



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

FIRST SECTION

CASE OF SHAKHGIRIYEVA AND OTHERS v. RUSSIA

(Application no. 27251/03)

JUDGMENT

This version was rectified on 27 July 2009
under Rule 81 of the Rules of the Court

STRASBOURG

8 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Shakhgiriyeva and Others v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 27251/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Russian nationals, listed below (the applicants), on 9 July 2003.

2. The applicants, who had been granted legal aid, 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. The applicants alleged that their relatives had been detained by servicemen in Chechnya on 23 October and 3 November 2002 and then killed. They complained under Articles 2, 3, 5 and 13 of the Convention.

4. On 1 September 2005 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. By a decision of 28 February 2008 the Court declared the application admissible.

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are:

- (1) Ms Asht Khamidovna Shakhgiriyeveva, born in 1960;
- (2) Ms Zarema Baudinovna Esmurzayeva (Magomadova), born in 1971;
- (3) Ms Alpatu Magomadova, born in 1922;
- (4) Ms Zarema Kharonovna Umarova, born in 1968;
- (5) Ms Ayshat Bibulatovna Gerasiyeva, born in 1985;
- (6) Ms Aza Ayubovna Abayeva, born in 1972;
- (7) Ms Svetlana Gelaniyevna Dakasheva¹, born in 1961.

8. The applicants are Russian nationals and residents of the village of Chechen-Aul, in the Grozny district of Chechnya. The sixth applicant currently resides outside Russia.

9. The facts of the case are mostly not in dispute between the parties. They may be summarised as follows.

A. Detention of eight persons and the searches of 23 October 2002

10. The applicants submitted that in the early hours of 23 October 2002 eight persons had been detained in their village by a group of servicemen wearing masks and camouflage uniforms and moving around in a Ural military truck, UAZ all-terrain military vehicles and armoured personnel carriers (APCs) with obscured number plates. Among the eight persons there were four relatives of the applicants: Magomed Shakhgiriyevev, Ali Magomadov, Ismail Umarov and Umalat Abayev.

1. Detention of Magomed Shakhgiriyevev

11. The first applicant is the mother of Magomed Khamidovich Shakhgiriyevev, born in 1986. She lives with her family in Chechen-Aul at 37 Lenina Street. In October 2002 Magomed Shakhgiriyevev was 16 years old and attended school. He was described by the school head teacher and the head of the village administration as a good student and a well-mannered young man. The first applicant is married and has two other children, who were then aged 6 and 15.

12. On the night of 22 to 23 October 2002 the first applicant and her family were at home sleeping. At about 5 a.m. an APC smashed the gates of their house and entered the courtyard. It was followed by a UAZ vehicle. Servicemen in uniforms and masks, armed with automatic weapons, surrounded the house and entered. The military did not produce identity

¹ Rectified on 27 July 2009: the text was “Ms Svetlana Galaniyevna Dakasheva...”

papers or any documents to justify their actions and gave no explanations. They did not ask for the inhabitants' identity documents. The first applicant and her two younger children were locked in one room. The servicemen threatened to shoot if they tried to go outside.

13. The first applicant's husband and her elder son, Magomed Shakhgiriyeu, were ordered to go outside into the courtyard. Magomed Shakhgiriyeu, who was wearing a long-sleeved T-shirt, trousers and socks, was escorted by the soldiers into the APC. He was not allowed to put on his boots. The first applicant submitted that her husband had been drunk on that night, and the servicemen seated him on the ground in the courtyard and asked where his machine gun was. He said that he had no weapons.

14. The first applicant submitted that a neighbour had tried to find out what had been happening and wanted to enter their courtyard, but the servicemen had hit her and told her to stay away.

15. During the search the soldiers seized some items from the house, including the goods the first applicant traded in the market and those stored at her house by other traders overnight, because her house was close to the market.

2. Detention of Ali Magomadov

16. The second and third applicants are the wife and mother of Ali Baudinovich Magomadov, born in 1966. The applicants' family live in Chechen-Aul in their own house at 81 Lenina Street. The second applicant has four minor children, who in October 2002 were aged between 2 and 11, from her marriage to Ali Magomadov. Ali Magomadov worked in Grozny at the local branch of Gazprom as a mechanic. The administration of Chechen-Aul described him as a good member of the community who had worked hard to support his large family and who had no connections with illegal armed groups.

17. In October 2002 the applicants were carrying out construction work on the house, and some windows on the second floor were not glazed.

18. On the night of 22 to 23 October 2002 the second and third applicants, Ali Magomadov and the children were at home sleeping. At approximately 4.30 a.m. a group of about 15 masked men in camouflage forcibly entered the house. They arrived in a Ural truck, whose number plates the applicants could not distinguish in the darkness. The servicemen were armed with machine guns and spoke Russian, largely using swearwords. They were hostile and aggressive. The military did not produce identity papers or any documents to justify their actions and gave no explanations.

19. The second applicant submitted that five or six men had entered the house through the windows of the second floor and had spread out around the rooms. In addition, about ten servicemen had kept guard in the courtyard. Once in the house, the servicemen ordered the second applicant

to turn on the light, but she replied that the village was without electricity on that night. They ordered her to go and get matches, which she did. The servicemen searched the room where the applicant and her daughter had been sleeping and asked the applicant if there were any men in the house. The applicant replied that her husband was the only man in the house, and the soldiers told her to fetch him. The second applicant went into the room where her husband and her sons had been sleeping and told Ali Magomadov that there were armed men looking for him. He put on a shirt and trousers and came out of the room.

20. The soldiers put him against the wall and asked him his name. He gave his full name and the soldiers immediately led him away. They gave no explanations and asked no further questions. One of the servicemen asked for Ali Magomadov's passport and the second applicant went to fetch it from his jacket. When she returned to the corridor the soldiers had already taken her husband away. Other servicemen took his passport.

21. The second applicant realised that her husband had been taken away barefoot and tried to follow them out of the house, but the soldiers shouted at her to close the door and remain inside.

22. The second applicant saw her husband being put into the Ural truck, which then left in the direction of Grozny.

23. The third applicant submitted that the armed men had entered the room where she and her 11-year-old granddaughter had been sleeping and put a machine gun to the head of her granddaughter, who had hidden under the blanket out of fear. The third applicant shouted "Don't shoot, it's a child!" and the armed man put the gun away. She was shocked by the night raid, she could not understand what was happening and then through the window she saw her son being led away by two men armed with machine guns.

