



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

FIRST SECTION

CASE OF TAGIROVA AND OTHERS v. RUSSIA

(Application no. 20580/04)

This version was rectified on 6 April 2010
under Rule 81 of the Rules of the Court

JUDGMENT

STRASBOURG

4 December 2008

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Tagirova and Others v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 20580/04) 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 seven Russian nationals listed below (“the applicants”), on 7 May 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 1 September 2005 the Court decided to apply Rule 41 of the Rules of Court.

4. On 23 May 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- 1) Ms Zaynap Zhazhayevna Tagirova, born in 1950;
- 2) Mr Taus Daudovich Tagirov, born in 1950;
- 3) Mr Musa Tausovich Tagirov, born in 1982;
- 4) Ms Zarema Abdullayevna Bazayeva¹, born in 1983;
- 5) Ms Madina Tausovna Tagirova, born in 1983;
- 6) Ms Milana Tausovna Tagirova, born in 1981; and
- 7) Ms Ratkha Tausovna Tagirova, born in 1972.

They live in Urus-Martan in the Chechen Republic.

7. The first and second applicants are married to each other. They are the parents of the third, fifth, sixth and seventh applicants and Mr Movsar Tausovich Tagirov, born in 1978. Movsar Tagirov was married to the fourth applicant. At the material time the second applicant was an officer of the special task force of the Chechen Republic. Movsar Tagirov was a trainee of the special task force of the Chechen Republic.

A. Disappearance of Movsar Tagirov

1. The applicants' account

8. On the night of 6 to 7 February 2003 the Tagirovs were sleeping in their family house at 86 Sovetskaya Street, Urus-Martan, in the Chechen Republic.

9. At about 3 a.m. on 7 February 2003 around twenty men wearing camouflage uniforms burst into the applicants' courtyard. They broke down the entrance door of the house; nine or ten of them entered. The men wore masks and were armed with sniper rifles («винторезы») equipped with silencers; they did not identify themselves but the applicants believed that they were Russian servicemen.

10. Having broken into the house, the armed men found in the living room the second applicant's duty machine gun and portable radio transmitter; one of them unloaded the machine gun and pulled a battery out of the radio transmitter.

11. An armed man examined the second applicant's officer's badge and asked him whether there were other men in the house. The second applicant replied that there was his son, a task force trainee.

¹ Rectified on 6 April 2010: the text was “Ms Zarema Abdullayevna Tagirova...”

12. Then the armed men compelled the Tagirovs to proceed to the courtyard. They did not allow Movsar Tagirov to dress himself properly with the result that he left the house without jacket or shoes. The armed men forced him to stand face to the wall and ordered that someone bring his identity papers. The fourth applicant produced a task force trainee's badge; the armed men examined it and then took Movsar Tagirov from the courtyard to the street.

13. Meanwhile three armed men forced the applicants back inside the house and threatened to open fire should they attempt to leave it. The applicants obeyed. Having entered the house, the first applicant looked out of the window and observed the armed men leading Movsar Tagirov down Sovetskaya Street.

14. Some fifteen minutes later the remaining three armed men unblocked the entrance door, proceeded to the courtyard and disconnected a portable radio transmitter installed in the second applicant's car. Then they left.

15. The second applicant ran to his car, turned on the radio transmitter and sent a message about his son's abduction to special task force units, but was unable to discover where he had been taken.

16. According to written statements made by the applicants' neighbours, on the night of 6 to 7 February 2003 the armed men allegedly belonging to the Russian military visited and searched other houses in Sovetskaya Street, Urus-Martan. The neighbours refused to disclose their identities, implying that they feared for their safety.

17. On 31 March 2004 Ms R.T., the applicant's neighbour in Sovetskaya Street, provided the SRJI with her written statement. She submitted that at 3 a.m. on 7 February 2003 armed men in masks and camouflage uniforms had entered her house and searched it. They had also demanded the identity papers of her fifteen-year-old son, who happened to be a namesake of Movsar Tagirov, checked them and left. Later Ms R.T. had been questioned by the district prosecutor's office.

18. On 16 May 2005 the first applicant provided the SRJI with her additional submissions. She reported that on the night of 7 February 2003 the armed men had arrived at her house on foot after travelling in an Ural vehicle and an armoured personnel carrier ("APC"). The military vehicles had been parked some 100 metres away from her house at Andreyev Street near the crossroads with Sovetskaya Street. The armed men had taken her son to the crossroads and then driven east down Andreyev Street where a military unit had been located. The first applicant had not seen any military vehicles herself and had obtained the information on them from residents of Andreyev Street who preferred to remain anonymous as they feared for their safety.

