



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

FIRST SECTION

CASE OF RASAYEV AND CHANKAYEVA v. RUSSIA

(Application no. 38003/03)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Rasayev and Chankayeva v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 38003/03) 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, Mr Rizvan Said-Khasanovich Rasayev and Mrs Raisa Abdulayevna Chankayeva (“the applicants”), on 14 October 2003.

2. The applicants, who had been granted legal aid, were 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, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2005 the President of the Chamber decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

4. On 7 June 2006 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1966 and 1939 respectively and live in the village of Chechen-Aul of the Grozny district, the Chechen Republic. They are the brother and the mother of Ramzan Said-Khasanovich Rasayev, born in 1963, who was apprehended on 25 December 2001 by armed men and has been missing since. The applicants live in Chechen-Aul at 21 Kalinina Street, and Ramzan Rasayev lived there as well before his apprehension.

A. Apprehension and subsequent detention of Ramzan Rasayev

1. The applicants' account

6. According to the applicants', on 25 December 2001 the armed forces of the Russian Federation arrived in Chechen-Aul to conduct a security raid. The operation was conducted by special reconnaissance unit no. 352 of the interior troops (*352^й отдельный разведывательный батальон внутренних войск*) under the command of Major General B.

7. At about noon Ramzan Rasayev was walking down the street returning home from a neighbour's house. Apparently some servicemen who were about 150 metres away called to him, but he did not hear them because of his impaired hearing and continued walking towards his home. Four servicemen followed him with a police dog and broke into his house straight after he had gone in.

8. According to the applicants and other witnesses, whose testimonies they submitted to the Court, the servicemen were wearing camouflage uniforms and carrying military weapons, but no masks, and were armed with machineguns. They spoke Russian without an accent. The servicemen did not present any documents and did not introduce themselves. They demanded that all the men of the household come out to the courtyard and say which one of them had just been in the street. Ramzan Rasayev responded and was accused of not stopping following the order. The first applicant and Ramzan Rasayev were told to lean against the wall and were searched; then their documents were checked.

9. The servicemen left, taking Ramzan Rasayev with them and saying that he would be back shortly after an additional document check. Apparently they were taking him to the "filtration point" on the outskirts of Chechen-Aul. The second applicant and Khava Rasayeva, Ramzan Rasayev's wife, were crying and asking the servicemen not to arrest him,

but the soldiers pushed them and other family members back into the house, ordered them to stay indoors and left.

10. The first applicant and Khava Rasayeva followed them at some distance and saw them heading to the military vehicles parked in Karl Marx Street (one armoured personnel carrier (APC), one Ural truck and one UAZ all-terrain military vehicle, all without visible identification plates). After that they saw Ramzan Rasayev, who was ordered to lean against a fence with his hands up. At that point the servicemen noticed that the applicants had followed them and chased them back into the house. Other witnesses saw that the servicemen then started hitting and kicking Ramzan Rasayev. About ten minutes later all of the servicemen left on the above-mentioned vehicles, taking Ramzan Rasayev with them.

11. The applicants submitted a handwritten plan of the neighbourhood indicating their house and the location of the military vehicles. They also submitted statements by Khava Rasayeva and their neighbours, I. B., M. M. and P. G., who confirmed their account of Ramzan Rasayev's apprehension.

12. Later on the same day a number of detainees at the "filtration point" saw Ramzan Rasayev. The applicants submitted written testimonies by A. Ya., Kh. B. and M. B., fellow villagers who had been detained at the filtration point and then released. Their description of the camp and the account of the circumstances of Ramzan Rasayev's detention may be summarised as follows. The camp was set up by the military forces on the outskirts of the village, behind a cordon. In the middle of the camp there was an open-air waiting area where the detainees remained before being called out for individual "filtration" interviews. There had been ten to twenty detainees at the filtration point on that day. Ramzan Rasayev was brought there at about 1.30 p.m. in a military truck and was first placed in the common waiting area but was shortly taken away, apparently for an interview, until about 5 p.m. When he was brought back he was taken to a separate tent, about 10 metres away from the common area. After that the others lost sight of him, and nobody saw him again.