3. Detention of Ismail Umarov

24. The fourth applicant is the sister of Ismail Kharonovich Umarov, born in 1975. The Umarov family live in their own house at 9 Sadovaya Street. Their house has two separate entrances. One part of the house is occupied by the fourth applicant, her two children, who in October 2002 were aged 9 and 7, and her mother. The fourth applicant is a widow; her husband died in 1995. The other part of the house is occupied by the family of the fourth applicant's brother Ismail Umarov, his wife and two children, aged 2 and 3 at that time. In October 2002 Ismail Umarov's wife was pregnant with a third baby, who was born in February 2003.

25. At about 4 a.m. on 23 October 2002 a group of masked men in camouflage uniforms with black armbands forcibly entered the courtyard of the Umarovs' house. The servicemen were armed with machine guns and spoke Russian. They were hostile and aggressive, shouting and shooting in

the air. The military did not produce identity papers or any documents to justify their actions and gave no explanations.

26. They arrived in two UAZ vehicles, climbed over the fence, opened the gates from inside and entered the courtyard. The fourth applicant's mother woke up and alerted the fourth applicant. Together they dressed up and went out into the courtyard, where there were several servicemen standing by the door which led to Ismail Umarov's part of the house. Upon the soldiers' orders, the fourth applicant's mother knocked on the door and called her son, saying that there were soldiers looking for him. When he opened the door, the servicemen dragged him out and put him into the UAZ vehicle. They did not ask for his identity documents and did not allow him to put on his shoes; he was taken away in a T-shirt and training trousers, barefoot. The servicemen then searched the house.

27. The fourth applicant tried to intervene but the soldiers told her that her brother would be taken to a "filtration point".

4. Detention of Umalat Abayev

28. The fifth and sixth applicants are the wife and sister of Umalat Ayubovich Abayev, born in 1978. Shortly before the events of October 2002 the head of the village administration recommended Umalat Abayev for work as a security guard and described him as a good man who had no connection with illegal or extremist groups and had not otherwise discredited himself. Similar recommendation letters were issued to him by the imam of the village mosque in Chechen-Aul and the local policeman.

29. The Abayev family live in their own house at 29 Partizanskaya Street. In the early hours of 23 October 2002 a group of servicemen arrived at their house in an APC and two UAZ vehicles. They were armed and wearing camouflage uniforms and masks. They forcibly entered the Abayev family house and ordered all the men to come out. The women said that there was only one man in the house, and the soldiers went into the room where Umalat Abayev was sleeping. They raised him from his bed and took him out into the street; he was not permitted to get dressed. When the relatives asked where he was being taken, the servicemen said that they could put questions to the Argun military commander's office and that Abayev would be "checked through a computer" and then released.

30. Then the servicemen searched the house, without producing any documents to justify their actions. According to the applicants, they "turned the whole house upside down", checked the documents and took away some valuables.

5. Detention of four other men on 23 October 2002

31. The applicants submitted that four other men had been detained in Chechen-Aul on the same night: S.Yu., R.Z., M.Zh. and A.Zh. (the latter

two are spelled in official documents as M.Dzh. and A.Dzh.). Two days later, on 25 October 2002, M.Zh. and A.Zh. were released. According to the applicants, they said that they had been detained in a cellar but could give no other details of their detention because they had been taken around blindfolded.

6. Information from the Government

32. The Government in their observations did not challenge the facts as presented by the applicants. They stated that it had been established that on 23 October 2002, at about 4 a.m., unidentified persons armed with automatic weapons and wearing camouflage uniforms had kidnapped in Chechen-Aul and taken in an unknown direction M. Shakhgiriyeu, A. Magomadov, I. Umarov, U. Abayev, R.Z., M.Zh. (M.Dzh.), A.Zh. (A.Dzh.) and S.Yu. The last-mentioned person had sustained a firearm wound. M.Zh. and A.Zh. had been released later.

B. Search for the men detained on 23 October 2002

33. Immediately after the detention of their family members the applicants and other relatives started to look for them. On 23 October 2002 the first applicant wrote a letter to the Chechnya Prosecutor about the detention of her son and seven other men by armed men in an APC. She also complained about the taking of property and money from her house.

34. On the applicants' behalf letters enquiring about the fate of their relatives were forwarded by a member of the State Duma, Mr Igrunov, and by the NGO "Civic Assistance" to the Chechnya Prosecutor's Office and to the Prosecutor General's Office. On 18 November 2002 the Chechnya Prosecutor's Office informed Civic Assistance that on 26 January 2002 (*sic*) the Grozny District Prosecutor's Office had opened a criminal investigation into the kidnapping of Mr Abayev and others under Article 126 of the Criminal Code, and that at present the investigation had been adjourned for failure to identify the culprits.

C. Disappearance of three persons on 3 November 2002

35. On 3 November 2002 three men from Chechen-Aul went looking for their missing fellow villagers Aslan Israilov, Khasin Yunusov and Adash A. No complaint was brought in relation to the disappearance of Adash A.

36. The sixth applicant is the wife of Aslan Ramzanovich Israilov, born in 1972 (she is also the sister of Umalat Abayev, who was detained on 23 October 2002). Aslan Israilov was a graduate of the Teachers' Institute and a teacher in a local sports school. He had three minor children, who in 2002 were aged between 1 and 10, from his marriage to the sixth applicant.

37. The seventh applicant is the sister of Khasin Gelaniyevich Yunusov, born in 1971. Khasin Yunusov was a sub-lieutenant in the police force and served in the Grozny district department of the interior (ROVD).

38. The applicants submitted that Khasin Yunusov as a policeman had obtained information that the detained men might be held in Khankala, the main Russian military base in Chechnya. On 3 November 2002 the three men left in the morning in Khasin Yunusov's Gazel utility vehicle and went to Khankala in order to meet a man named "Ilyas" who had allegedly worked for the Main Military Intelligence Department of the Army (GRU) and who could help them to find the persons detained on 23 October 2002. Later on the same day they met the head of the village administration of Chechen-Aul, Saypudin Ts., in a café by the roadside. Mr Ts. later recounted to the applicants that the three men had told him that they had not found "Ilyas" in Khankala and had headed to his house in the village of Tolstoy-Yurt, but that they would return to Khankala by 3 p.m. on the same day because they had arranged for a meeting there. The seventh applicant later talked to the women who had served in the café, who confirmed that the three men had eaten there, that they had said that they were in a hurry and that they were going to Khankala.

