



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

FIRST SECTION

CASE OF TSUROVA AND OTHERS v. RUSSIA

(Application no. 29958/04)

JUDGMENT

STRASBOURG

6 November 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Tsurova 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,

Khanlar Hajiyeu,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 16 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 29958/04) 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 four Russian nationals listed below (“the applicants”), on 14 July 2004.

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

3. On 14 March 2007 the Court decided to apply Rule 41 of the Rules of Court and 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.

4. 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

5. The applicants are:

- 1) Ms Leyla Isayevna Tsurova, who was born in 1973;
- 2) Mr Isa Beksultanovich Tsurov, who was born in 1948;
- 3) Mr Magomed Isayevich Tsurov, who was born in 1982; and
- 4) Ms Aminat Tarkhanovna Tsurova, who was born in 1949.

They live in the village of Voznesenovskaya, the Republic of Ingushetia.

6. The second and fourth applicants are married. They are the parents of Mr Ibragim Isayevich Tsurov, born in 1970, and of the first and third applicants.

A. Disappearance of Ibragim Tsurov

1. The applicants' account

7. On 26 April 2003 Ibragim Tsurov, an advocate admitted to the Bar of the Chechen Republic, was driving his VAZ-2110 car in the city of Grozny. He was accompanied by Mr A.S., Mr D.S. and Mr S.N., servicemen of military unit no. 98311.

8. Several cars which had no registration numbers, including a VAZ-2107, a VAZ-2121 and a Volga with a flashing blue light, chased Ibragim Tsurov's car and forced it to stop. A number of masked men got out of the vehicles, pointed their machine guns at Ibragim Tsurov and his passengers and ordered them to get out of the car and lie on the ground.

9. Ibragim Tsurov produced a special pass issued by the commander of the United Group Alignment. The armed men hit him with a machine gun butt, put him into the boot of his car and drove away.

2. Information submitted by the Government

10. On 26 April 2003 Ibragim Tsurov was driving the VAZ-211030 car with registration number B660PK15 from the village of Khankala, the Chechen Republic, to Vladikavkaz, the Republic of North Ossetia-Alania. There were three passengers in the car - Mr A.S., Mr D.S. and Mr S.N., servicemen of military unit no. 98311. At about 12.30 p.m. Ibragim Tsurov's car was stopped by unidentified armed men wearing masks who were driving a VAZ-2107 and a VAZ-2121 cars without registration number plates. Using violence, they put Ibragim Tsurov into the boot of one of their cars and took him away to an unknown destination. They also stole his VAZ-211030 car.

B. The search for Ibragim Tsurov and the investigation

1. The applicants' account

11. After Ibragim Tsurov's abduction the applicants contacted various official bodies, both in person and in writing, trying to establish his whereabouts and fate. In particular, they applied to the prosecutors' offices at different levels, the military commander's office, the President of the Republic of Ingushetia, the Ministry of the Interior of the Chechen Republic, the Plenipotentiary Representative of the Russian President in the Southern Federal Circuit and the Russian State Duma. They were supported in their efforts by the SRJI. The complaints, even those signed by only one of the applicants, were lodged on behalf of the whole family. The applicants retained copies of some of these complaints and submitted them to the Court. The official bodies forwarded the majority of the complaints to the prosecutors' offices for investigation.

12. On 26 May 2003 the military prosecutor's office of military unit no. 20102 ("the unit prosecutor's office") informed the first applicant that an inquiry had established that no military personnel had been implicated in Ibragim Tsurov's abduction.

13. On 18 June 2003 the prosecutor's office of the city of Grozny ("the city prosecutor's office") instituted an investigation into Ibragim Tsurov's disappearance and theft of his car under Article 126 § 2 (aggravated kidnapping) and Article 162 § 2 (aggravated robbery) of the Russian Criminal Code. The case file was given number 40086.

14. On 30 June 2003 the city prosecutor's office granted the first applicant victim status in case no. 40086.

15. On 18 August 2003 the investigation in case no. 40086 was suspended for failure to identify the alleged perpetrators.

16. On 28 August 2003 the prosecutor's office of the Oktyabrskiy District of Grozny ("the district prosecutor's office") sent the first applicant a progress report on the investigation in case no. 40086. According to the report, the investigative authorities had sent requests concerning the fate of Ibragim Tsurov to the Federal Security Service ("FSB") and the police, questioned the first applicant and witnesses to the kidnapping, collected references concerning Ibragim Tsurov's character, given specific orders to the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office") and the unit prosecutor's office and initiated a search for Ibragim Tsurov's car.

