



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

FIRST SECTION

CASE OF KHADZHIALIYEV AND OTHERS v. RUSSIA

(Application no. 3013/04)

JUDGMENT

STRASBOURG

6 November 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Khadzhialiyeu 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,

Dean Spielmann,

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. 3013/04) 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 three Russian nationals, Mr Salman Saidovich Khadzhialiyeu, born in 1932; Ms Alpaty Elikhanova, born in 1937; and Mr Magamed Ramzanovich Khadzhialiyeu, born in 2002, (“the applicants”), on 27 November 2003.

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

4. On 5 April 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants lived in the village of Samashki, the Achkhoy-Martan District, in the Chechen Republic.

A. Disappearance of Ramzan and Rizvan Khadzhaliyev

1. The applicants' account

7. The first and second applicants are the parents of Mr Ramzan Salmanovich Khadzhaliyev, born in 1977, and Mr Rizvan Salmanovich Khadzhaliyev, born in 1979. The third applicant is Ramzan Khadzhaliyev's son.

8. On the night of 14 to 15 December 2002 the first and second applicants, their sons and Ramzan Khadzhaliyev's wife, Mrs Petimat Kubiyeva, were sleeping in the family home at 45 Lenina Street, in the village of Samashki. At about 3 a.m. on 15 December 2002 around eight unidentified men wearing camouflage uniforms broke into the house. They were armed with machine guns and spoke Russian without an accent. Some of them wore masks; the unmasked men had Slavic features. The applicants believed that the men belonged to the Russian federal troops.

9. The first applicant and his sons got up and left their bedrooms. The servicemen forced the Khadzhaliyev men to the floor and then beat them with machine gun butts. They also beat the second applicant and Mrs Petimat Kubiyeva, then pregnant with the third applicant.

10. In the meantime, several servicemen searched the house without producing a warrant, found some money and seized it. They also demanded the Khadzhaliyev brothers' identity papers.

11. Having severely beaten Ramzan and Rizvan Khadzhaliyev, the servicemen tied and handcuffed the brothers. They locked the other family members in one room, did not allow the Khadzhaliyev brothers to dress themselves and dragged them away.

12. The applicants did not see the servicemen leaving, but it was rumoured that they drove away in an UAZ vehicle.

2. Information submitted by the Government

13. The investigation established that at about 3 a.m. on 15 December 2002 unidentified persons wearing camouflage uniforms and armed with machine guns had entered the house at 43 Lenin Street in the village of

Samashki, kidnapped Ramzan and Rizvan Khadzhaliyev and taken them away in an unknown direction.

B. The search for Ramzan and Rizvan Khadzhaliyev and the investigation into their kidnapping

1. The applicants' account

14. Immediately after the abduction of their relatives the applicants contacted their neighbour, Mr S., a police officer. In the morning of 15 December 2002 Mr S. informed the Department of the Interior of the Achkhoy-Martan District ("the Achkhoy-Martan ROVD") of the Khadzhaliyev brothers' abduction.

15. During the following days one of the applicants' relatives visited several State agencies and requested information as to the whereabouts and fate of Ramzan and Rizvan Khadzhaliyev. Officials assured him that their disappearance would be investigated.

16. The first and second applicants continued to search for their sons and repeatedly wrote to various official bodies asking for assistance in finding the Khadzhaliyev brothers. They were assisted in their efforts by the SRJI.

2. The Government's account

17. On 15 December 2002 the second applicant requested the Achkhoy-Martan inter-district prosecutor's office ("the inter-district prosecutor's office") to assist in the search for her sons. On the same date an investigator of the inter-district prosecutor's office examined the crime scene and found three firearm cartridges of 9 mm calibre.

18. On 17 December 2002 the inter-district prosecutor's office instituted an investigation into the disappearance of Ramzan and Rizvan Khadzhaliyev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 63099.

