



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

FIRST SECTION

CASE OF MAGAMADOVA AND ISKHANOVA v. RUSSIA

(Application no. 33185/04)

*This version was rectified on 24 November 2008
under Rule 81 of the Rules of Court*

JUDGMENT

STRASBOURG

6 November 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Magamadova and Iskhanova 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 the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 33185/04) 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 two Russian nationals, Mrs Luiza Abdulbekovna Magamadova and Mrs Alpatu Didieva Iskhanova (“the applicants”), on 19 July 2004.

2. The applicants 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 Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 26 March 2007 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1964 and 1958 respectively. They live in the village of Mesker-Yurt, Shali District, in the Chechen Republic.

5. The first applicant was married to Mr Viskhadzhi Shatayevich Magamadov, born in 1962; they are the parents of five children. The second applicant was married to Mr Khaskhan¹ Shakhtamirovich Mezhiyev, born in 1963; they are the parents of three children. At the material time the two couples lived in neighbouring houses in Mesker-Yurt.

A. Disappearance of Viskhadzhi Magamadov and Khaskhan Mezhiyev

1. The applicants' account

6. Between 13 and 14 November 2002 Khaskhan Mezhiyev stayed overnight at Viskhadzhi Magamadov's home. The men slept in the main house. The first applicant, her children and her brother-in-law slept in an annexe to the Magamadovs' family house.

7. At 5 a.m. on 14 November 2002 the first applicant woke up and heard the sound of gates opening. Shortly after that a group of unknown armed men entered her room. They wore camouflage uniforms and body armour; some of them wore masks. They did not identify themselves. The first applicant believed that they were servicemen of the Russian federal troops because they had Slavic features and spoke Russian without any accent. One of the servicemen shouted at the first applicant, using swearwords freely. The men examined the room where the first applicant, her children and brother-in-law slept and, having realised that there were no adult men in it, left. The first applicant looked out of the window and noticed in the courtyard about ten servicemen surrounding the main house.

8. In the meantime Viskhadzhi Magamadov, a practising Muslim, was performing his prayer in the main house. The servicemen entered his room and pushed him down to the floor. Then they forced Viskhadzhi Magamadov and Khaskhan Mezhiyev out to the courtyard and ordered them to run barefoot towards two armoured personnel carriers ("APCs") parked nearby. The APCs' registration numbers were covered with mud.

9. The first applicant tried to follow her husband but the servicemen blocked her way. Eventually she went out of the annexe to the courtyard.

10. The servicemen threw Viskhadzhi Magamadov and Khaskhan Mezhiyev on the ground and hit them with rifle butts. Then they put the two men into the APCs and drove away.

11. When the first applicant entered the main house, she discovered that there had been a search as there was a mess in the house and the floor was covered with scattered sugar.

¹ Mr Mezhiyev's first name "Khasan" was changed as "Khaskhan" in the whole text of the judgment.

12. The applicants have had no news of Viskhadzhi Magamadov and Khaskhan Mezhiyev since 14 November 2002.

2. Information submitted by the Government

13. The Government disagreed with the applicants' account of events. They argued that the second applicant had not witnessed her husband's abduction and concluded that it was doubtful that the kidnapping had taken place at all.

B. The search for Viskhadzhi Magamadov and Khaskhan Mezhiyev and the investigation

1. The applicants' account

14. Shortly after the events of 14 November 2002 the applicants started to search for their husbands. They repeatedly contacted various official bodies, both in person and in writing, informing them that their husbands had been apprehended on the night of 13 to 14 November 2002 and trying to establish the whereabouts and fate of those missing. In particular, they applied to the prosecutors' offices at different levels, the Ministry of the Interior of the Chechen Republic, the Plenipotentiary Representative of the Russian President in the Southern Federal Circuit, the Federal Security Service ("FSB"), the Russian Ombudsman and the Russian State Duma, describing in detail the circumstances of their husbands' abduction. In their efforts the applicants were assisted by the SRJI. The official bodies forwarded the majority of the complaints to the prosecutors' offices for investigation.

15. On 22 November 2002 the Shali district prosecutor's office ("the district prosecutor's office") instituted an investigation into the disappearance of Viskhadzhi Magamadov and Khaskhan Mezhiyev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was given the number 59263. The decision read as follows:

"At about 5 a.m. on 15 November 2002 unidentified armed men wearing camouflage uniforms [who had arrived] in two APCs surrounded the house at 28 Shkolnaya Street in the village of Mesker-Yurt and seized [Mr] Mezhiyev and [Mr] Magomadov. After that [Mr Mezhiyev and Mr Magomadov] were placed in the APCs and taken away in an unknown direction."

