



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

FIRST SECTION

CASE OF ZULPA AKHMATOVA AND OTHERS v. RUSSIA

(Applications nos. 13569/02 and 13573/02)

JUDGMENT

STRASBOURG

9 October 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Zulpa Akhmatova and Others v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 13569/02 and 13573/02) 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 six Russian nationals, listed below (“the applicants”), on 19 March 2002.

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 and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their three relatives had disappeared after being detained by servicemen in Chechnya on 14 January 2001. They complained under Articles 2, 3, 5, 6 and 13 of the Convention.

4. By a decision of 23 October 2007 the Court joined the applications and declared them admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- (1) Mrs Zulpa Akhmatova (also spelled Akhmadova), born in 1939;
- (2) Mr Abaz Debizov, born in 1932 (died in April 2004);
- (3) Mrs Taus Serbiyeva, born in 1932;
- (4) Mr Islam Serbiyev, born in 1964;
- (5) Mrs Saret Yasadova, born in 1963;
- (6) Mr Sharpudi Bargayev, born in 1956.

The applicants are Russian nationals and live in Chechnya, in the village of Novye Atagi, in the Shali District, except for the fourth applicant, who lives in Grozny.

A. The applicants' relatives' arrest on 14 January 2001

7. The applicants submitted that between 14 and 16 January 2001 the federal troops had conducted a "sweeping" operation ("зачистка") in the neighbouring villages of Novye Atagi and Starye Atagi. Early in the morning on 14 January 2001 the federal forces blocked the roads leading into Novye Atagi and stopped the traffic on the Grozny to Shatoy highway, which is the main road leading into and out of the village. They then disarmed and blocked the local police and cut off their communications. After that they proceeded to carry out house-to-house searches and identity checks.

8. The military operation was allegedly in response to the kidnapping on 9 January 2001 of a Médecins sans Frontières humanitarian worker, Mr Kenneth Gluck, which had occurred on the road outside Starye Atagi. The operation was well documented by human rights NGOs, such as Memorial and Human Rights Watch. The applicants submitted numerous affidavits about the events of 14 to 16 January 2001 produced by members of the families of the detained persons and by neighbours. They suggested that at least 21 men had been detained in Novye Atagi and Starye Atagi during that operation, including their relatives Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev.

1. Detention of Said-Magomed Debizov and Iznovr Serbiyev

9. The first and second applicants are the mother and father of Said-Magomed (also spelled Said-Magomet) Abazovich Debizov, born in 1967. Both applicants retired and lived at 40 Arsanova Street. The first applicant suffers from epilepsy and diabetes and the second applicant had advanced

tuberculosis (he died in April 2004). Their son Said-Magomed Debizov was a cattle-breeder, and after finishing his army service in 1987 he lived in Kalmykia. He was married and had five minor children; his family resided in Kalmykia. He was also suffering from tuberculosis. In early January 2001 Said-Magomed Debizov came to his home village of Novye Atagi to visit the first and second applicants, whom he also supported financially. Immediately upon arrival he registered with the village administration. Said-Magomed Debizov was described by the head of the village administration as a good member of the community and part of a large and hard-working family, who had not taken part in unlawful activities.

10. The third and fourth applicants are the mother and brother of Iznovr Usamovich Serbiyev, born in 1967. Iznovr Serbiyev was the youngest of the third applicant's eight children, and lived with her at 62 Arsanova Street in Novye Atagi. He was married and the father of three minor children. After completing his service in the Soviet army in 1987, he graduated from university with a degree in economics. However, he could not find work in this field, and supported his family by working as a car mechanic in Novye Atagi. Iznovr Serbiyev was described by the head of the village administration as a respectful and honest man, who had no connections with the illegal fighters.

11. Said-Magomed Debizov and Iznovr Serbiyev had been friends since childhood. Early in the morning on 14 January 2001 they both went to the car repair shop where Mr Serbiyev worked. They were both carrying identity documents. When the electricity was cut off, they decided to close the workshop and to return home. At about 9.30 a.m. they went out into Gornaya Street, along which two armoured personnel carriers (APCs) and an Ural military truck were passing. Several witnesses testified that the two men had been accompanied by servicemen, who had not been wearing masks and were described as "contract soldiers", to one of the trucks and put into the back. The vehicles had then driven off towards Grozny, in the direction of the military checkpoint on the main road.

2. Detention of Bekkhan Bargayev

12. The fifth and sixth applicants are the mother and father of Bekkhan Sharpuudinovich Bargayev, born in 1981. They lived at 8 Arsanova Street in Novye Atagi. The fifth applicant is a bookkeeper and the sixth applicant is unemployed. Bekkhan Bargayev graduated from the 11th grade of Novye Atagi school no. 2. He was described by the head of the village administration as a modest, good-natured young man, who had mostly stayed at home and had never participated in illegal activities.