2. Information submitted by the Government

19. At about 3 a.m. on 7 February 2003 unidentified persons armed with machine guns and wearing camouflage uniforms entered the house at 86 Sovetskaya Street and kidnapped Movsar Tagirov.

B. The search for Movsar Tagirov and the investigation

1. The applicants' account

20. From 7 February 2003 onwards the applicants repeatedly complained about Movsar Tagirov's abduction to various official bodies, such as the prosecutors' offices at different levels, the military commander's office of the Urus-Martan District, the Department of the Federal Security Service of the Chechen Republic ("the FSB Department") and the local administration of the Urus-Martan District. In their efforts the applicants were assisted by the SRJI.

21. On 15 February 2003 the prosecutor's office of the Urus-Martan District ("the district prosecutor's office") instituted an investigation into Movsar Tagirov's disappearance under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping) and notified the first applicant accordingly. The number assigned to the case file was not mentioned.

22. On 22 February 2003 the district prosecutor's office granted the first applicant victim status in case no. 34020 concerning Movsar Tagirov's kidnapping by "unidentified men in masks and camouflage uniforms".

23. On 4 April 2003 the first applicant wrote to the district prosecutor's office enquiring about progress in the investigation in case no. 34020. On 10 April 2003 the district prosecutor's office replied that the investigation had been instituted on 15 February 2003 and was under way. They noted that the first applicant would be informed of its outcome.

24. On 11 April 2003 the first applicant wrote to the military commander of the Urus-Martan District, the FSB Department and the local administration describing in detail the circumstances of her son's abduction and asking for assistance in establishing his whereabouts. She mentioned that her son had been abducted by military servicemen driving a grey "UAZ" all-terrain vehicle.

25. On 15 April 2003 the district prosecutor's office suspended the investigation in case no. 34020 for failure to identify those responsible and ordered that the department of the interior of the Urus-Martan District organise the search for Movsar Tagirov and his kidnappers. On 16 April 2003 they informed the first applicant accordingly.

26. On 22 April 2003 the FSB Department informed the first applicant that they had not instituted any criminal proceedings against Movsar Tagirov. They further noted that they had carried out a fruitless inquiry into

Movsar Tagirov's disappearance and suggested that he might have been kidnapped by members of illegal armed groups disguised in military uniforms.

27. On 30 May 2003 the Southern Federal Circuit Department of the Prosecutor General's Office informed the first applicant that they had forwarded her complaint to the prosecutor's office of the Chechen Republic.

28. On 5 and 18 June 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaints to the district prosecutor's office.

29. On 3 July 2003 the military commander's office of the Urus-Martan District informed the first applicant that they had carried out an inquiry into her son's kidnapping and that they had no information on his whereabouts or reasons for his abduction.

30. On 16 July 2003 the first applicant wrote to the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office") asking them to help her find her son. She mentioned that her son had been abducted by military servicemen driving a grey "UAZ" all-terrain vehicle.

31. On 22 July 2003 the UGA prosecutor's office forwarded the first applicant's letter to the military prosecutor's office of military unit no. 20102 ("the unit prosecutor's office") and ordered that it be verified whether Russian federal servicemen had been involved in Movsad Tagirov's kidnapping.

32. On 5 September 2003 the unit prosecutor's office informed the first applicant that they had carried out an inquiry, which had not established any implication of military personnel in her son's kidnapping.

33. On 25 October 2003 the SRJI requested the district prosecutor's office to inform them of progress in the investigation in case no. 34020, to allow the first applicant access to the investigation file and to resume the investigation if it had been suspended. They received no reply and repeated the request on 20 December 2003 with a copy sent to the prosecutor's office of the Chechen Republic.

34. On 2 February 2004 the prosecutor's office of the Chechen Republic informed the SRJI that the investigation into Movsar Tagirov's kidnapping was under way and that investigative measures were being taken to solve the crime.

35. On 20 September 2004 the SRJI requested the district prosecutor's office to inform them of progress in the investigation in case no. 34020 and of investigative measures taken.