2. The Government's account

13. According to the Government, between 24 and 26 December 2001 a special operation was conducted in the village of Chechen-Aul to check identity papers and locate members of illegal armed groups. Troops from the Ministry of Defence, the Ministry of the Interior and the Federal Security Service (FSB) took part in the operation. During that period unidentified persons in camouflage uniform apprehended Ramzan Rasayev, who lived in Chechen-Aul, and took him to an unknown destination. He was not delivered to the filtration point and was not in the list of persons detained. His whereabouts have not been established to date.

B. Search for Ramzan Rasayev and investigation

14. From that day the applicants have been searching for Ramzan Rasayev. Both in person and in writing they have applied to various official bodies, trying to find out his whereabouts and fate. The applicants have retained copies of some of their letters to the authorities and the answers, which they have submitted to the Court. Their attempts to discover the whereabouts of Ramzan Rasayev, and the criminal proceedings, can be summarised as follows.

15. On 28 December 2001 the first applicant filed a written request with the military prosecutor of military unit no. 20102 asking for an explanation of the grounds on which Ramzan Rasayev was being kept in detention and enquiring about the place of his detention.

16. On 2 January 2002 the first applicant repeated his request, this time indicating the witnesses of his brother's apprehension.

17. On an unspecified date the first applicant filed a written complaint with the Grozny District Prosecutor. On 5 January 2002 this complaint was forwarded to the military prosecutor of military unit no. 20102 "to be joined to the criminal case file".

18. On 17 January 2002 the second applicant wrote to the Prosecutor's Office of the Chechen Republic asking for the whereabouts of her son to be established and to be informed accordingly.

19. On an unspecified date the applicants filed a written complaint with the Chechnya Department of the FSB. On 22 January 2002 that complaint was forwarded to the military prosecutor's office because the agency "had no information on its officers' involvement in Ramzan Rasayev's arrest".

20. On an unspecified date the second applicant filed a written complaint with the Special Envoy of the Russian President for rights and freedoms in Chechnya. On 30 January 2002 that letter was forwarded to the Prosecutor's Office of the Chechen Republic "for appropriate measures to be taken".

21. On 26 January 2002 the Grozny District Prosecutor's Office opened a criminal investigation into the abduction of Ramzan Rasayev (criminal case file no. 56014). The decision to open the investigation read:

"From 24 to 26 December 2001 divisions of the federal troops of the RF, the Ministry of the Interior and the FSB carried out a special operation in Chechen-Aul of the Grozny District, the Chechen Republic, to locate members of illegal armed groups and check passports. During the operation the servicemen detained Mr Ramzan Rasayev, a resident of Chechen-Aul, and took him to an unknown destination. His whereabouts are still unknown. ..."

22. On 28 January 2002 the first applicant was questioned as a witness. He gave his account of the events as described in paragraphs 6-10 above.

23. On 26 March 2002 the Grozny District Prosecutor's Office suspended the criminal proceedings in case no. 56014. The decision to suspend the investigation read:

“From 24 to 26 December 2001 divisions of the federal troops of the RF, the Ministry of the Interior and the FSB carried out a special operation in Chechen-Aul of the Grozny District, the Chechen Republic, to locate members of illegal armed groups and check passports. During the operation the servicemen detained Mr Ramzan Rasayev, a resident of Chechen-Aul, and took him to an unknown destination. His whereabouts are still unknown.

Having regard to the foregoing and taking into account that in the course of the preliminary investigation [it did not appear possible to identify] the persons to be charged with the offence and that the time-limits for the preliminary investigation are expiring, [the preliminary investigation] should be suspended . . .”

24. On 3 December 2002 the Grozny District Prosecutor’s Office resumed the criminal proceedings in case no. 56014. The decision stated that on 27 March 2002 the Prosecutor’s Office of the Chechen Republic had instructed the Grozny District Prosecutor’s Office to take certain investigative measures in the case. However, the instructions had not been complied with.