17. In a letter of 30 August 2003 the Ministry of the Interior of the Chechen Republic informed the first applicant that an investigation into her brother's kidnapping in case no. 40086 had been opened on an unspecified date.

18. On 9 September 2003 the department of interior the Oktyabrskiy District (“ROVD”) informed the first applicant that an investigation of Ibragim Tsurov’s kidnapping had been commenced in case no. 40086 and that investigative measures were being taken to establish his whereabouts and identify those responsible.

19. In a letter of 21 October 2003 the prosecutor’s office of the Chechen Republic informed the first applicant that the investigation into Ibragim Tsurov’s kidnapping had been suspended and then resumed.

20. On 24 October 2003 the Prosecutor General’s Office of Russia informed the first applicant that the investigation in case no. 40086 was pending before the district prosecutor’s office and was being supervised by the prosecutor’s office of the Chechen Republic.

21. On 1 December 2003 the applicants requested the district prosecutor’s office to inform them of progress in the investigation.

22. In a letter of 8 January 2004 the prosecutor’s office of the Chechen Republic informed the SRJI that the investigation of Ibragim Tsurov’s disappearance was under way and that investigative measures were being taken to resolve the crime.

23. On 18 January 2004 the Department of the FSB of the Republic of Ingushetia informed the second applicant that the FSB had no jurisdiction to investigate his son’s disappearance and that they had no information on Ibragim Tsurov’s whereabouts.

24. On 12 February 2004 the district prosecutor’s office sent the first applicant a progress report on the investigation in case no. 40086. According to the report, the investigative authorities had sent requests concerning the fate of Ibragim Tsurov to the FSB and the police, questioned the first applicant and witnesses to the kidnapping, collected references concerning Ibragim Tsurov’s personality, given specific orders to the UGA prosecutor’s office and the unit prosecutor’s office and initiated a search for Ibragim Tsurov’s car. The first applicant was also informed that the investigative measures had not led to the identification of the alleged perpetrators and that the investigation had been suspended.

25. On 1 June 2004 the applicants wrote to the district prosecutor’s office and the prosecutor’s office of the Chechen Republic enquiring about progress in the investigation. On the same date the first applicant requested the investigative authorities to question Mr A.S. and Mr D.S. as witnesses and to search for Ibragim Tsurov’s car.

26. On 29 June 2004 the prosecutor’s office of the Chechen Republic informed the applicants that the investigation was pending.

27. On 9 July 2004 the district prosecutor’s office endorsed a plan of investigative measures to be taken by 1 August 2004 in case no. 40086 envisaging searching for the VAZ-2107, VAZ-2121 and Volga cars, questioning Mr D.S. and Ibragim Tsurov’s relatives and dispatching requests for information to various official bodies.

28. On 12 July 2004 the district prosecutor's office requested the commander of the United Group Alignment to explain why he had issued Ibragim Tsurov with the special pass.

29. On 23 July 2004 the first applicant requested information on progress in the search for her brother's car from the ROVD. On the same date she requested from the district prosecutor's office an update on the progress in the investigation in case no. 40086 and a copy of the decision to suspend the investigation.

30. On 26 July 2004 the Ministry of the Interior of the Republic of Ingushetia informed the first applicant that Ibragim Tsurov had been wanted by the department of the interior of the Kirovskiy District of the Republic of North Ossetia-Alania for aggravated extortion and therefore had been arrested by officers of the department of the interior of the town of Malgobek. It was stated that those officers' actions had been lawful. The first applicant was invited to apply for further information to the department of the interior of Kirovskiy District.

31. On 24 February 2005 the district prosecutor's office informed the first applicant that there were no reasons to resume the investigation in case no. 40086. On 10 May 2005 the prosecutor's office of the Chechen Republic sent the first applicant a similar letter.

32. On an unspecified date Ibragim Tsurov's disappearance was reported to the United Nations Working Group on Enforced or Involuntary Disappearances ("the Working Group"). The Working Group requested information on the matter from the Government.

33. On 15 September 2005 the Government submitted to the Working Group their account of the circumstances of Ibragim Tsurov's abduction. They mentioned that there had been three white cars at the scene of incident – a VAZ-2107, a VAZ-2121 and a Volga car with a flashing light.

2. Information submitted by the Government

34. On 2 June 2003 the city prosecutor's office received the first applicant's request to take measures to search for her brother.