36. On 27 October 2004 the prosecutor's office of the Chechen Republic informed the SRJI that the investigation into Movsar Tagirov's kidnapping had been opened and suggested that the first applicant send her further queries to the district prosecutor's office.

37. In her additional submissions to the SRJI of 16 May 2005 the first applicant noted that following her son's abduction she had contacted

numerous “intermediaries” who had connections with the Russian military. According to one of them named “Baysi”, a Russian serviceman named “Pet’ka” had told “Baysi” that Movsar Tagirov upon his abduction had been brought to the military commander’s office of Urus-Martan and spent two or three days there. Then he had been transferred to the temporary department of the interior and then to “Pet’ka’s” military unit. “Pet’ka” had mentioned that the detainee in question had an aquiline nose and a damaged left ear, which corresponded to Movsar Tagirov’s description. After a week spent in the military unit the detainee had been transferred to Khankala military base by a serviceman named “Alferov”. This information was not communicated to the investigating authorities.

38. On 18 March 2005 the SRJI requested that the district prosecutor’s office reply to their letter of 20 September 2004.

39. On 4 and 7 October 2005 the SRJI requested information on case no. 34020 from the district prosecutor’s office, but received no reply.

40. On 20 October 2005 the prosecutor’s office of the Chechen Republic informed the SRJI that the first applicant had been receiving updates on the course of the investigation. The applicants did not receive any such information.

41. On 13 December 2007 the first applicant requested the Achkhoy-Martan Inter-District Investigative Committee of the Russian Prosecutor General’s Office to allow her access to interview records included in the case file and permission to copy them.

2. Information submitted by the Government

42. On 15 February 2003 the district prosecutor’s office instituted an investigation of Movsar Tagirov’s abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 34020.

43. On 22 February 2003 the first applicant was granted victim status and questioned. She submitted that on 7 February 2003 unknown armed men had entered her house, unloaded her husband’s duty machine gun and taken away her son. She did not know the perpetrators and had not heard any noise of vehicles. Other relatives of Movsar Tagirov were questioned in the course of the investigation and made statements identical to that by the first applicant.

44. Law enforcement agencies of the Chechen Republic and the North Caucasus Area replied to the district prosecutor’s office’s queries that Movsar Tagirov had not been arrested, that no criminal proceeding had been instituted against him and that he had not been suspected of participation in illegal armed groups. Movsar Tagirov had not applied for medical assistance to hospitals in the Chechen Republic and had not been detained in remand prisons in the North Caucasus Area. His dead body had not been

found among unidentified corpses. Investigative measures taken had not led to establishing his whereabouts.

45. The investigation was on several occasions suspended for failure to identify the perpetrators. Higher prosecutors ordered the resumption of the proceedings to verify information obtained from the police.

46. The investigation failed to establish the whereabouts of Movsar Tagirov and found no evidence of the involvement of federal troops in the crime. It has not been completed and is pending before the Achkhoy-Martan Inter-District Investigative Committee of the Russian Prosecutor General's Office.

47. Despite specific requests by the Court, the Government did not disclose any documents of the investigation file in case no. 34020. 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

48. 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 REGARDING ABUSE OF THE RIGHT OF PETITION

49. 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 accuse the Russian Federation of being a State which allegedly carries out a policy of violation of human rights in the Chechen Republic. The Government 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.

50. 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 *LOCUS STANDI*

51. The Government suggested that the applicants had probably been unaware of the contents of the application form, which had been signed not by the applicants, but by their representatives and two other collaborators of the SRJI. They concluded that there was a lack of *locus standi* in the present case.

52. The Court notes that the applicants gave the SRJI powers of attorney thus duly authorising this NGO to represent their interests in Strasbourg proceedings, and in particular to sign on their behalf application forms submitted to the Registry. There are no grounds to believe that the applicants issued those powers of attorney against their will. Accordingly, the Government's objection must be dismissed.

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

A. The parties' submissions

53. The Government contended that the applicants' complaints should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Movsar Tagirov had not yet been completed. They further argued that it had been open to the applicants to challenge either in court or before a higher prosecutor any actions or omissions of the investigating or other law enforcement authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil complaints but they had failed to do so.

54. The applicants contested that objection and stated that the criminal investigation had proved to be ineffective. They also argued that remedies suggested by the Government were ineffective given the situation in the Chechen Republic.