25. On 20 December 2002 the Grozny District Prosecutor’s Office issued a certificate in the first applicant’s name confirming that criminal proceedings concerning the abduction of his brother were under way.

26. On 21 December 2002 the Grozny District Prosecutor’s Office issued another certificate of similar content, but also indicating that Ramzan Rasayev had been arrested by military servicemen and taken to an unknown destination.

27. On 25 December 2002 the first applicant was granted victim status in the criminal proceedings concerning the abduction of his brother. The decision of the Grozny District Prosecutor’s Office contained the following statement:

“From 24 to 26 December 2001 the military units of the Ministry of Defence, the Ministry of the Interior and the FSB carried out a special operation in Chechen-Aul of the Grozny District, Chechnya, to locate members of illegal armed groups and check passports. During the operation the servicemen detained Mr Ramzan Rasayev, born in 1963, a resident of Chechen-Aul, and took him to an unknown destination. His whereabouts are still unknown. ...”

28. On 4 January 2003 the Grozny District Prosecutor’s Office suspended the criminal proceedings in case no. 56014, as “no persons to be charged with the crime could be identified”. The first applicant was informed of the decision.

29. According to the Government, on 30 March 2003 the Military Prosecutor’s Office of the United Group Alignment received a letter from the Special Envoy of the Russian President for rights and freedoms in Chechnya with a request to assist in the search for Ramzan Rasayev. The prosecutor’s office of military unit no. 20102 conducted an inquiry in the course of which no information about the involvement of servicemen in the abduction of Ramzan Rasayev was received. The military prosecuting authorities did not take any procedural decisions in this regard.

30. On 28 April 2003 the second applicant wrote to the Secretary of the Security Council of Chechnya requesting assistance in finding her son.

31. On an unspecified date the first applicant filed a complaint with the Chief Military Prosecutor's Office. On 19 May 2003 this complaint was forwarded to the office of the Prosecutor General in the Southern Federal Circuit.

32. On 30 May 2003 the Grozny District Prosecutor's Office provided the first applicant with an official statement indicating the dates of the suspension and the resumption of criminal case no. 56014. The last event in the procedural history was the decision to suspend of 4 January 2003.

33. On 2 June 2003 the SRJI wrote on the applicants' behalf to the Prosecutor's Office of the Chechen Republic asking for an update on the investigation of case no. 56014.

34. On 9 July 2003 the Prosecutor's Office of the Chechen Republic informed the first applicant that the criminal proceedings in case no. 56014 had been suspended as of 25 January 2003 (as opposed to 4 January 2003 as previously indicated).

35. On 7 January 2006 the Grozny District Prosecutor's Office resumed the investigation. The first applicant was informed of the decision.

36. On 8 January 2006 the first applicant was questioned as a witness. He confirmed his statements made on 28 January 2002.

37. On the same date B. I., the applicants' neighbour, was questioned. She stated that in December 2001 she had seen servicemen putting Ramzan Rasayev into a Ural vehicle without identification plates and taking him to an unknown destination.

38. On 7 February 2006 the Grozny District Prosecutor's Office suspended the investigation on the ground that the persons to be charged with the offence had not been identified. The first applicant was informed of the decision.

39. On 28 July 2006 the Prosecutor's Office of the Chechen Republic quashed the decision to suspend the investigation and referred the case for further investigation to the Grozny District Prosecutor's Office. The resumed investigation was supervised by the Office of the Prosecutor General. The first applicant was informed of the decision.

40. According to the Government, in the course of the investigation requests were sent to various State agencies and remand prisons of Chernokozovo and Stavropol with a view to establishing the whereabouts of Ramzan Rasayev. However, they were of no avail.

41. According to the applicants, throughout the criminal investigation they were not involved in the proceedings and received almost no information about their progress. According to the Government, they were informed of all the decisions to suspend and resume the investigation.