35. On 7 June 2003 the city prosecutor's office received Mr D.S.'s request to search for Ibragim Tsurov.

36. On 18 June 2003, upon examination of Mr D.S.'s request, the city prosecutor's office instituted an investigation into Ibragim Tsurov's abduction and the theft of his car under Articles 126 § 2 and 162 § 2 of the Russian Criminal Code. The case file was assigned number 40086.

37. On 20 June 2003 the city prosecutor's office sent a request for an internal inquiry into Ibragim Tsurov's kidnapping to the UGA prosecutor's office.

38. On 21 June 2003, upon examination of the first applicant's request, the city prosecutor's office instituted an investigation into Ibragim Tsurov's

kidnapping under Article 126 § 2 of the Russian Criminal Code. The case file was assigned number 40089.

39. On 30 June 2003 the city prosecutor's office granted the first applicant victim status and questioned her. She submitted that starting from the end of 2001 her brother had worked in military unit no. 20102 in Khankala and had had a special pass allowing him to move freely throughout the Chechen Republic. He had no enemies. On the day of his abduction he had had a large sum of money on him. The first applicant suggested that her brother could have possibly been kidnapped because of that money. She had no suspects in mind.

40. On 30 June 2003 the city prosecutor's office ordered the ROVD to put the VAZ-211030 car on the federal search list and to take measures aimed at establishing Ibragim Tsurov's whereabouts and the identities of the perpetrators.

41. On 1 July 2003 the city prosecutor's office joined cases nos. 40086 and 40089 under number 40086.

42. On 1 July 2003 the city prosecutor's office questioned Ms M.Z., Ibragim Tsurov's partner. She submitted that she had been living with Ibragim Tsurov since May 2002 and had known that he worked in the military prosecutor's office in Khankala. She had seen him for the last time on 26 April 2003 before his departure to Vladikavkaz. Three days later she had gone to Khankala to search for her partner and had been told there that he was missing. A few days later she had learned that Ibragim Tsurov had been kidnapped. On the following day she had informed his relatives of the incident and visited a military prosecutor, who had told her of the circumstances of the kidnapping.

43. On 22 July 2003 the ROVD informed the city prosecutor's office that a search for Ibragim Tsurov was under way.

44. On 18 August 2003 the city prosecutor's office ordered operational and search bureau no. 2 of the Main Department of the Ministry of the Interior for the South Federal Circuit ("ORB-2") to take investigative measures in order to find the kidnappers and to verify whether Ibragim Tsurov had been a member of illegal armed groups in 1999-2000.

45. On an unspecified date Mr S.N. was questioned. He submitted that on 26 April 2003 Ibragim Tsurov, Mr D.S., Mr A.S. and himself had headed for Vladikavkaz in Ibragim Tsurov's VAZ. While they were driving through Grozny their car was forced to stop by a white VAZ-2107 car without registration number plates. Several armed men in masks had got out of the VAZ-2107 and ordered Mr S.N. and his acquaintances to lie on the ground. Ibragim Tsurov had produced his documents and said that he was an employee of the military prosecutor's office. An armed man had hit him on the head with a gun butt. Then the men had put Ibragim Tsurov into the boot of the VAZ-2107, taken his car and driven away in an unknown direction.

46. Mr A.S. was also questioned and made a deposition identical to that of Mr S.N.

47. On 18 August 2003 the city prosecutor's office suspended the investigation in case no. 40086 for failure to identify those responsible and informed the first applicant accordingly.

48. On 21 October 2003 the prosecutor's office of the Chechen Republic, acting on the first applicant's request, quashed the decision of 18 August 2003 and resumed the investigation.

49. On 28 October 2003 the district prosecutor's office received the investigation file.

50. On 29 October 2003 the district prosecutor's office requested the ORB-2 to take investigative measures in order to find the missing person, his kidnappers and any witnesses to the incident.

51. On 30 October 2003 the district prosecutor's office ordered the unit prosecutor's office to question Mr A.S. and Mr D.S for a second time.

52. On 6 November 2003 the district prosecutor's office requested information on Ibragim Tsurov from the bar of the Chechen Republic.

53. On 24 November 2003 the district prosecutor's office questioned Mr Ya.A., Ibragim Tsurov's hierarchical superior at the Bar of the Chechen Republic. He submitted that Ibragim Tsurov's clients in general had been satisfied with his work. He further stated that several months before the kidnapping Ibragim Tsurov had been severely beaten at his client's house in the village of Staraya Sunzha; the beating had stopped once he had produced his documents. At some point Ibragim Tsurov had told Mr Ya.A. that he had almost found those who had beaten him and that they would soon be punished, but he had not mentioned whether those men were bandits or State servicemen.