B. The Court's assessment

55. 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*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI; *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports of Judgments and Decisions* 1996-IV; and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

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

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

58. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

59. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement authorities immediately after the kidnapping of Movsar Tagirov and that an investigation has been pending since 15 February 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

60. The Court observes that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints and considers that this matter falls to be examined below.

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

A. The parties' arguments

61. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Movsar Tagirov had been State agents. In support of their complaint they referred to the following facts. All roads from Urus-Martan but one had been blocked by federal checkpoints. The residents of Urus-Martan had seen the military vehicles near the applicants' house on the night of 7 February 2003. The first applicant had never told the investigators about the APC and the Ural vehicle because they had not asked her to, but she had been aware that such vehicles had been used to kidnap her son. The perpetrators had been armed with the type of sniper rifles used by the Russian military. At the material time a curfew had been introduced in Urus-Martan. Ms R.T. had confirmed that the perpetrators had checked the identity papers of her son, Movsar Tagirov's namesake.

62. The Government submitted that unidentified armed men had kidnapped Movsar Tagirov. They further contended that the investigation of the incident was pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relative was dead.

63. The Government pointed out that the State authorities had had no reasons to arrest Movsar Tagirov, a trainee special task force officer, and that it was highly probable that the crime had been committed by members of illegal armed groups wishing to take revenge on a future serviceman of a law enforcement agency. Groups of Ukrainian, Belorussian and ethnic Russian mercenaries had committed crimes in the territory of the Chechen Republic; thus, the fact that the perpetrators had Slavic features and spoke Russian did not prove their attachment to the Russian military. The Government also observed that a considerable number of weapons had been stolen by illegal armed groups from Russian arsenals in the 1990s and that anyone could purchase masks and camouflage uniforms. If the perpetrators had been State agents, they would have had detailed information on the applicants' relative and would not have confused him with the fifteen-year-old son of Ms R.T.

64. The Government further emphasised that the applicants had not alleged during the domestic investigation that the perpetrators had used APCs or Ural vehicles and noted that so-called "witnesses" had refused to make statements before the investigators. There had been no evidence that any armed men had visited other houses in the neighbourhood on the night of 7 February 2003. There had been no data to confirm that the second

applicant had sent requests for help via his portable radio transmitter following his son's abduction. The Government doubted the veracity of the statement of "Baysi" referred to by the first applicant. Furthermore, the applicants had never mentioned persons named "Baysi" and "Pet'ka" in their communications with the national authorities.

65. In sum, the Government insisted that involvement of State agents in Movsar Tagirov's kidnapping had not been proven beyond reasonable doubt.

B. The Court's evaluation of the facts

66. In cases where 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-...).

67. The Court points out that a number of principles have been developed in its case-law as regards cases where 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 requiring 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).

68. 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, § 32, Series A no. 336; and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

69. The Court reiterates that it has noted the difficulty for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of

such 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).

70. The Court notes that despite its requests for a copy of the investigation file into the abduction of Movsar Tagirov, the Government produced no documents from the investigation file. They 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)).

71. The Court has found the Russian State authorities responsible for extra-judicial executions or disappearances of civilians in the Chechen Republic in a number of cases, even in the absence of final conclusions from the domestic investigation (see *Khashiyev and Akayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Estamirov and Others v. Russia*, no. 60272/00, 12 October 2006; *Imakayeva*, cited above; and *Baysayeva v. Russia*, no. 74237/01, 5 April 2007). It has done so primarily on the basis of witness statements and other documents attesting to the presence of military or security personnel in the area concerned at the relevant time. It has relied on references to military vehicles and equipment, on witness accounts, on other information on security operations and on the undisputed effective control of the areas in question by the Russian military. On that basis, it has concluded that the areas in question were “within the exclusive control of the authorities of the State” in view of military or security operations being conducted there and the presence of servicemen (see, *mutatis mutandis*, *Akkum v. Turkey*, cited above, § 211; and *Zubayrayev v. Russia*, no. 67797/01, § 82, 10 January 2008).

72. However, in the present case the Court has little evidence on which to draw such conclusions. For instance, the first applicant referred to her conversation with a person named “Baysi” but did not provide any information on his identity or a statement bearing his signature. All witness statements submitted by the applicants but one are anonymous. The Court considers that it cannot regard such statements as reliable evidence.