C. Discovery of the remains of Ramzan and Rizvan Khadzhaliyev

19. At about 3 p.m. on 19 December 2002 body parts of two dead males were found in a field belonging to the Sernovodskiy farm in the Sunzhenskiy District, approximately 10 kilometres from the village of Samashki. On the same date servicemen of the Department of the Interior of the Sunzhenskiy District ("the Sunzhenskiy ROVD") examined the Sernovodskiy farm field and collected body parts of two dead males, fragments of clothing and splinters of an explosive device.

20. According to the applicants, the remains were spread over an area of 500 square metres. Upon their examination it was established that the

remains originated from dead bodies which had been decapitated and then blown up. The heads of those killed were not found.

21. On 20 December 2002 an investigator of the inter-district prosecutor's office examined the remains in the premises of the Sunzhenskiy ROVD. On the same date the first applicant and his relatives identified the remains as belonging to Ramzan and Rizvan Khadzhailiyev. According to the applicants, the identification was based on the victims' distinctive hands and fingers, as well as on the fragments of clothing.

22. On 21 December 2002 the applicants' family buried the remains of the Khadzhailiyev brothers.

23. On 17 January 2003 the civil registry office of the Achkhoy-Martan District certified the death of Ramzan and Rizvan Khadzhailiyev. The date and the place of death were recorded as 21 December 2002, the village of Samashki. The cause of death was not recorded.

D. Investigation into the killing of Ramzan and Rizvan Khadzhailiyev

1. The applicants' account

24. On 27 and 28 December 2002 the inter-district prosecutor's office granted victim status to Mrs Petimat Kubiyeva and to the second applicant, respectively.

25. On 17 February 2003 the inter-district prosecutor's office suspended the investigation and notified the applicants accordingly.

26. On 12 June 2003 the first applicant requested the inter-district prosecutor's office to find his sons' killers. On 26 June 2003 the inter-district prosecutor's office replied that the decision to suspend the investigation into the murder of Ramzan and Rizvan Khadzhailiyev opened under Article 105 § 2 of the Russian Criminal Code (aggravated murder) had been quashed on 27 June 2003 and assured the first applicant that the investigative authorities would take the requisite steps to solve the crime.

27. On 27 June 2003 the inter-district prosecutor's office informed Mrs Petimat Kubiyeva that the investigation in case no. 63099 had been resumed.

28. On 27 July 2003 the inter-district prosecutor's office informed the victims that the investigation into the murder of Ramzan and Rizvan Khadzhailiyev had been suspended for failure to identify the alleged perpetrators.

29. On 18 September 2003 the first and second applicants requested an update from the inter-district prosecutor's office as to the progress in the investigation. In reply, on 26 September 2003 they were informed that the investigation into the murder of Ramzan and Rizvan Khadzhailiyev had been opened on 17 December 2002 and then suspended on 27 July 2003,

but that investigative measures were being taken to solve the crime and that the investigation was being supervised by the prosecutor's office of the Chechen Republic.

30. On 20 October 2003 the first applicant complained to the prosecutor's office of the Chechen Republic about the inactivity of the inter-district prosecutor's office and asked for assistance in finding his sons' killers.

31. On 27 October 2003 the first applicant asked the prosecutor's office of the Chechen Republic to resume the investigation in case no. 63099, to inform him on what date the investigation had been opened, to give a detailed account of the investigative measures taken and to let him study the forensic report drawn up after the discovery of the remains of Ramzan and Rizvan Khadzhailiyev.

32. On 1 December 2003 the SRJI wrote to the inter-district prosecutor's office repeating in essence the first applicant's questions contained in his letter of 27 October 2003 and asking for an update on progress in the investigation.

33. On 9 December 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the inter-district prosecutor's office.

34. On 18 December 2003 the inter-district prosecutor's office informed the first applicant that the investigation in case no. 63099 had been opened under Article 126 § 2 and then re-qualified under Article 105 § 2 of the Russian Criminal Code after the discovery of the remains of Ramzan and Rizvan Khadzhailiyev. They also noted that the investigation had been ample and that, even though it had been stayed, measures were being taken to solve the crime. The first applicant was invited to the inter-district prosecutor's office in order to study the forensic report at his convenience.