13. According to the applicants, on 14 January 2001 Bekkhan Bargayev was washing the family car, a Zhiguli Vaz-2101, near a stream, about 300 metres from his home. At about 1.30 p.m. he saw APCs entering the village and started driving back towards home. An APC, driving at high

speed, chased his car and smashed into it. Mr Bargayev was not hurt and climbed out of the car. The fifth applicant, who was at home, ran out because of the noise and the bursts of submachine-gun fire. She saw the servicemen beating her son with rifle butts and tried to intervene. The soldiers beat her, and she fell to the ground. Bekkhan Bargayev was forced into an APC with an obscured hull number and driven away. The neighbours who witnessed the scene were prevented from interfering by armed soldiers.

14. The families of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev have had no news of them since 14 January 2001.

15. The Government in their observations did not challenge the facts as presented by the applicants. They stated that it had been established that on 14 January 2001 during the daytime, unidentified persons wearing camouflage uniforms and masks, armed with automatic weapons and using armoured vehicles, had arrived in the village of Novye Atagi in the Shali District, apprehended Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev and taken them away in an unknown direction.

B. The search for Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev and the investigation

16. Immediately after the detention of their family members the applicants started to search for them. Until 16 January 2001 Novye Atagi remained sealed off, and the applicants could not travel and search for their relatives.

17. Most of the men detained during the sweeping operation were released within the following two days, except five men, three of them the applicants' relatives. On 26 January 2001 the bodies of two detainees were discovered in the Novye Atagi quarry. According to witness statements and a Memorial report, the bodies bore clear signs of torture and violent death: fingers and ears were cut off, there were scars from electric shocks, and knife and gunshot wounds. The Government disputed this information (see below).

18. The applicants applied to numerous official bodies, both in person and in writing, trying to find out the whereabouts and the fate of the three disappeared men. Among other authorities they applied to the departments of the Interior, to the military commanders' offices, to the Federal Security Service (the FSB), to the civil and military prosecutors at various levels, to administrative authorities and public figures, and to the OSCE mission in Chechnya. The applicants also personally visited detention centres and military bases. On 5 March 2001 the applicants completed UN Human Rights Centre individual reports about cases of forced disappearance.

19. The applicants received no substantive information about the fate of their family members and about the investigation. On several occasions they

were sent copies of letters by which their requests had been forwarded to the different prosecutors' services. Below is a summary of the letters kept by the applicants and the replies they received from the authorities.

1. Correspondence kept by the relatives of Said-Magomed Debizov and Iznovr Serbiyev

20. On 19 January 2001 the first and third applicants, Zulpa Akhmatova and Taus Serbiyeva, wrote letters to the military prosecutor of Chechnya, the head of the Chechnya Administration, the military commander of Chechnya and the Special Envoy of the Russian President in Chechnya for rights and freedoms, asking for help in finding their sons.

21. Several weeks after their sons had been detained, the first and third applicants wrote to the Prosecutor General, the head of the FSB and the Minister of the Interior. In the letters they recounted the details of their sons' detention and stated that Mr Sukharev, the deputy mayor of Grozny in charge of the release of illegally detained persons, had unofficially told them that Said-Magomed Debizov and Iznovr Serbiyev had been detained at "21 Obzon" (special mission brigade no. 21) and that a criminal charge had been brought against them. The applicants asked to be informed of the charges against their sons and to receive confirmation of the place of their detention.

22. On 1 March 2001 the applicants wrote to the member of the State Duma for Chechnya, Mr Aslakhonov, and asked for his assistance in finding their family members.

23. On 2 March 2001 the Shali District Prosecutor's Office ("the district prosecutor's office") informed the third applicant that on 20 February 2001 that office had instituted criminal proceedings (case file no. 23034) in respect of the kidnapping of Said-Magomed Debizov and Iznovr Serbiyev, and that she could review the relevant documents in that office.

24. On 3 March 2001 the third applicant submitted a petition to the head of the Chechnya Administration, the military prosecutor and the military commander of Chechnya to help her find her son.

25. On 21 March 2001 the office of the Public Prosecutor of Chechnya ("the Chechnya Prosecutor's Office") forwarded the first and third applicants' complaint to the district prosecutor's office with a request to open a criminal investigation under Article 126 of the Criminal Code (kidnapping) following the "disappearance" of their two relatives after "unknown persons dressed in camouflage uniform had conducted an identity check in the village of Novye Atagi". Similar letters were sent on 24 and 27 May 2001.

26. On 9 June 2001 the district prosecutor's office informed the first and third applicants that on 20 January 2001 it had instituted criminal proceedings under Article 126 of the Criminal Code into their sons' kidnapping, and that the file had been assigned no. 23034.

27. On 13 March 2002 the first and third applicants requested the district prosecutor's office to inform them about the progress in the investigation.

28. On 23 April 2002 the Chechnya Prosecutor's Office forwarded the applicants' letter to the district prosecutor's office for action and requested that office to transfer the investigation file to it.