54. On 27 November 2003 the district prosecutor's office requested from the unit prosecutor's office access to files on criminal cases in which Ibragim Tsurov had represented the suspects. Later copies of the sentences delivered by military courts in respect of Ibragim Tsurov's clients were included in the investigation file.

55. On 28 November 2003 the district prosecutor's office extended the term of preliminary investigation until 28 December 2003.

56. On 22 December 2003 the district prosecutor's office requested information on Ibragim Tsurov's special pass from the headquarters in Khankala. They were told that Ibragim Tsurov had been issued with a special pass on 22 March 2002 at the request of the commander of the United Group Alignment for official requirements.

57. On 28 December 2003 the investigation in case no. 40086 was suspended.

58. On 29 December 2004 the prosecutor's office of the Chechen Republic quashed the decision of 28 December 2003 and resumed the investigation.

59. On 6 May 2004 the unit prosecutor's office informed the district prosecutor's office that Ibragim Tsurov was not their employee, but was an advocate.

60. On an unspecified date military unit no. 98311 informed the district prosecutor's office that Mr A.S. had been sent on mission to another region and that Mr D.S. had resigned from the military service and had moved to Magnitogorsk.

61. On 1 July 2004 the district prosecutor's office requested a prosecutor's office of Magnitogorsk to question Mr D.S. on the circumstances of Ibragim Tsurov's kidnapping.

62. On 23 July 2004 Mr D.S. was questioned. He submitted that on 26 April 2003 Ibragim Tsurov's car had been stopped in Grozny by two white cars with tinted windows and without registration number plates – a VAZ-2107 and a VAZ-2121. Armed men in camouflage uniforms had got out of the white cars; Mr D.S. did not remember exactly how many of them there were. One of the armed men had ordered Mr D.S. to get out of the car and to lie on the ground. The armed men had put Ibragim Tsurov in the boot of his own car and driven away. Later Mr D.S. and his fellow servicemen had reported the incident to the authorities.

63. On 17 July 2004 the district prosecutor's office questioned Ms L.M., a relative of Ibragim Tsurov's client residing in the village of Staraya Sunzha. She submitted that in February 2003 Ibragim Tsurov had stayed in her house overnight. At some point late at night unknown armed and masked men had burst into her house and beaten her grandson and Ibragim Tsurov. The latter had told them that he was an advocate. Then the armed men had left.

64. On 22 July 2004 the district prosecutor's office again questioned Mr Ya.A. who essentially repeated his earlier deposition.

65. The district prosecutor's office requested information on eventual arrest of Ibragim Tsurov from various law enforcement agencies of the Chechen Republic. The departments of the Ministry of Interior of the Chechen Republic and the Federal Security Service replied that they had no such information and that no special operations had been carried out in respect of Ibragim Tsurov.

66. On 23 July 2004 the district prosecutor's office granted the first applicant's request for information on progress in the investigation. On the same date the first applicant informed the investigators that Ibragim Tsurov's relatives had no new information concerning the kidnapping.

67. On 12 July 2004 the district prosecutor's office ordered the ROVD to ensure that Mr T.Ts., Ibragim Tsurov's relative, visit them for an interview. The ROVD replied that it was impossible to establish Mr T.Ts.' whereabouts.

68. On 26 July 2004 the district prosecutor's office requested the prosecutor's office of the Malgobek District in the Republic of Ingushetia to question relatives of Ibragim Tsurov.

69. On 29 July 2004 the district prosecutor's office suspended the investigation in case no. 40086 for failure to identify the perpetrators and informed the first applicant accordingly.

70. On 14 December 2004 the district prosecutor's office quashed the decision of 29 July 2004 and resumed the investigation.

71. On 23 December 2004 and 13 January 2005 the district prosecutor's office sent to the prosecutor's office of the Malgobek District requests analogous to that of 26 July 2004.

72. On 14 January 2005 the district prosecutor's office again suspended the investigation.

73. On 26 April 2007 the district prosecutor's office quashed the decision of 14 January 2005 and resumed the investigation in case no. 40086.

74. The investigation failed to establish the whereabouts of Ibragim Tsurov. The investigating authorities sent requests for information to the competent State agencies and took other steps to have the crime resolved. The investigation found no evidence to prove involvement of law enforcement agencies in the crime. No special operations had been carried out in respect of Ibragim Tsurov by law enforcement agencies of the Chechen Republic.