35. On 23 December 2003 the prosecutor's office of the Chechen Republic informed the SRJI that the investigation into the kidnapping of Ramzan and Rizvan Khadzhailiyev by "unidentified persons" had been opened under Article 126 § 2 of the Russian Criminal Code and then stayed and that investigative measures were being taken to establish the Khadzhailiyev brothers' whereabouts and to find those responsible for their deaths.

36. On 20 January 2004 the SRJI requested the inter-district prosecutor's office and the prosecutor's office of the Chechen Republic to clarify under which provision of the Russian Criminal Code the investigation had been opened and to provide detailed information as to its progress.

37. On 12 February 2004 the prosecutor's office of the Chechen Republic replied to the SRJI that the investigation had been opened under Article 126 § 2 and then re-qualified under Article 105 § 1 of the Russian Criminal Code and that the relatives of the victims of the crime had studied

the forensic report. They also noted that investigative measures were being taken to solve the crime.

38. On 3 August 2004 the SRJI requested the inter-district prosecutor's office to inform them whether there had been any special operations conducted by the Russian federal troops in the village of Samashki in December 2002, whether any curfew had been set up and, if so, whether vehicles had been allowed to circulate freely after the curfew, and whether there had been any checkpoints based in the surrounding area of the village of Samashki.

39. On 9 August 2004 the first applicant requested the prosecutor's office of the Chechen Republic to investigate the events of 15 December 2002 and to inform him of the progress in the proceedings. On 3 September 2004 the inter-district prosecutor's office replied that the investigation had been opened on 17 December 2002 and stayed on 27 July 2003 and that investigative steps were being taken to identify those responsible for the deaths. On 13 September 2004 the inter-district prosecutor's office sent the first applicant an identical letter.

40. On 4 April 2005 the SRJI requested information on the progress in the investigation from the inter-district prosecutor's office and the prosecutor's office of the Chechen Republic.

41. On 1 June 2005 the prosecutor's office of the Chechen Republic replied to the SRJI that the contents of the investigation file were confidential pursuant to Article 161 of the Russian Code of Criminal Procedure ("CCP").

2. The Government's account

42. On 19 December 2002 the inter-district prosecutor's office questioned as a witness Mr O.A., an employee of the Sernovodskiy farm. Mr A. submitted that at about 10 a.m. on 19 December 2002 he had found several body parts and a shell hole with a diameter of 1.5 m near a motorway and informed the ROVD of it.

43. On 21 December 2002 the inter-district prosecutor's office re-classified the crime investigated in case no. 63099 as aggravated murder punishable under Article 105 § 2 of the Russian Criminal Code.

44. On 21 December 2002 the inter-district prosecutor's office questioned Mr M., a Sunzhenskiy ROVD policeman. Mr M. submitted that at about 2.30 a.m. on 15 December 2002, while a group of the Sunzhenskiy ROVD servicemen had been patrolling the village of Samashki, he had seen two UAZ vehicles without registration number plates and a few armed persons in camouflage uniforms standing near the vehicles. The armed men had explained that they had come from Grozny to carry out a special operation. Some thirty minutes later Mr M. had heard shots. Then around fifteen armed men in camouflage uniforms had arrived from Lenin Street, got into the UAZ vehicles and driven away. Mr M. had gone down Lenin

Street and met the applicants who had told him about the Khadzhialiyev brothers' abduction.

45. On 25 December 2002 the inter-district prosecutor's office questioned Mr Yu.A., a Sunzhenskiy ROVD policeman. The witness submitted that on the night of 15 December 2002 he had been on duty at the police precinct of the village of Samashki. At about 2.30 a.m., while patrolling the village, he had seen two UAZ vehicles without registration number plates and reported it to the precinct. His colleague Mr M. had talked to the men in the vehicles. Thirty minutes later around twenty armed and masked men had got into the vehicles and driven away.

