



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

FIRST SECTION

CASE OF KHALIDOVA AND OTHERS v. RUSSIA

(Application no. 22877/04)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Khalidova and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *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. 22877/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Russian nationals (“the applicants”), on 3 February 2004.

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

3. On 1 September 2005 the Court decided to apply Rule 41 of the Rules of Court.

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

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- 1) Ms Ayset Magomedovna Khalidova, who was born in 1959;
- 2) Mr Khasmagomed Khalidov, who was born in 1924;
- 3) Ms Nebisat Khalidova, who was born in 1916;
- 4) Mr Atbi Isayevich Khalidov, who was born in 1993, and
- 5) Ms Zarina Isayevna Khalidova, who was born in 1980.

They live in the town of Urus-Martan, in the Chechen Republic.

7. The second and the third applicants are spouses and the parents of Mr Isa Khalidov, born in 1950. Isa Khalidov was married to the first applicant, they are the parents of Mr Shamil Khalidov, born in 1981, and the fourth and the fifth applicants.

A. Disappearance of Isa and Shamil Khalidov

1. The applicants' account

8. In November 2002 Isa and Shamil Khalidov worked at a juice factory, Dary Prirody, in the village of Psedakh, Malgobekskiy District in the Republic of Ingushetia, a region adjacent to the Chechen Republic.

9. At about 11 p.m. on 29 November 2002 ten armed men wearing camouflage uniforms and masks arrived at the factory. They identified themselves as officers of law enforcement agencies and, without providing any explanations, took Isa and Shamil Khalidov away in a grey UAZ vehicle with registration number 241 06 RUS.

10. The applicants did not witness the apprehension of Isa and Shamil Khalidov and only learned of it in the evening of 30 November 2002 from a relative who had heard local rumours.

2. Information submitted by the Government

11. The investigation in case no. 03540030 established that at about 11 p.m. on 29 November 2002 unidentified armed persons had entered the territory of the factory, Dary Prirody, where a camp for refugees from the Chechen Republic had been located. They had put Isa and Shamil Khalidov in a UAZ vehicle with registration number 241 06 and had driven away to an unknown destination.

B. The search for Isa and Shamil Khalidov and the investigation

1. The applicants' account

12. Having learned of their relatives' disappearance, the applicants started searching for Isa and Shamil Khalidov. In an attempt to establish the whereabouts and the fate of those missing, they applied both in person and in writing to various official bodies, such as the Prosecutor General's Office, the military prosecutor of the United Group Alignment, the Administration of the Chechen Republic, the Russian Ministry of the Interior, the Ministry of Interior of the Chechen Republic, the Ministry of Interior of Ingushetia, the military commander's office of the Urus-Martan District of the Chechen Republic and the Russian State Duma. The applicants retained copies of some of these complaints and submitted them to the Court. Most of the complaints were lodged by the first applicant on behalf of the whole family. A number of complaints were lodged by the SRJI on the first applicant's behalf. Some applications remained unanswered, while some of them were forwarded to prosecutors' offices at different levels.

13. On 15 December 2002 the first applicant wrote to the Ingushetia prosecutor's office and the Ministry of Interior of Ingushetia complaining about her husband and son's disappearance.

14. On 25 December 2002 the prosecutor's office of Ingushetia forwarded the first applicant's letter to the prosecutor's office of the town of Malgobek ("the Malgobek prosecutor's office").

15. At some point the Ministry of Interior of Ingushetia established that a unit of servicemen of the department of interior of the Nadterechny District of the Chechen Republic ("the Nadterechny ROVD"), under the command of Mr K., had been in the village of Psedakh at the time of the apprehension of Isa and Shamil Khalidov.

16. In a decision of 7 January 2003 the Malgobek prosecutor's office stated that, according to an inquiry into the events of 29 November 2002, Isa and Shamil Khalidov had been apprehended by an officer of the Nadterechny ROVD, Mr K.; the Malgobek prosecutor's office had refused to initiate criminal proceedings against the latter in the absence of evidence of a crime.