39. The applicants submitted that on 3 November 2002 a military helicopter had been downed above Khankala. They submitted a number of press and human rights groups' reports, according to which that day the military, in response to the attack, had detained a large number of people on the road, had blown up three five-storey buildings from where the rocket could have been fired and had shelled the village of Prigorodnoye near the airport.

40. Later the applicants learned from unnamed local residents that their three relatives could have been detained on 3 November 2002 at a roadblock in Minutka Square in Grozny. According to this information, a group of servicemen had arrived at the roadblock in an APC and a GAZ vehicle and had taken three men and a Gazel vehicle away. The applicants did not submit any additional information on this matter.

41. The Government in their observations did not challenge the principal facts as presented by the applicants. They stated that it had been established that on 3 November 2002 Khasin Yunusov had left home in his own Gazel vehicle in an unknown direction, accompanied by his friends Aslan Israilov and Adash A. They had never returned. The Government also stated that the applicants had never informed any State bodies of the fact that their relatives had been detained in Minutka Square.

D. Discovery of five bodies on 8 November 2002 and the investigation

42. According to the applicants, on 8 November 2002 five male bodies were discovered by the local residents in the forest near the village of

Vinogradnoye, in the Grozny district, near the road to Tolstoy-Yurt. The bodies were delivered to the mosque of Tolstoy-Yurt. On 9 November 2002 several relatives of the persons missing since 23 October 2002 travelled there and identified them as the five men who had been detained in Chechen-Aul: Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov, Umalat Abayev and R.Z. The body of the sixth person detained on that night, S.Yu., has never been found and he is still considered missing. On the same day the five bodies were brought to Chechen-Aul and buried.

43. According to the Government, the five bodies had been found in the forest in the vicinity of Darbanbakhi village, in the Gudermes district. They also stated that, according to the information from the prosecutor's office, the relatives had identified only four bodies – those of the applicants' relatives – while the relatives of R.Z. had not identified the fifth body as his.

44. Among the documents submitted by the Government (see below) the 27 September 2003 decision of the Grozny District Prosecutor's Office to adjourn the investigation contained the following description:

“On 8 November 2002 at about 10 a.m. in the forest, about 10 kilometres away from the village of Darbanmakhi, Gudermes district, towards the village of Vinogradnoye, Grozny district, two kilometres to the south from the Darbanmakhi – Vinogradnoye road, five male bodies were discovered with the heads bound with fragments of cloth, the hands tied and firearm wounds. They were later identified by their relatives as having been kidnapped in Chechen-Aul on 23 October 2002: I.Kh. Umarov, A.B. Magomadov, M.Kh. Shakhgiriyeu, U.A. Abayev and [R.Z.]”

45. It appears that the applicants did not see the bodies before they were buried, nor did they submit them for an autopsy. It also appears that they did not take any photographs before the burial. However, it appears that the bodies were photographed and submitted for a forensic report in Tolstoy-Yurt and that a local medical worker in Chechen-Aul inspected the bodies before the burial.

46. Ali Magomadov's sister Khazhar I. submitted an account of how she identified her brother's body:

“My brother was killed by unimaginable acts of torture. His whole body was covered with strange pink spots, the upper part of the body was darker in colour as if the blood had rushed to it. Maybe he was tortured by electricity or suspended upside down. His hands were tied together behind his back, the neck was also covered with something. Maybe there was a mark there. The feet up to the ankles and hands were as if they had been put into hot water, skin peeled off like after a blister. He was wearing the same clothes and barefoot. The nose was broken, the face was covered with blood mixed with dirt. Everything was too unexpected, the signs of torture were too horrible, we were all in shock...”

47. The first applicant submitted that the bodies of the five men had borne numerous firearm wounds, bones had been broken, and skin on the fingers had been chipping off.

48. On 22 November 2002 the Chechen-Aul outpatient medical service issued a medical certificate of death in respect of Ali Magomadov. The date

and place of death were recorded as 9 November 2002, Gudermes district. The certificate indicated that a doctor had examined the body and concluded that death had occurred as a result of murder through strangulation and numerous blows.

49. On 10 December 2002 the same medical service issued a certificate of death in respect of Magomed Shakhgiriyeu. The date and place of death were recorded as 9 November 2002, Vinogradnoye village. The cause of death was recorded as a firearm wound to the head – an act of murder.

50. On 10 December 2002 the Chechnya Prosecutor's Office forwarded the first applicant's letter to the Grozny District Prosecutor's Office and informed her that the investigation into the "kidnapping" of her son was under way.

51. On 11 December 2002 the Grozny district civil registration office issued a death certificate for Ali Magomadov. The date and place of death were recorded as 9 November 2002, Gudermes.

52. On 15 December 2002 the first applicant was granted victim status in criminal investigation no. 56166, opened into the kidnapping and subsequent murder of her son and other men.

53. On 17 December 2002 Mr Igrunov, a member of the State Duma, again wrote to the Prosecutor General's Office and asked him to ensure that additional investigative steps were taken in order to find out who was responsible for the kidnapping and murder of Umalat Abayev and other villagers. He noted that the arrest and detention had been carried out by a military group and that it should be relatively easy to establish who had been responsible for the mission in question.

54. On 15 January 2003 the Grozny District Prosecutor's Office issued the second applicant with a note confirming that the death of her husband on 23 October 2002 was being investigated by that office. The certificate was issued for submission to Ali Magomadov's employer, the Grozny branch of Gazprom.

55. On 17 January 2003 the Grozny district civil registration office issued a death certificate for Magomed Shakhgiriyeu. The date and place of death were recorded as 9 November 2002, Vinogradnoye, Grozny district.

56. On 23 January 2003 the Chechnya Prosecutor's Office replied to Mr Igrunov's enquiry about the investigation into the abduction and murder of Umalat Abayev. The letter stated that on 23 October 2002 the Grozny District Prosecutor's Office had opened criminal investigation file no. 56166 under Article 126, paragraph 2, of the Criminal Code (kidnapping). After the discovery of Umalat Abayev's body on 8 November 2002, the Gudermes District Prosecutor's Office had opened criminal investigation no. 57103 under Article 105, paragraph 2 (murder with aggravating circumstances). On 10 January 2003 the two sets of proceedings had been joined as file no. 56166 at the Grozny District Prosecutor's Office. The letter further stated that the Chechnya Prosecutor's Office had examined the investigation

file. In order to solve the crime, requests for information had been forwarded to various military and security services in Chechnya and in the Northern Caucasus. The investigation obtained information that Mr Abayev had been a follower and a supporter of the “Wahhabi” movement, and had actively promoted its teachings. The letter also explained that the previous letter of 18 November 2002 from the Chechnya Prosecutor's Office, which had referred to the adjourned criminal investigation into Mr Abayev's abduction, had in fact concerned his detention on 24 December 2001 during a special operation. After a check Mr Abayev and others had returned home. On 26 January 2002 criminal investigation file no. 56014 had been opened into his kidnapping but had later been adjourned for failure to identify the culprits. On 15 February 2003 Mr Igrunov forwarded his correspondence with the prosecutor's office to Umalat Abayev's family.

