



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

FIRST SECTION

CASE OF NASUKHANOVA AND OTHERS v. RUSSIA

(Application no. 5285/04)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Nasukhanova and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 5285/04) 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 six Russian nationals listed below (“the applicants”), on 22 January 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 7 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 Zara Khasanovna Nasukhanova, born in 1954;
- 2) Mr Magomed Dulayevich Kasumov, born in 1936;
- 3) Ms Razet Magomedovna Kasumova, born in 1976;
- 4) Ms Luiza Magomedovna Kasumova, born in 1981;
- 5) Ms Kristina Magomedovna Kasumova, born in 1984; and
- 6) Ms Kamila Magomedovna Kasumova, born in 1982.

They live in the village of Pervomayskaya of the Grozny District of the Chechen Republic.

7. The first and second applicants are parents of the third, fourth, fifth and sixth applicants and of Mr Ruslan Magomedovich Kasumov, born in 1974.

A. Events of 3 February 2003

1. The applicants' account

(a) Apprehension of Ruslan Kasumov

8. On the night of 2 to 3 February 2003 Ruslan Kasumov stayed overnight at the house of his relative, Mr Sh.D., at 4 Proletarskiy Alley, the village of Pervomayskaya. At about 2 a.m. on 3 February 2003 four armoured personnel carriers ("APCs") and four Ural vehicles pulled up in front of that house and around thirty armed men wearing camouflage uniforms broke inside it. Some of them wore masks. The men did not identify themselves; they shouted at the inhabitants in Russian. Then they took Mr Sh.D. and Ruslan Kasumov to the courtyard and demanded their names. Having heard the reply, they let Mr Sh.D. go back in the house and loaded Ruslan Kasumov into one of the APCs. Then the vehicles drove away in the direction of the village of Ken-Yurt. Mr Sh.D.'s wife, Ms Tamara Kh., noticed that one of the APCs had registration number 907.

9. The applicants have had no further news of Ruslan Kasumov.

(b) Apprehension of Mr A.D.

10. At about 2 a.m. on 3 February 2003 a group of armed men wearing camouflage uniforms broke into the house of Mr Sh.D.'s brother, Mr A.D., at 3 Proletarskiy Alley, the village of Pervomayskaya. They took Mr A.D., handcuffed him, asked his family name and dragged him out of the house.

Then they put a T-shirt on his head so that Mr A.D. could not see their faces. One of the servicemen again asked Mr A.D.'s last name, said that they would clear things up later and put Mr A.D. into an APC. The vehicle travelled for about thirty minutes and then stopped. Mr A.D. heard a man asking someone if he could identify Mr A.D., who had a torch shone in his face. The reply was negative. The men questioned Mr A.D., asking him whether he had participated in illegal armed groups or assisted rebels. Some twenty to thirty minutes later one of the men unlocked the handcuffs and left Mr A.D. lying on the ground. The men got into the vehicles and drove in the direction of the village of Ken-Yurt. Mr A.D. waited for a few moments and ran home.

2. Information submitted by the Government

11. At about 3 a.m. on 3 February 2003 unidentified persons wearing camouflage uniforms and masks and armed with machine guns arrived in the village of Pervomayskaya and kidnapped Ruslan Kasumov from the house at 3 Proletarskiy Alley.

B. The search for Ruslan Kasumov and the investigation

1. The applicants' account

12. In the morning of 3 February 2003 the applicants learned of Ruslan Kasumov's abduction and complained about it to several military commanders' offices and to the prosecutor's office of the Grozny District ("the district prosecutor's office"). Further, they continued to search for their relative and repeatedly contacted the Special Envoy of the Russian President in the Chechen Republic for Rights and Freedoms ("the Special Envoy"), the Russian President, the Russian Prosecutor General's Office, the military prosecutors' offices, the Administration of the Chechen Republic and the Ombudsman of the Chechen Republic. In the applications they described the circumstances of Ruslan Kasumov's abduction and asked for assistance in establishing his whereabouts and fate. Most of the complaints were lodged by the first applicant on behalf of the whole family. The applicants were assisted in their efforts by the SRJI. They retained copies of some of those complaints and submitted them to the Court. The official bodies forwarded most of the complaints to prosecutors' offices at different levels.

13. On 17 February 2003 the Special Envoy forwarded the first applicant's letter to the prosecutor's office of the Chechen Republic, which in its turn sent it to the district prosecutor's office on 12 March 2003.