17. On 15 January 2003 the Ministry of Interior of Ingushetia informed the first applicant that an inquiry into the disappearance of her husband and son had established that a group of servicemen of the Chechen police forces commanded by Mr K. had been in the village of Psedakh in the evening of the disappearance of Isa and Shamil Khalidov. The Ministry of Interior of Ingushetia further advised the first applicant to contact the Nadterechny ROVD and assured her that the search for her relatives would be continued.

18. On 28 January 2003 the Malgobek prosecutor's office requested the prosecutor's office of the Nadterechny District of the Chechen Republic ("the Nadterechny prosecutor's office") to verify whether Isa and Shamil Khalidov had been arrested and, if so, to report their whereabouts and to provide detailed information concerning the arrest.

19. On 4 March 2003 the Malgobek prosecutor's office wrote to the prosecutor's office of the Chechen Republic stating that Isa and Shamil Khalidov had been apprehended by the servicemen of the Chechen police forces under the command of Mr K. and that the Nadterechny ROVD had refused to cooperate and provide information concerning the Khalidovs' detention. The Malgobek prosecutor's office requested the prosecutor's office of the Chechen Republic to establish which law enforcement agency had detained Isa and Shamil Khalidov, to provide legal grounds and copies of documents authorising their detention and to inform them of the two men's whereabouts.

20. In reply to the request of 28 January 2003, on 20 March 2003 the Nadterechny prosecutor's office informed the Malgobek prosecutor's office that the Nadterechny ROVD had not detained Isa and Shamil Khalidov, that Mr K.'s unit had not been sent to the village of Psedakh on 29 November 2002 and that the Nadterechny ROVD did not own a UAZ vehicle with the registration number 241 06 RUS.

21. On 7 April 2003 the first applicant wrote to the Nadterechny prosecutor's office seeking an investigation of her husband and son's unlawful detention or kidnapping opened. On the same date she wrote to the Nadterechny ROVD enquiring about her relatives' fate.

22. On 5 May 2003 the first applicant requested the prosecutor's office of the Chechen Republic to open an investigation of the unlawful detention or kidnapping of her husband and son.

23. On 8 May 2003 the Malgobek prosecutor's office quashed the decision of 7 January 2003 and opened an investigation of the disappearance of Isa and Shamil Khalidov under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was given the number 03540030.

24. On 15 May 2003 the South Federal Circuit Department of the Prosecutor General's Office forwarded the first applicant's letter to the Ingushetia prosecutor's office.

25. On 26 May 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the Nadterechny prosecutor's office.

26. On 30 May 2003 the first applicant was granted victim status in case no. 03540030.

27. On 3 June 2003 the Nadterechny prosecutor's office informed the first applicant that there were no grounds to prosecute Mr K. and the servicemen of his unit because they had not been in the village of Psedakh

at the time of the detention of Isa and Shamil Khalidov and that the Nadterechny ROVD did not have a UAZ vehicle with the registration number 241 06 RUS.

28. On 25 June 2003 the Ingushetia prosecutor's office informed the first applicant that the Malgobek prosecutor's office had opened an investigation of the kidnapping of Isa and Shamil Khalidov and mentioned that the investigation had been impeded by the unwillingness to cooperate of the law enforcement agencies of the Chechen Republic.

29. On 9 July 2003 the SRJI wrote on behalf of the applicants to the Malgobek prosecutor's office enquiring about the progress of the investigation.

30. On 23 July 2003 the military prosecutor's office of the United Group Alignment forwarded the first applicant's letter concerning the disappearance of her husband and son to the military prosecutor's office of military unit no. 20102.

31. On 25 August 2003 the SRJI requested the Nadterechny prosecutor's office to open an investigation into the Khalidovs' kidnapping. In reply, on 25 September 2003 the Nadterechny prosecutor's office submitted that the alleged implication of Mr K.'s unit in the Khalidovs' disappearance had not been proven and that the investigation was pending before the Malgobek prosecutor's office.