16. On 22 January 2003 the district prosecutor's office stayed the investigation in case no. 59263 for failure to identify those responsible. The second applicant was informed of the suspension by letter of 29 January 2003.

17. On 26 March 2003 the military prosecutor of military unit no. 20116 ("the unit prosecutor's office") informed the applicants that military

personnel had not been implicated in Viskhadzhi Magamadov and Khaskhan Mezhiyev's abduction.

18. On 6 April 2003 the applicants requested the prosecutor's office of the Chechen Republic and the district prosecutor's office to resume the investigation and to admit them to the proceedings as victims. On 11 April 2003 the district prosecutor's office replied that their application concerning the search for their husbands "apprehended by unidentified servicemen of law enforcement bodies of the Russian Federation" had been included in the investigation file in case no. 59263 and stated that the applicants would be informed of any progress in the investigation.

19. On 7 July 2003 the prosecutor's office of the Chechen Republic quashed the decision of 22 January 2003 on suspension of the investigation, reopened the proceedings in case no. 59263, ordered that the district prosecutor's office take all requisite investigative measures to resolve the crime and informed the applicants accordingly.

20. On 15 July 2003 the Main Military Prosecutor's Office forwarded the second applicant's letter to the prosecutor's office of the Chechen Republic.

21. On 1 August 2003 the prosecutor's office of the Chechen Republic sent letters identical to the one of 7 July 2003 to each of the applicants.

22. On 4, 11 and 18 August 2003 the prosecutor's office of the Chechen Republic forwarded the second applicant's letters to the district prosecutor's office.

23. On 15 August 2003 the Department of the FSB of the Chechen Republic informed the first applicant that her husband had not been detained by FSB officers, that he had not been suspected of any crimes and that the FSB was taking the necessary steps to establish his whereabouts and to identify those responsible for his disappearance.

24. On 23 August 2003 the Ministry of the Interior of the Chechen Republic forwarded the second applicant's letter to the Shali district department of the interior ("ROVD") and ordered the facts complained of to be verified and procedural steps taken if necessary.

25. On 1 September 2003 the district prosecutor's office informed the applicants that the investigation into their husbands' kidnapping was in progress.

26. On 20 September 2003 the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office") forwarded the first applicant's complaint to the unit prosecutor's office and ordered it to conduct an inquiry.

27. On 20 January 2004 the prosecutor's office of the Chechen Republic informed the applicants that "on 26 October 2003 the investigation in the criminal case [had been] suspended pursuant to Article 208 § 1 of the Russian Code of Criminal Procedure (due to failure to identify the alleged perpetrators)" and that "[o]n 20 October 2003 the prosecutor's office of the

Chechen Republic [had] resumed the investigation and investigative measures aimed at identification of the perpetrators and establishment of [the applicants'] relatives whereabouts [were] being taken".

28. On 14 February 2004 the district prosecutor's office informed the first applicant that the investigation had been resumed on 2 February 2004 and that investigative measures were being taken.

29. On 28 April 2004 the district prosecutor's office informed the first applicant that the investigation in case no. 59263 was under way.

30. On 20 May 2004 the UGA prosecutor's office informed the unit prosecutor's office that its letter of 20 September 2003 remained unanswered, forwarded a copy of the first applicant's complaint for the second time and ordered an inquiry.

31. On 4 June 2004 the prosecutor's office of the Chechen Republic forwarded a complaint lodged on behalf of the second applicant by Civic Assistance, a regional NGO based in Moscow, to the district prosecutor's office.

32. On 11 August 2004 the prosecutor's office of the Chechen Republic informed the second applicant that her complaint lodged with Civic Assistance had been included in the investigation file in case no. 59263 and that investigative measures were being taken to establish her husband's whereabouts.

33. On 5 November 2004 the prosecutor's office of the Chechen Republic forwarded to the district prosecutor's office a complaint lodged by the SRJI on behalf of the applicants for examination and requested that case no. 59263 be investigated more energetically.

34. On 6 July 2005 the unit prosecutor's office informed the first applicant that they had no information on her husband's whereabouts.

35. On 8 and 11 July 2005 the prosecutor's office of the Chechen Republic forwarded the first applicant's requests for assistance in the search for her husband to the district prosecutor's office.