57. On 11 April 2003 the relatives of the five men from Chechen-Aul wrote to the Grozny District Prosecutor's Office and the Chechnya Prosecutor's Office. They asked for details of the criminal investigation and requested to be granted victim status in the proceedings.

58. On 16 April 2003 the Grozny district civil registration office issued a death certificate for Umalat Abayev. The date and place of death were recorded as 23 October 2002, Chechen-Aul.

59. On 22 April 2003 the applicants wrote to the Chechnya Prosecutor and the Grozny District Prosecutor asking to be informed of the progress in the investigation concerning the abduction and murder of six men from Chechen-Aul. They noted that they were not aware of the criminal investigation file number or whether there had been any progress in the proceedings. They also asked to be granted victim status in the proceedings. As no reply was received to that letter, they sent it again in May or June 2003.

60. On 9 July 2003 the SRJI, acting upon the applicants' behalf, asked the Chechnya Prosecutor and the Grozny District Prosecutor for an update on the criminal investigation into the abduction and murder of five men from Chechen-Aul and asked them to grant the relatives victim status.

61. On 9 July 2003 the Chechnya Prosecutor's Office forwarded the “collective letter from the villagers of Chechen-Aul” to the Grozny District Prosecutor's Office.

62. On 27 September 2003 the investigator of the Grozny District Prosecutor's Office ordered the adjournment of investigation no. 56166 for failure to identify the culprits. According to the relevant document, the investigation had been adjourned on 23 January 2003, reopened on 15 August 2003 and adjourned on 27 September 2003. In the same document the Grozny ROVD was instructed to continue to take steps to identify the culprits.

63. On 14 October 2005 the SRJI, acting on the applicants' behalf, asked the Grozny District Prosecutor's Office to inform it about the progress made and to allow the relatives access to criminal investigation file no. 56166.

64. On 14 February and on 31 March 2008 the relatives of the missing men were informed by the Grozny inter-district department of the investigation committee that on the same days the investigation of criminal case no. 56166 had been adjourned.

E. Search for Aslan Israilov and Khasin Yunusov and the discovery of the bodies on 18 April 2003

65. The sixth and seventh applicants started to look for their missing relatives, Aslan Israilov and Khasin Yunusov, immediately after their disappearance on 3 November 2002.

66. On an unspecified date the head of the village administration of Chechen-Aul, the village imam and the chairman of the committee of elders signed requests to the authorities asking for the release of the three men who had been illegally detained on 3 November 2002 in Minutka Square in Grozny.

67. The seventh applicant submitted that on 6 November 2002 she and the head of the village administration, Mr Ts., had gone to the head of the Grozny ROVD and asked him if he was aware that Khasin Yunusov, one of his servicemen, had disappeared after a trip to Khankala. The seventh applicant submitted that the head of the department had assured her that he was aware of that fact and that a large number of people had been detained after the downing of the helicopter. He allegedly told her that the Federal Security Service (FSB) had been checking the detainees and that they would all be released after 15 November 2002.

68. After 15 November 2002 the applicants continued to look for their relatives. The seventh applicant submitted that she had talked to a man who had allegedly worked at the Khankala military base and who had initially agreed to help them find out the fate of their relatives. He assured her that he had seen the name of her husband and two other men in the lists of detainees. However, one month later the same man allegedly told her that the lists had been destroyed and that he could not help them.

69. On 11 December 2002 the seventh applicant wrote a formal complaint to the Chechen Government about the disappearance of her brother on 3 November 2002. She stressed that her brother had been a member of the police force and that, according to rumours, he had been detained at the Khankala military base.

70. On 15 December 2002 the Grozny Town Prosecutor's Office opened a criminal investigation under Article 105, paragraph 2, of the Criminal Code. The decision to open the criminal investigation stated that on 3 November 2002 Khasin Yunusov had left home in a Gazel vehicle and

disappeared. The facts of the case, including Mr Yunusov's membership of the police force, gave rise to a suspicion that he had been killed. The disappearance of Mr Yunusov was confirmed by his family members and a report of 22 November 2002 by the head of the Grozny ROVD.

71. On 16 January 2003 the Chechnya Prosecutor's Office informed the seventh applicant that on 15 December 2002 the Grozny Town Prosecutor's Office had opened criminal investigation file no. 56192 into the disappearance of Khasin Yunusov, Aslan Israilov and Adash A. The investigation established that on 3 November 2002 at about 3 p.m. the three men had been seen in the Zara café on the road near Tolstoy-Yurt. They had been heading to Grozny in order to find missing fellow villagers. After that they had not been seen again. The investigation into the circumstances of the disappearance was continuing.

72. On 31 March 2003 Khasin Yunusov's sister was granted victim status in the proceedings.

73. On 18 April 2003 the SRJI wrote to the Grozny District Prosecutor's Office on behalf of the sixth and seventh applicants and asked it for an update in criminal case no. 56192.

74. According to the applicants, on 18 April 2003 three male bodies were discovered in Khankala, 400 metres away from the fence of the military base. The Government stated that the bodies had been found near the village of Berdykel in the Grozny district. The decision of the Grozny District Prosecutor's Office of 10 May 2003 to transfer the investigation contained the following description:

“On 18 April 2002 at about 5 p.m. in the village of Khankala, at the bottom of a quarry, about 400 metres from the location of the VV [Internal Troops] of the Ministry of the Interior and about one kilometre from the location of the VOGO and P [Temporary Operative Alignment of Bodies and Services] of the Ministry of the Interior, three unidentified male bodies with signs of violent death were discovered.”

75. The bodies were inspected by a policeman of the Grozny ROVD and by a military prosecutor, who authorised the Grozny ROVD to take the bodies away for identification and burial. The bodies were taken to the mosque of the village of Berket-Yurt and the local policeman informed the policeman in Chechen-Aul and the relatives of the missing persons. On 24 April 2003 the policeman from Chechen-Aul and Khasin Yunusov's brother identified his body by the clothes he had been wearing. The relatives of Aslan Israilov and Adash A. also identified them by their clothes. It appears that the bodies had been in an advanced stage of decomposition. No documents were found on them.

