant submitted that Murad Lyanov had been a first-year student of the computer sciences department of a technical college in Grozny. She claimed that she and her mother would be financially dependent on Murad Lyanov upon his graduation because his sisters were married and lived with their families and his brother was unemployed. According to her, she and her mother would have benefited from his financial support in the amount stated above. The first applicant's calculations were based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2004 ("Ogden tables").

152. The second applicant claimed that she had sustained damage in respect of the lost wages of her son following his abduction and subsequent

disappearance. The applicant claimed a total of 585,454.40 Russian roubles (RUR) under this head (approximately EUR 15,862).

153. The second applicant submitted that although her son had been unemployed at the time of his disappearance as he had been only fifteen years old, according to the regional tradition he was supposed to become the breadwinner for his parents as the youngest son in the family. Accordingly she, as a widow, could have counted on 30 % of his earnings. The second applicant's calculations were also based on the Ogden tables.

154. The Government submitted that the applicants' claims were unfounded since they could not be based on "expected" earnings of "expected" breadwinners. Not only had their sons not been breadwinners at the relevant time but, on the contrary, being minors they had been the applicants' dependants.

155. 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". The Court notes that the applicants' sons were unemployed at the time and, being only fifteen and seventeen years old, were dependent on the applicants. However, taking into account that the applicants' sons were close to coming of age, the Court finds it reasonable to assume that they would eventually have had some earnings and that the applicants would have benefited from these. The Court thus finds that there is indeed a direct causal link between the violation of Article 2 in respect of the applicants' sons and the loss by the applicants of the financial support which they could have provided for them. The Court cannot, however, take into account the first applicant's claim in respect of her mother since the latter is not an applicant in the present case. Furthermore, the Court notes that each applicant has other children from whose financial support they must be able to benefit. Having regard to the information in its possession, the Court awards each of the applicants EUR 2,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

156. The first applicant claimed EUR 80,000 in respect of non-pecuniary damage for the suffering she, her other children and her mother 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 second applicant claimed EUR 60,000 in respect of non-pecuniary damage for the suffering caused by the loss of her son and the authorities' response.

157. The Government found the amounts claimed exaggerated.

158. The Court has found violations of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' sons. 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 cannot, however, take into account the first applicant's claim in respect of her other family members since they are not applicants in the present case. The Court awards each of the applicants EUR 35,000, plus any tax that may be chargeable thereon.

C. The first applicant's request for an investigation

159. The first applicant also requested, referring to Article 41 of the Convention, that "an independent investigation which would comply with the requirements of the Convention be conducted into her son's disappearance". She relied in this connection on the cases of *Assanidze v. Georgia* ([GC], no. 71503/01, §§ 202-203, ECHR 2004-II) and *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, § 84, ECHR 2003-VI).

160. The Court notes that in *Kukayev v. Russia*, no. 29361/02, §§ 131-134, 15 November 2007, in comparable circumstances, the Court decided that it was most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention. The Court does not see any exceptional circumstances which would lead it to reach a different conclusion in the present case.

D. Costs and expenses

161. The first applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the first applicant's legal representation amounted to GBP 1,489.47. She requested the award to be transferred directly into her representatives' account in the United Kingdom. The first applicant submitted the following breakdown of costs:

- GBP 566.67 for 5 hours and 40 minutes of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;
- GBP 747.80 for translation costs, as certified by invoices; and
- GBP 175 for administrative and postal costs.

162. The second applicant was represented by the SRJI. She submitted an itemised schedule of costs and expenses that included research and

interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The second applicant requested the award to be transferred directly into her representatives' account in the Netherlands. The aggregate claim in respect of costs and expenses related to the second applicant's legal representation amounted to EUR 12,010.62, which comprised:

- EUR 1,200 for the preparation of documents submitted to the domestic authorities in relation to the present proceedings;
- EUR 8,475 for the preparation of the initial application and subsequent submissions before the Court;
- EUR 1,521.57 for translation expenses, as certified by invoices;
- EUR 136.80 postal expenses, and;
- EUR 677.25 (corresponding to 7% of the legal fees) for administrative costs, such as telephone, fax and e-mail, photocopying and paper expenses and other items.

163. The Government did not dispute the details of the calculations submitted by the applicants, but pointed out that they should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had been actually incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They also objected to the second applicant's representatives' claim in the part related to the work of lawyers other than those that had signed the first set of her observations.

164. The Court has to establish first whether the costs and expenses indicated by the applicants were actually incurred and, second, whether they were necessary and reasonable (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

165. Having regard to the details of the information available, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

166. 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, however, that 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 second applicant's representatives.

167. As regards the Government's objections concerning the second applicant, the Court notes that she was represented by the SRJI. It is satisfied that the lawyers indicated in the second applicant's claim formed part of the SRJI staff. Accordingly, the objection must be dismissed.