36. On 22 August 2005 the district prosecutor's office informed the second applicant that the investigation in case no. 59263 had been suspended on 2 March 2005.

37. On 27 August 2005 the UGA prosecutor's office informed the second applicant that she should send her further queries to the district prosecutor's office or to the prosecutor's office of the Chechen Republic.

38. On 15 September 2005 the district prosecutor's office informed the first applicant that the investigation had been suspended.

39. On 8 November 2005 the SRJI requested an update on the progress in the investigation in case no. 59263 from the prosecutor's office of the Chechen Republic. In reply they were informed that the prosecutor's office of the Chechen Republic had resumed the investigation on 28 October 2005.

40. On 9 November 2005 the district prosecutor's office informed the applicants that the investigation had been suspended on 30 October 2005.

41. On 19 January 2006 the prosecutor's office of the Chechen Republic informed the second applicant that she had been granted victim status and questioned on 22 November 2002 and that the investigation had been suspended.

2. Information submitted by the Government

42. On 15 November 2002 the second applicant complained to the district prosecutor's office of her husband's kidnapping by unknown men.

43. On 22 November 2002 the district prosecutor's office instituted an investigation of Viskhadzhi Magamadov and Khaskhan Mezhiyev's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 59263. On the same date the second applicant was granted victim status and questioned. She submitted that her husband had gone to his neighbour's home and then been taken away by unidentified armed men in two APCs.

44. On 27 November 2002 the district prosecutor's office sent requests for information to the ROVD, the department of the FSB of the Shali district, a military prosecutor's office, the military commander of the Shali district, the information centre of the Ministry of the Interior of the Chechen Republic, the remand prisons in the Chechen Republic and operational and search bureau no. 2 ("ORB-2"). In reply they were informed that the police, the FSB and the military had not carried out any operations in respect of Viskhadzhi Magamadov and Khaskhan Mezhiyev, that the two men had not been arrested or detained and that the State agencies had no information on the whereabouts of the missing men.

45. On 10 December 2002 the district prosecutor's office granted the first applicant victim status in case no. 59263 and questioned her. The first applicant submitted that her husband had been unemployed. In the evening of 14 November 2002 Khaskhan Mezhiyev had come to visit her husband. At about 5 a.m. on 15 November 2002 the first applicant had been awakened by noise coming from the courtyard and seen armed men in camouflage uniforms, some of whom had worn masks. The men had entered the house in which her husband and Khaskhan Mezhiyev had been sleeping, taken them outside and brought them to the APC.

46. On 22 January 2003 the investigation was suspended for failure to identify those responsible.

47. On 2 February 2004 the district prosecutor's office resumed the investigation in case no. 59263 and informed the applicants accordingly.

48. At some point the investigation was suspended. It was resumed on 30 September 2005 and again suspended on 30 October 2005.

49. On 23 July 2006 the district prosecutor's office refused to institute a criminal investigation into the first applicant's allegations that the armed men who had kidnapped her husband had sprayed an unknown fluid in her face for the reason that the first applicant had sustained no bodily injuries.

50. The district prosecutor's office questioned a number of witnesses. Neither the witnesses nor the victims alleged that Viskhadzhi Magamadov and Khaskhan Mezhiyev had been beaten at the time of their abduction.

51. The Government submitted that the investigating authorities had sent a number of queries to various State bodies and had taken other unspecified investigative measures.

52. The investigation failed to establish the whereabouts of Viskhadzhi Magamadov and Khaskhan Mezhiyev. 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 support the involvement of servicemen of the military or law enforcement agencies in the crime.

53. On 15 May 2007 the district prosecutor's office resumed the investigation in case no. 59263 and informed the applicants accordingly.

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

55. Despite specific requests by the Court the Government did not disclose most of the contents of the investigation file in case no. 59263, providing only copies of decisions to suspend and resume the investigation and to grant victim status, as well as of several consequent notifications to the relatives. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

56. Article 125 of the Russian Code of Criminal Procedure 2002 ("the CCP") provides that the decision of an investigator or prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a district court, which is empowered to examine the lawfulness and grounds of the impugned decisions.

57. Article 161 of the CCP establishes the rule that data from the preliminary investigation cannot be disclosed. Part 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to

divulge information about the private life of the participants in criminal proceedings without their permission.