46. On 26 December 2002 the inter-district prosecutor's office questioned Mr M.A., Ramzan and Rizvan Khaliadzhiyev's uncle, who gave an account of the events of the night of 15 December 2002 and submitted that he had identified his nephews' clothes.

47. On 27 December 2002 the inter-district prosecutor's office granted victim status to the second applicant and to Mrs Petimat Kabiyeveva and questioned them.

48. On 27 December 2002 an investigator of the inter-district prosecutor's office ordered the Sunzhenskiy ROVD and the Achkhoy-Martan ROVD to take investigative measures in order to identify the perpetrators and eye-witnesses and to obtain information about the Khadzhialiyev brothers. In reply he was informed that investigative measures, although thus far fruitless, were being taken, that eye-witnesses had not been identified, that neither the UAZ vehicles nor those who had identified themselves as servicemen of Grozny law enforcement agencies had been found and that the Khadzhialiyev brothers had had positive references from their fellow villagers.

49. On 27 December 2002 the inter-district prosecutor's office ordered the experts of the Ministry of the Interior of the Chechen Republic to carry out a ballistic examination of the three firearm cartridges and a pyrotechnic examination of the explosive device's splinters. It was established that the cartridges had been fired from a Makarov handgun of 9 mm calibre or from another analogous handgun. The cartridges did not correspond to those kept in the forensics department. Furthermore, the experts established that the splinters were "fragments of a jacket of an industrially manufactured shrapnel shell of 152 mm calibre, which [was] used by illegal armed groups on the territory of the Chechen Republic as [a] self-made explosive device for terrorist attacks".

50. On 4 and 15 January 2003 two witnesses – the applicants' relative and their neighbour – were questioned.

51. On 11 January 2003 the inter-district prosecutor's office ordered the forensics bureau of the Chechen Republic to carry out an expert post-mortem examination of the remains identified as those of Ramzan and Rizvan Khadzhialiyev. It was established that the remains were body parts

of at least two persons which had been dismembered as a result of the damaging effects of an explosion.

52. On 3 February 2003 the first applicant was questioned as a witness.

53. On 17 February 2003 the inter-district prosecutor's office suspended the investigation in case no. 63099 for failure to identify those responsible and notified the second applicant and Mrs Petimat Kabiyeve accordingly.

54. On 7 June 2003 the inter-district prosecutor's office requested the operation and search bureau no. 2 of the Main Department of the Ministry of Interior for the South Federal Circuit ("ORB-2") to identify the policemen who had arrived in the Achkhoy-Martan District to carry out special operations. In reply they were informed that on the night of 15 December 2002 no arrest operations had been carried out in respect of Ramzan and Rizvan Khadzhaliyev.

55. On 27 June 2003 the inter-district prosecutor's office resumed the investigation.

56. On 29 June 2003 the inter-district prosecutor's office requested information concerning the Khadzhaliyev brothers from the Achkhoy-Martan ROVD. In reply they were informed that the criminal police had no information capable of compromising Ramzan and Rizvan Khadzhaliyev. On the same date the inter-district prosecutor's office requested the prosecutor's office of the Zavodskoy District of Grozny to establish which law enforcement agencies had carried out special operations in the Achkhoy-Martan District between 13 and 17 December 2002. In reply they were informed that the law enforcement agencies of the Zavodskoy District had not carried out any such operations.

57. On 30 June 2003 the inter-district prosecutor's office requested information on Ramzan and Rizvan Khadzhaliyev from the Department of the Federal Security Service for the Chechen Republic. They were informed that the two missing men had not been the subject of any investigation.

58. On 3 July 2003 Mr F., one of the policemen who had collected the remains of Ramzan and Rizvan Khadzhaliyev on 19 December 2002, was questioned as a witness.

59. On 4 July 2003 Mr E.M., a police expert who had participated in the examination of the scene of the incident on 19 December 2002, was questioned.

60. On 5 July 2003 Mr Yu.A. was again questioned.

61. In July 2003 the inter-district prosecutor's office questioned a number of acquaintances of Ramzan and Rizvan Khadzhaliyev.