C. Proceedings against investigating officials

42. On 1 December 2003 the SRJI lodged, on the first applicant's behalf, a complaint with the Grozny District Court challenging the inaction of the Grozny District Prosecutor's Office. They asked the court to order the prosecuting authorities to conduct a thorough investigation, to question fifteen witnesses named in the complaint, including other residents of Chechen-Aul who had been held at the same filtration point with Ramzan Rasayev and to allow the first applicant to make copies of documents contained in the case file.

43. On 21 December 2005 the Grozny District Court ordered the Grozny District Prosecutor's Office to resume the investigation, to question the witnesses named by the first applicant and to allow him to make copies of documents contained in the case file. The prosecutor's office appealed.

44. On 5 February 2006 the Supreme Court of the Chechen Republic amended the decision of the Grozny District Court thereby removing the order to allow the first applicant to make copies of documents contained in the case file. It upheld the decision in the remaining part.

D. The Court's request to submit the investigation file

45. Despite a specific request by the Court, the Government did not submit a copy of the investigation file into the abduction of Ramzan Rasayev. They submitted fifteen pages of case-file materials containing decisions instituting, suspending and resuming the investigation and a decision granting the first applicant victim status. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in criminal proceedings.

II. RELEVANT DOMESTIC LAW

46. For a summary of the relevant domestic law see *Kukayev v. Russia*, no. 29361/02, §§ 67-69, 15 November 2007, 10 May 2007.

THE LAW

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

A. Arguments of the parties

47. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Ramzan Rasayev had not yet been completed. They further argued that it had been open to the applicant to lodge complaints with the courts about the allegedly unlawful detention of his son.

48. 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 that had been reviewed by the Court, and also to reports of various NGOs and international bodies. That, in their view, rendered any potentially effective remedies inadequate and illusory in this case.

B. The Court's assessment

49. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52; *Akdivar and Others*, cited above, p. 1210, §§ 65-67; and, most recently,

Cennet Ayhan and Mehmet Salih Ayhan v. Turkey, no. 41964/98, § 64, 27 June 2006).

50. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above, p. 1211, § 68, and *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

51. Having regard to the Government's objection concerning the applicants' failure to complain of their family member's unlawful detention to the domestic authorities, the Court observes, that, after Ramzan Rasayev had been taken away by armed men on 25 December 2001, the applicants actively attempted to establish his whereabouts and applied to various official bodies, whereas the authorities denied their responsibility for his detention. In such circumstances, and in particular in the absence of any proof to confirm the very fact of the detention, even assuming that the remedy referred to by the Government was accessible to the applicants, it is more than questionable whether a complaint to a court of the unacknowledged detention of the applicants' family member by the authorities would have had any prospects of success. Moreover, the Government have not demonstrated that the remedy indicated by them would have been capable of providing redress in the applicants' situation, namely, that it would have led to the release of Ramzan Rasayev and the identification and punishment of those responsible. Accordingly, the Government's objection concerning non-exhaustion of domestic remedies must be dismissed.

52. In so far as the Government's objection concerns the fact that the domestic investigation is still pending, the Court considers that it raises issues which are closely linked to the merits of the applicant's complaints. Thus, it considers that this matter falls to be examined below under the substantive provisions of the Convention (see paragraphs 77-78 below).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

53. The applicants complained under Article 2 of the Convention that their family member 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. Arguments of the parties

54. The Government argued that the complaint was unfounded. They referred to the fact that the investigation had obtained no evidence to the effect that this person was dead, or that representatives of the federal forces had been involved in his abduction or alleged killing. The Government also claimed that the investigation of the disappearance of the applicants’ family member met the Convention requirement of effectiveness, as evidenced by the questioning of witnesses by the investigating authorities and requests sent by them to other State agencies.