THE LAW

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

58. The Government submitted that the application had not been lodged in order to restore the allegedly violated rights of the applicants. The actual object and purpose of the application was clearly political as the applicants wanted to "put forward charges in address of the Russian Federation as the state which [is] ostensibly pursuing a policy of infringement of human rights in [the] territory of the Chechen Republic". They concluded that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

59. The Court considers that the Government may be understood to be suggesting that there was an abuse of the right of petition on the part of the applicants. It observes in this respect that the complaints the applicants brought to its attention concerned 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

60. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Viskhadzhi Magamadov and Khaskhan Mezhiyev had not yet been completed.

61. The applicants contested that objection. They stated that the criminal investigation had been pending for almost six years without producing any meaningful results and thus had proved to be ineffective.

B. The Court's assessment

62. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the

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

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

64. The Court observes that the applicants complained to the law enforcement authorities immediately after the kidnapping of Viskhadzhi Magamadov and Khaskhan Mezhiyev and that an investigation has been pending since 22 November 2002. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

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

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

A. The parties' arguments

66. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Viskhadzhi Magamadov and Khaskhan Mezhiyev were State agents. In support of their complaint they referred to the following facts. The armed men who had abducted Viskhadzhi Magamadov and Khaskhan Mezhiyev had Slavic features and had spoken

Russian without an accent, which proved that they were not of Chechen ethnic origin. They had arrived in APCs at 5 a.m., while at the material time curfew hours had been introduced in Mesker-Yurt and, accordingly, no motorcade could have passed by numerous federal check-points between 8 p.m. and 6 a.m. without the authorities' permission. The applicants also pointed out that the ground given for the Government's refusal to submit the file in criminal case no. 59263 was that it contained "information concerning the disposition of military and special troops [and] the character of their activity".

67. The Government rejected the applicants' allegations. They argued that it had not been proved that Viskhadzhi Magamadov and Khaskhan Mezhiyev had been kidnapped. They claimed that the applicants had fabricated the information regarding the date of the alleged kidnapping which they had submitted to the Court as, in the Government's view, the applicants themselves had stated at some point that their husbands had been taken away not on the night of 13 to 14 November 2002, but on that of 14 to 15 November 2002. The Government also noted that the applicants had never requested the domestic courts to declare their husbands missing or dead. They further pointed out that groups of Ukrainian, Belorussian and ethnic Russian mercenaries had committed crimes in the territory of the Chechen Republic and emphasised that the fact that the perpetrators had had Slavic features and spoken Russian did not prove their attachment to the Russian military. They further observed that a considerable number of APCs had been stolen from Russian arsenals in the 1990s, and some had been captured by members of illegal armed groups in the course of battles with the federal military.

B. The Court's evaluation of the facts

1. General principles

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

69. 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).

70. 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.

71. 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).

72. 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).

73. 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 organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Avşar*, cited above, § 284).

2. *Establishment of the facts*

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

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

76. The applicants claimed that the persons who had taken Viskhadzhi Magamadov and Khaskhan Mezhiyev away on 14 November 2002 and then killed them had been State agents.

77. The Government alleged that the very fact of the kidnapping of Viskhadzhi Magamadov and Khaskhan Mezhiyev had not been established with certainty (see paragraphs 13 and 67 above). The Court points out in this respect that the domestic investigating authorities accepted that the crime had taken place when they instituted the criminal proceedings in case no. 59263. The investigation was several times suspended and resumed for failure to identify the perpetrators, not because no crime had taken place. Thus, the Court cannot agree with the Government's argument.

78. Turning to the Government's contention regarding allegedly fabricated information, the Court notes that in their applications to domestic official bodies the applicants referred to the events of the night of 13 to 14 November 2002 (see paragraph 14 above). The Court emphasises that because of the subsidiary nature of the Convention system it is not in a position to establish the exact date of the events complained of. Nevertheless, nothing in the material in its possession suggests that the applicants have ever asserted at the domestic level that their husbands disappeared on 15 November 2002. The fact that the said date was mentioned in the district prosecutor's decision to institute the investigation in case no. 59263 (see paragraph 15 above) does not in itself render the applicants' submission fabricated or false and might be the result of a simple clerical error. Accordingly, the Court is satisfied that the applicants informed both the domestic authorities and the Court of their husbands' abduction in a coherent manner.