14. On 17 March 2003 the district prosecutor's office instituted an investigation into Ruslan Kasumov's disappearance under Article 126 § 2 of

the Russian Criminal Code (aggravated kidnapping). The case file was given the number 42050.

15. On 7 April 2003 the first applicant asked the district prosecutor's office whether the investigation into the event had been opened and requested victim status.

16. On 28 April 2003 the prosecutor's office of the Chechen Republic informed the first applicant that on 17 March 2003 the district prosecutor's office had opened an investigation into her son's kidnapping in case no. 42050 and that investigative measures were being taken to solve the crime.

17. On 21 July 2003 the first applicant asked the prosecutor's office of the Chechen Republic to help to establish her son's whereabouts.

18. On 29 July 2003 the first applicant requested the district prosecutor's office to update her on progress in the investigation and to grant her victim status. She received no reply and repeated her request in a letter of 8 August 2003.

19. On 27 August 2003 the Southern Circuit Department of the Prosecutor General's Office informed the first applicant that her complaint had been forwarded to the prosecutor's office of the Chechen Republic.

20. On 5 September 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office.

21. On 8 October 2003 the district prosecutor's office granted the first applicant victim status.

22. On 13 November 2003 the military prosecutor's office of military unit no. 20102 ("the unit prosecutor's office") informed the first applicant that the inquiry had established no traces of the implication of military personnel in her son's kidnapping. On 9 December 2003 the first applicant received a similar letter from the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office").

23. On 9 December 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office and requested it to provide detailed information on the investigation by 20 October 2003.

24. On 25 December 2003 the military commander of the Chechen Republic informed the first applicant that her complaint had been forwarded to the military commander of the Grozny District.

25. On 5 January 2004 the Ministry of the Interior of the Chechen Republic informed the first applicant that investigative measures necessary to establish her son's whereabouts and to identify those responsible were being taken.

26. On 14 February 2004 the UGA prosecutor's office forwarded the first applicant's complaint to the unit prosecutor's office and indicated that a new inquiry should be carried out in order to verify the facts complained of,

to check any implication of the federal servicemen in Ruslan Kasumov's abduction and to find the APC and to which authority it had belonged.

27. On 2 March 2004 the prosecutor's office of the Chechen Republic informed the first applicant that the investigation into her son's kidnapping was under way and invited her to send further queries to the district prosecutor's office.

28. On 9 March 2004 the Ministry of the Interior of the Chechen Republic informed the first applicant that the investigation into her son's kidnapping by "unidentified men wearing camouflage uniforms and masks and armed with machine guns" was pending, that those responsible had not been identified and that a plan of further investigative measures had been adopted.

29. On 27 March and 9 April 2004 the UGA prosecutor's office forwarded the first applicant's complaints to the unit prosecutor's office.

30. On 9 April 2004 the military commander's office of the Chechen Republic forwarded the first applicant's complaint to the military commander's office of the Grozny District, noted that Ruslan Kasumov had been apprehended by "armed men in military uniforms" and demanded that the facts complained of be verified and detailed information on progress in the investigation be provided by 15 April 2004.

31. On 14 April 2004 the military commander's office of the Grozny District informed the first applicant that the investigation into her son's kidnapping was pending before the district prosecutor's office.

32. On 21 April 2004 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office.

33. On 21 May 2004 the Deputy Prosecutor General in the Southern Federal Circuit informed the first applicant that her complaint had been forwarded to the prosecutor's office of the Chechen Republic.

34. On 20 December 2004 the first applicant requested the prosecutor's office of the Chechen Republic to inform her of the outcome of the investigation in case no. 42050. On the same date she wrote to the military commander of the Chechen Republic asking that the investigation be rendered more effective.

35. On 24 December 2004 the military commander of the Chechen Republic forwarded the first applicant's complaint to the military commander's office of the Staropromyslovskiy District of the Chechen Republic and requested that the facts complained of be verified.

36. On 29 December 2004 the prosecutor's office of the Chechen Republic informed the first applicant that her complaint had been forwarded to the district prosecutor's office.

37. On 17 February 2005 the Main Military Prosecutor's Office in the Southern Circuit informed the first applicant that her complaint had been forwarded to the prosecutor's office of the Chechen Republic.