73. Moreover, the mere fact that the perpetrators were armed with sniper rifles does not necessarily mean that they were State servicemen. The applicants have never submitted that the camouflage uniforms worn by the armed men bore any insignia of the type that should normally appear on uniforms of State agents. It appears that sniper rifles and camouflage

uniforms with no insignia could have been obtained by persons not belonging to the military via various, possibly illegal channels.

74. The information at the Court's disposal does not warrant the conclusion that the armed men had travelled to the applicants' house in military vehicles. Neither the applicants themselves nor Ms R.T. have ever alleged, either before the domestic investigation or before the Court, that they saw any military vehicles in the vicinity of the crime scene with their own eyes. Given that the perpetrators used no vehicles and arrived on foot, the Court considers that they could have moved around the town unbeknown to servicemen at military checkpoints with greater ease than, for example, groups of armed men riding in an armoured personnel carrier. Besides, the applicants themselves submitted that one road leading from Urus-Martan had not been blocked by federal checkpoints, which would facilitate the penetration of insurgents into the town.

75. Furthermore, it is noteworthy that the applicants did not provide information on the APC and Ural vehicle when questioned by the district prosecutor's office. Nor did they mention to the investigators their encounter with "Baysi". The Court is not persuaded that the investigators should have asked the applicants leading questions to establish, for example, whether any APCs or other vehicles had been used by the perpetrators given that it did not occur to the victims of the crime to disclose to the investigation all the relevant information at their disposal of their own motion.

76. Accordingly, the information in the Court's possession does not suffice to establish that the perpetrators belonged to the security forces or that a security operation had been carried out in respect of Movsar Tagirov.

77. At the same time the Court takes into account the Government's submission that Movsar Tagirov, an officer-to-be, could have been a target of illegal armed groups fighting against federal forces in the Chechen Republic. In such circumstances, the Court cannot attribute responsibility for the unlawful acts in the present case to the respondent State without additional evidence to that effect.

78. To sum up, it has not been established to the required standard of proof – "beyond reasonable doubt" – that the security forces were implicated in the kidnapping of Movsar Tagirov; nor does the Court consider that the burden of proof can be entirely shifted to the Government.

V. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

81. The applicants argued that Movsar Tagirov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for more than five years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court's case-law on Article 2. The applicants invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

82. 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 criminal domestic remedies should be joined to the merits of the complaint (see paragraph 60 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 Movsar Tagirov

83. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances in which 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*, 27 September 1995, §§ 146-47, Series A no. 324 and *Avşar*, cited above, § 391).

84. As noted above, the domestic investigation failed to produce any tangible results as to the identities of the persons who had kidnapped Movsar Tagirov. The applicants did not submit persuasive evidence to support their allegations that State agents were the perpetrators of the crime. The Court has already found above that, in the absence of relevant information, it is unable to find that security forces were implicated in the kidnapping of the applicants' relative (see paragraph 78 above). Neither has it established “beyond reasonable doubt” that Movsar Tagirov was deprived of his life by State agents.

85. In such circumstances the Court finds no State responsibility, and thus no violation of the substantive limb of Article 2 of the Convention.

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

86. 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, § 161; and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). 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, §§ 105-09, ECHR 2001-III (extracts); and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

87. The Court notes that there is no proof that Movsar Tagirov has been killed. However, it reiterates that the above-mentioned obligations also apply to cases where a person has disappeared in circumstances which may be regarded as life-threatening (see *Toğcu*, cited above, § 112). The applicants informed the investigating authorities that Movsar Tagirov had been kidnapped by a large group of unknown armed men. Given a considerable number of reported enforced disappearances of persons in the Chechen Republic and persistent confrontation between illegal armed groups and federal troops in the region in the early 2000s, the Court considers that the disappearance of Movsar Tagirov could be regarded as life-threatening. Furthermore, after a certain lapse of time during which no information on the fate of the missing man had been received, both the applicants and investigators could have presumed that he had been deprived of his life at the hands of the kidnappers. Accordingly, the Court concludes that the State authorities were under a positive obligation to investigate the crime in question.

88. Given that there was an investigation into the kidnapping of Movsar Tagirov, the Court must now assess whether it met the requirements of Article 2 of the Convention.

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

90. The Court notes that the authorities were immediately made aware of the crime by the applicants. The investigation in case no. 34020 was instituted on 15 February 2003, that is, eight days after Movsar Tagirov's abduction. Such a delay was liable *per se* 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.