29. On 23 August 2002 the Chechnya Prosecutor's Office stated in reply to the applicants' letters that it had examined the investigation files opened in respect of the kidnapping of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev, and that the proceedings had been suspended on account of the failure to identify the culprits. The district prosecutor had been instructed to reopen the investigation and to take further steps in order to identify the culprits and to establish the missing persons' whereabouts.

30. On 17 September 2002 the district prosecutor's office informed the first and third applicants that the criminal investigation in case no. 23034 had been reopened and that they should report to the office for questioning.

On 21 April 2003 the first and third applicants asked the district prosecutor's office to inform them about the progress in the investigation and to grant them victim status in the proceedings.

31. On 12 May 2003 the district prosecutor's office informed the applicants that the proceedings in criminal case no. 23034 had been adjourned and reopened on two occasions. In September 2002 the investigation had forwarded a number of requests for information to the military commander of the district, to all the local departments of the interior in Chechnya, to all pre-trial detention centres in Chechnya and to the FSB. These measures had produced no results and the investigation had been adjourned on 10 October 2002. The measures aimed at finding their sons would continue.

32. On 17 May 2003 the district prosecutor's office reminded the first applicant that in March 2001 she had been questioned and had been granted victim status in the criminal proceedings regarding her son's abduction.

33. On 17 May 2003 the district prosecutor's office informed the third applicant that on 15 March 2001 it had questioned Iznovr Serbiyev's wife and granted her victim status in the proceedings.

34. On 11 June 2003 the district prosecutor's office again informed the first and third applicants about the adjournment of the proceedings and the absence of relevant information from the law-enforcement authorities in Chechnya.

35. On 30 October 2003 the district prosecutor's office informed the applicants that the investigation in cases nos. 23034 and 23031 had been adjourned, but that steps aimed at finding their relatives continued. The applicants were informed of the possibility of appealing against the decisions to a higher-ranking prosecutor or to a court.

2. Correspondence kept by the relatives of Bekkhan Bargayev

36. The fifth applicant, Saret Yasadova, submitted that in the days immediately following her son's detention, the military commander of the village, whose name she did not recall, had told her that Bekkhan Bargayev had been in a hospital in Khankala and that he had been "registered on a computer as an illegal fighter".

37. In January 2001 the fifth applicant wrote to the district prosecutor's office, the military commander and the military prosecutor of Chechnya, the head of the district administration and the head of the district department of the interior, stating the circumstances of her son's detention and asking for help in finding him.

38. At some point in 2001 the fifth applicant wrote to the Deputy Prosecutor General in charge of the Southern Federal Circuit and asked for assistance in finding her son.

39. On 3 March 2001 the fifth applicant wrote to the head of the Chechnya Administration, the military prosecutor and the military commander of Chechnya, requesting them to help her find her son.

40. On 7 March 2001 the military prosecutor of military unit no. 20102, based in Khankala, the main Russian military base in Chechnya, informed the fifth applicant that her complaint about the alleged kidnapping of her son by military servicemen had been forwarded to the military prosecutor of military unit no. 20116, based in Shali.

41. On 15 March 2001 the district prosecutor's office informed the fifth applicant that a criminal investigation (file no. 23031) had been opened into her son's kidnapping.

42. On 18 May 2001 the military prosecutor of military unit no. 20116 forwarded the fifth applicant's complaints to the Chechnya Prosecutor for further investigation, since there were no grounds to conclude that military servicemen had been involved in Mr Bargayev's abduction.

43. On 23 April 2002 the Chechnya Prosecutor's Office forwarded the fifth applicant's letter to the district prosecutor's office.

44. On 23 August 2002 the Chechnya Prosecutor's Office stated in reply to the applicants' letters that it had examined the files opened in respect of the kidnapping of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev, and that the investigation had been suspended on account of the failure to identify the culprits. The district prosecutor had been instructed to reopen the investigation and to take further steps to identify the culprits and to establish the missing persons' whereabouts.

45. On 30 October 2003 the district prosecutor's office informed the applicants that the investigation of cases nos. 23034 and 23031 had been adjourned, but that measures aimed at finding their relatives were being taken. The applicants were informed of the possibility of appealing against the decisions to a higher-ranking prosecutor or to a court.

46. The applicants referred to the report “Counterterrorist Operation” produced by Memorial, which in Chapter 9 described the sweeping operation in Atagi between 14 and 16 January 2001 and the detention of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev. They also referred to the Human Rights Watch report of March 2001 entitled “The ‘Dirty War’ in Chechnya: Forced Disappearances, Torture and Summary Executions”, which listed Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev among the victims of “forced disappearances” after their detention by the Russian servicemen.