38. On 18 February 2005 the district prosecutor's office informed the first applicant that, although the investigation in case no. 42050 had been suspended for failure to identify those responsible, investigative measures were being taken to solve the crime. It was not specified which body had decided to suspend the investigation or when that decision had been taken. The first applicant was advised of an opportunity to appeal against the suspension to a higher prosecutor or to a court.

39. On 21 February 2005 the first applicant requested the district prosecutor's office to provide her with detailed information on progress in the investigation in case no. 42050 and on measures taken and their outcome and to resume the investigation should it be stayed.

40. On 18 December 2006 the department of the interior of the Grozny District informed the first applicant that the investigation in case no. 42050 was under way.

41. On 17 February 2007 the district prosecutor's office informed the first applicant that, despite the suspension of investigation in case no. 42050, investigative measures were being taken to solve the crime.

42. On 5 March 2007 the prosecutor's office of the Chechen Republic informed the first applicant that the investigation had been suspended.

43. On 31 July 2007 the district prosecutor's office notified the first applicant of the resumption of the investigation.

2. Information submitted by the Government

44. On 14 February 2003 the first applicant reported her son's kidnapping to the authorities.

45. On 3 March 2003 the authorities visited the house at 3 Proletarskiy Alley and inspected the crime scene.

46. On 17 March 2003 the district prosecutor's office acting on the basis of the first applicant's complaint of 14 February 2003 instituted an investigation of Ruslan Kasumov's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The decision stated that Ruslan Kasumov had been kidnapped from the house at 3 Korotkaya Street in the village of Pervomayskaya. The case file was assigned the number 42050.

47. On 12 May 2003 the district prosecutor's office extended the term of preliminary investigation in case no. 42050 until 17 June 2003. The decision stated that at 3 a.m. on 3 February 2003 Ruslan Kasumov had been kidnapped from the house at 3 Korotkaya Street in the village of Pervomayskaya by "unidentified persons in camouflage uniforms and masks driving four APCs and four Ural vehicles".

48. On 17 June 2003 the district prosecutor's office suspended the investigation for failure to identify those responsible.

49. On 2 October 2003 the investigation in case no. 42050 was resumed.

50. On 8 October 2003 the first applicant was granted victim status and questioned. She submitted that at about 7 p.m. on 2 February 2003 her son had gone to visit his friend Mr Sh.D. On the following morning the first applicant had learned of his abduction.

51. On 8 October 2003 Mr Sh.D. was questioned and submitted that at about 10.30 p.m. on 2 February 2003 Ruslan Kasumov had come to his place to watch television. At some point Mr Sh.D. had fallen asleep. He woke and saw several armed and masked men inside his house. The armed men took away Ruslan Kasumov and Mr. A.D. An hour later Mr A.D. returned home.

52. On 10 October 2003 Mr A.D. was questioned and submitted that in the evening of 2 February 2003 Ruslan Kasumov had come to their place to watch television. At about 2 a.m. several armed men in masks had entered Mr A.D.'s bedroom, taken him outside and put him into an APC. The APC travelled for a while and then he was looked at. An unknown man said "No, this is not him". When Mr A.D. returned home, he learned of Ruslan Kasumov's abduction, but he had not seen the latter inside the APC. Mr A.D. was unable to identify the perpetrators.

53. On 3 November 2003 the district prosecutor's office suspended the investigation.

54. On 2 March 2004 the investigation was resumed and then suspended on 9 April 2004.

55. On 9 June 2004 the prosecutor's office of the Chechen Republic quashed the decision of 9 April 2004 and resumed the proceedings.

56. On 21 June 2004 the first applicant was again questioned and submitted that on the night of Ruslan Kasumov's abduction her neighbour named "Tamara" had seen an APC with registration number 907. She also described her son's distinctive features and the clothes that he had been wearing on the night of the kidnapping.

57. On 17 July 2004 the district prosecutor's office suspended the investigation in case no. 42050 and notified the first applicant accordingly.

58. On 15 December 2004 the district prosecutor's office resumed the proceedings and informed the first applicant accordingly.

59. On 17 January 2005 the investigation was suspended for failure to identify the perpetrators. The first applicant was informed that, despite the suspension of the proceedings, the police were taking investigative measures to solve the crime.

60. On 18 January 2005 the district prosecutor's office resumed the investigation for an unexplained reason and notified the first applicant accordingly. It was also decided to carry out a significant number of unspecified investigative measures in the shortest possible time span.