32. On 5 September 2003 the military prosecutor's office of military unit no. 20102 forwarded the first applicant's letter to the military commander of the Urus-Martan District of the Chechen Republic.

33. On 15 September 2003 the SRJI requested from the Malgobek prosecutor's office information on the progress of the investigation of the kidnapping of Isa and Shamil Khalidov.

34. On 25 September 2003 the Nadterechny prosecutor's office informed the SRJI and the first applicant that there was no proof of Mr K.'s implication in the Khalidovs' disappearance and explained that it had not instituted proceedings regarding the kidnapping of Isa and Shamil Khalidov because the investigation in case no. 03540030 was pending before the Malgobek prosecutor's office.

35. On 11 November 2003 the first applicant complained to the Malgobek Town Court of Ingushetia that the Malgobek prosecutor's office had not provided her with information on the course of the investigation in case no. 03540030.

36. On 16 December 2003 the first applicant wrote to the Malgobek prosecutor's office enquiring about the investigation of the kidnapping of her husband and son.

37. On 18 December 2003 the Malgobek prosecutor's office suspended the investigation in case no. 03540030 for a failure to identify suspects.

38. On 28 January 2004 the Malgobek Town Court of Ingushetia allowed the first applicant's complaint and ordered that the Malgobek

prosecutor's office provide her with copies of the decisions of 7 January, 8 May and 18 December 2003. The judgment became final immediately.

39. On 28 March 2004 first applicant asked the Malgobek prosecutor's office to question Mr K. and the servicemen of his unit as witnesses to the disappearance of Isa and Shamil Khalidov.

40. On 7 July 2004 the SRJI requested from the Malgobek prosecutor's office information on the progress in the investigation into the kidnapping of Isa and Shamil Khalidov. In reply, on 31 July 2004 the Malgobek prosecutor's office submitted that the investigation in case no. 03540030 had been stayed on 18 December 2003 due to the investigative authorities' inability to identify those responsible, that the investigation had examined the implication of the servicemen of the Nadterechny ROVD in the Khalidovs' kidnapping and that there were no grounds for resumption of the proceedings.

41. On 5 August 2004 the first applicant asked the Malgobek prosecutor's office to inform her of the progress of the investigation. In reply, on 17 August 2004 the Malgobek prosecutor's office stated that Mr K. and the servicemen of his unit had been questioned and that there were no grounds to consider them implicated in the kidnapping of Isa and Shamil Khalidov.

2. Information submitted by the Government

42. On 15 December 2002 the first applicant reported the kidnapping of her husband and son to the police.

43. On an unspecified date the military commander advised the first applicant to apply to a prosecutor's office.

44. On 29 December 2002 the first applicant lodged a complaint concerning her relatives' kidnapping with the Malgobek prosecutor's office.

45. On 7 January 2003 the Malgobek prosecutor's office refused to institute criminal proceedings in respect of the events complained of by the first applicant pursuant to Article 24 § 1 (2) of the Code of Criminal Procedure.

46. On 8 May 2003 the Malgobek prosecutor's office quashed the decision not to institute criminal proceedings and opened an investigation of Isa and Shamil Khalidov's disappearance under Article 126 § 2 of the Criminal Code (aggravated kidnapping).

47. The investigators questioned as witnesses a serviceman of the department of interior of the Malgobek District, a serviceman of the Ministry of Interior of Ingushetia and two servicemen of the Nadterechny ROVD. The servicemen submitted that they had no information concerning those who had kidnapped Isa and Shamil Khalidov or the whereabouts of the missing men.

48. In November 2002 no servicemen of the Nadterechny ROVD were posted to the Malgobek District of Ingushetia.

49. The department of the Federal Security Service (“FSB”) of Ingushetia, the FSB department of the Chechen Republic, the Ministry of Interior of Russia, the Ministry of Interior of Ingushetia, the Nadterechny prosecutor’s office and other law enforcement agencies of North Caucasus had no information on the arrest of Isa and Shamil Khalidov, their whereabouts or identities of the kidnappers.

