



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

FIRST SECTION

CASE OF ILYASOVA AND OTHERS v. RUSSIA

(Application no. 1895/04)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Ilyasova and Others v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and 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. 1895/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Russian nationals listed below (“the applicants”), on 26 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 Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 26 March 2007 the Court decided to apply Rule 41 of the Rules of Court, to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 13 November 2008 the Court dismissed the Government’s objection concerning the application of Article 29 § 3 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

1. Ms Mingi Khalidovna Ilyasova, born in 1952;
2. Mr Ayub Abubakarovich Ilyasov, born in 1973;
3. Ms Markha Abubakarovna Ilyasova, born in 1975;
4. Ms Maret Abubakarovna Ilyasova, born in 1978.

They live in Mesker-Yurt, Shali District, the Chechen Republic. The first applicant is the mother of Mr Adam Abubakarovich Ilyasov, born in 1983. The other applicants are his brother and sisters.

A. Apprehension and subsequent disappearance of Mr Adam Ilyasov

1. The applicants' account

6. Mr Adam Ilyasov lived with his family at 95 Lenina Street, Mesker-Yurt, Shali District, Chechen Republic. He had never been detained or charged with any offences.

7. According to the first applicant, on 15 November 2002 at around 6 a.m., when she was at home with her daughter and son, Mr Adam Ilyasov, armed servicemen of the Russian federal forces approached the Ilyasovs' house in three armoured personnel carriers (APCs) with licence plates covered with mud. They were wearing masks and uniforms without any insignia. They were armed mostly with small arms and some of them had portable radio transmitters. The servicemen broke into the house and smashed everything inside: they broke doors, tore out window frames, turned the furniture upside down, scattered things everywhere and broke the windows of Mr Adam Ilyasov's truck, a GAZ-3307, which was parked in the yard of the house. They presented neither identity papers nor a search or detention order. When the first applicant tried to intervene, one of the servicemen kicked her in the chest and she fell on the floor. Then they grabbed Mr Adam Ilyasov, twisted his arms, threw him in the APC and drove off in an unknown direction. They also took his passport, driving licence and documents for the truck.

8. Ms M. Il., Mr Adam Ilyasov's aunt, and Ms M. Is., his sister-in-law, submitted written statements providing their account of the events. They stated that they shared the same yard as the applicants. On 15 November 2002 at around 6.15 a.m. armed men in four APCs with registration numbers covered with mud came from the Khankala direction. They were tall, spoke Russian without an accent, were wearing uniforms without any insignia and masks and carried small arms. Some of them had portable radio transmitters and shields. They did not let anyone in the Ilyasovs' house. They searched the house, having broken the windows and the door, and broke the windows of the truck parked in the yard. Then they took Mr Adam Ilyasov and left in the direction of the Argun Military Commander's Office. They produced no documents to authorise either the search or Mr Ilyasov's arrest.

9. Mr Adam Ilyasov has never been seen again.

2. The Government's account

10. The Government submitted that in the course of the investigation in case no. 59274 it was established that on 15 November 2002 at approximately 6.15 a.m. unidentified persons in camouflage uniforms armed with automatic weapons had abducted Mr Adam Ilyasov from his house and had taken him to an unknown destination.

B. Search for Adam Ilyasov and investigation

11. The applicants applied in writing and in person to numerous State authorities seeking to establish Mr Adam Ilyasov's whereabouts. Copies of the applications have been submitted to the Court. Their applications filed with the Prosecutor General's Office and the Prosecutor's Office of the Chechen Republic were forwarded to the Shalinskiy District Prosecutor's Office. Their applications filed with the Military Prosecutor of the United Group Alignment (UGA) were forwarded to the Military Prosecutor of military unit no. 20116. A written application was lodged for the first time by the first applicant on 29 November 2002.

12. On 10 December 2002 the Shalinskiy District Prosecutor's Office instituted criminal proceedings in case no. 59274 concerning the abduction of Mr Adam Ilyasov by unidentified representatives of the federal forces.