61. On 18 February 2005 the investigation was suspended and the first applicant was informed accordingly.

62. On 31 July 2007 the district prosecutor's office quashed the decision of 18 February 2005 because it was necessary to take unspecified investigative measures.

63. On the same date the district prosecutor's office noted that the investigation file erroneously mentioned the place of kidnapping as the house at 3 Korotkaya Street, whereas the crime had been committed at 3 Proletarskiy Alley, and decided to correct the error.

64. According to the Government, on unspecified dates the investigation questioned a number of the applicants' fellow villagers as witnesses. They submitted that one night in February 2003 they had heard military vehicles and seen APCs on the street; they had not noticed the APCs' numbers. On the following day they had learned of Ruslan Kasumov's abduction. They had not seen the missing man being placed in one of the APCs.

65. The investigation requested information on Ruslan Kasumov's abduction from various law enforcement agencies. The branches of the Ministry of the Interior, the Ministry of Defence, the Department of the Federal Security Service of the Chechen Republic and the prosecutors' offices of different districts and towns of the Chechen Republic replied that they had not arrested Ruslan Kasumov and that no special operations had been carried out in the village of Pervomayskaya on the night of 3 February 2003. Ruslan Kasumov had not been kept in any remand prisons or temporary detention facilities in the North Caucasus area.

66. The investigation, which so far had failed to establish the whereabouts of Ruslan Kasumov or to find any evidence to support involvement of the Russian federal military in the crime, was under way. The first applicant was being kept duly informed of all procedural decisions.

67. Despite specific requests by the Court the Government did not disclose most of the contents of the investigation file in case no. 42050, providing only copies of decisions to suspend and resume the investigation, several notifications to the first applicant of the suspension and resumption of the proceedings and copies of the minutes of the first applicant's interviews. 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

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

THE LAW

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

69. The Government submitted that the application had not been lodged in order to restore the allegedly violated rights of the applicants. The actual object and purpose of the application was clearly political as the applicants wanted to “incriminate the Russian Federation in allegedly adopting a policy infringing on human rights in the Chechen Republic”. They concluded that there had been an abuse of the right of petition on the part of the applicants and that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

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

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

A. The parties' submissions

71. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Ruslan Kasumov had not yet been completed. They further argued that it had been open to the applicants to challenge in court or before higher prosecutors any actions or omissions of the investigating authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to lodge civil claims for damages caused by State authorities but they had failed to do so.

72. The applicants contested that objection and claimed that they had no effective domestic remedies available. They emphasised that the criminal investigation had been pending for more than five years without any tangible results and had thus proved to be ineffective.

B. The Court's assessment

73. 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, and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

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

75. 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.

76. As regards a civil action to obtain redress for damage sustained through alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

77. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement authorities shortly after the kidnapping of Ruslan Kasumov and that an investigation has been pending since 17 March 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

78. Furthermore, the Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints. Thus, it considers that this matter falls to be examined below.

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

A. The parties' arguments

79. The applicants maintained that it was beyond reasonable doubt that the armed men who had taken away Ruslan Kasumov had been State agents. They had Slavic features and spoke Russian without an accent, which proved that they were not of Chechen origin. The armed men had arrived in APCs and Ural military vehicles. In the applicants' view, the fact that eight military vehicles capable of carrying as many as 100 persons had been able to move freely late at night in an area under the control of Russian federal troops proved that the perpetrators belonged to the Russian law enforcement agencies. The applicants also pointed out that, according to the Government, the investigation file in case no. 42050 contained confidential information related to the disposition and activities of military and special units.

80. The Government submitted that there was no evidence that Ruslan Kasumov had been detained by State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They asserted that the statements by the first applicant, Mr Sh.D. and Mr A.D. were incoherent. The investigators had looked into the possibility of involvement of Mr Sh.D. and Mr A.D. in the kidnapping but had not proven it because of the right not to testify against oneself provided for in Russian law. Furthermore, the applicants and witnesses had not been specific when describing their relationships with the missing man – whether they were his cousins, friends or neighbours.

81. In their observations on admissibility and merits of the application of 10 September 2007 the Government submitted that a woman named "Tamara" who had allegedly seen an APC with number 907 had not been found. In their additional observations of 21 January 2008 the Government mentioned Ms Tamara Kh., the wife of Mr Sh.D., who had been described by the first applicant in the course of her interview of 21 June 2004.