76. On the same day the three bodies were taken to Chechen-Aul and buried. The applicants did not have a chance to look at them. It appears that upon the discovery of the bodies a report was drawn up, and photographs were taken of them and of the objects collected from them, but the applicants do not have copies of those reports. The applicants did not submit

the bodies for an autopsy or a medical examination before burial. They referred to unnamed witness statements which indicated that the three bodies had numerous firearm wounds to the head and chest, that there were pieces of rope and that the right legs of the three bodies had been missing as if they had been tied together and blown up by an explosive charge.

77. The seventh applicant submitted that one month later the head of the administration of Chechen-Aul, Ts., and the local policeman who had first identified the bodies had been killed.

78. On 18 April 2003 the Grozny District Prosecutor's Office opened criminal investigation file no. 42076 following the discovery of three unidentified male bodies with signs of violent death. On 10 May 2003 this investigation was joined to criminal investigation no. 56192, following the identification of the corpses.

79. On 7 May 2003 the Grozny District Prosecutor's Office informed the SRJI and the seventh applicant that the criminal case had been pending with that office since 15 December 2002 as file no. 56192 and that the "interested parties" could access the documents within the file by visiting the premises of that office.

80. On 22 May 2003 the military prosecutor of military unit no. 20102 based in Khankala replied to the family of Khasin Yunusov that there were no reasons to suspect the involvement of military servicemen in the abduction and killing of their relative and two other men. The criminal investigation into the abduction and murder was pending before the Grozny District Prosecutor's Office.

81. On 6 June 2003 an investigator of the Grozny District Prosecutor's Office adjourned the investigation of criminal case no. 56192 for failure to identify the persons responsible for the crime.

82. On 14 October 2005 the SRJI, acting on the applicants' behalf, asked the Grozny District Prosecutor's Office and the Chechnya Prosecutor's Office to inform it, and/or the relatives of the missing and killed men from Chechen-Aul, about the status of the investigation. They also asked the prosecutor's office to allow the relatives access to the case file. In its letter the SRJI reminded the prosecutor's office of its obligations under the Code of Criminal Procedure and the Convention to inform the victims of progress in the investigation.

83. The applicants submitted they had not been informed of the progress of the proceedings and that they had no effective access to the investigation file.

84. In April 2008 the applicants' representatives informed the Court that the sixth applicant, the wife of Aslan Israilov and sister of Umalat Abayev, had moved outside the Russian Federation following several instances of harassment of her family in 2004 by masked men in camouflage uniforms. She and one of her minor children had suffered from psychological trauma and required medical assistance, as attested by medical documents.

F. Information from the Government

85. In their observations the Government did not dispute the information concerning the investigation of the deaths of Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov, Umalat Abayev, Aslan Israilov and Khasin Yunusov as submitted by the applicants. Relying on information obtained from the Prosecutor General's Office, they referred to a number of other procedural steps taken by the investigation which had not been mentioned by the applicants. However, despite specific requests from the Court, the Government did not submit copies of most of the documents to which they referred (see below).

1. Investigation into the kidnappings of 23 October 2002

86. As regards the investigation into the kidnapping of the applicants' four relatives on 23 October 2002, the Government stated that on the same day the Grozny District Prosecutor's Office had opened investigation file no. 56166 upon an application by Umalat Abayev's mother and by the head of the Chechen-Aul administration. The investigation had initially been opened to investigate the charges of kidnapping committed by a group, but was later altered to include the charges of kidnapping of several persons, committed with the use of violence, destruction of property, robbery and armed robbery.

87. The Government submitted that on 25 October 2002 the head of military unit no. 3671 had informed the investigation that the servicemen of that unit had not taken part in any military operations in Chechen-Aul and that no military vehicles of the Argun military commander's office had been used for these purposes.

88. In November 2002 the Gudermes District Prosecutor's Office received applications from Umalat Abayev's mother about the kidnapping of her son, as well as the theft of money, an audio player and documents for a car. They also received an application from the head of the Chechen branch of Gazprom about the kidnapping of its employee Mr Magomadov.

89. Immediately after the finding of five bodies, on 8 November 2002 the Gudermes District Prosecutor's Office opened criminal investigation file no. 57103 in respect of the aggravated murder of several persons. According to the Government, the investigators had examined the site where the bodies had been discovered, carried out forensic examinations, produced ballistic expert reports and questioned the person who had found the bodies, as well as the head of the village administration of Darbanbakhhi. On 10 November 2002 the forensic expert reports were produced for the five bodies. They concluded that the deaths could have been caused by gunfire wounds to the heads. One bullet found together with the bodies had been submitted for a ballistic report, which concluded on 19 November 2002 that it had been fired from a Russian-made PM or APS pistol.

90. On 10 January 2003 the two criminal cases were joined as file no. 56166.

91. The investigators questioned a number of applicants and other relatives of the victims. The first applicant was questioned and granted victim status on 25 December 2002. She gave statements relating to the kidnapping of her son, Magomed Shakhgiriyeu, and the subsequent finding of his body in the Gudermes district. She had identified the body of her son in the village cemetery on 9 November 2002. On 17 January 2006 the investigation questioned Magomed Shakhgiriyeu's father, who explained that on 23 October 2002 a group of armed men had taken away his son and his friend, R.Z., from their house. On 9 November 2002 he had identified both his son and R.Z. among the five bodies brought to the village cemetery.

92. On 23 October 2002 the investigators questioned the second applicant, Ali Magomadov's wife, who was granted victim status on 25 December 2002. She explained that during the night she had heard noise in the courtyard and had seen about ten armed men wearing masks. They had asked if there were any men in the house and had driven her husband away in a Ural truck. She specified that the "military" had spoken unaccented Russian between themselves. Later her husband's body had been discovered. It had been identified by her husband's sister.

93. Also on 23 October 2002 the investigators questioned Ismail Umarov's mother and wife and granted victim status to the latter. Both women stated that at about 5 a.m. on 23 October 2002 about ten men armed with automatic weapons and wearing camouflage uniforms, using two UAZ vehicles, had entered their house and taken away Ismail Umarov. She was again questioned on 12 January 2006. The fourth applicant, Ismail Umarov's sister, was questioned on 19 December 2002. She confirmed the statements about her brother's abduction. On 8 December 2005 Islam Umarov's brother testified that on 9 November 2002 he had identified his brother's body in the village cemetery. The body had haematomas and abrasions, but he had not noticed any firearm wounds.