13. On 11 December 2002 the first applicant was granted victim status in the criminal proceedings. It appears that she was questioned on the same date. The first applicant confirmed her account of the events set out in paragraph 7 above.

14. On 15 December 2002 the investigating authorities sent requests to the Shali department of the Federal Security Service (FSB), the Shali District Military Commander, the military prosecutor of military unit no. 20116, the deputy commander of the UGA, the first deputy head of the Temporary United Alignment of Agencies and Units of the Ministry of the Interior [*ВОГО и П МВД – временная объединенная группировка органов и подразделений МВД*], and the commander of the interior troops of the Ministry of the Interior in the North-Caucasian Region so as to identify which units were involved in the special operation carried out in Mesker-Yurt on 15 November 2002. According to the replies received, none of those agencies had conducted a special operation in Mesker-Yurt on the date in question or had any information about Mr Adam Ilyasov or his whereabouts. Likewise, the heads of remand prisons situated in North Caucasia reported that they had no information about Mr Adam Ilyasov since he had never been held in those facilities.

15. According to the Government, during an inspection of the Ilyasov's house conducted on an unspecified date no items were seized and no evidence was found.

16. On 10 February 2003 the investigation was suspended on account of the failure to identify the culprits. On 14 February 2003 the Shalinskiy District Prosecutor's Office informed the first applicant of the suspension.

17. On 13 August 2003 the Shalinskiy District Prosecutor's Office informed the applicants' representatives, SRJI, that the proceedings in criminal case no. 59274 instituted on 2 December 2002 had been suspended, that the first applicant had been granted victim status and that she could apply to the Shalinskiy District Prosecutor's Office for a copy of the decision to that effect.

18. On 15 August 2003 the Prosecutor's Office of the Chechen Republic informed the first applicant that on that date the decision to suspend the preliminary investigation had been quashed on account of its incompleteness, and the proceedings had been resumed.

19. On 15 August 2003 the FSB informed the first applicant that Mr Adam Ilyasov had not been detained by the FSB.

20. On 18 August 2003 the Military Prosecutor's Office of the UGA informed the first applicant that her application had been examined. The inspection conducted had produced no evidence of involvement of servicemen in the abduction of Mr Adam Ilyasov.

21. On 22 August 2003 the investigation in criminal case no. 59274 was actually resumed. The first applicant was informed of the resumption by a letter of 25 August 2003.

22. On 23 August 2003 the Shalinskiy District Prosecutor's Office informed the first applicant that her applications addressed to the Military Prosecutor's Office and the President of Russia had been received by the Shalinskiy District Prosecutor's Office and enclosed in the file pertaining to criminal case no. 59274. Investigative measures aimed at establishing the whereabouts of Mr Adam Ilyasov were being taken.

23. The Government submitted the following information concerning the questioning of witnesses in the course of the investigation.

24. On 25 August 2003 the investigating authorities questioned Ms Z. Sh., who submitted that she was the Ilyasovs' neighbour. She stated that shortly after 6 a.m. on 15 November 2002 two APCs had driven down Lenina Street and stopped at the Ilyasovs' house. After a while she had heard screaming coming from their yard. Later she had learned that Mr Adam Ilyasov had been abducted and his documents had been stolen. She submitted that Mr Adam Ilyasov had not been a member of any illegal armed groups.

25. On an unspecified date the investigating authorities questioned Ms M. Il., Mr Adam Ilyasov's aunt, who was the Ilyasovs' neighbour. She submitted that in the morning of 15 November 2002 she had been at home.

When she had heard a woman crying she had left her room and in the yard she had seen armed men dressed in camouflage and wearing masks. The first applicant, who had also been in the yard, had told her that those men had taken Mr Adam Ilyasov and his papers. Ms M. Il. had seen APCs in the street but had not noted their registration numbers.

26. Ms E. Il., another aunt of Mr Adam Ilyasov, who was questioned on an unspecified date, submitted that she had learned about his abduction from her relatives. She also stated that Mr Adam Ilyasov had not been a member of any illegal armed groups.