91. The Court notes that, regrettably, it is unable to build a time line of the investigation due to the Government's failure to submit not only the case documents, but also a detailed account of relevant events. Nevertheless, it refers to the Government's assertion that the investigation in case no. 34020 was several times suspended and then resumed and that it had been found lacking by higher prosecutors (see paragraph 45 above). The Court draws inferences from the Government's failure to submit information on the course of the investigation and concludes that a number of essential investigative measures were either delayed or not taken at all.

92. The Court also notes that, even though the first applicant was granted victim status in case no. 34020, the district prosecutor's office only informed her of its decisions of 15 February and 15 April 2003, while it is

clear from the Government's submissions that the investigation was suspended and then resumed a number of times. In such circumstances the Court considers that the investigators clearly and blatantly failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the legitimate interests of the next of kin of the victim in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

93. Finally, the Court notes that the investigation in case no. 34020 was suspended and resumed an unspecified number of times. In such circumstances it is plausible to assume that there were lengthy periods of inactivity of the district prosecutor's office when no proceedings were pending.

94. The Court will now examine the limb of the Government's objection that was joined to the merits of the complaint (see paragraph 60 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. Moreover, the Government mentioned the possibility for the applicants to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions of the investigating authorities before a court. Furthermore, taking into account the finding that the effectiveness of the investigation had already been undermined, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the criminal-law remedies relied on by the Government were ineffective in the circumstances and rejects their objection concerning the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

95. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding Movsar Tagirov's kidnapping in life-threatening circumstances, in breach of Article 2 in its procedural aspect.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

96. The applicants relied on Article 3 of the Convention, submitting that as a result of their relative's disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

97. 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.

98. The applicants maintained their submissions.

B. The Court's assessment

99. Referring to its settled case-law, the Court reiterates that, where a person has been abducted by State security forces and subsequently disappeared, his or her relatives can claim to be victims of treatment contrary to Article 3 of the Convention on account of their mental distress caused by the “disappearance” of their family member and the authorities' reactions and attitudes to the situation when it is brought to their attention (see, among many other authorities, *Kurt v. Turkey*, 25 May 1998, §§ 130-34, *Reports of Judgments and Decisions* 1998-III; and *Timurtaş v. Turkey*, no. 23531/94, §§ 96-98, ECHR 2000-VI).

100. Turning to the circumstances of the present case, the Court notes that the applicants are close relatives of Movsar Tagirov. Accordingly, it has no doubt that the applicants have indeed suffered from grave emotional distress following the kidnapping of their son, husband and brother.

101. The Court recalls that it has already found violations of Article 3 of the Convention in respect of relatives of missing persons in a series of cases concerning the phenomenon of “disappearances” in the Chechen Republic (see, for example, *Luluyev and Others*, cited above, §§ 117-18; *Khamila Isayeva v. Russia*, no. 6846/02, § 143-45, 15 November 2007; and *Kukayev v. Russia*, no. 29361/02, §§ 107-10, 15 November 2007). It is noteworthy, however, that in those cases the State was found to be responsible for the disappearance of the applicants' relatives. In the present case, by contrast, it has not been established to the required standard of proof – “beyond reasonable doubt” – that the Russian authorities were implicated in Movsar Tagirov's kidnapping (see paragraph 78 above). In such circumstances the Court considers that this case is clearly distinguishable from those mentioned above and therefore concludes that the State cannot be held responsible for the applicants' mental distress caused by the commission of the crime itself.

102. Furthermore, the Court is not persuaded that the investigating authorities' conduct in this case, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could in itself have caused the applicants mental distress in excess of the minimum level of severity which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among other authorities, *Cruz Varas and Others v. Sweden*, 20 March 1991, § 83, Series A no. 201).

103. 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.

VII. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

104. The applicants further stated that Movsar Tagirov 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

105. The Government submitted that no evidence had been obtained by the investigators to confirm that Movsar Tagirov had been deprived of his liberty by State agents in breach of the guarantees set out in Article 5 of the Convention.

106. The applicants reiterated the complaint.

B. The Court's assessment

107. 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).

108. Nevertheless, the Court has not found it established “beyond reasonable doubt” that Movsar Tagirov was apprehended by Russian servicemen (see paragraph 78 above). Similarly, it cannot presume that upon his kidnapping the missing man was placed in unacknowledged detention under the control of State agents.