62. On 27 July 2003 the investigation was suspended for failure to identify those responsible and the relatives of the victims were notified accordingly.

63. On 9 June 2007 the inter-district prosecutor's office quashed the decision of 27 July 2003 and resumed the investigation in case no. 63099.

64. Despite specific requests by the Court the Government did not disclose the majority of the contents of the investigation file in case no. 63099, providing only copies of decisions to suspend and resume the investigation and to grant victim status. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the CCP, 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

65. 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

66. 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 "incriminate the Russian Federation in allegedly adopting a policy infringing upon human rights in 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.

67. 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 an 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

68. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that

the investigation of the killing of Ramzan and Rizvan Khadzhaliyev had not yet been completed.

69. The applicants contested that objection. They stated that the criminal investigation had been pending for more than five years without producing any meaningful results and thus had proved to be ineffective.

B. The Court's assessment

70. 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).

71. 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).

72. The Court observes that the applicants complained to the law enforcement authorities immediately after the abduction of Ramzan and Rizvan Khadzhaliyev and that an investigation has been pending since 17 December 2002. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

73. 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

74. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Ramzan and Rizvan Khadzhaliyev and then killed them had been State agents. In support of their complaint they referred to the following facts. The armed men who had abducted Ramzan and Rizvan Khadzhaliyev had had Slavic features and had spoken Russian without an accent, which proved that they were not of Chechen origin. The men had arrived in military vehicles late at night, which indicated that they had been able to circulate freely past the curfew. The armed men driving the UAZ vehicles had told the ROVD policemen that they belonged to the law enforcement agencies of Grozny. The Government explained their refusal to submit the investigation file in case no. 63099 by saying that it contained "information constituting military secrets related to the disposition and activities of the military and special units".

75. The Government submitted that there was no evidence that Ramzan and Rizvan Khadzhaliyev had been detained by State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. The crime could have been attributable to illegal armed groups. 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 also observed that a considerable number of armaments had been stolen from Russian arsenals in the 1990s and suggested that the crime could have been committed by members of illegal armed groups. Furthermore, the Government asserted that it had not been proven that the UAZ vehicles seen by the policemen on the night of Ramzan and Rizvan Khadzhaliyev's abduction had been the same as those in which the two men had been taken away. The cartridges found in the applicants' courtyard proved that the Khadzhaliyev family had used firearms and thus had presented a clear danger. The fact that the witnesses had not heard any sound of an explosion proved that the bodies of Ramzan and Rizvan Khadzhaliyev had not been blown up on 15 December 2002. Moreover, the Government questioned the results of the identification of the remains because the heads of the dead bodies had not been found.

B. The Court's evaluation of the facts

1. General principles

76. 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-...).

77. 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).

78. 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.

79. 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).

80. 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).

81. 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*

82. The Court notes that despite its requests for a copy of the investigation file into the abduction of Ramzan and Rizvan Khadzhaliyev, the Government produced only a small number of the documents from the case file. The Government referred to Article 161 of the CCP. 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)).

83. 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 deaths of the applicants' relatives can be attributed to the authorities.

84. The applicants alleged that the persons who had taken Ramzan and Rizvan Khadzhaliyev away on 15 December 2002 and then killed them had been State agents.

85. The Government suggested in their submission that the persons who had detained Ramzan and Rizvan Khadzhaliyev could be 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).

86. 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).

87. The Court notes that the applicants' assertion that the men who abducted Ramzan and Rizvan Khadzhaliyev were State agents has been maintained throughout the investigation. In particular, the local policemen informed the investigating authorities that on the night of 14 to 15 December 2002 they had seen a group of armed men in camouflage uniforms in two UAZ vehicles who had identified themselves as servicemen from Grozny carrying out a special operation (see paragraphs 44 and 45 above). The mere fact that the police were satisfied with the explanation given by the armed men strongly supports the applicants' allegation that the latter were State servicemen. Besides, the domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law enforcement agencies had been involved in the abduction (see paragraphs 54 and 56 above).