C. Information from the Government

47. In their observations the Government did not dispute the information concerning the investigation of the abduction of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev as presented by the applicants. Relying on information obtained from the Prosecutor General’s Office, they referred to a number of other procedural steps taken by the investigation which had not been mentioned by the applicants. However, despite specific requests from the Court, the Government did not submit copies of any documents to which they referred (see below).

48. On 13 February 2001 the district prosecutor’s office opened a criminal investigation (file no. 23031) under Article 126, paragraph 2 (a) and (g), into the kidnapping of B. Bargayev, acting upon a complaint submitted by the fifth applicant, his mother. On 10 April 2001 the investigation of the case was assigned to an operational investigative group within the prosecutor’s office.

49. On 15 March 2001 the fifth applicant was questioned and was granted victim status in case no. 23031. She stated that at about 1.30 p.m. her son had been washing his car in the street near their house. The car had been hit by an APC, from which armed persons in masks had jumped out and taken her son away.

50. Also on 15 March 2001 the sixth applicant, the father of the kidnapped man, was questioned and was granted victim status. He stated that he had not been an eyewitness to the events, but he was certain that the crime had been committed by military servicemen. He could not name the source of that information and did not submit any pecuniary claims for the damaged car.

51. According to the Government, within the same period the investigation had questioned three relatives of Mr Bargayev and the head of the village administration. It had also carried out on-site examinations and taken other relevant steps. A question had been put to the local military commander.

52. On 13 April 2001 the investigation was adjourned on account of the failure to identify the culprits. On 23 April 2001 the investigation was

resumed. In April and May 2001 the investigator forwarded requests to the Shali District Department of the Interior, asking that office to take measures to solve the crime. On 23 May 2001 the investigation was adjourned. On 23 August 2002 that decision was quashed by the Chechnya Prosecutor's Office. On 28 August 2002 the investigation was resumed and new information requests were sent to the "competent bodies". On 28 September 2002 the investigation was adjourned.

53. On 3 June 2003 the investigation was resumed. On 1 July 2003 the investigator in charge of the case again examined the site of the crime and drew up a plan. On 15 August 2003 the investigation was adjourned. On 29 June 2005 the investigation of criminal case no. 22031 was resumed, and on 29 July 2005 it was again adjourned.

54. In the meantime, on 20 February 2001 the district prosecutor's office had opened another criminal investigation (file no. 23034), acting upon a complaint by Mrs A. about the kidnapping of her cousin S.-M. Debizov and his friend I.U. Serbiyev, also under Article 126, paragraph 2 (a) and (g).

55. On 2 March 2001 the first applicant was questioned and granted victim status in case no. 23034, concerning the kidnapping of her son S.-M. Debizov. On 5 March (in some documents 15 March) 2001 the investigation questioned the wife of I. Serbiyev and granted her victim status in the proceedings. On 15 March 2001 the third applicant was questioned about her son's abduction. On 29 June 2005 the third applicant was also granted victim status in case no. 23034.

56. On 15 March 2001 the investigation questioned three neighbours of the applicants. The witnesses stated that on 14 January 2001 at about 11 a.m. a number of unknown persons had arrived at the car repair shop where Mr Serbiyev and Mr Debizov worked and had taken them away.

57. On 20 April 2001 the investigation was adjourned on account of the failure to identify the culprits. On 19 September 2001 that decision was quashed and the investigation was resumed. The investigator forwarded requests for information to the local department of the interior. On 30 September 2001 he informed the fourth applicant that the investigation into his brother's abduction was ongoing. On 19 October 2001 the investigation was adjourned.

58. On 23 August 2002 the Chechnya Prosecutor's Office examined the case file and quashed the decision to adjourn the proceedings. On 10 September 2002 the investigation was resumed. On 11 September 2002 the first and third applicants were informed about the resumption of the proceedings, and information requests were forwarded to the competent authorities. On 10 October 2002 the investigation was adjourned on account of the failure to identify the culprits. On 28 June 2005 the proceedings in case no. 23034 were reopened.

59. The Government submitted in their observations that on 29 September 2005 the two criminal investigations had been joined by the

district prosecutor's office, because the crimes had been committed at the same time and the same place. The proceedings were assigned case no. 23031.

60. On 29 and 30 June 2005 the investigation again examined the site of the crime, questioned the third applicant and forwarded requests for information about the missing persons to the pre-trial detention centres in the Northern Caucasus. On 29 July 2005 the investigation was adjourned.

61. On 20 August 2005 (or 3 October 2005 according to one document) the investigation was again reopened. The applicants were informed of this. The investigator instructed the local police service to identify and question witnesses to the abduction. On unknown dates the police questioned five persons, who testified that on 14 January 2001 about 15 persons driving an APC, allegedly military servicemen, had entered Novye Atagi and driven Bekkhan Bargayev away. Three other persons testified that on 14 January 2001 a group of unidentified persons wearing masks and camouflage uniforms, armed with automatic weapons and moving about in APC and UAZ vehicles, had taken away Said-Magomed Debizov and Iznovr Serbiyev from the car repair workshop in Novye Atagi.