55. The applicants maintained their complaint and contended that their family member had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. They further argued that the investigation had not met the requirements of effectiveness and adequacy required by the Court’s case-law on Article 2. The applicants noted that the investigation had been adjourned and reopened a number of times, thus delaying the taking of the most basic steps, and that they had not been properly informed of the most important investigative steps. They argued that the fact that the investigation had been pending for such a long period of time without producing any known results had been a further proof of its ineffectiveness. The applicants invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

56. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 52 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Ramzan Rasayev

i. General principles

57. 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).

ii. Establishment of the facts

58. The applicants alleged that on 25 December 2001 their family member, Ramzan Rasayev, had been apprehended by Russian servicemen and then disappeared. They invited the Court to draw inferences as to the well-foundedness of their allegations from the Government's failure to provide the documents requested from them. The applicants supported their allegations with statements by seven witnesses, including Ramzan Rasayev's wife, their three neighbours who had witnessed the apprehension and three other residents of Chechen-Aul, who had been held at the

filtration point with Ramzan Rasayev. The witnesses provided a coherent account of the special operation conducted in the village on 25 December 2001 and stated that Ramzan Rasayev had been apprehended by the servicemen involved in the operation and then detained at the filtration point on the outskirts of the village.

59. The Government confirmed that a special operation had been carried out in Chechen-Aul between 24 and 26 December 2001 aimed at locating members of illegal armed groups and checking identity papers. Furthermore, they did not deny that Ramzan Rasayev had been abducted by unknown armed men on the same date. However, the Government referred to the absence of conclusions from the pending investigation and denied that the State was responsible for the disappearance of the applicants' family member.

60. The Court notes that despite its repeated requests for a copy of the investigation file into the abduction of Ramzan Rasayev, apart from fifteen pages of copies of procedural decisions, the Government have produced no documents from the case file at all, relying on Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

61. In view of this and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect. It considers that the applicants have presented a coherent and convincing picture of their family member's detention on 25 December 2001. They themselves were eyewitnesses to the events and collected statements from seven other witnesses referring to the involvement of the military or security forces in the abduction.

62. The Court observes that the Government did not deny that Ramzan Rasayev had been abducted by armed men and, at the same time, confirmed that a special operation had been conducted in the village on the date of his abduction. The fact that a large group of armed men in uniform, equipped with military vehicles, during a special operation conducted in the village by the State's forces, proceeded in broad daylight to apprehend the applicant at his home and placed him at a "filtration point" with several persons apprehended earlier, strongly supports the applicants' allegation that these were State servicemen. It further notes that after six years the domestic investigation has produced no tangible results.

63. The Court reiterates that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is

thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

64. Taking into account the above elements, the Court is satisfied that the applicants have made out a prima facie case that their family member was detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide a plausible explanation of the events in question, the Court finds it established that Ramzan Rasayev was apprehended on 25 December 2001 at his house in Chechen-Aul by State servicemen during a security operation.

65. The Court further notes that there has been no reliable news of the applicant's son since 25 December 2001. His name has not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to him after his apprehension.

66. 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-... (extracts)), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Ramzan Rasayev or any news of him for over seven years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of Ramzan Rasayev's disappearance and the official investigation into his abduction, which has gone on for over six years, has produced no tangible results.

67. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that on 25 December 2001 Ramzan Rasayev was apprehended by State servicemen and that he must be presumed dead following his unacknowledged detention.

iii. The State's compliance with Article 2

68. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but

also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar*, cited above, § 391).

69. The Court has already found it established that the applicants' family member must be presumed dead following unacknowledged apprehension 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 his presumed death is attributable to the respondent Government.

70. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Ramzan Rasayev.

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

71. 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).

72. Turning to the facts of the present case, the Court notes that the applicants enclosed a copy of the first applicant's request of 28 December 2001 to the military prosecutor of military unit no. 20102 enquiring about the grounds for and the place of his brother's detention. Accordingly, the authorities were aware of Ramzan Rasayev's disappearance at least three days after his apprehension. However, the investigation was not opened until 26 January 2002, that is almost one month later. Therefore, the investigation was instituted with a delay, for which there has been no explanation, in a situation where prompt action was vital.