27. Ms P. A., questioned on an unspecified date, submitted that she was the Ilyasov's relative. In the morning of 15 November 2002 she had learned from a fellow villager that Mr Adam Ilyasov had been abducted. She had no information that he had been involved in any unlawful activity. Ms Z. Kh. made a similar statement. It is not clear who she was.

28. On 22 September 2003 the investigation was suspended.

29. On 14 October 2003 SRJI applied in writing to the Prosecutor of the Shalinskiy District, asking him to provide information on the progress and results of the criminal investigation and to grant the first applicant the opportunity to study the case-file if the proceedings had been suspended. No reply was received.

30. On 21 February 2005 the first applicant asked the Shalinskiy District Prosecutor's Office for an update on the investigation.

31. On 26 May 2005 the Prosecutor's Office of the Chechen Republic informed the first applicant that requests had been sent to law-enforcement agencies and remand prisons of the neighbouring regions. According to the replies received, Mr Adam Ilyasov had not been held in any of those facilities. Investigative measures aimed at establishing his whereabouts and identification of the perpetrators were being carried out.

32. On 28 May 2005 the Prosecutor's Office of the Chechen Republic informed the first applicant that the investigation had been suspended on 22 September 2003.

33. On 20 June 2005 the investigation was resumed. The first applicant was notified of the resumption on 21 June 2005.

34. On 20 July 2005 the investigation was again suspended on account of the failure to identify the culprits. The first applicant was notified accordingly on the same day.

35. On 19 October 2005 the Shali District Prosecutor's Office resumed the investigation. The decision read, in particular:

"On 15 November 2002, at 6.15 a.m. unidentified persons in camouflage clothes armed with automatic weapons who arrived in two APCs abducted [Mr] Adam Ilyasov from his home ... and took [him] to an unknown destination. ...

Examination of the materials of the case revealed that the decision [to suspend the investigation] was premature, since investigative actions and operational measures to ... identify the culprits had not been fully carried out. ...

In the course of additional investigation in the case it is necessary: to update the plan of investigative-operational measures so as to include verification of new versions of events, to obtain and join to the materials of the case replies from law-enforcement agencies to which requests had been sent earlier, question again [the first applicant] (who might have new information concerning the circumstances of her son's apprehension of which the investigation is not aware), to identify and question additional witnesses to [Mr Adam] Ilyasov's abduction and to carry out other investigative-operational measures so as to take a final decision in the case. ..."

36. The first applicant was informed of the resumption of the investigation on the same day.

37. On 19 November 2005 the investigation was suspended again on account of the failure to identify the culprits.

38. On 31 May 2007 the investigation was resumed. The decision read, in particular:

"...The decision to suspend the investigation was unlawful [since] not all the measures that could have been taken while the persons to be charged with the offence had not been identified had been carried out.

In particular, [witness V. M.] was not questioned, the GAZ-3307 truck was not inspected, a forensic medical examination of [the first applicant] was not conducted, a copy of [Mr Adam] Ilyasov's identity document was not enclosed in the case file, no legal assessment was made in respect of the unidentified persons' actions in the part related to the damaging of the Ilyasovs' property and theft of [Mr Adam Ilyasov's] documents."

C. Proceedings against law-enforcement officials

39. On 19 December 2003 SRJI brought before the Shali Town Court a complaint concerning the inaction of the Shalinskiy District Prosecutor's Office.

40. On 23 June 2005 SRJI brought before the Shali Town Court another complaint concerning the inaction of the Shalinskiy District Prosecutor's Office.

41. On 23 September 2005 SRJI complained to the Supreme Court of the Chechen Republic and the High Judicial Qualification Board that neither of the two complaints had been examined by the Shali Town Court.

42. According to the reply of the Shali Town Court of 11 October 2005 it had not received either of the complaints.

43. On 14 October 2005 SRJI re-submitted the complaint concerning the inaction of the Shalinskiy District Prosecutor's Office to the Shali Town Court. They asked it, in particular, to order the Prosecutor's Office to grant the first applicant access to the case file and to conduct a thorough investigation into her son's abduction.