75. The Government further submitted that the progress of the investigation was being supervised by the Prosecutor General's Office of Russia. According to the Government, the first applicant had been duly informed of all decisions taken during the investigation.

76. Despite specific requests by the Court the Government did not disclose any documents of criminal case no. 40086. 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.

C. Criminal proceedings against Ibragim Tsurov

77. On 28 December 2003 the North Caucasus Department of the Prosecutor General's Office of Russia instituted criminal proceedings against Ibragim Tsurov under Article 163 § 3 of the Russian Criminal Code (aggravated extortion) in case no. 18/204. The decision stated that in 1998 the suspect had assisted members of an illegal armed group who had kidnapped several persons, by negotiating ransoms with relatives of those

kidnapped. On the same date a search warrant for Ibragim Tsurov was issued.

78. On 14 February 2004 the Prosecutor General's Office of Russia ordered Ibragim Tsurov's name to be put on the federal wanted list.

79. On 14 February 2004 the department of the interior of the Kirovskiy District of the Republic of North Ossetia-Alania opened a search file in respect of Ibragim Tsurov.

80. According to the Government, the department of the interior of the Kirovskiy District of the Republic of North Ossetia-Alania were taking investigative measures in relation to the criminal proceedings against Ibragim Tsurov. The latter's whereabouts had not been established and a search for him was under way.

81. The Government provided copies of the two decisions by the North Caucasus Department of the Prosecutor General's Office of Russia dated 28 December 2003 and of the decision by the department of the interior of the Kirovskiy District of the Republic of North Ossetia-Alania dated 14 February 2004.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

83. 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 was clearly political as the applicants wanted to "bring charges against the Russian Federation, as a state which ostensibly is pursuing a policy of infringement of human rights in the territory of the Chechen Republic". They concluded that there had been an abuse of the right of petition on the part of the applicants and that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

84. The Court observes that the complaints the applicants brought to its attention concerned their genuine grievances. Nothing in the case file reveals any appearance of abuse of their right of individual petition. Accordingly, the Government's objection must be dismissed.

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

A. The parties' submissions

85. 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 Ibragim Tsurov had not yet been completed. They further argued that the applicants had not requested the domestic courts to declare Ibragim Tsurov missing or dead. Neither had the applicants brought any civil claims for compensation of damages pursuant to Article 1069 of the Russian Civil Code or challenged the investigators' decisions in court pursuant to Article 125 of the Russian Criminal Procedure Code.

86. The applicants contested that objection. They stated that the criminal investigation had been pending for five years and had proved to be ineffective.

B. The Court's assessment

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

88. 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).

89. The Government asserted that the applicants had not applied to have Ibragim Tsurov declared missing or dead. The Court, however, is not convinced that a judicial act confirming the fact of the applicants' relative's disappearance or death could have provided any redress at national level in respect of the grievances brought to Strasbourg.

90. As to the remainder of the Government's objection, the Court notes that the Russian legal system provides, in principle, two avenues of recourse for victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

91. As regards a civil action to obtain redress for damage sustained through alleged illegal acts or unlawful conduct of State agents, 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. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

92. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement authorities shortly after the kidnapping of Ibragim Tsurov and that an investigation has been pending since 18 June 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

93. The Court considers that this part of the Government's objection raises issues concerning the effectiveness of the 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.

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

A. The parties' arguments

94. The applicants maintained that it was beyond reasonable doubt that the men who had kidnapped Ibragim Tsurov were State agents. In support of their complaint they referred to the following facts: Ibragim Tsurov had been issued with a special pass, which proved that he had not been involved in illegal activities. Mr A.S., Mr D.S. and Mr S.N., servicemen in the Russian military, had not tried to resist the armed men who had taken Ibragim Tsurov away, which proved that they had considered the perpetrators to be duly authorised officials carrying out a security operation. The Volga car had been equipped with a flashing light used by the police and other law enforcement agencies. The letter of 26 July 2004 had confirmed that the police had arrested Ibragim Tsurov.