73. The Court further notes that on 28 January 2002 the first applicant was questioned. It appears that after that a number of crucial steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all. In particular, apart from the first applicant, who was questioned again on 8 January 2006, the investigating authorities only questioned one more witness, I. B., the applicant's neighbour, and that was done almost four years after the institution of the investigation. The investigating authorities never questioned other witnesses, including the second applicant, Ramzan Rasayev's wife and their other neighbours who had eyewitnessed the apprehension, the persons held together with Ramzan Rasayev at the filtration point and named by the applicants and servicemen in charge of the special operation in Chechen-Aul. The Court finds it particularly appalling that the investigating authorities failed to question the witnesses even after the domestic courts ordered them to do so in the final decision of the Supreme Court of the Chechen Republic of 5 February 2006.

74. The Court also notes that the first applicant was granted victim status only on 25 December 2002, that is, almost a year after the institution of the investigation. He was not informed of any significant developments in the investigation, apart from decisions suspending and resuming it. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny or to safeguard the interests of the next of kin in the proceedings.

75. Lastly, the Court notes that the investigation was suspended and resumed several times and that the domestic courts criticised deficiencies in the proceedings and ordered remedial measures. However, the investigating authorities failed to comply with the ruling of the Supreme Court of the Chechen Republic of 5 February 2006 and, moreover, two days later they suspended the investigation again. It was resumed again only after the application had been communicated to the respondent Government.

76. The Court observes that in the present case the investigating authorities not only did not comply with the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II), but failed to take the most elementary investigative measures.

77. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the authorities' failure to take necessary and urgent investigative measures undermined the effectiveness of the investigation in its early stages. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection.

78. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Ramzan Rasayev, in breach of Article 2 in its procedural aspect. Accordingly, there has been a violation of Article 2 in this respect also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE APPLICANTS

79. The applicants submitted that the anguish and distress suffered by them as a result of the “disappearance” of their family member and the lack of an adequate response on behalf of the authorities amount to treatment in violation of Article 3 of the Convention, which reads as follows:

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

A. The parties’ submissions

80. The applicants maintained their complaint.

81. In the Government’s view, the level of suffering allegedly caused to the applicants by the fact of their relative’s disappearance was beyond the evaluation of the law-enforcement authorities and could not be objectively measured, as it related to psychological aspects, such as the emotions and personalities of the individuals concerned.

B. The Court’s assessment

1. Admissibility

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

2. Merits

83. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will

include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

84. In the present case the Court notes that the applicants are the brother and the mother of the individual who has disappeared. They were eyewitnesses to his apprehension. For more than seven years they have not had any news of him. During this period the applicants have applied to various official bodies with enquiries about their family member, 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 family member following his detention. The responses received by the applicants mostly denied that the State was responsible for his arrest 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.

85. 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 member and their inability to find out what happened to him. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

86. 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 3 OF THE CONVENTION IN RESPECT OF RAMZAN RAMSAYEV

87. Also relying on Article 3 of the Convention, the applicants argued that they had serious grounds to believe that Ramzan Rasayev had been subjected to torture and inhuman treatment when in detention. They further complained that no effective investigation had been conducted in this respect.

88. 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*, cited above, pp. 64-65, § 161 *in fine*).

89. The Court has found it established that Ramzan Rasayev was detained on 25 December 2001 by State agents. It has also found that, in view of all the known circumstances, he can be presumed dead and that the responsibility for his death lies with the State authorities (see paragraphs 67 above). However, the exact way in which he died and whether he was subjected to ill-treatment while in detention have not been established.

90. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

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

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

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

...

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

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

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

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

A. The parties' submissions

92. The Government submitted that no evidence had been obtained by the investigators to confirm that Ramzan Rasayev had been deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention. He was not listed among the persons kept in detention centres

93. The applicants maintained their complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

95. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev*, cited above, § 122).

96. The Court has found it established that Ramzan Rasayev was apprehended by State servicemen on 25 December 2001 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

97. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their family member 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.

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

VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

99. In their initial application form the applicants stated that they had been deprived of access to a court, contrary to the provisions of Article 6 of the Convention, which reads as follows:

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

100. In the observations on admissibility and merits of 14 November 2006 the applicants stated that they no longer maintained their complaint under Articles 6.