50. The UAZ vehicle with registration number 241 06 RUS was assigned to the department of interior of the Dzheyrakhskiy District of Ingushetia (“the Dzheyrakhskiy ROVD”). The investigators questioned the head of the Dzheyrakhskiy ROVD who submitted that in 2002 the UAZ vehicle was being repaired as by that time it had deteriorated as a result of wear and tear. In February 2003 the UAZ vehicle had been written off the books of the Dzheyrakhskiy ROVD. In November 2002 the vehicle had not been moved outside the Dzheyrakhskiy District and its registration plates had not been removed.

51. In 2002 the Malgobek ROVD did not use the UAZ vehicle with registration number 0 241 MM 06.

52. A number of witnesses were questioned but their interviews gave no new information concerning the circumstances of the kidnapping of Isa and Shamil Khalidov.

53. The investigation had not identified the perpetrators and was under way. Investigative measures aimed at resolving the kidnapping of Isa and Shamil Khalidov were being taken.

54. Despite specific requests by the Court the Government did not disclose any documents of the investigation file in case no. 03540030. Relying on the information obtained from the Prosecutor General’s Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

55. Article 24 § 2 (1) of the Russian Code of Criminal Procedure (“CCP”) provides that in the absence of the event of a crime a criminal investigation cannot be instituted and an opened criminal investigation should be terminated.

56. Article 125 of the CCP provides that the decision of an investigator or prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens’ access to justice, may be appealed against to a district

court, which is empowered to examine the lawfulness and grounds of the relevant decisions.

57. Article 161 of the CCP establishes the rule that data from the preliminary investigation cannot be disclosed. Part 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the participants in criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of the participants in the criminal proceedings without their permission.

THE LAW

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

58. The Government submitted that the application had not been lodged in order to restore the allegedly violated rights of the applicants. The actual object and purpose of the application had been of a clearly political nature. They concluded that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

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

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

A. The parties' submissions

60. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Isa and Shamil Khalidov had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints about the kidnapping of their relatives or to challenge in court any actions or omissions of the investigating or other law enforcement authorities. The first applicant had used this opportunity and applied to the Malgobek Town Court, however, the

applicants had not brought any complaints concerning the disappearance of Isa and Shamil Khalidov to the courts of the Chechen Republic and the Kabardino-Balkarian Republic or to the courts of the Stavropol, Krasnodar and Rostov Regions.

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

B. The Court's assessment

62. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, §§ 65-67; and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

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

64. The Court first notes, having regard to the Government's objection concerning the applicants' failure to complain to domestic authorities of their relatives' unlawful detention, that after Isa and Shamil Khalidov had been taken away by armed men the applicants actively attempted to establish their whereabouts and applied to various official bodies, whereas the authorities first admitted that the two men had been apprehended by the police officers but later denied responsibility for the detention of the missing persons. In such circumstances, and in particular in the absence of

any proof to confirm the very fact of the detention, even assuming that the remedy referred to by the Government was accessible to the applicants, it is more than questionable whether a court complaint of the unacknowledged detention of Isa and Shamil Khalidov 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 Isa and Shamil Khalidov and the identification and punishment of those responsible (see *Musayeva and Others v. Russia*, no. 74239/01, § 69, 26 July 2007). Accordingly, the Government's objection concerning non-exhaustion of domestic remedies in respect of Isa and Shamil Khalidov's unlawful deprivation of liberty must be dismissed.

65. As to the alleged violation of Isa and Shamil Khalidov's right to life, the Court notes that the applicants complained to the law enforcement authorities immediately after they had become aware of their relatives' disappearance and that the criminal proceedings have been pending since 8 May 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

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

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

A. The parties' submissions

67. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Isa and Shamil Khalidov had been State agents. In support of the complaint they referred to the fact that the armed men had driven the UAZ vehicle belonging to the police.