79. Furthermore, the Government suggested that Viskhadzhi Magamadov and Khaskhan Mezhiyev, if kidnapped at all, could have been

apprehended by 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 *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

80. Moreover, the Court considers it very unlikely that two APCs stolen by paramilitary groups in the 1990s could have moved freely through Russian federal military check-points without being noticed. It thus finds that the fact that a large group of armed men in uniform driving the APCs arrived in Mesker-Yurt at 5 a.m. strongly supports the applicants' allegation that these were State servicemen. In their application to the authorities the applicants consistently maintained that Viskhadzhi Magamadov and Khaskhan Mezhiyev had been detained by unknown men in the APCs and asked the investigators to look into that possibility (see paragraphs 43 and 45 above). The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law enforcement agencies were involved in the kidnapping (see paragraphs 18 and 44 above).

81. The Court observes 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).

82. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were apprehended by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the military or law enforcers 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 Viskhadzhi Magamadov and Khaskhan Mezhiyev were abducted on 14 November 2002 by State servicemen during an unacknowledged security operation.

83. There has been no reliable news of Viskhadzhi Magamadov and Khaskhan Mezhiyev since the date of the kidnapping. 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.

84. Having regard to the previous cases concerning disappearances of people in Chechnya 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; *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 Viskhadzhi Magamadov and Khaskhan Mezhiyev or any news of them for almost six years supports this assumption.

85. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Viskhadzhi Magamadov and Khaskhan Mezhiyev must be presumed dead following their unacknowledged detention by State servicemen.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

86. The applicants complained under Article 2 of the Convention that their relatives had disappeared after being 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

87. The Government contended that the domestic investigation had obtained no evidence to the effect that Viskhadzhi Magamadov and Khaskhan Mezhiyev were dead or that any servicemen of the federal law enforcement agencies had been involved in their alleged kidnapping or

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

88. The applicants argued that Viskhadzhi Magamadov and Khaskhan Mezhiyev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court's case-law on Article 2. The fact that the investigation had been pending for almost six years without producing any known results had been further proof of its ineffectiveness.

B. The Court's assessment

1. Admissibility

89. 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 65 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 Viskhadzhi Magamadov and Khaskhan Mezhiyev

90. 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)).

91. The Court has already found it established that the applicants' relatives must be presumed dead following unacknowledged detention 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 Viskhadzhi Magamadov and Khaskhan Mezhiyev.

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

92. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, p. 49, § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

93. In the present case, the kidnapping of Viskhadzhi Magamadov and Khaskhan Mezhiyev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

94. The Court notes at the outset that most of 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 presented by the Government.

95. The Court notes that the authorities were immediately made aware of the crime by the applicants. The investigation in case no. 59263 was instituted on 22 November 2002, that is, eight days after Viskhadzhi Magamadov and Khaskhan Mezhiyev's abduction. Such a postponement was liable in itself 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. It appears that after that a number of essential steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all. For example, the Government produced no detailed information on the witnesses who had allegedly been questioned or on the dates on which those interviews had been held. It is obvious that such interviews, if they were to produce any

meaningful results, should have been organised immediately after the crime was reported to the authorities, and as soon as the investigation commenced.

96. A number of essential steps were never taken. Most notably, it appears that the investigators had taken no steps to establish the owner of the APCs that had moved around Mesker-Yurt on 14 November 2002. Nor does it appear that the investigation tried to identify and question the servicemen who had manned the checkpoints on the way to Mesker-Yurt.

97. The Court also notes that even though the applicants were eventually granted victim status in case no. 59263, they were 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.

98. Finally, the Court notes that the investigation in case no. 59263 was suspended and resumed a number of times and that there were lengthy periods of inactivity at the district prosecutor's office when no proceedings were pending.

99. Having regard to the Government's objection to admissibility joined to the merits of the complaint (see paragraph 65 above), inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the authorities' failure to take necessary and urgent investigative measures undermined the effectiveness of the investigation in its early stages. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection.

100. 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 Viskhadzhi Magamadov and Khaskhan Mezhiyev, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

101. The applicants relied on Article 3 of the Convention, submitting that as a result of their husbands' 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

102. The Government disagreed with these allegations and argued that the investigation had not established that the applicants had been subjected

to inhuman or degrading treatment prohibited by Article 3 of the Convention.

103. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

105. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the 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).

106. In the present case the Court notes that the applicants are the wives of the missing persons. The first applicant witnessed the abduction of the two men. For almost six years the applicants have not had any news of Viskhadzhi Magamadov and Khaskhan Mezhiyev. During this period they have applied to various official bodies with enquiries about husbands, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of the two men following their kidnapping. The responses received by the applicants mostly denied that the State was responsible for their 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.