94. Umalat Abayev's mother was questioned on 23 October 2002 and on 11 January 2006. During her first interview she stated that her son had been detained by a group of about 20 armed men wearing camouflage uniforms, who had placed him in an APC and had also searched the house. They had also taken away family property and some documents. She had also noted a UAZ vehicle in the street. On 25 December 2002 she was granted the status of victim in the proceedings. Later, Umalat Abayev's body had been discovered in the Gudermes district. His mother had identified him and described a wound to the back of the head and an abrasion on the left side of the face.

95. According to the Government, on 23 October 2002 the investigators questioned a son of M.Zh., who stated that on that night his father had been

taken away by unknown armed men, who had first checked their documents. M.Zh.'s wife gave similar statements on 23 October 2002. They also specified that they saw Ural trucks and UAZ cars in the street. The same men had taken the family's VAZ-2107 car and an audio player. On 17 September 2003 M.Zh.'s wife was granted victim status. On an unspecified date M.Zh. was also questioned and granted victim status. He stated that on that date a group of about 30 armed men had entered their courtyard, checked their documents and ordered them to lie on the ground in the courtyard. Then he had been blindfolded and placed in a car, together with some other fellow villagers, including his neighbour Ali Magomadov. He, Ali Magomadov and four other persons from their village had been kept in a former bath house for two days. Then everyone except for himself and A.Zh. had been taken away and he and A.Zh. had been released and had returned home. Later he had learnt that other persons who had been kidnapped had been found dead. On 11 January 2006 M.Zh. brought a civil claim, in the same proceedings, relating to the theft of his property.

96. A.Zh. was questioned on 9 November 2002 and granted victim status. He was again questioned on 1 December 2005. He stated that in the evening of 23 October 2002 he had been coming home and had been stopped in the street by unknown armed persons. He had been taken to an unknown location, where he had stayed for three days. He had not been ill-treated.

97. According to the Government, the investigators also questioned relatives and neighbours of S.Yu., who had also been kidnapped on 23 October 2002 and whose whereabouts had not been established. Some of the witnesses referred to the UAZ vehicles used by the perpetrators. His relatives explained that a large group of armed men in camouflage uniforms had entered their house, asked if they had any weapons, beaten up three brothers from the Yu. family and when one of them, S.Yu., had tried to escape, had shot at him and wounded him. He had been dragged into the UAZ vehicle and driven away. The same men, who had spoken Russian and Chechen among themselves, had taken 500 United States dollars from their house. His mother had been granted victim status on 25 December 2002.

98. Furthermore, the Government stated that the identity and place of residence of the eighth person kidnapped on that day, R.Z., could not be established. No one had applied to the law-enforcement authorities in relation to his kidnapping and his relatives could not be identified.

99. Among the documents submitted by the Government, one witness statement made in April 2006 by a neighbour of the Shakhgiriyevs, I.S., contained the following information:

“At about 2-3 a.m. on 23 October 2002 I was at home and heard noise in the street. I looked outside and saw men running around wearing camouflage uniforms. I didn't go out, because we are afraid of the military. In the morning I learnt that during the night masked men in military camouflage uniforms had come to the Shakhgiriyevs' house.

They came in one APC and two or three UAZ cars. The military broke the gates with the APC and entered into the courtyard. They did not let anyone enter. There were more than 25 of them, all armed with automatic weapons. They took away [seven men] from our village. They collected them from all over Chechen-Aul. ... The men in camouflage uniforms carried out their operation in ten or 15 minutes, i.e. they broke the gates, took the men and left. They spoke Russian among themselves. I did not note the numbers on the cars and vehicles. ...”

100. From the documents submitted by the Government and from their observations, it follows that in 2006, within the same set of criminal proceedings, the investigators questioned and granted victim status to other persons whose property had been damaged on 23 October 2002. On 10 January 2006 the Grozny District Prosecutor's Office granted victim status and the status of civil claimant to Zhabrail Kh. on the following grounds:

“It has been established that on 23 October 2002 at about 3 a.m. in the village of Chechen-Aul in the Grozny district, in the course of a special operation being carried out in the said village, the servicemen fired at the house situated at 31 Ordzhonikidze Street, the property of Zhabrail Kh. As a result of opening fire, a stallion belonging to Zhabrail Kh. was killed in the barn.”

101. On 11 January 2006 the same investigating authority granted victim status and the status of civil claimant to Gulnara E. on the following grounds:

“On 23 October 2002 at about 4 a.m. unknown persons wearing camouflage uniforms and masks, armed with automatic weapons, committed arson in a room in the house and exploded a hand grenade in another room of the house situated at 83 Lenina Street, by which pecuniary damage in the amount of 45,000 roubles and non-pecuniary damage was caused to Gulnara E.”

102. As indicated in the documents submitted by the Government, the same investigation also dealt with the kidnapping and murder on 27 October 2002 in Chechen-Aul of Ismail G., born in 1977, and Isa G., born in 1966, committed by “unidentified armed persons in camouflage uniforms”.

103. It further appears that a number of applicants, their relatives and neighbours were additionally questioned in January 2006 and gave statements confirming the above descriptions of the kidnappings, the theft of property and the subsequent discovery of the bodies.

2. Investigation into the disappearance of three men on 3 November 2002

104. The Government submitted that on 15 December 2002 criminal investigation file no. 56192 had been opened by the Grozny District Prosecutor's Office. The murder investigation under Article 105 of the Criminal Code had been opened on the basis of a complaint by Khasin Yunusov's sister concerning the disappearance of her brother.

105. The investigation established that on 3 November 2002 Khasin Yunusov and his two friends Aslan Israilov and Adash A. had left Chechen-Aul in Yunusov's Gazel vehicle.

106. Among the documents submitted by the Government, on 11 November 2002 a waitress from a roadside café testified that on 3 November 2002 she had served lunch to three men, one of them Khasin Yunusov. They had talked about a special operation in Chechen-Aul and Khankala and were in a hurry. They had then left in the direction of the village of Petropavlovskaya. On the same day an employee of a petrol station located at the same place testified that Khasin Yunusov had bought gasoline for his Gazel vehicle there.

107. In December 2002 the Chechnya Department of the Interior carried out an internal investigation into the disappearance of its staff member Khasin Yunusov. It did not establish his whereabouts and the Grozny ROVD concluded that Khasin Yunusov's disappearance could be linked to the latter's professional service.