95. The Government submitted that unidentified armed men in camouflage uniforms had kidnapped Ibragim Tsurov. They emphasised that the eyewitnesses to the kidnapping had not seen any Volga car with a flashing light and that the applicants had invented this detail. Even assuming that there had been such a car, it could have belonged to criminals who had obtained a flashing light illegally. The Government insisted that it was not proven that the armed men had belonged to State agencies. Ibragim Tsurov had actively cooperated with the federal forces so that they had not had any reasons to apprehend him. The fact that the perpetrators had been wearing camouflage uniforms and carrying firearms did not prove that they were State servicemen, because members of illegal armed groups had also had such items. Ibragim Tsurov could have been kidnapped, pursuant to the traditions of feud, by the persons from whom he had demanded ransom. Furthermore, the Government suggested that in reality there had been no crime at all, since Ibragim Tsurov had probably staged his own kidnapping to escape either criminal prosecution or feudal vengeance. The Government also doubted the authenticity of the letter of the Ministry of the Interior of the Republic of Ingushetia dated 26 July 2004. They noted that the registration number of the letter was illegible and its date had been corrected. The Government concluded that the letter could not serve as a proof of Ibragim Tsurov's arrest by the police. They also pointed out that Mr A.S., Mr D.S. and Mr S.N. had not shown any resistance to the armed men who had apprehended Ibragim Tsurov because they had had reasons to believe that those men were State agents carrying out a lawful arrest operation. Mr A.S., Mr D.S. and Mr S.N. had not immediately reported the incident to the authorities because they were not close friends of Ibragim Tsurov and were not worried about him. Ibragim Tsurov had been issued

with the special pass long before the institution of the criminal proceedings against him. In sum, the Government insisted that no State agents were implicated in Ibragim Tsurov's disappearance.

B. The Court's evaluation of the facts

1. General principles

96. 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 applicants' allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-...).

97. The Court points out that a number of principles have been developed in its case-law when it is faced with the 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 unrebutted 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).

98. 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.

99. 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).

100. 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).

101. Finally, when there have been criminal proceedings in the domestic courts concerning those same allegations, it must be borne in mind that criminal-law liability is distinct from international-law responsibility 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 the light of the relevant principles of international law. The responsibility of a State under the Convention, for the acts of its bodies, 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 *Avşar*, cited above, § 284).

2. *Establishment of the facts*

102. The Court notes that despite its requests for a copy of the investigation file concerning the kidnapping of Ibragim Tsurov, the Government produced no documents from the 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)).

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

104. The applicants alleged that the persons who had taken Ibragim Tsurov away on 26 April 2003 were State agents.

105. The Government suggested in their submission that the persons who had detained Ibragim Tsurov could be members of illegal armed 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 *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

106. Furthermore, the Court points out that the Government's submissions on the merits of the present application have been somewhat contradictory. At the outset they emphasised that Ibragim Tsurov had not been suspected of any illegal activities and thus could not have been arrested by State agents, and then submitted that he had been suspected of a serious crime and that the search for him was ongoing. They also first denied that the perpetrators had driven a Volga car with a flashing light and eventually admitted that such a car could possibly have been seen at the crime scene.

107. The Court observes that it has not been disputed between the parties that a large group of armed men in uniform stopped Ibragim Tsurov's car in a street in Grozny in broad daylight and then put him into the car boot. Moreover, the Government suggested that the three eyewitnesses to the abduction, who happened to be trained military servicemen, had possibly considered this to be a regular police operation.

108. Furthermore, the Court emphasises that the applicants were informed by the Ministry of the Interior of the Republic of Ingushetia that their relative had been arrested by the police (see paragraph 30 above). It is not persuaded by the Government's argument that the letter of 26 July 2004 was fabricated as they have not submitted any documents to confirm that Ibragim Tsurov was not arrested by the Malgobek police, such as a police registration log for the relevant time period or other materials. In the absence of such documents the Court considers that the Government have failed to discredit the validity of the letter as a piece of evidence. Accordingly, it finds it established that at least on one occasion the State officials acknowledged that Ibragim Tsurov had been arrested by officers of the department of the interior of the town of Malgobek.

109. The Court finds that the aforesaid strongly supports the applicants' allegation that the armed men who apprehended Ibragim Tsurov were State servicemen conducting a security operation. It observes in this respect that where the applicants make 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 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).

110. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that Ibragim Tsurov was apprehended by State servicemen. The Government's statement that the

investigation did not find any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Ibragim Tsurov was apprehended on 26 April 2003 by State servicemen during an unacknowledged security operation.

111. There has been no reliable news of Ibragim Tsurov since the date of the kidnapping. His name has not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to him after his arrest.

112. Having regard to the previous cases concerning disappearances of persons in the Chechen Republic which have come before the Court (see, among others, *Bazorkina*, cited above; *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 Ibragim Tsurov or any news of him for more than five years supports this assumption.