62. The Government stated, in summary, that the investigation had questioned over a dozen relatives and neighbours of the abducted persons, as well as the head of the Novye Atagi administration, Mr Datsayev, who had given similar accounts of the events. None of the persons questioned had stated that Mr Debizov, Mr Serbiyev and Mr Bargayev had been ill-treated while being apprehended.

63. Furthermore, the Government stated that on 27 January 2001 the Shali District Prosecutor's Office had opened a criminal investigation (file no. 23011) following the discovery on 26 January 2001 on the outskirts of Novye Atagi of two male bodies with firearm wounds. The two men had been identified as Z. and Kh., residents of another village, who had left home in the morning of 14 January 2001 and had not been seen alive afterwards. The investigation had not obtained information to confirm that Z. and Kh. had been tortured before their deaths. The investigation had not obtained any clues to link the case to the abduction of the applicants' relatives and was ongoing.

64. The Government further admitted that the investigation into the kidnapping of the applicants' three relatives had been unable to establish their whereabouts. It found no evidence to support the involvement of the "special branches of the power structures" (*специальных подразделений силовых структур*) in the crime. The law-enforcement authorities of Chechnya had never arrested or detained Mr Debizov, Mr Serbiyev and Mr Bargayev on criminal or administrative charges and had not carried out a criminal investigation in respect of any of them. The Shali District Department of the Interior, the Chechnya Department of the FSB and the Northern Caucasus military circuit stated that no special operations had

been carried out in respect of the three men and that they had never been detained by them. Furthermore, the Government stressed that the criminal investigation had obtained no information to confirm the applicants' allegations that the village had been "sealed off" by servicemen or that a special operation had been carried out there at the time. The possibility could not be excluded, in their view, that the crime had been committed by members of the illegal armed groups who had entered the village.

65. Despite specific requests by the Court on two occasions, the Government did not submit any documents from the file in criminal case nos. 23031 and 23034, except for a copy of the list of documents contained in it. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings and could prejudice the success of the investigation.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

67. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev had not yet been completed. They further argued that it had been open to the applicants to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, in line with Article 125 of the Criminal Procedural Code, but that they had not availed themselves of that remedy. They referred to other similar cases reviewed by the Court where such remedies had been employed and had led, in some instances, to the reopening of adjourned

proceedings. They also argued that it had been open to the applicants to pursue civil complaints, which they had failed to do.

68. The applicants contested that objection. With reference to the Court's practice, they argued that they had not been obliged to apply to the civil courts in order to exhaust domestic remedies. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect had been futile. They argued that the remedy suggested by the Government would not be adequate and effective and referred by way of example to other cases concerning the investigation of abuses committed by the federal forces in Chechnya.

B. The Court's assessment

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

70. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

71. As regards a civil action, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the preliminary objection in this regard is dismissed.

72. As regards criminal-law remedies, an investigation has been pending since February 2001. The applicants and the Government dispute its effectiveness.

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

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

A. The parties' arguments

74. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev had been State agents. In support of their complaint they referred to the following evidence. The detention had occurred within the context of a large-scale sweeping operation, during which the villages of Starye Atagi and Novye Atagi had been completely sealed off by the federal forces. Their relatives had been apprehended by a large group of armed persons using armoured vehicles, which were not used by illegal armed groups and which would not have been able to move freely around the area during the operation. The applicants noted the presence of numerous military checkpoints, which would not allow the circulation of military vehicles without the forces' knowledge and permission. The applicants further pointed out that the bodies of two men, Z. and Kh., who had been detained during the same sweeping operation, had later been found with clear signs of having suffered violent deaths.

75. The Government submitted that on 14 January 2001 unidentified masked men in camouflage uniforms armed with machine guns and using armoured vehicles had abducted Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev. They further contended that the investigation into the incident was still pending, but that it had obtained no information about the conduct of a special operation in Atagi on the dates in question. There was no evidence that the men had been State agents and therefore there were no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relatives were dead. The Government also stated that the crime could have been committed by members of illegal armed groups.

B. Article 38 § 1 (a) and consequent inferences drawn by the Court

76. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of

applications. Failure on a Government's part to submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI).

77. The applicants alleged that their relatives had been illegally arrested by the authorities and had then disappeared. They also alleged that no proper investigation had taken place. In view of these allegations, the Court asked the Government to produce documents from the criminal investigation file which were regarded as crucial to the establishment of the facts in the present case.