44. On 13 March 2006 the Shali Town Court partially allowed the complaint. The district court ordered the district prosecutor's office to grant the first applicant access to the case file in accordance with the procedure

provided for in the Code of Criminal Procedure. It rejected the complaint in the remaining part.

D. The Court's request for the investigation file

45. Despite a specific request by the Court, the Government did not submit a copy of the file of the investigation into the abduction of Mr Adam Ilyasov. They submitted twenty-three pages of case-file materials containing decisions instituting, suspending and resuming the investigation and the decision of the Shali Town Court of 13 March 2006. 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. At the same time, the Government suggested that a Court delegation could have access to the "materials of the criminal cases containing no state or military secrets ... without making copies thereof" at the place where the preliminary investigation was being conducted in Russia.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

47. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Mr Adam Ilyasov had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints about the allegedly unlawful detention of their relative or to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, but, apart from the complaint examined by the Shali Town Court on 13 March 2006, they had not availed

themselves of that remedy. Furthermore, they had failed to appeal against the decision of 13 March 2006.

48. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect, including the application to the court, had been futile.

B. The Court's assessment

49. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

50. The Court first notes, having regard to the Government's objection concerning the applicants' failure to complain of their relative's unlawful detention to the domestic authorities, that after Mr Adam Ilyasov had been taken away by armed men, the applicants actively attempted to establish his whereabouts and applied to various official bodies, whereas the authorities denied responsibility for the detention of the missing person. In such circumstances, and in particular in the absence of any proof to confirm the very fact of the detention, even assuming that the remedy referred to by the Government was accessible to the applicants, it is more than questionable whether a court complaint of the unacknowledged detention of Mr Adam Ilyasov by the authorities would have had any prospects of success. Moreover, the Government have not demonstrated that the remedy indicated by them would have been capable of providing redress in the applicants' situation, namely that it would have led to the release of Mr Adam Ilyasov and the identification and punishment of those responsible (see *Musayeva and Others v. Russia*, no. 74239/01, § 69, 26 July 2007). Accordingly, the Government's objection concerning non-exhaustion of domestic remedies must be rejected in this part.

51. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities shortly after the abduction of their relative and that the criminal proceedings have been pending since 10 December 2002. The applicants and the Government dispute the effectiveness of the investigation into the complaint.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

53. The applicants complained under Article 2 of the Convention that their family member had disappeared after having been detained by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Arguments of the parties

54. The Government argued that the complaint was unfounded. They referred to the fact that the investigation had obtained no evidence to the effect that this person was dead, or that representatives of the federal forces had been involved in his abduction or alleged killing. In particular, there was no evidence that any special operations had been conducted on the date in question. The Government also claimed that the investigation of the disappearance of the applicants’ family member met the Convention requirement of effectiveness, as evidenced by the questioning of witnesses by the investigating authorities and requests sent by them to other State agencies.

55. The applicants maintained their complaint and contended that their family member had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. They further argued that the investigation had not met the requirements of effectiveness and adequacy required by the Court’s case-law on Article 2. The applicants noted that the investigation had been adjourned and reopened a number of times, thus delaying the taking of the most basic steps, and that they had not been properly informed of the most important investigative measures. They argued that the fact that the investigation had been ongoing for such a long period of time without producing any known results was further proof of its ineffectiveness. The applicants invited the Court to draw

conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

56. 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. 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 52 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 Mr Adam Ilyasov

i. General principles

57. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, 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 *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

ii. Establishment of the facts

58. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties

when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

59. The applicants alleged that on 15 November 2002 their family member, Mr Adam Ilyasov, had been apprehended by Russian servicemen and then disappeared. They invited the Court to draw inferences as to the well-foundedness of their allegations from the Government's failure to provide the documents requested from them. The first applicant was an eye-witness to his apprehension and the applicants supported her account of the events with statements by two more eye-witnesses. The latter provided a coherent account of the events that took place in Mesker-Yurt in the morning of 15 November 2002 and stated that Mr Adam Ilyasov had been apprehended by servicemen and taken away in an APC.