168. Having regard to the details of the claims submitted by the applicants, the Court awards the first applicant the amount as claimed, together with any value-added tax that may be chargeable, the net award to be paid in pounds sterling into the representatives' bank account in the United Kingdom, as identified by the first applicant. It awards the second applicant the amount of EUR 7,000, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the second applicant.

E. Default interest

169. 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

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* unanimously that there has been a violation of Article 2 of the Convention in respect of Murad Lyanov and Islam Dombayev;
3. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the failure to conduct an effective investigation into the circumstances in which Murad Lyanov and Islam Dombayev had disappeared;
4. *Holds* unanimously that there has been no violation of Article 3 of the Convention in respect of the alleged ill-treatment of Murad Lyanov and Islam Dombayev;
5. *Holds* unanimously that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;
6. *Holds* unanimously that there has been a violation of Article 5 of the Convention in respect of Murad Lyanov and Islam Dombayev;
7. *Holds* unanimously that no separate issues arise under Article 8 of the Convention;

8. *Holds* unanimously that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention;
9. *Holds* unanimously that there has been no violation of Article 13 of the Convention as regards the alleged violation of Article 3 of the Convention in respect of Murad Lyanov and Islam Dombayev;
10. *Holds* unanimously that no separate issues arise under Article 13 of the Convention as regards the alleged violations of Article 3 in respect of the applicants and of Articles 5 and 8;
11. *Holds* unanimously that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
12. *Holds* unanimously that no separate issues arise under Article 34 of the Convention
13. *Holds* by five votes to two
 - (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, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, to each of the applicants in respect of pecuniary damage;
 - (ii) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage to each of the applicants;
 - (iii) GBP 1,489.47 (one thousand four hundred eighty nine pounds forty seven pence) in respect of the first applicant's costs and expenses, plus any tax that may be chargeable to the applicant, to be paid into her representatives' bank account in the United Kingdom;
 - (iv) EUR 7,000 (seven thousand euros) in respect of the second applicant's costs and expenses, plus any tax that may be chargeable to the applicant, to be paid into the representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following opinion is annexed to this judgment:

(a) partly dissenting opinion of Judge Kovler joined by Judge Hajiyeu.

C.L.R.
S.N.

PARTLY DISSENTING OPINION OF JUDGE KOVLER JOINED BY JUDGE HAJIYEV

I am unable to agree with the conclusions of the majority on one point, namely the issue of pecuniary damage.

In some previous cases concerning disappearances in Chechnya the Court routinely made awards in respect of pecuniary damage where the disappeared adult persons were unemployed. The awards were based on the assumption that they would eventually have had some earnings from which the applicants would have benefited (see, among other cases, *Imakayeva v. Russia*, no. 7615/02, § 213, ECHR 2006-XIII).

It should be noted in this connection that the Constitution of the Russian Federation provides: “Able-bodied children over eighteen years old must take care of disabled parents” (Article 38 part 3). This is a moral imperative laid down as a constitutional norm subject to certain conditions (children over eighteen, disabled parents). The first applicant submitted that her son had been a student aged seventeen and that his brother had been unemployed, but that in the future she would have benefited from his financial support (paragraph 151). The text of the judgment reproduces the second applicant’s argument that “although her son had been unemployed at the time of his disappearance as he had been only fifteen years old, according to the regional tradition he was supposed to become the breadwinner for his parents as the youngest son in the family” (paragraph 153). The conclusions of the Court on this issue are thus largely based on assumption and on customary law (“regional tradition”).

The assumption, largely speculative as such, appears to be particularly far-fetched in the present case. As justly noted by the Government (paragraph 154), the applicants’ sons were minors, and not only were they not breadwinners, but were themselves dependent on the applicants. The Court indirectly agrees with this argument: “[t]he Court notes that the applicants’ sons were unemployed at the time and, being only fifteen and seventeen years old, were dependent on the applicants” (paragraph 155). But it appears that this conclusion is counterbalanced by others, namely that “the applicants’ sons were close to coming of age” and “they would eventually [*sic!*] have had some earnings”...

The award in respect of pecuniary damage on account of the loss of possible future financial support from persons who, being the applicants’ dependants, had all their means of subsistence provided by the applicants at the time of their presumed death, runs counter to the logic of civil law. Taken to an extreme, such logic would lead the Court to make awards for

pecuniary damage to parents on account of the expected loss of income of deceased babies as “potential breadwinners”. Furthermore, this approach appears inconsistent with the Court’s cases where an award in respect of pecuniary damage has been made to real dependants, including children, of disappeared persons (see, among other cases, *Sangariyeva and Others v. Russia*, no. 1839/04, §§ 121-129, 29 May 2008).

It is noteworthy that in reducing the initial claim in respect of pecuniary damage (based moreover on the “Ogden tables”!) the Court observes that “[f]urthermore, ... each applicant has other children from whose financial support they must be able to benefit” (paragraph 155).

I am aware that my reasoning could be interpreted as a kind of exercise in cynicism in relation to the real and irreplaceable loss sustained by the applicants. But my position on other issues in this tragic case will vouch for my bona fide intentions.