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

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

114. The applicants complained under Article 2 of the Convention that their relative 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

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

116. The applicants argued that Ibragim Tsurov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for 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, and invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court’s assessment

1. Admissibility

117. 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 93 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 Ibragim Tsurov

118. 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)).

119. The Court has already found it established that the applicants' relative must be presumed dead following unacknowledged detention by State servicemen and that his death can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Ibragim Tsurov.

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

120. 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).

121. In the present case, the kidnapping of Ibragim Tsurov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

122. The Court notes at the outset that none of the documents from the investigation file were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicants and the information about its progress presented by the Government.

123. The Court notes that, according to the deposition of Ms M.Z., several days after her partner's kidnapping she learned of its circumstances from the prosecutor's office (see paragraph 42 above), which shows that the authorities were aware of the incident shortly, if not immediately, after it

had taken place. The city prosecutor's office instituted the investigation in case no. 40086 on 18 June 2003, that is, almost two months after Ibragim Tsurov's abduction. Such a postponement was *per se* 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. The Court further observes that three days after the institution of the investigation in case no. 40086 the very same city prosecutor's office opened another investigation into Ibragim Tsurov's abduction in case no. 40089 (see paragraphs 36 and 38 above). In its view, this fact in itself proves that the city prosecutor's office did not show exemplary diligence in organising their paperwork, which could do nothing but undermine the efficiency of the investigation.

124. It also appears that there were also certain flaws in the course of the investigation. The Court notes that on two occasions a higher prosecutor's office quashed the decisions to suspend the investigation (see paragraphs 48 and 58 above). The particular reasons for doing so are unknown due to the Government's refusal to provide copies of the relevant documents. Nevertheless, the Court infers from the facts of the quashing that there were some deficiencies in the investigation criticised by the prosecutor's office of the Chechen Republic.

125. The Court further observes that Mr D.S., the eyewitness to the kidnapping who eventually reported the crime to the authorities, was questioned for the first time only on 23 July 2004, that is one year and three months after the events (see paragraph 62 above). It is obvious that this investigative measure, if it were to produce any meaningful results, should have been taken as soon as the investigation commenced. Such a delay, for which there has been no explanation in the instant case, not only demonstrates the authorities' failure to act of their own motion but also constitutes 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).

126. Besides, it appears that the investigators have taken no measures to verify whether Ibragim Tsurov was arrested by the department of the interior of the town of Malgobek as stated in the letter by the Ministry of Interior of the Republic of Ingushetia dated 26 July 2004. The district prosecutor's office sent requests for information concerning the possible arrest of Ibragim Tsurov to law enforcement agencies of the Chechen Republic. However, it does not transpire from the information submitted by the Government any similar requests have ever been sent to law enforcement agencies of the Republic of Ingushetia, a region adjacent to the Chechen Republic.

127. The Court also notes that even though the first applicant was eventually granted victim status in case no. 40086, she was only informed of the suspension and resumption of the proceedings, and not of any other

significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

128. Finally, the Court notes that the investigation in case no. 40086 was suspended and then resumed four times and that there were lengthy periods of inactivity by the city and district prosecutors' offices when no proceedings were pending. It is noteworthy that no proceedings whatsoever were pending between 14 January 2005 and 26 April 2007, that is for more than two years. The investigation was only resumed after the present application had been communicated to the Government.

129. As to the Government's objection regarding non-exhaustion of criminal domestic remedies, which has been joined to the merits of the application, the Court observes the following. The Government mentioned that the applicants had the opportunity to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court points out that the applicants, having no access to the case file and not being 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, inasmuch as the Government's objection concerns the fact that the domestic investigation is still pending, the Court notes that the authorities' failure to take necessary and urgent investigative measures undermined the effectiveness of the investigation in its early stages. Accordingly, the Court finds that the criminal remedies relied on by the Government were ineffective in the circumstances and dismisses their preliminary objection.

130. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Ibragim Tsurov, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

131. The applicants relied on Article 3 of the Convention, claiming that Ibragim Tsurov had been ill-treated by Russian servicemen and that there was no effective investigation into the ill-treatment. They further complained under this heading that as a result of their relative's disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

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

133. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

(a) The complaint concerning Ibragim Tsurov

134. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 161 in fine).