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

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

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. The parties' submissions

104. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the actions or omissions of the

investigating authorities in court, which they had failed to do. In sum, the Government submitted that there had been no violation of Article 13.

105. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

106. 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 Ramzan Rasayev had been ill-treated during and after his apprehension by State agents, the Court notes that the complaint under Article 3 was found unsubstantiated under this head in paragraphs 88-90 above. Accordingly, the applicant did not have an “arguable claim” of a violation of a substantive Convention provision and, therefore, Article 13 of the Convention is inapplicable. It follows that this part of the application should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

107. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the complaints under Article 2, Article 3 in respect of the applicants and Article 5, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

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

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

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

110. In view of the Court's above findings with regard to Article 2, this complaint is clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13.

111. It follows that in circumstances where, as here, the criminal investigation into the disappearance of two persons has been ineffective and the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

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

113. As regards the violation of Article 3 of the Convention found on account of the applicants' mental suffering as a result of the disappearance of their close relative, their inability to find out what had happened to him and the way the authorities had handled their complaints, the Court notes that it 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.

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

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

115. The applicants complained that they had been discriminated against in the enjoyment of the Convention rights because the violations complained of had taken place on account of their residence in Chechnya and their ethnic background as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

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

A. The parties’ submissions

116. The Government contended that the applicants had never been discriminated against in the enjoyment of their Convention rights on any ground.

117. The applicants insisted that they had been discriminated against.

B. The Court’s assessment

118. The Court observes that no evidence has been submitted to it that suggests that the applicants were treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated.

119. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. 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. Damage

121. The applicants did not submit any claims in respect of pecuniary damage. As regards non-pecuniary damage, they claimed that they had endured moral suffering 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 relatives. They left to the Court's discretion the exact amount to be awarded under this head.

122. The Government submitted that should the Court find a violation of the applicants' rights a token amount would constitute equitable satisfaction for the non-pecuniary damage suffered by them.

123. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicants jointly EUR 35,000, plus any tax that may be chargeable thereon.

B. Costs and expenses

124. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow at a rate of EUR 50 per hour and the drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses relating to the applicants' legal representation amounted to EUR 7,579.24, less the sum received by way of legal aid from the Council of Europe. The applicants requested the award to be transferred directly into their representatives' account in the Netherlands.

125. The Government did not dispute the details of the calculations submitted by the applicants, but contended that the sum claimed was excessive. They also objected to the request to transfer the award for legal representation directly into the applicants' representatives' account in the Netherlands.

126. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

127. Having regard to the details of the information submitted, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives. As to whether they were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time that, due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in

one set of documents. The Court thus doubts that the legal drafting was necessarily time-consuming to the extent claimed by the representatives.

128. Furthermore, the Court notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicant's representatives' accounts (see, for example, *Toğcu*, cited above, § 158; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; and *Imakayeva*, cited above).

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

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to dismiss the Government's objection concerning non-exhaustion of domestic remedies in the part relating to the applicants' failure to complain of Ramzan Rasayev's unlawful detention;
2. *Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies in the part relating to the fact that the domestic investigation is still pending and reject it;
3. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 6 of the Convention;
4. *Declares* the complaints under Article 2, Article 3 in respect of the applicants, Article 5 and Article 13 of the Convention in conjunction with Article 2, Article 3 in respect of the applicants and Article 5 of the Convention admissible and the remainder of the application inadmissible;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of Ramzan Rasayev;

6. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Ramzan Rasayev had disappeared;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ramzan Rasayev;
9. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention;
10. *Holds* that no separate issues arise under Article 13 of the Convention on account of the alleged violations of Article 3 of the Convention in respect of the applicants and of Article 5 of the Convention;
11. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 35,000 (thirty-five thousand euros) in respect of non-pecuniary damage to the applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable to these amounts;
 - (iii) EUR 5,150 (five thousand one hundred and fifty euros) in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

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

Søren Nielsen
Registrar

Christos Rozakis
President