78. In their submissions the Government confirmed that on 14 January 2001 Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev had been taken away by armed men, after which there had been no news of them. However, the perpetrators of the crime had not been found. They refused to disclose any documents from the criminal investigation file, relying on Article 161 of the Code of Criminal Procedure. The Government also argued that the Court's procedure contained no guarantees of the confidentiality of documents, in the absence of sanctions for applicants in the event of a breach of the obligation not to disclose the contents of such documents to the public. They cited, by way of comparison, the Rome Statute of the International Criminal Court of 17 July 1998 (Articles 70 and 72) and the Statute of the International Criminal Tribunal for the former Yugoslavia (Articles 15 and 22) and argued that these documents provided for personal responsibility for a breach of the rules of confidentiality and laid down a detailed procedure for the pre-trial examination of evidence.

79. The Court notes that Rule 33 § 2 of the Rules of Court permits a restriction on the principle of the public character of documents deposited with the Court for legitimate purposes, such as the protection of national security, the private life of the parties or the interests of justice. The Court cannot speculate as to whether the information contained in the criminal investigation file in the present case was indeed of such nature, since the Government did not request the application of this Rule and it is the obligation of the party requesting confidentiality to substantiate its request.

80. Furthermore, the statutes of the two international courts cited by the Government operate in the context of international criminal prosecution of individuals, where the tribunals in question have been granted jurisdiction over offences against their own administration of justice. The Court observes that it has previously stated that criminal-law liability is distinct from international-law responsibility under the Convention. The Court's competence is confined to the latter and is based on its own provisions, which are to be interpreted and applied on the basis of the objectives of the

Convention and in the light of the relevant principles of international law (see, *mutatis mutandis*, *Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII).

81. The Court lastly notes that it has already found on a number of occasions that the provisions of Article 161 of the Code of Criminal Procedure do not preclude the disclosure of documents from a pending investigation file, but rather set out a procedure for and limits to such disclosure (see *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006, and *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII). For these reasons the Court considers the Government's explanation insufficient to justify the withholding of the key information requested by it.

82. Reiterating the importance of a respondent Government's cooperation in Convention proceedings, the Court finds that there has been a breach of the obligation laid down in Article 38 § 1 (a) of the Convention to furnish all necessary facilities to assist the Court in its task of establishing the facts.

C. The Court's evaluation of the facts

83. The Court observes that it has developed a number of principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161). 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 proceed to examine whether the applicants' relatives can be presumed dead and whether their deaths can be attributed to the authorities.

84. The applicants alleged that the persons who had taken Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev away on 14 January 2001 and then killed them had been State agents.

85. The Government suggested in their submissions that the persons who had detained Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev could have been members of paramilitary groups. However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

86. The Court notes that, on the contrary, the applicants' version of the events is supported by the witness statements collected by the applicants

and by the investigation. The applicants and witnesses stated that the perpetrators had acted in a manner similar to that of a security operation – they had arrived in a large group, put guards on the roads, checked the residents' identity documents, and had spoken Russian among themselves and to the residents. The witnesses also referred to the use of military vehicles such as APCs, which could not have been available to paramilitary groups. In their applications to the authorities the applicants consistently maintained that their relatives had been detained by unknown servicemen and requested the investigation to look into that possibility. Human rights groups monitoring the situation in the region reported the same.

87. The Court finds that the fact that a large group of armed men in uniform in broad daylight, equipped with military vehicles, was able to move freely through military roadblocks, to check identity documents and to arrest several persons in an urban area strongly supports the applicants' allegation that these were State servicemen. The domestic investigation also accepted the factual assumptions submitted by the applicants and took steps to check the involvement of law-enforcement bodies in the arrest. The investigation was unable to establish which precise military or security units had carried out the operation, but it does not appear that any serious steps were taken in that direction.

88. The Court observes that where applicants make out a *prima facie* case and it is prevented from reaching factual conclusions owing to the lack of relevant documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, 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).

89. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were 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 another plausible explanation of the events in question, the Court considers that Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev were arrested on 14 January 2001 in Novye Atagi by State servicemen during an unacknowledged security operation.

90. There has been no reliable news of the applicants' relatives since 14 January 2001. Their names have not been found in any official detention

facilities' records. Finally, the Government did not submit any explanation as to what had happened to them after their arrest.

91. The Court notes with great concern that a number of cases have come before it which suggest that the phenomenon of "disappearances" is well known in Chechnya (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII; *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007). The Court has already found that, in the context of the conflict in Chechnya, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev or of any news of them for over seven years supports this assumption. For the above reasons the Court considers that it has been established beyond reasonable doubt that they must be presumed dead following unacknowledged detention by State servicemen.

92. Furthermore, as in previous similar cases, the Court finds that the authorities' behaviour in the face of the applicants' well-substantiated complaints gives rise to a strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation (see *Magomadov v. Russia*, no. 68004/01, § 98, 12 July 2007).

93. For the above reasons the Court considers that it has been established beyond reasonable doubt that Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev must be presumed dead following their unacknowledged detention by State servicemen. The Court also finds it established that no proper investigation has taken place into the abduction which preceded their disappearance.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

94. 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. Alleged violation of the right to life of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev

95. The applicants maintained their complaint and argued that their relatives had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years.