108. On 18 April 2003 three male bodies with signs of violent death were found near the village of Berdykel of the Grozny district. On the same day the Grozny District Prosecutor's Office opened criminal investigation file no. 42076 in respect of aggravated murder (paragraph two of Article 105 of the Criminal Code). Later the three bodies had been identified as those missing from 3 November 2002.

109. On 10 May 2003 the two criminal cases were joined as file no. 56192.

110. On 13 May 2003 the Grozny District Prosecutor's Office obtained the report of the examination of the site where the three bodies had been found, compiled by the servicemen of military unit no. 20112 (the Khankala military base). The report stated that the bodies had been found in a quarry near the village of Khankala with signs of advanced decomposition. The body no. 1 had the left leg missing from the knee joint down, and bodies nos. 2 and 3 had the right feet missing.

111. Forensic reports found that the three bodies had perforating wounds to the head, chest and neck, which could have caused the deaths. It is unclear if any other injuries were mentioned. The Government did not submit copies of these reports and did not specify whether they had established the time of the deaths.

112. According to the Government, at some point the investigators questioned Khasin Yunusov's brother, who confirmed that his brother had been missing since 3 November 2002. He also stated that three months after that the frame of his brother's vehicle had been found in a forest. On 5 April 2003 the witness had learnt of the discovery of three unidentified bodies. He and a brother of Aslan Israilov had identified the bodies of their relatives, as well as the body of Adash A. All three bodies had parts of their legs missing below the knee.

113. At some point the investigation questioned Umalat Abayev's mother, who stated that the three men had been involved in the search of those kidnapped on 23 October 2002. Aslan Israilov had told her that on 3 November 2002 they had arranged a meeting with a man named "Ilyas" in Khankala, who could help in obtaining the release of her son and other detainees. On the same day she learnt that a helicopter had been downed above Khankala, following which all transport movement had been restricted. She had managed to return home, while her son-in-law Aslan Israilov had not returned. Six months later his body, together with the bodies of Khasin Yunusov and Adash A., had been found near Khankala with signs of violent death.

114. According to the Government, other relatives of the three missing men were questioned and granted victim status on unspecified dates. They gave similar statements and testified that they had no information about their relatives' deaths. Khasin Yunusov's sister was granted victim status on 31 March 2003. His mother was also questioned and granted victim status on an unspecified date. Aslan Israilov's brother and Adash A.'s mother were also questioned and granted victim status at some point.

115. The Government stated that the sixth and seventh applicants, the sisters of Umalat Abayev and Khasin Yunusov respectively, had not been granted victim status in the proceedings because they had never applied to the law-enforcement bodies with such requests. The Government also noted that the victims had been informed about the progress of the investigation and that they had never requested to be informed of the results of the forensic expert reports.

116. On 8 May 2003 the head of the Chechen-Aul administration confirmed the information from the relatives concerning the disappearance of three men on 3 November 2002 and the subsequent discovery of their bodies. The Government submitted a copy of his witness statement.

117. In addition, the investigation questioned five other persons. The Government did not provide any other information in relation to these witnesses.

118. The Government also submitted that the investigation had not been made aware of the relatives' allegations to the Court that the three men had been detained in the vicinity of Minutka Square on 3 November 2002. The investigators would take steps in order to check this information.

3. Conclusions in relation to both investigation files

119. In relation to both investigation files, the Government submitted that they had failed to identify the persons who had committed the crimes. The investigating authorities sent requests for information to the competent State agencies in November and December 2002, March 2003, December 2005, and January and April 2006. The investigation found no evidence to support the involvement of the "special branches of the power structures"

(специальных подразделений силовых структур) in the crimes. The law-enforcement authorities of Chechnya had never arrested or detained the applicants' relatives on criminal or administrative charges and had not carried out a criminal investigation in respect of them. The Ministry of the Interior and the FSB had no information about the involvement of the kidnapped men with illegal armed groups or any other serious crimes. The investigation also found out that no special operations had been carried out in respect of the applicants' relatives and that no military vehicles had been assigned by the military commander's office for that purpose.

120. In their submissions the Government stated that the investigation in both cases carried out by the Grozny District Prosecutor's Office had been adjourned and reopened on numerous occasions, owing to the fact that the perpetrators of the crimes could not be identified. The progress of both cases was monitored by the Prosecutor General's Office. The persons who had victim status in the proceedings had been regularly informed of their progress.

121. As indicated in the documents submitted by the Government, between 23 October 2002 and April 2008 the investigation in case no. 56166 concerning the murder of Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev was adjourned at least six times, and every time the investigation was later reopened by prosecutors. The investigation in case no. 56192 concerning the murders of Aslan Israilov and Khasin Yunusov was adjourned and reopened four times between November 2002 and April 2006.

122. Despite specific requests by the Court, the Government failed to disclose most of the material in criminal files nos. 56166 and 56192, providing only copies of decisions to suspend and resume the investigation and to grant victim status, as well as of the relatives' applications to the district prosecutor's office and notifications to the relatives about the adjournment and reopening of the proceedings. They also submitted two witness statements, as indicated above. 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

123. 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 PRELIMINARY OBJECTION

A. Arguments of the parties

124. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov, Umalat Abayev, Aslan Israilov and Khasin Yunusov had not yet been completed. They argued that it had been open to the applicants to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, but that they had not availed themselves of any such remedy. They referred to several examples when domestic courts had allowed complaints by victims in criminal proceedings and obliged the investigative authorities to carry out certain steps. They also argued that it was open to the applicants to pursue civil complaints.

125. The applicants contested that objection. With reference to the Court's practice, they argued that they had not been obliged to apply to the courts in order to exhaust domestic remedies. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect had been futile.

B. The Court's assessment

126. In the present case, the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will now proceed to 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).

127. 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.

128. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February

2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The preliminary objection in this regard is thus dismissed.

129. As regards criminal-law remedies, the Court observes that two sets of investigations into the disappearances have been pending since October and December 2002. The applicants and the Government disagreed as to their effectiveness.

130. The Court considers that this limb of the Government's preliminary 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. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS

A. The parties' arguments

131. The applicants maintained that it was beyond reasonable doubt that Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov, Umalat Abayev, Aslan Israilov and Khasin Yunusov had been taken away and then killed by State agents. The applicants submitted that their relatives had been detained by servicemen in the course of sweeping operations in Chechen-Aul and in Grozny. They had then been deprived of their lives, while still under the full control of State representatives. The applicants also noted that the State had failed to advance any other version of the events or to disclose documents from the criminal investigation files which could shed light on the circumstances of the deaths, and invited the Court to draw the relevant inferences.