68. The Government submitted that unidentified armed men had kidnapped Isa and Shamil Khalidov. They insisted that no special operations had been carried out in the Malgobek District at the material time. They further contended that the investigation of the incident was pending, that there was no evidence that the perpetrators had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. The hypothesis of servicemen's involvement had been examined by the investigators, who had found no evidence for it. The applicants had not told the investigators the name of the person who had allegedly witnessed Isa and Shamil Khalidov's kidnapping

and seen the UAZ vehicle with registration number 241 06 RUS. In any event, the policemen of the Nadterechny ROVD would never have driven a vehicle belonging to the Dzheyraakhskiy ROVD as such a situation would be unthinkable given the domestic rules on territorial jurisdiction. The Government further argued that there was no convincing evidence that the applicants' relatives were dead.

B. The Court's evaluation of the facts

(a) General principles

69. In cases in which there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information able to corroborate or refute the applicants' allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-...).

70. The Court points out that a number of principles have been developed in its case-law when it is faced with a task of establishing facts on which the parties disagree. As to the facts that are in dispute, the Court reiterates its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others*, cited above, § 160).

71. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 32, and *Avşar v. Turkey*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

72. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a

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

73. These principles apply also to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation of what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Taniş*, cited above, § 160).

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

(b) Establishment of the facts

75. The Court notes that despite its requests for a copy of the investigation file into the abduction of Isa and Shamil Khalidov, the Government produced no documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

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

77. The applicants alleged that the persons who had apprehended Isa and Shamil Khalidov on 29 November 2002 had been State agents.

78. The Court notes that this allegation is supported by the investigation. In particular, it notes that the Malgobek prosecutor's office refused to

institute an investigation of the disappearance of Isa and Shamil Khalidov for the reason that the two men had been taken away by an officer of the Nadterechny ROVD (see paragraph 16 above). Furthermore, the Court observes that the Ingushetia law enforcement agencies alleged that the Nadterechny ROVD servicemen had been in the village of Psedakh at the time of the abduction of the applicants' relatives, while the State bodies of the Chechen Republic disagreed with that hypothesis (see paragraphs 17, 19 and 20 above). Lastly, it emphasises that the Government admitted that a vehicle with the registration number 241 06 RUS allegedly seen at the crime scene belonged to a police unit (see paragraph 50 above). The Court is not persuaded by the Government's argument that the possibility of the use of the vehicle in November 2002 by the Nadterechny ROVD servicemen or other State agents was excluded.

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

80. Taking into account the above elements, the Court is satisfied that the applicants have made out a *prima facie* case that Isa and Shamil Khalidov were apprehended by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court considers that Isa and Shamil Khalidov were apprehended on 29 November 2002 by State servicemen during an unacknowledged security operation.

81. There has been no reliable news of Isa and Shamil Khalidov since the date of the kidnapping. Their names have not been found in any official detention facilities' records. The Government have not submitted any explanation as to what happened to them after their abduction.

82. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, among others, *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court considers that, in the

context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Isa and Shamil Khalidov or of any news of them for several years supports this assumption.

83. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Isa and Shamil Khalidov must be presumed dead following their unacknowledged detention by State servicemen.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

A. The parties’ submissions

85. The Government contended that the domestic investigation had obtained no evidence to the effect that Isa and Shamil Khalidov were dead or that any servicemen of the federal law enforcement agencies had been involved in their kidnapping or alleged killings. The Government claimed that the investigation of the kidnapping of the applicants’ relatives met the Convention requirement of effectiveness, as all measures envisaged by national law were being taken to identify the perpetrators.

86. The applicants argued that Isa and Shamil Khalidov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for more than five years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court’s case-law on Article 2. The

investigation of Isa and Shamil Khalidov's kidnapping had been opened more than five months after the events and then had been suspended and resumed a number of times. The applicants had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for many years without producing any known results was 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 him/them or to the Court.

B. The Court's assessment

1. Admissibility

87. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 66 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 Isa and Shamil Khalidov

88. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

89. The Court has already found it established that Isa and Shamil Khalidov must be presumed dead following their unacknowledged detention by State servicemen and that their deaths can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Isa and Shamil Khalidov.