96. The Government contended that the investigation had obtained no evidence to the effect that these persons were dead, or that representatives of the military or police had been involved in their abduction or alleged killing.

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

98. The Court has already found it established that the applicants’ relatives must be presumed dead following their unacknowledged arrest by State servicemen and that the 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 Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev.

B. Alleged inadequacy of the investigation into the abduction

99. The applicants argued that the investigation had not met the requirements of effectiveness and adequacy. They noted that it had been adjourned and reopened a number of times and that the taking of the most basic steps had thus been protracted, and that they had not been informed properly 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 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.

100. The Government claimed that the investigation into the disappearance of the applicants' relatives met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

101. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of 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. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

102. In the present case, an investigation into the abductions was carried out. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

103. 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 parties and the information about its progress submitted by the Government.

104. Turning to the facts of the case, it has already established that no proper investigation has taken place into the disappearance of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev. The Court notes that the authorities were immediately aware of the crime through the applicants' submissions. The investigations were opened on 13 February and 20 February 2001, one month after the applicants' relatives were detained. This delay in itself was liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action has to be taken in the days immediately after the event. It also appears that within the following weeks the applicants and some of their neighbours were questioned and the scene of the crime was inspected. The applicants were granted victim status in March 2001. However, 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. For example, the decision to join the proceedings in two cases concerning the same events in the same place and on the same day was taken only in September 2005 (see paragraph 59 above). These 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).

105. A number of essential steps were never taken. Most notably, it does not appear that the investigating authorities tried to identify and question the servicemen who had manned the roadblocks to which the witnesses

referred, or that they tried to find out whether any special operations had been carried out in Novye Atagi on the days in question or identified any other persons who had allegedly been detained in the course of the operation.

106. The Court also notes that even though the applicants were granted victim status, they were only informed of the adjournment and reopening of the proceedings, and not of any other significant developments. Accordingly, the authorities failed to ensure that the investigation received the required level of public scrutiny, and to safeguard the interests of the next of kin in the proceedings.

107. The Government referred to the possibility for the applicants to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants, having had no access to the case file and not having been properly informed of the progress of the investigation, could not have effectively challenged the actions or omissions of the investigating authorities before a court. Furthermore, taking into account the fact that the investigation was in any event reopened on numerous occasions following directions by higher-ranking prosecutors, it is unclear what additional effect a demand by the applicants for the same measure from a court could have had. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

108. In the light of the foregoing, the Court dismisses the Government's preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation, and holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Said-Magomed Debizov, Iznoyr Serbiyev and Bekkhan Bargayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

109. In their initial applications the applicants submitted that their relatives had been ill-treated during their arrest. They also claimed that as a result of their relatives' disappearance and the State's failure to investigate it, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

110. The Government disagreed with these allegations and argued that the investigation had not established that Said-Magomed Debizov, Iznoyr

Serbiyev and Bekkhan Bargayev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention or that State agents had been responsible for their disappearances.

A. Alleged ill-treatment of the applicants' relatives

111. In their additional observations of 21 January 2008 the applicants stated that they no longer maintained this complaint under Article 3.

112. 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).

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

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

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

115. In the present case the Court notes that the applicants are the parents and brother of individuals who have disappeared. For more than eight years they have not had any news of them. During this period the applicants have applied to various official bodies with enquiries about their family members, 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 members following their detention. The responses received by the applicants mostly denied that the State was responsible for their relatives’ 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.

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

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

118. The applicants further stated that Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev 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.”

119. In the Government’s opinion, no evidence had been obtained by the investigators to confirm that Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev had been detained in breach of the guarantees set out in Article 5 of the Convention.

120. 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).

121. The Court has found it established that Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev were detained by State servicemen on 14 January 2001 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).

122. 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 above findings 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.

123. Consequently, the Court finds that Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev 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.

VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

124. In their initial applications the applicants stated that they had been deprived of access to a court, contrary to the provisions of Article 6 of the Convention, the relevant parts of which provide:

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

125. The Government disputed this allegation.

126. In the additional observations of 21 January 2008 the applicants stated that they no longer maintained this complaint.

127. 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 complaint by virtue of Article 37 § 1 of the Convention *in fine* (see *Stamatios Karagiannis*, cited above, § 28).

128. 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

129. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

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

130. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. They referred to Article 125 of the Code of Criminal Procedure, which allowed participants in criminal proceedings to complain to a court about measures taken during an investigation. The applicants had never made use of this possibility, which required the initiative of the participants in criminal proceedings, and thus the absence of a court action could not constitute a violation of Article 13.

131. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State’s obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

132. It follows that in circumstances where, as here, a criminal investigation into violent deaths was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was

consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

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

134. 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 their mental suffering as a result of the disappearance of their sons and brother, 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 conjunction with Article 3 of the Convention.