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

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

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

109. The applicants further stated that Viskhadzhi Magamadov and Khaskhan Mezhiyev had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

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

...

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

...

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

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

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

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

A. The parties' submissions

110. In the Government's opinion, no evidence was obtained by the investigators to confirm that Viskhadzhi Magamadov and Khaskhan

Mezhiyev had been deprived of their liberty in breach of the guarantees set out in Article 5 of the Convention.

111. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

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

114. The Court has found it established that Viskhadzhi Magamadov and Khaskhan Mezhiyev were abducted by State servicemen on 14 November 2002 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

115. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their husbands had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard them against the risk of disappearance.

116. In view of the foregoing, the Court finds that Viskhadzhi Magamadov and Khaskhan Mezhiyev were held in unacknowledged

detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. The parties’ submissions

118. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them.

119. The applicants reiterated the complaint.

B. The Court’s assessment

1. *Admissibility*

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

2. *Merits*

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

Kingdom, judgment of 25 June 1997, *Reports of Judgments and Decisions* 1997-III, p. 1020, § 64).

122. As regards the complaint of lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life 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).

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

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

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

126. As regards the applicants' reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on account of the applicants' mental suffering as a result of the disappearance of their husbands, their inability to find out what had happened to them and the way the authorities had handled their complaints. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

127. As regards the applicants' reference to Article 5 of the Convention, the Court reiterates that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a

violation of Article 5 of the Convention resulting from unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

VIII. ALLEGED VIOLATIONS OF ARTICLE 14 OF THE CONVENTION

128. In their initial application form the applicants stated that they had been discriminated against on the grounds of their ethnic origin. Article 14 provides:

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

129. In the observations on admissibility and merits of 27 August 2007 the applicants stated that they no longer wished their complaints under Article 14 of the Convention to be examined.

130. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character, affecting respect for human rights, as defined in the Convention, which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unpublished; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

133. The applicants claimed compensation for the lost wages of their husbands after their arrest and subsequent disappearance. They submitted

that, even though Viskhadzhi Magamadov and Khaskhan Mezhiyev had been unemployed at the time of their abduction, it was reasonable to suppose that they would have found a job and earned at least the official minimum wage and would have supported the applicants and their minor children. The first applicant claimed a total of 445,520.91 Russian roubles (RUB) under this head (approximately 12,200 euros (EUR)). The second applicant claimed RUB 589,348.25 (approximately EUR 16,200).

134. The Government regarded these claims as unfounded.

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

B. Non-pecuniary damage

136. The applicants claimed EUR 80,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their husbands, the indifference shown by the authorities towards them and the failure to provide any information about the fate of the missing men.

137. The Government considered the amounts claimed excessive.

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

C. Costs and expenses

139. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and 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. They also claimed administrative expenses, which were not supported by any documents, and international courier fees

as confirmed by invoices. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 8,148.05.

140. The Government disputed the reasonableness and the justification of the amounts claimed under this head. They also submitted that the applicants' claims for just satisfaction had been signed by six lawyers, while three of them had not been mentioned in the powers of attorney issued by the applicants.

141. The Court points out that the applicants had given authority to act to the SRJI and its three lawyers. The applicants' claims for just satisfaction were signed by six persons in total. The names of three of them appeared in the powers of attorney, while three other lawyers collaborated with the SRJI. In such circumstances the Court sees no reasons to doubt that the six lawyers mentioned in the applicants' claims for costs and expenses took part in preparation of the applicants' observations.

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

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

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

145. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award the amount of EUR 5,000, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to the applicants, the amount due to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 14 of the Convention;
2. *Dismisses* the Government's objection as to the abuse of the right of petition;
3. *Decides* to join to the merits the Government's objection as to non-exhaustion of domestic remedies and rejects it;
4. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of Viskhadzhi Magamadov and Khaskhan Mezhiyev;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Viskhadzhi Magamadov and Khaskhan Mezhiyev disappeared;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Viskhadzhi Magamadov and Khaskhan Mezhiyev;
9. *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;
10. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 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 3,000 (three thousand euros) in respect of pecuniary damage to each of the applicants, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

- (ii) EUR 35,000 (thirty-five thousand euros), in respect of non-pecuniary damage to each of the applicants, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;
- (iii) EUR 4,150 (four thousand one hundred and fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicants;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

12. *Dismisses* the remainder of the applicants' claim 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