88. The Court is not persuaded by the Government's argument that the UAZ vehicles seen by the policemen were not the ones in which the applicants' relatives were taken away. In its view, it is hardly probable that two different groups of armed men in camouflage uniforms were driving through the village of Samashki in UAZ vehicles on the same night. Moreover, it is doubtful that any other UAZ vehicles allegedly belonging to illegal armed groups could remain unnoticed by the police unit patrolling the village.

89. 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 special forces in the kidnapping and subsequent killing 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 Ramzan and Rizvan Khadzhaliyev were apprehended on 15 December 2002 by State servicemen during an unacknowledged security operation.

90. The next point to be considered by the Court is whether there is a link between Ramzan and Rizvan Khadzhialiyev's abduction and their deaths.

91. The Court does not share the Government's doubts as to the accuracy of the identification of the remains found on 19 December 2002. It notes in this respect that, should the investigators have questioned the submissions made by the relatives of Ramzan and Rizvan Khadzhialiyev in the course of the identification, they could have ordered a DNA expert examination. Accordingly, the Court considers it proven that the remains belonged to the applicants' relatives.

92. The circumstances and time of death of Ramzan and Rizvan Khadzhialiyev remain unclear. The date of death recorded in the death certificates does not appear to be correct given that the dead bodies were found two days previously (see paragraphs 19 and 23 above). The Court is precluded from examining the data contained in the post-mortem forensic report due to the Government's failure to submit a copy of it. In such circumstances the Court is ready to draw inferences from the Government's unwillingness to produce this document. Considering that the exploded remains were found only four days after the abduction, it thus deems it plausible that Ramzan and Rizvan Khadzhialiyev were killed by the same persons who had kidnapped them.

93. Having regard to the above, the Court finds it established that Ramzan and Rizvan Khadzhialiyev were killed by State servicemen following their apprehension and that the State authorities are to be held responsible for their deaths.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

94. The applicants complained under Article 2 of the Convention that their relatives had been detained by Russian servicemen and then killed 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

95. The Government contended that the domestic investigation had obtained no evidence to the effect that any servicemen of the federal law enforcement agencies had been involved in Ramzan and Rizvan Khadzhaliyev's kidnapping and subsequent killing. The Government claimed that the criminal investigation met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

96. The applicants maintained their complaints 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

97. 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 73 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Ramzan and Rizvan Khadzhaliyev

98. 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*, cited above, § 391).

99. The Court has already found it established that the applicants' relatives were killed by State servicemen and that the deaths can be attributed to the State (see paragraph 93 above). 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 Ramzan and Rizvan Khadzhialiyev.

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

100. 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).

101. In the present case, the kidnapping and murder of Ramzan and Rizvan Khadzhialiyev were investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

102. 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 as to its progress presented by the Government.

103. The authorities were informed of Ramzan and Rizvan Khadzhialiyev's abduction shortly after the incident. It is obvious that they took note of that information as the investigator of the inter-district prosecutor's office examined the crime scene on 15 December 2002 (see paragraph 17 above). Three handgun cartridges were found in the applicants' courtyard during the examination, which indicated that there had been acts of violence and, consequently, that Ramzan and Rizvan Khadzhialiyev's lives were probably in danger. Nevertheless, the inter-district prosecutor's office instituted the investigation into the kidnapping only two days later regardless of the need to promptly carry out investigative measures in order to find the abducted men (see paragraph 18 above).

104. The Court observes that a number of crucial investigative measures were delayed. For instance, the post-mortem examination of the remains identified as those of Ramzan and Rizvan Khadzhialiyev was ordered some three weeks after their discovery. The first applicant who had witnessed his sons' abduction was questioned for the first time six weeks after the incident. The persons who had been present at the moment of the collection of the remains were questioned seven months after that event. The Court considers that, in order to comply with their obligation to exercise exemplary diligence in dealing with a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II), the investigating authorities should have taken these measures more promptly.