60. The Government conceded that Mr Adam Ilyasov had been abducted by unknown armed men on 15 November 2002. However, they denied that any special operations had been carried out in Mesker-Yurt on that date. The Government referred to the absence of conclusions from the ongoing investigation and denied that the State was responsible for the disappearance of the applicants' family member.

61. The Court notes that despite its repeated requests for a copy of the investigation file into the abduction of Mr Adam Ilyasov, apart from twenty-three pages of copies of procedural decisions, the Government have produced no documents from the case file at all, relying on 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)).

62. In view of this and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect. It considers that the applicants have presented a coherent and convincing picture of their family member's apprehension on 15 November 2002. The first applicant was an eyewitness to the events and collected statements from two other witnesses referring to the involvement of the military or security forces in the abduction.

63. The Court observes that the Government did not deny that Mr Adam Ilyasov had been abducted by armed men; however, they denied that those men were State agents. The Court finds that the fact that a large group of armed men in uniform, equipped with armoured vehicles which could not have been available to paramilitary groups, was able to move freely during curfew hours strongly supports the applicants' allegation that these were State servicemen. In their application to the authorities the applicants consistently maintained that Mr Adam Ilyasov had been detained by unknown servicemen and requested the investigating authorities to look into that possibility. It further notes that after six years the domestic investigation has produced no tangible results.

64. The Court reiterates that 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 applicant, 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).

65. Taking into account the above elements, the Court is satisfied that the applicants have made out a *prima facie* case that their family member was detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide a plausible explanation of the events in question, the Court finds it established that Mr Adam Ilyasov was apprehended on 15 November 2002 at his house in Mesker-Yurt by State servicemen during a security operation.

66. The Court further notes that there has been no reliable news of Mr Adam Ilyasov since 15 November 2002. His name has not been found in the official records of any detention facilities. Finally, the Government did not submit any explanation as to what had happened to him after his apprehension.

67. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts)), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Mr Adam Ilyasov or any news of him for over six years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of Mr Adam Ilyasov's disappearance and the official investigation into his abduction, which has gone on for over six years, has produced no tangible results.

68. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that on 15 November 2002 Mr Adam Ilyasov was apprehended by State servicemen and that he must be presumed dead following his unacknowledged detention.

iii. The State's compliance with Article 2

69. 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, to which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

70. The Court has already found it established that the applicants' family member must be presumed dead following unacknowledged detention by State servicemen. Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, it follows that liability for his presumed death is attributable to the respondent Government.

71. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Mr Adam Ilyasov.

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

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

73. The Court notes at the outset that most of the documents from the investigation were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few

documents submitted by the parties and the information about its progress presented by the Government.

74. Turning to the facts of the present case, the Court notes that the authorities were notified of the offence by the first applicant's written complaint of 29 November 2002. However, the investigation was not opened until 10 December 2002, that is, eleven days later. Therefore, the investigation was instituted with a delay, for which there has been no explanation, in a situation where prompt action was vital.

75. The Court further notes that on 11 December 2002 the first applicant was questioned. It appears that after that a number of crucial steps were delayed or not taken at all. In particular, it appears that the investigating authorities did not question other witnesses until August 2003, that is, eight months after the events. Although the Government submitted that no evidence was found as a result of the inspection of the crime scene, the Court notes, firstly, that they provided no information as to the date of the inspection and, secondly, as is noted in the decision of 31 May 2007 to resume the investigation, the GAZ-3307 truck was not inspected. The failure to examine, over a period of five years, this vehicle, which obviously constituted a significant element of the crime scene, casts doubt as to the diligence with which the inspection was carried out. As for the requests to other State agencies purposed to establish whether a special operation was conducted in Mesker-Yurt on the relevant date, the Court notes that although they were sent on 15 December 2002, the decision to resume the investigation of 19 October 2005 notes that as of that date the relevant replies were not enclosed in the criminal file. Furthermore, it appears that no efforts had been made to trace the APCs after they had left Mesker-Yurt.