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

90. 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 an 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).

91. In the present case the kidnapping of Isa and Shamil Khalidov was investigated. The Court must assess whether the investigation met the requirements of Article 2 of the Convention.

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

93. The Court notes that, as soon as the applicants had learned of their relatives' abduction, they reported it to the police. It considers that by doing so the applicants duly and diligently informed the authorities of the crime and that they could not be required to lodge any additional complaints. As soon as the police became aware of the crime allegedly committed, it was for them to report the incident to a prosecutor's office via official channels of communication that should exist between various law enforcement agencies.

94. One month after the abduction the district prosecutor's office refused to open an investigation, insisting that Isa and Shamil Khalidov had been apprehended by the police and thus there had been no crime. The investigation in case no. 03540030 was instituted on 8 May 2003, that is, four months and twenty-two days after the crime had been reported to the authorities on 15 December 2002. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances,

where crucial action has to be taken in the first days after the event. Furthermore, it appears that even after the institution of the investigation a number of essential steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

95. The Court also notes that even though the first applicant was eventually granted victim status in case no. 03540030, she was not promptly informed of the progress in the investigation and even had to address the court in order to obtain copies of three decisions of the Malgobek prosecutor's office (see paragraph 38 above). Moreover, it appears that she was not informed of any other significant developments in the investigation. 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.

96. Finally, the Court notes that the investigation in case no. 03540030 was suspended on 18 December 2003. It is unclear whether it was eventually resumed. Assuming that no proceedings at all were pending since the known date of suspension and considering that the Government's assertion that the investigation in case no. 03540030 was pending was not supported by any documentary evidence, the Court concludes that the investigating authorities remained inactive for more than four years.

97. The Government mentioned that the applicants had the opportunity to apply for judicial review of the actions and decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants did, in fact, complain to the Malgobek Town Court of the investigators' failure to inform them of the progress of the case. However, due to lack of information the applicants were unable to challenge effectively the acts and inaction of the Malgobek prosecutor's office. The effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures. In such circumstances, the Court considers that the applicants could not be required to challenge in court every single decision of the district prosecutor's office. Moreover, the applicants could not be expected to complain of the investigators' decisions to courts of various regions of Russia in breach of domestic rules on territorial jurisdiction. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

98. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation of the circumstances surrounding the disappearance of Isa and Shamil Khalidov, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

99. The applicants relied on Article 3 of the Convention, submitting that as a result of their relatives' disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. They also complained under this heading that Isa and Shamil Khalidov had probably been subjected to ill-treatment upon their abduction while in the unregistered detention. Article 3 reads:

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

A. The parties' submissions

100. The Government disagreed with these allegations and argued that the investigation had not established that the applicants and Isa and Shamil Khalidov had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

101. In their observations on the admissibility and merits of the application the applicants submitted that they no longer wished to have the complaint regarding alleged ill-treatment of Isa and Shamil Khalidov examined. They further reiterated the complaint concerning the mental suffering endured.

B. The Court's assessment

1. Admissibility

(a) The complaint concerning the ill-treatment of Isa and Shamil Khalidov

102. 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 further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unpublished; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September

2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

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

(b) The complaint concerning the applicants' mental suffering

104. The Court notes that this part of the complaint under Article 3 of the Convention 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

105. 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).

106. In the present case the Court notes that the applicants are close relatives of the missing persons. For more than five years they have not had any news of Isa and Shamil Khalidov. During this period the applicants have applied to various official bodies with enquiries about Isa and Shamil Khalidov, both in writing and in person. Despite their requests, the applicants have never received any plausible explanation or information as to what became of Isa and Shamil Khalidov following their kidnapping. The responses received by the applicants mostly denied that the State was responsible for the abduction or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

109. The applicants further stated that Isa and Shamil Khalidov 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

110. In the Government's opinion, no evidence was obtained by the investigators to confirm that Isa and Shamil Khalidov had been deprived of their liberty in breach of the guarantees set out in Article 5 of the Convention.

111. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

113. 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).

114. The Court has found it established that Isa and Shamil Khalidov were apprehended by State servicemen on 29 November 2002 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

116. In view of the foregoing, the Court finds that Isa and Shamil Khalidov 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.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. The parties’ submissions

118. 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. In sum, the Government submitted that there had been no violation of Article 13.

119. The applicants reiterated the complaint.

B. The Court’s assessment

1. *Admissibility*

120. 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*

121. 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).

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

123. 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.

124. It follows that in circumstances where, as here, the criminal investigation of the disappearance of Isa and Shamil Khalidov has been ineffective and the effectiveness of any other remedy that may have existed has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

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

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

127. 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

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

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

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

130. 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*, cited above, § 28).

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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

133. The first and fourth applicants claimed damages in respect of the lost wages of their relatives from the time of their arrest. They suggested that Isa and Shamil Khalidov would have earned at least the official minimum wage and submitted a detailed calculation of the sums claimed based on the Ogden Actuarial Tables. The first applicant claimed

610,157.52 Russian roubles (RUB) (approximately 17,000 euros (EUR)) in total. The fourth applicant claimed RUB 69,524.34 (approximately EUR 1,940).

134. According to the Government, even assuming that the applicants had a right to compensation for pecuniary damage, it should have been calculated pursuant to Russian domestic laws and not on the basis of the Ogden tables.

135. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relatives and the loss by the first and fourth applicants of the financial support which they could have provided. Having regard to the applicants' submissions and the fact that Isa and Shamil Khalidov were not employed on a regular basis at the time of their apprehension, the Court awards EUR 3,000 to the first applicant and EUR 1,500 to the fourth applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

136. As to the non-pecuniary damage for the suffering caused by the disappearance of Isa and Shamil Khalidov and by the indifference shown by the authorities and the failure to provide any information about the fate of the missing men, the first applicant claimed EUR 80,000, while the fourth and fifth applicants claimed EUR 50,000 each. The second and third applicants made no claims under this heading.

137. The Government found the amounts claimed exaggerated.

138. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relatives. The applicants have also been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the first and fourth applicants EUR 30,000 each. It also awards EUR 10,000 to the fifth applicant, plus any tax that may be chargeable thereon.

C. Costs and expenses

139. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and drafting of legal documents submitted to the domestic authorities at a rate of EUR 50 per hour, as well as drafting of legal documents submitted to the Court at

the rate of EUR 150 per hour, EUR 7,225 in total. They also claimed EUR 59.57 in translation fees, as confirmed by invoices, and EUR 505.75 in administrative costs.

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

141. The Court notes that the applicants were represented by the SRJI. It is satisfied that the lawyers indicated in their claim formed part of the SRJI staff. Accordingly, the objection must be dismissed.

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

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

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

145. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards the amount of EUR 4,500, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable from the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 3 of the Convention regarding the alleged ill-treatment of Isa and Shamil Khalidov, as well as their complaint under Article 14 of the Convention;
2. *Dismisses* the Government's objection as to the abuse of the right of petition;
3. *Dismisses* the Government's objection as to non-exhaustion of domestic remedies in respect of Isa and Shamil Khalidov's unlawful deprivation of liberty;
4. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and reject it;
5. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of Isa and Shamil Khalidov;
7. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation of the circumstances in which Isa and Shamil Khalidov had disappeared;
8. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
9. *Holds* that there has been a violation of Article 5 of the Convention in respect of Isa and Shamil Khalidov;
10. *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;
11. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
12. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 3,000 (three thousand euros) to the first applicant and EUR 1,500 (one thousand five hundred euros) to the fourth applicant in respect of pecuniary damage, 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;
- (ii) EUR 30,000 (thirty thousand euros) to the first and fourth applicants each and EUR 10,000 to the fifth applicant in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable to these amounts;
- (iii) EUR 3,650 (three thousand six hundred fifty euros) in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the 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;

13. *Dismisses* the remainder of the applicants' claims 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