105. Furthermore, the Court observes that it does not appear that the investigators have taken any measures to verify which plant or factory produced the industrially manufactured shell found near the remains of the applicants' relatives although such information could have been used to disclose the initial purchaser of that armour.

106. The Court also notes that even though the second applicant was eventually granted victim status in case no. 63099, 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.

107. Finally, the Court notes that the investigation in case no. 63099 was suspended on 17 February 2003, that is, two months after its commencement. It was resumed on 27 June 2003 and continued for a month. Furthermore, no proceedings whatsoever were pending between 27 July 2003 and 9 June 2007, that is, for almost four years. The Government did not advance any plausible explanation for such a considerable period of inactivity. The investigation was only resumed after the present application had been communicated to the Government on 5 April 2007.

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

109. 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 and death of Ramzan and Rizvan Khadzhialiyev, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

110. The applicants relied on Article 3 of the Convention, submitting that as a result of their relatives' abduction and killing and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. They also claimed that Ramzan and Rizvan Khadzhialiyeu had been ill-treated by Russian servicemen and that there was no effective investigation into the ill-treatment. Furthermore, the first and second applicants complained that at the moment of their sons' abduction they had been beaten. Article 3 reads:

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

A. The parties' submissions

111. The Government disagreed with these allegations and argued that the investigation had not established that either the applicants or Ramzan and Rizvan Khadzhialiyeu had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

112. The applicants maintained their submissions.

B. The Court's assessment

1. *Admissibility*

(a) **The complaint concerning Ramzan and Rizvan Khadzhialiyeu**

113. 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, pp. 64-65, § 161 in fine).

114. The Court has found it established that Ramzan and Rizvan Khadzhialiyeu were detained on 15 December 2002 by federal forces and then died while in the hands of servicemen as a result of the use of force (see paragraphs 89 and 93 above). However, the description of the remains of their bodies made by the forensic experts does not permit the Court to conclude beyond reasonable doubt that the two men had been tortured or otherwise ill-treated prior to their deaths.

115. 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.

116. As to the alleged violation of procedural guarantees of Article 3, the Court considers that in the absence of any reliable information about the alleged ill-treatment of Ramzan and Rizvan Khadzhialiyev this complaint raises no separate issue from that examined above under Article 2 and to be examined below under Article 13 of the Convention (see *Luluyev and Others v. Russia*, no. 69480/01, § 107, ECHR 2006-... (extracts)).

(b) The complaint concerning the ill-treatment of the first and second applicants on 15 December 2002

117. The Court observes that the first and second applicants did not submit any documentary evidence, such as medical certificates or witness statements, confirming that they had sustained any injuries on 15 December 2002. Nor does it appear that this complaint has been properly raised before the domestic law enforcement authorities. The Court thus finds that this complaint has not been substantiated.

118. 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.

(c) The complaint concerning the applicants' moral suffering

119. 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

120. The Court notes that while a family member of a “disappeared person” can claim to be a victim of treatment contrary to Article 3 (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, §§ 130-34), the same principle would not usually apply to situations where the person taken into custody has later been found dead (see *Tanli v. Turkey*, no. 26129/95, § 159, ECHR 2001-III (extracts)). However, if a period of initial disappearance is long it may in certain circumstances give rise to a separate issue under Article 3 (see *Gongadze v. Ukraine*, no. 34056/02, §§ 184-186, ECHR 2005-XI).

121. The Court observes that Ramzan and Rizvan Khadzhialiyev were abducted on 15 December 2002. Their remains were found on 19 December 2002, that is, four days later. The Court is not persuaded that in the present case there was a distinct long-lasting period during which the applicants sustained uncertainty, anguish and distress characteristic to the specific phenomenon of disappearances (see, by contrast, *Luluyev and Others*, cited above, § 115; and *Kukayev v. Russia*, no. 29361/02, § 107, 15 November 2007). Nonetheless, in order to decide whether there has been a violation of Article 3 of the Convention in respect of the applicants, the Court deems it

necessary to pay attention to the following. Ramzan and Rizvan Khadzhiyev's corpses were dismembered and decapitated. Only some of their fragments were discovered, while the missing parts have not been found to date. For almost six years the applicants have been unable to bury the dead bodies of their loved ones in a proper manner, which in itself must have caused their profound and continuous anguish and distress. The Court thus considers in the specific circumstances of this case the moral suffering endured by the applicants has reached 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 (see, by contrast, *Nesibe Haran v. Turkey*, no. 28299/95, § 84, 6 October 2005).