82. It had been impossible to find an owner of the APC with that number. None of the villagers questioned as witnesses had seen Ruslan Kasumov being placed in an APC. Mr Sh.D. had not provided a detailed account of the circumstances of the kidnapping, which, in the Government's view, proved that in fact he was not an eyewitness to the crime. The investigation could not either prove or disprove the allegations that APCs

had been moving around the village of Pervomayskaya on the night of Ruslan Kasumov's kidnapping, because all law enforcement agencies had claimed that they had not carried out any special operations or arrested the missing man.

83. The Government asserted that the crime could have been attributable to illegal armed groups. They pointed out that groups of Ukrainian, Belorussian and ethnic Russian mercenaries had committed crimes in the territory of the Chechen Republic and emphasised that the fact that the perpetrators had Slavic features and spoke Russian did not prove that they were attached to the Russian military. They also observed that a considerable number of armaments and APCs had been stolen from Russian arsenals by insurgents in the 1990s and that criminals could have possessed camouflage uniforms.

B. The Court's evaluation of the facts

1. General principles

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

85. The Court points out that a number of principles have been developed in its case-law when it is faced with the task of establishing facts on which the parties disagree. As to the facts that are in dispute, the Court reiterates its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others*, cited above, § 160).

86. 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.

87. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A; *Ribitsch*, cited above, § 34; and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

88. These principles apply also to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation of what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Taniş*, cited above, § 160).

89. Finally, when there have been criminal proceedings in the domestic courts concerning those same allegations, it must be borne in mind that criminal law liability is distinct from international law responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions, which are to be interpreted and applied on the basis of the objectives of the Convention and in the light of the relevant principles of international law. The responsibility of a State under the Convention for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Avşar*, cited above, § 284).

2. *Establishment of the facts*

90. The Court notes that despite its requests for a copy of the investigation file into the abduction of Ruslan Kasumov, the Government produced only a small number of the documents from the case file. They referred to Article 161 of the CCP. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

91. In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should

be taken into account when deciding whether the applicants' relative can be presumed dead and whether his death can be attributed to the authorities.

92. The applicants alleged that the persons who had taken Ruslan Kasumov away on 3 February 2003 were State agents.

93. The Government, in their turn, suggested that the persons who had detained Ruslan Kasumov could be members of illegal armed groups. However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

94. The Court notes that the applicants' allegation is supported by the investigation and by the witness statements. The domestic investigation accepted that the kidnappers had travelled in four APCs and four Ural vehicles (see paragraph 47 above) and took steps to check whether law enforcement agencies were involved in the kidnapping (see paragraphs 22 and 26 above). Furthermore, Mr A.D. reported the circumstances under which he had been taken away by armed men in the APCs (see paragraph 52 above) and several residents of the village of Pervomayskaya claimed to have seen APCs on the streets on the night of Ruslan Kasumov's abduction (see paragraph 64 above). The investigating authorities had information concerning a registration number of one of the APCs but took no steps to question Ms Tamara Kh., although it is clear from the Government's submissions that her identity had been established (see paragraph 81 above). The Court notes that, although neither Mr A.D. nor the villagers saw Ruslan Kasumov being placed inside an APC, it is highly plausible to assume that the armed men who apprehended the missing man and the armed men travelling in the APCs and the Ural vehicles were the same persons.

95. The Court considers it very unlikely that several military vehicles stolen by insurgents from the federal troops in the 1990s could have moved freely through Russian military checkpoints without being noticed. It thus finds that the fact that a large group of armed men in uniform travelling in the APCs and the Ural vehicles arrived in the village of Pervomayskaya at 3 a.m. strongly supports the applicants' assertion that these were State servicemen.

96. Moreover, in the Court's view the fact that the witnesses questioned by the investigators were not very specific as to the nature of their relationships with Ruslan Kasumov does not in itself suffice to cast doubt on the veracity of their statements.

97. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by

the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

98. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was apprehended by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Ruslan Kasumov was apprehended on 3 February 2003 by State servicemen during an unacknowledged security operation.

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

100. Having regard to the previous cases concerning disappearances of persons in the Chechen Republic which have come before the Court (see, among others, *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Ruslan Kasumov or any news of him for more than five years supports this assumption.