109. The Court therefore considers that this part of the application should be dismissed as being incompatible *ratione personae* and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

110. 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

111. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the actions or omissions of the investigating authorities in court or before higher prosecutors and to bring civil claims for damages. In sum, the Government submitted that there had been no violation of Article 13.

112. The applicants reiterated the complaint.

B. The Court's assessment

113. The Court observes that the complaint made by the applicants under this Article has already been examined in the context of Article 2 of

the Convention. Having regard to the finding of a violation of Article 2 in its procedural aspect (see paragraph 95 above), the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 2 is admissible, there is no need to make a separate examination of this complaint on its merits (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 84-86, ECHR 2004-XI, and *Anık and Others v. Turkey*, no. 63758/00, § 86, 5 June 2007).

IX. ALLEGED VIOLATIONS OF ARTICLE 14 OF THE CONVENTION

114. In their initial application form the applicants stated that they had been discriminated against on the grounds of their ethnic origin in breach of Article 14 of the Convention, which 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.”

115. In the observations on admissibility and merits of 20 December 2007 the applicants stated that they no longer wished their complaint under Article 14 of the Convention to be examined.

116. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character, affecting respect for human rights, as defined in the Convention, which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

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

X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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

119. The fourth applicant claimed damages in respect of her husband's lost wages. She submitted that Movsar Tagirov had almost finished his training as a special task force officer and could have counted on receiving a

monthly salary upon completion of the training. The fourth applicant claimed a total of 2,478,100.11 Russian roubles under this heading (approximately 70,000 euros (EUR)).

120. The Government regarded these claims as unfounded.

121. 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 conclusion that there has been no violation of Article 2 in its substantive aspect, the Court finds that there is no direct causal link between the alleged violation of Movsar Tagirov's right to life and the loss by the fourth applicant of the financial support which he could have provided. Accordingly, it makes no award under this heading.

B. Non-pecuniary damage

122. The first, second and fourth applicants claimed EUR 40,000 each, while the third, fifth, sixth and seventh applicants claimed EUR 5,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member and the indifference shown by the authorities towards them.

123. The Government found the amounts claimed exaggerated.

124. The Court has found a violation of Article 2 in its procedural aspect. It thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It finds it appropriate to award under this head to the first and second applicants EUR 3,000 jointly, the fourth applicant EUR 3,000 and the third, fifth, sixth and seventh applicants EUR 850 each, plus any tax that may be chargeable on these amounts.

C. Costs and expenses

125. 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 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 courier mail expenses and translation fees confirmed by relevant invoices, as well as administrative costs that were not supported by any documents. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 6,717.77.

126. 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. They also doubted that it had been necessary to send the correspondence to the Registry via courier mail.

127. The Court points out that the applicants had given authority to act to the SRJI and its four lawyers. The applicants' observations and 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 reason to doubt that the six lawyers mentioned in the applicants' claims for costs and expenses took part in preparation of the applicants' observations. Moreover, there are no grounds to conclude that the applicants were not entitled to send their submissions to the Court via courier mail.

128. The Court must now establish whether the costs and expenses indicated by the applicants' relative were actually incurred and whether they were necessary (see *McCann and Others*, cited above, § 220).

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

130. 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 the investigation file. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives.

131. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award the applicants' representatives EUR 4,500, less EUR 850 received by way of legal aid from the Council of Europe, plus any tax that may be chargeable to the applicants, the award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

132. 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' complaints under Article 14 of the Convention;
2. *Dismisses* the Government's objection regarding abuse of the right of petition;
3. *Dismisses* the Government's objection regarding *locus standi*;
4. *Decides* to join to the merits the Government's objection regarding non-exhaustion of criminal domestic remedies and rejects it;
5. *Declares* the complaints under Articles 2 and 13 of the Convention admissible and the remainder of the application inadmissible;
6. *Holds* that there has been no violation of Article 2 of the Convention in its substantive limb in respect of Movsar Tagirov;
7. *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 Movsar Tagirov disappeared;
8. *Holds* that no separate issue arises under Article 13 of the Convention in respect of the alleged violation of Article 2;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) in respect of non-pecuniary damage, EUR 3,000 (three thousand euros) to the first and second applicants jointly, EUR 3,000 (three thousand euros) to the fourth applicant and EUR 850 (eight hundred and fifty euros) each to the third, fifth, sixth and seventh 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 3,650 (three thousand six 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;

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

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President