122. In view of the above, the Court finds that there has been a breach of Article 3 of the Convention in respect of the applicants.

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

123. The applicants further stated that Ramzan and Rizvan Khadzhiyev 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

124. The Government asserted that Ramzan and Rizvan Khadzhaliyev had not been kept in any detention facilities and claimed that there was no breach of the guarantees set out in Article 5 of the Convention.

125. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

126. 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

127. 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 and Others*, cited above, § 122).

128. The Court has found it established that Ramzan and Rizvan Khadzhaliyev were apprehended by State servicemen on 15 December 2002. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of it. 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).

129. In view of the foregoing, the Court finds that Ramzan and Rizvan Khadzhaliyev 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

130. 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

131. 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.

132. The applicants reiterated the complaint.

B. The Court’s assessment

1. *Admissibility*

133. 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*

134. 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 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).

135. 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 v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

136. 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.

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

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

139. The Court notes that the complaint concerning the applicants' moral suffering is "arguable" for the purposes of Article 13 of the Convention. Nevertheless 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' attitude towards the applicants. In such circumstances the Court considers that no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

140. 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. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

141. 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.”

142. In the observations on admissibility and merits of 7 September 2007 the applicants stated that they no longer wished their complaints under Article 14 of the Convention to be examined.

143. 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).

144. 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

145. 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

146. The applicants claimed damages in respect of the lost wages of their relatives. They asserted that even though Ramzan and Rizvan Khadzhialiyevev 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 that they would have financially supported the applicants. The first applicant claimed 145,198.74 Russian roubles (RUB) (approximately 4,035 euros (EUR)). The second applicant claimed

RUB 193,803.18 (approximately EUR 5,400). The third applicant claimed RUB 227,796.74 (approximately EUR 6,330).

147. The Government regarded these claims as unfounded.

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

B. Non-pecuniary damage

149. The first and second applicants claimed EUR 60,000 each, while the third applicant claimed EUR 40,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members and the indifference shown by the authorities towards them.

150. The Government found the amounts claimed exaggerated.

151. The Court has found a violation of Articles 2, 5 and 13 of the Convention in respect of the applicants' late relatives. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award the first and second applicants jointly EUR 50,000 and the third applicant EUR 20,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

152. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research 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 translation fees confirmed by invoices and administrative expenses that were not supported by any evidence. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 8,406.99.

153. 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 five lawyers, while three of them had not been mentioned in the powers of attorney issued by the applicants.

154. 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 two other lawyers collaborated with the SRJI. In such circumstances the Court sees no reasons to doubt that the five lawyers mentioned in the applicants' claims for costs and expenses took part in preparation of the applicants' observations.

155. 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).

156. 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.

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

158. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award them 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, the award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

159. 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 alleged 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, 5 and 13 of the Convention, as well as the complaint under Article 3 of the Convention regarding the applicants' moral sufferings admissible and the remainder of the application inadmissible;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of Ramzan and Rizvan Khadzhiyev;
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 of Ramzan and Rizvan Khadzhiyev's abduction and death;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ramzan and Rizvan Khadzhiyev;
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) to the first and second applicants jointly and EUR 1,500 (one thousand five hundred euros) to the third applicant, in respect of pecuniary damage, to be

converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

(ii) EUR 50,000 (fifty thousand euros) to the first and second applicants jointly and EUR 20,000 (twenty thousand euros) to the third applicant, in respect of non-pecuniary damage to 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, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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