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

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. The parties’ submissions

103. The Government contended that the domestic investigation had obtained no evidence to the effect that Ruslan Kasumov 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. The first applicant had reported the crime to the authorities belatedly and thus contributed to the loss of evidence; it also proved that the kidnapping had been staged. The investigation had been suspended and then resumed a number of times, which proved that the investigators had been making efforts to solve the crime. The first applicant had been advised of her right to complain of decisions taken in the case. Operative and search measures had been taken even while the investigation had been suspended.

104. The applicants argued that Ruslan Kasumov 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. They had verbally informed the authorities of Ruslan Kasumov’s abduction in the morning of 3 February 2003. The applicants invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the investigation file to them or to the Court.

B. The Court's assessment

1. Admissibility

105. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 78 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 Ruslan Kasumov

106. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar*, cited above, § 391).

107. The Court has already found it established that the applicants' relative must be presumed dead following unacknowledged detention by State servicemen and that the death can be attributed to the State (see paragraph 101 above). In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Ruslan Kasumov.

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

108. 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 an investigation is to secure 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).

109. In the present case, the kidnapping of Ruslan Kasumov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

110. 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.

111. The Court observes that the applicants submitted that they had verbally reported Ruslan Kasumov's abduction to the investigating authorities immediately after it took place, that is, on 3 February 2003 (see paragraph 12 above). The investigation in case no. 42050 was instituted on 17 March 2003, that is one month and eleven days after the kidnapping.

112. The Government attributed the delay in commencing the investigation to the applicants, arguing that the first applicant had made a complaint to the authorities only on 14 February 2003. The Court is not in a position to establish whether the applicants visited any law enforcement authorities on 3 February 2003 in the absence of any material evidence for that or to the contrary, but it does not deem it necessary to go into such details for the following reason. The Government provided no explanation whatsoever for the fact that the district prosecutor's office had opened the investigation in case no. 42050 more than a month after 14 February 2003. The Court reiterates in this respect that the mere knowledge of the kidnapping in life-threatening circumstances on the part of the authorities gives rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the incident (see, *mutatis mutandis*, *Ergi v. Turkey*, 28 July 1998, § 82, *Reports of Judgments and Decisions* 1998-IV; and *Yaşa v. Turkey*, 2 September 1998, § 100, *Reports of Judgments and Decisions* 1998-VI). Accordingly, the Court finds that the investigating authorities should be held responsible for the delay in commencing the investigation between 14 February and 17 March 2003. In the Court's view this delay was in itself liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in a timely fashion.

113. Furthermore, the Court notes that, as can be seen from the decisions of the district prosecutor's office, there were some defects in the investigation and unspecified investigative measures were not promptly taken, which led to the resumption of the proceedings (see paragraphs 60 and 62 above).

114. It is noteworthy that the district prosecutor's office questioned Mr Sh.D. and Mr A.D., the key witnesses to the incident, for the first time only in October 2003, that is, some six months after the commencement of the investigation (see paragraphs 51 and 52 above). Moreover, as can be seen from the letter by the UGA prosecutor's office, by 14 February 2004 the investigation had not taken measures to establish which State agency owned the APC (see paragraph 26 above). It is obvious that these investigative steps should have been taken 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).

115. It does not appear from the materials at the Court's disposal that the investigation tried to question a witness named "Tamara" who had allegedly seen the registration number of one of the APCs. The Court does not see which obstacles the investigators might have faced trying to find that witness. First, it was sufficiently clear from the first applicant's submissions made on 21 June 2004 that she knew the woman's address, given that she described "Tamara" as her neighbour (see paragraph 56 above). Secondly, according to the Government, the last name of "Tamara" was known to the investigators (see paragraph 81 above). In such circumstances the Court considers that the investigation failed to take a simple and self-evident measure in questioning a witness who could have provided essential information on the crime.

116. The Court also notes that even though the first applicant was eventually granted victim status in case no. 420050, she was only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the 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).

117. Finally, the Court notes that the investigation in case no. 42050 was suspended and resumed six times and that no proceedings whatsoever were pending between 18 February 2005 and 31 July 2007.