135. The Court has found it established that Ibragim Tsurov was detained on 26 April 2003 by federal forces and that no reliable news of him has been received since. It has also found that, in view of all the known circumstances, he can be presumed dead and that the responsibility for his death lies with the State authorities (see paragraph 119 above). However, the questions of the exact way he died and whether he was subjected to ill-treatment while in detention have not been elucidated. The Court considers that the materials before it do not permit to find beyond all reasonable doubt that Ibragim Tsurov was ill-treated in detention. It thus finds that this part of the complaint has not been substantiated.

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

(b) The complaint concerning the applicants' mental suffering

137. 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

138. The Court observes that the question whether a member of the family of a "disappeared person" is a victim of treatment contrary to

Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

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

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

141. 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

142. The applicants further stated that Ibragim Tsurov 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

143. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Ibragim Tsurov was had been deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention.

144. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

145. 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

146. 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).

147. The Court has found it established that Ibragim Tsurov was apprehended by State servicemen on 26 April 2003 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

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

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

150. 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."

A. The parties' submissions

151. The Government contended that the applicants had had effective civil and criminal remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. In sum, the Government submitted that there had been no violation of Article 13.

152. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

153. 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

154. 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).

155. 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 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 *Süheyra 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).

156. 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.

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

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

159. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the complaint under Article 3 that Ibragim Tsurov had been ill-treated by State agents, the Court notes that this part of the complaint under Article 3 was found unsubstantiated in paragraph 135 above. In the absence of an “arguable claim” of a violation of a substantive Convention provision the Court finds that there has been no violation of Article 13 in this respect.

160. As regards the applicants’ reference to Article 3 of the Convention on account of their mental suffering caused by the disappearance of their close relative, their inability to find out what had happened to him and the way the authorities had handled their complaints, the Court notes that it has found a violation in this respect. 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.

161. 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 resulting 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

162. 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

163. The second and fourth applicants claimed damages in respect of the lost wages of their son caused by his disappearance. Ibragim Tsurov had worked as an advocate for an average annual wage of 96,000 Russian roubles (RUB) (approximately 2630 euros (EUR)). The second and fourth applicants submitted that, as his parents, they could have received 40 % of his earnings and claimed a total of RUB 1,173,505.28 (approximately EUR 32,150)) jointly.

164. The Government regarded these claims as unfounded.

165. 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 second and fourth applicants' son and the loss by the applicants of the financial support which he could have provided. Having regard to the second and fourth applicants' submissions, the Court finds it appropriate to award the second and fourth applicants EUR 10,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

166. The first and third applicants, Ibragim Tsurov's siblings, claimed EUR 10,000 each, while the second and fourth applicants claimed EUR 30,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member and the indifference shown by the authorities towards them.

167. The Government found the amounts claimed exaggerated.

168. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate

to award the second and fourth applicants EUR 25,000 jointly and the first and third applicants EUR 5,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

C. Costs and expenses

169. The applicants were represented by the SRJI. They submitted an agreement with the SRJI and a brief invoice in which a total amount claimed under the heading of costs and expenses (EUR 9,544.4) appeared. However, they failed to submit in timely fashion an itemised schedule of costs and expenses allegedly incurred.

170. The Government pointed out that the sought expenses were not supported by any invoices or receipts to show that they had actually been incurred.

171. The Court reiterates that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents and within the time-limit fixed for the submission of the applicants' observations on the merits, "failing which the Chamber may reject the claim in whole or in part". In the instant case, it observes that the applicants failed to present documents in support of the amount claimed under the heading of costs and expenses. In view of the applicants' failure to comply with the aforesaid requirement and noting that their representatives have been paid EUR 850 in legal aid by the Council of Europe, the Court makes no award for costs and expenses (see *Malechkov v. Bulgaria*, no. 57830/00, § 165, 28 June 2007).

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objection as to the alleged abuse of the right of petition;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
3. *Declares* the complaints under Articles 2, 5 and 13, as well as the complaint concerning the applicants' moral suffering under Article 3 of

the Convention, admissible and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Ibragim Tsurov;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Ibragim Tsurov had disappeared;
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 Ibragim Tsurov;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
9. *Holds* that there has been no violation of Article 13 of the Convention as regards the alleged violation of Article 3 of the Convention in respect of Ibragim Tsurov;
10. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Article 3 as regards the applicants and Article 5;
11. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 10,000 (ten thousand euros) to the second and fourth applicants jointly 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 this amount;
 - (ii) EUR 25,000 (twenty-five thousand euros) to the second and fourth applicants jointly and EUR 5,000 (five thousand euros) to the first and third applicants each 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;
 - (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;

12. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 6 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President