76. It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

77. The Court also notes that even though the first applicant was granted victim status, she was only informed of the suspensions and resumptions of the investigation, sometimes with a significant delay. In particular, she was only notified on 28 May 2005 of the suspension of the investigation on 22 September 2003. It appears that she was not informed of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, and to safeguard the interests of the next of kin in the proceedings.

78. Finally, the Court notes that the investigation was adjourned and resumed four times and that there were lengthy periods of inactivity of the district prosecutor's office when no proceedings were pending. Higher prosecuting authorities criticised deficiencies in the proceedings and ordered remedial measures. However, it appears that their instructions were not fully complied with.

79. 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 in progress, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for many years having produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection in this part.

80. The Court further notes that 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 did, in fact, make use of that remedy, which eventually led to their complaint having been partially allowed by the Shali Town Court on 13 March 2006. The applicants did not appeal against the decision in the part refusing their complaint. The Court notes, however, that the investigation has been resumed by the prosecuting authorities themselves a number of times due to the need to take additional investigative measures. Nevertheless, they still failed to investigate the applicants' allegations properly. Moreover, owing to the time that had elapsed since the events complained of, certain investigative steps that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it considers it highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy invoked by the Government was ineffective in the circumstances and rejects their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

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

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

82. 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. The first applicant also complained that she had

been ill-treated by servicemen during her son's apprehension. Article 3 reads:

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

A. The parties' submissions

83. The Government accepted that the applicants must have suffered as a result of their family member's disappearance. However, since the involvement of State agents in his abduction had not been established, the State could not be held responsible for their suffering.

84. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

(a) The complaint concerning the first applicant

85. 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*, cited above, pp. 64-65, § 161 *in fine*).

86. The Court notes that the first applicant's allegation that one of the servicemen who had apprehended her son had kicked her in the chest and she had fallen down is supported only by her own statement. No witness statements corroborating this allegation and no medical certificate to confirm possible injuries sustained by the first applicant have been presented to the Court. It thus finds that this part of the complaint has not been substantiated.

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

(b) The complaint concerning the applicants' moral suffering

88. 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*

89. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct (see *Orhan*, cited above, § 358, and *Imakayeva*, cited above, § 164).

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

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

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

93. The applicants further stated that Mr Adam Ilyasov 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

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

95. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

96. The Court notes that in paragraph 50 above it rejected the Government’s objection concerning the applicants’ alleged failure to complain about Mr Adam Ilyasov’s unlawful detention. It further 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*

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

98. The Court has found it established that Mr Adam Ilyasov was apprehended by State servicemen on 15 November 2002 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and no official trace of his subsequent whereabouts or fate exists. 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).

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

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

V. ALLEGED VIOLATIONS OF ARTICLE 3 IN RESPECT OF MR ADAM ILYASOV AND OF ARTICLES 6 and 14 OF THE CONVENTION

101. In their initial application form the applicants submitted that it was highly probable that Mr Adam Ilyasov had been subjected to treatment contrary to Article 3 of the Convention. They also stated that they had been deprived of access to a court, contrary to the provisions of Article 6 of the Convention, and that they had been discriminated against on the grounds of their ethnic origin. The relevant part of Article 6 of the Convention reads as follows:

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

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.”

102. In the observations on admissibility and merits of the case of 6 November 2007 the applicants stated that they no longer wished their complaints under Article 3 in this part and under Articles 6 and 14 of the Convention to be examined.

103. 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).

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

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

105. 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

106. 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 the opportunity to challenge the actions or omissions of the investigating authorities in court. It had also been open to them to file a civil claim for damages. In sum, the Government submitted that there had been no violation of Article 13.

107. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

108. 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

109. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, judgment of 25 June 1997, *Reports of Judgments and Decisions* 1997-III, p. 1020, § 64).

110. As regards the complaint of a 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).

111. 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.

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

113. Consequently, there has been a violation of Article 13 in conjunction with Articles 2 and 3 of the Convention.

114. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the complaint under Article 3 that Mr Adam Ilyasov had been ill-treated during and after his apprehension by State agents, the Court notes that the complaint under Article 3 was struck out in this part in paragraph 104 above since the applicants no longer wished to maintain it. Accordingly, the Court does not find it necessary to examine the complaint under Article 13 in this part.