118. The Court will now examine the limb of the Government's objection that was joined to the merits of the complaint (see paragraph 78

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 investigating authorities before a court. Furthermore, given 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 as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

119. 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 Ruslan Kasumov, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

120. The applicants initially complained that Ruslan Kasumov had probably been ill-treated while at the hands of State agents and that they had endured moral suffering caused by their relative's disappearance and the State's failure to investigate it properly. They relied on Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

121. The Government argued that the investigation had not established that either the applicants or Ruslan Kasumov had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

122. In their observations on the admissibility and merits of the application of 29 November 2007 the applicants submitted that they no longer wished to have the complaint regarding alleged ill-treatment of Ruslan Kasumov examined. They further reiterated the complaint concerning their own moral suffering.

B. The Court's assessment

1. The complaint concerning the ill-treatment of Ruslan Kasumov

123. 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 further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unpublished; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

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

2. The complaint concerning the applicants' moral suffering

(a) Admissibility

125. 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.

(b) Merits

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

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

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

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

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

130. The applicants stated that Ruslan Kasumov 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

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

132. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

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

2. Merits

134. 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).

135. The Court has found it established that Ruslan Kasumov was apprehended by State servicemen on 3 February 2003 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

137. 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

138. 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. In sum, the Government submitted that there had been no violation of Article 13.

139. The applicants reiterated the complaint.

B. The Court’s assessment

1. *Admissibility*

140. 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*

141. 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*, 25 June 1997, § 64, *Reports of Judgments and Decisions* 1997-III).

142. As regards the complaint of lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

143. 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*, 27 April 1988, § 52, Series A no. 131). 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.

144. 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.

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

146. As regards the applicants' reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on account of the applicants' moral 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. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

147. As regards the applicants' reference to Article 5 of the Convention, the Court reiterates that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a violation of Article 5 of the Convention resulting unacknowledged detention, the Court considers that no separate issue arises in respect of

Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

VIII. ALLEGED VIOLATIONS OF ARTICLE 14 OF THE CONVENTION

148. In their initial application form the applicants stated that they had been discriminated against on the grounds of their ethnic origin. They relied on 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.”

149. In the observations on admissibility and merits of 29 November 2007 the applicants stated that they no longer wished their complaints under Article 14 of the Convention to be examined.

150. 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*, cited above, § 28).

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. 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

153. The first and second applicants claimed damages in respect of their son’s lost wages. They submitted that, although Ruslan Kasumov had been unemployed at the time of his abduction, he could have expected to earn at least the minimum wage and to support them financially. The first applicant claimed under this heading a total of 211,001.28 Russian roubles (RUB) (approximately 5,900 euros (EUR)) and the second applicant claimed RUB 129,039.52 (approximately EUR 3,600).

154. The Government regarded these claims as unfounded.

155. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relative and the loss by the first and second applicants of the financial support which he could have provided. Having regard to the applicants' submissions and the fact that Ruslan Kasumov was not employed at the time of his abduction, the Court finds it appropriate to award EUR 2,000 to the first and second applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable to this amount.

B. Non-pecuniary damage

156. The first and second applicants, Ruslan Kasumov's parents, claimed EUR 40,000 each, while the third, fourth, fifth and sixth applicants, his siblings, claimed EUR 10,000 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.

157. The Government found the amounts claimed exaggerated.

158. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award the first and second applicants EUR 25,000 jointly and the third, fourth, fifth and sixth applicants EUR 2,500 each in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

C. Costs and expenses

159. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 8,265.07.

160. 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.

161. The Court points out that the applicants had given authority to act to the SRJI and its three 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 reasons to doubt that the six lawyers mentioned in the applicants' claims for costs and expenses took part in preparation of the applicants' observations.

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

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

164. 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. Besides, the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives.

165. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award under this heading 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

166. 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 Articles 3 and 14 as regards the alleged ill-treatment of Ruslan Kasumov and alleged discrimination;

2. *Dismisses* the Government's objection as to the alleged abuse of the right of petition;
3. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
4. *Declares* the complaints under Articles 2, 5 and 13 of the Convention, as well as the complaint under Article 3 of the Convention regarding the applicants' moral suffering admissible;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of Ruslan Kasumov;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances of Ruslan Kasumov's disappearance;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ruslan Kasumov;
9. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
10. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
11. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 2,000 (two thousand euros) to the first and second applicants jointly in respect of pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (ii) EUR 25,000 (twenty-five thousand euros) to the first and second applicants jointly and EUR 2,500 (two thousand and five hundred euros) to the third, fourth, fifth and sixth applicants each in respect of non-pecuniary damage, to be converted into Russian

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

(iii) 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;

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

Done in English, and notified in writing on 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President