135. As regards the applicants' reference to Article 5 of the Convention, the Court notes that according to its established case-law, the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements, and in view of its above findings of a violation of Article 5 of the Convention on account of the applicants' relatives' 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 APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. 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

137. The first and third applicants claimed damages in respect of the lost wages of their sons Said-Magomed Debizov and Iznovr Serbiyev. They claimed that although at the time of their abduction the two men had been employed respectively as a cattle-breeder and a car mechanic, they were unable to obtain salary statements for either of them. In such cases, under the national legislation, the calculation should be made on the basis of the subsistence level established by law. The first applicant claimed a total of 430,544 Russian roubles (RUB) (11,923 euros (EUR)) under this head, and the third applicant claimed RUB 434,394 (EUR 12,029).

138. The first applicant assumed that both she and Said-Magomed Debizov's five minor children, who were taken care of by her, would have been financially dependent on him from the date of his arrest until the time when his children reached the age of 18. Similarly, the third applicant assumed that both she and Iznovr Serbiyev's five minor children, who were taken care of by her, would have been financially dependent on him from the date of his arrest until the time when his children reached the age of 18. The two applicants calculated the earnings of their sons for these periods, taking into account an average inflation rate of 10%, and argued that they could each have expected 20% of the total and each child 10% of the total in the first applicant's case and 15% in the third applicant's case. Their calculations were based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2004 ("Ogden tables").

139. The Government regarded these claims as based on suppositions and unfounded. In particular, they noted that the applicants had never claimed compensation at national level for the loss of a breadwinner, although such a possibility was provided for. They also stressed that the deaths of the two men had never been established and denied the responsibility of State agents for the losses alleged.

140. 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 appropriate cases, 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 first and the third applicants' sons and the loss by those applicants of the financial support which their respective sons could have provided. The Court further finds that the applicants' sons' loss of earnings also concerns their dependent children and that it is reasonable to assume that Said-Magomed Debizov and Iznovr Serbiyev would eventually have had some earnings from which their minor children would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to the first and third applicants' submissions and to the fact that no information has been available about the earnings of the two men at the time of their apprehension, the Court awards EUR 8,000 each to the first and third applicants in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

141. The applicants claimed financial compensation for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives. The first

applicant, acting also on behalf of her deceased husband, the second applicant, claimed EUR 80,000 under this head. The third, fourth, fifth and sixth applicants claimed EUR 40,000 each.

142. The Government found the amounts claimed excessive.

143. 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 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. Acting on an equitable basis, taking into account the degree of relationships between the applicants and the disappeared men and mindful of previous awards made in comparable cases (see *Imakayeva*, cited above, § 216, and *Alikhadzhiyeva*, cited above, § 111), the Court makes the following awards:

- (a) EUR 35,000 to the first applicant;
- (b) EUR 35,000 to the third and fourth applicants jointly;
- (c) EUR 35,000 to the fifth and sixth applicants jointly.

C. Costs and expenses

144. 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 and experts. The aggregate claim in respect of costs and expenses relating to the applicants' legal representation amounted to EUR 12,656.

145. The Government disputed the reasonableness and the justification of these amounts. They questioned, in particular, whether all the lawyers working for the SRJI had been involved in the present case and whether it had been necessary for the applicants to rely on courier mail.

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

147. Having regard to the details of the information submitted and the contracts for legal representation concluded between the SRJI and the first, third and sixth applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

148. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that these cases were rather complex and required a certain amount of research and

preparation. It notes, however, that the applicants' representatives did not submit any additional observations on the merits and that the case involved little documentary evidence, in view of the Government's refusal to submit any documents from the case files. The Court thus doubts that research was necessary to the extent claimed by the representatives.

149. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 10,000, 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.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *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 complaint under Article 3 concerning the ill-treatment of the applicants' relatives and the complaint under Article 6 of the Convention;
3. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev;
5. *Holds* that there has been a violation of the procedural obligation under Article 2 of the Convention on account of the failure to conduct an effective investigation into the circumstances in which Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev were killed;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;

7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Said-Magomed Debizov, Iznovr Serbiyev and Bekkhan Bargayev;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2;
9. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Articles 3 and 5;
10. *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) in respect of pecuniary damage, the sums indicated below, to be converted into Russian roubles at the rate applicable at the date of settlement: EUR 8,000 (eight thousand euros) to the first applicant and EUR 8,000 (eight thousand euros) to the third applicant;
 - (ii) in respect of non-pecuniary damage, the sums indicated below to be converted into Russian roubles at the rate applicable at the date of settlement: EUR 35,000 (thirty-five thousand euros) to the first applicant; EUR 35,000 (thirty-five thousand euros) to the third and fourth applicants jointly; and EUR 35,000 (thirty-five thousand euros) to the fifth and sixth applicants jointly;
 - (iii) EUR 9,150 (nine thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the applicants' representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President