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

116. 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 as a result of 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.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. 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

118. The first applicant claimed that she had sustained damage in respect of the loss of her son’s earnings following his apprehension and subsequent disappearance. She claimed a total of 518,503.86 roubles (RUR) under this head (approximately 14,320 euros (EUR)).

119. The first applicant claimed that Mr Adam Ilyasov had been employed as a potato trader. She did not provide any documents to support the alleged amount of his wages. Having regard to the provisions of the Civil Code on calculations of lost earnings, she claimed that the amount of her son’s earnings should be equal to the average remuneration of a person with similar qualifications and could not be based on an amount lower than the subsistence level determined by federal laws. The first applicant submitted that she would have benefited from Mr Adam Ilyasov’s financial support in an amount equal to 30% of his earnings. Her calculations were based on provisions of the Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary’s Department in 2007 (“the Ogden tables”).

120. The Government argued that no compensation for pecuniary damage should be awarded to the first applicant since it was not established that her son was dead. Furthermore, there was no evidence that the first applicant, being neither a pensioner nor a disabled person, had been dependant on Mr Adam Ilyasov. They also pointed out that she should have applied to the domestic courts with a claim for compensation for damage caused by the death of the family’s main breadwinner.

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. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

122. The Court finds that there is indeed a direct causal link between the violation of Article 2 in respect of the first applicant’s son and the loss by the applicant of the financial support which he could have provided for her. However, it notes that the first applicant did not furnish any documents to corroborate the amount of her son’s alleged earnings. Nevertheless, the

Court finds it reasonable to assume that her son would eventually have had some earnings and that the first applicant would have benefited from them. It notes, at the same time, that the first applicant has other children from whose financial support she must be able to benefit. Having regard to the first applicant's submissions, the Court awards her EUR 4,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

123. The first applicant claimed EUR 50,000 and the second, third and fourth applicants 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, the indifference shown by the authorities towards him and the failure to provide any information about the fate of their close relative.

124. The Government found the amounts claimed exaggerated.

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

C. Costs and expenses

126. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The applicants requested the award to be transferred directly into their representatives' account in the Netherlands. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,298.70, which comprised:

- EUR 1,050 for the preparation of documents submitted to the domestic authorities in relation to the present proceedings;
- EUR 5,700 for the preparation of the initial application and subsequent submissions before the Court;
- EUR 45.15 for translation expenses, as certified by invoices;
- EUR 31.05 for postal expenses, and;

- EUR 472.50 (corresponding to 7% of the legal fees) for administrative costs, such as telephone, fax and e-mail, photocopying and paper expenses and other items.

127. The Government did not dispute the details of the calculations submitted by the applicants, but pointed out that they should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had been actually incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They also objected to the applicants' representatives' claim in the part related to the work of lawyers other than those that had been specifically indicated on the powers of attorney signed by the applicants.

128. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

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. As to whether they 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 the legal drafting was necessarily time-consuming to the extent claimed by the representatives.

130. As regards the Government's objection, the Court notes that the applicants were represented by the SRJI. It is satisfied that the lawyers indicated in the applicants' claim formed part of the SRJI staff. Accordingly, the objection must be dismissed.

131. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them the amount of EUR 6,000, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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 join to the merits the Government's objection concerning non-exhaustion of domestic remedies in the part related to criminal-law domestic remedies and rejects it;
2. *Declares* the complaint under Article 3 of the Convention in the part related to the applicants' mental suffering, the complaints under Articles 2, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Mr Adam Ilyasov;
4. *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 Mr Adam Ilyasov had disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants' mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Mr Adam Ilyasov;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that there is no need to examine the complaint under Article 13 in conjunction with Article 3 of the Convention in respect of Mr Adam Ilyasov;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
10. *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 3 of the Convention in respect of Mr Adam Ilyasov and the applicants' complaints under Article 6 and 14 of the Convention;
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 4,000 (four thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, to the first applicant in respect of pecuniary damage;
- (ii) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage to the applicants jointly;
- (iii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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