132. The Government submitted that on 23 October 2002 "unidentified masked men in camouflage uniforms armed with machine guns" had abducted Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev. They further contended that the investigation into the incident was still pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. No information had been obtained by the investigation about the carrying out of special operations in Chechen-Aul on that day. They also referred to some other criminal investigations where gangs in Chechnya had been equipped with camouflage uniforms, weapons and forged documents belonging to members of the security forces. They also noted that the witnesses had said that some of the abductors had spoken among themselves in Chechen.

133. As to the disappearance on 3 November 2002 of Aslan Israilov and Khasin Yunusov, the Government stressed that the documents in the criminal investigation file had contained no information about the latter's detention in Grozny. The applicants and other relatives of the missing men had never informed the investigating authorities about the alleged detention of their relatives during a sweeping operation in Grozny. Furthermore, they drew the Court's attention to the fact that, according to the conclusions of the internal investigation carried out by the Ministry of the Interior in relation to the disappearance of its staff member Khasin Yunusov, his death had been linked to the carrying out of his professional duties. In such circumstances, there were no reasons to suspect that the State agents had been implicated in his abduction and murder.

B. Article 38 § 1 (a) and consequent inferences drawn by the Court

134. The Court has on many occasions reiterated that the Contracting States are required to furnish all necessary facilities to the Court and that a failure on a Government's part to submit information which is in their hands, without a satisfactory explanation, may reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI).

135. In the present case the applicants alleged that their relatives had been illegally arrested and then killed by servicemen. They also alleged that no proper investigation had taken place. In view of these allegations, the Court asked the Government to produce documents from the file on the criminal investigation opened in relation to the kidnapping. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the present case.

136. The Government confirmed the principal facts as submitted by the applicants. They refused to disclose most of the documents from the criminal investigation files, relying on Article 161 of the Code of Criminal Procedure. The Government also argued that the Court's procedure contained no guarantees of the confidentiality of documents, in the absence of sanctions for applicants in the event of a breach of confidentiality. They also argued that the applicants were represented by foreign nationals who could not be brought to account in Russia in the event of such a breach. Lastly, the Government argued that by providing detailed information about the progress of the investigation and some documents from the criminal investigation files, they had complied with their obligations under Article 38 § 1 (a).

137. The Court notes that Rule 33 § 2 of the Rules of Court permits a restriction on the principle of the public character of documents deposited with the Court for legitimate purposes, such as the protection of national

security, the private life of the parties or the interests of justice. The Court cannot speculate as to whether the information contained in the criminal investigation file in the present case was indeed of such nature, since the Government did not request the application of this Rule and it is the obligation of the party requesting confidentiality to substantiate its request.

138. The Court further notes that it has already found on a number of occasions that the provisions of Article 161 of the Code of Criminal Procedure do not preclude the disclosure of documents from a pending investigation file, but rather set out a procedure for and limits to such disclosure (see *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006, and *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII). For these reasons the Court considers the Government's explanation insufficient to justify the withholding of the key information requested by it.

139. As to the Government's argument that they had complied with the requirements of Article 38 § 1 (a) by providing a summary of the investigative steps and some documents from the investigation files requested, the Court reiterates that in cases where the applicants raise the issue of the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). The Court would also 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).

140. Reiterating the importance of a respondent Government's cooperation in Convention proceedings, the Court finds that there has been a breach of the obligation laid down in Article 38 § 1 (a) of the Convention to furnish all necessary facilities to assist the Court in its task of establishing the facts.

C. The Court's evaluation of the facts

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

to examine crucial elements in the present case that should be taken into account when deciding whether the deaths of the applicants' relatives can be attributed to the authorities.

1. As regards Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev

142. The applicants alleged that the persons who had taken Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev away on 23 October 2002 and then killed them had been State agents.

143. The Government suggested in their submission that the persons who had detained Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev could have been members of paramilitary groups. However, this allegation was not specific and they did not submit any material to support it. The reference to other criminal cases where members of criminal gangs had used camouflage uniforms or forged documents does not invalidate the information collected in the present case attesting to the carrying out of a security operation. Furthermore, from the information reviewed by the Court it does not appear that the domestic investigation has ever considered this possibility.

144. The Court notes that, on the contrary, the applicants' version of the events is supported by the witness statements collected by the applicants and by the investigation. The applicant and the neighbours stated that the perpetrators had acted in a manner similar to that of a security operation – they had checked the residents' identity documents, and they had spoken Russian among themselves and to the residents. Some witnesses also referred to the use of military vehicles such as APCs, which could not be available to paramilitary groups (see, for example, paragraphs 91 and 93 above). In the only witness statement produced by the Government from the investigation file no. 56166, the witness referred to them as “military” (see paragraph 96 above). In their applications to the authorities the applicants consistently maintained that their relatives had been detained by unknown servicemen and requested the investigation to look into that possibility. Finally, some of the documents issued by the investigation directly mentioned the carrying out of a security operation (see paragraph 99 above).

145. The Court finds that the fact that a large group of armed men in uniform during curfew hours, equipped with military vehicles, was able to move freely through military roadblocks and proceeded to check identity documents and to arrest several persons at their homes in an urban area strongly supports the applicants' allegation that these were State servicemen. The other detainees' accounts about the circumstances of their detention and release support this conclusion. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check the involvement of law-enforcement bodies in the arrest. The investigation was unable to establish which precise military or security units had carried

out the operation, but it does not appear that any serious steps were taken in that direction.

146. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

147. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were 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 another plausible explanation of the events in question, the Court considers that Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev were arrested on 3 November 2002 at their homes in Chechen-Aul by State servicemen during an unacknowledged security operation.

148. The bodies of the five detained men, including four of the applicants' relatives, were discovered on 8 November 2002 in a forest. The forensic documents cited by the Government and witness statements attest that the deaths were violent, referring to gunshot wounds to the heads.

149. The next point to be considered by the Court is whether there is a causal link between the arrest of the four men by State servicemen and their deaths. The Court reiterates in this connection that 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, among many authorities, *Tomasi v. France*, 27 August 1992, Series A no. 241-A, §§ 108-11, and *Avşar v. Turkey*, no. 25657/94, § 392, ECHR 2001-VII).

150. In the present case there was no news of the four men between their apprehension on 23 October 2002 and the finding of their bodies on 8 November 2002. The Court also notes that although forensic expert examinations have been carried out on the bodies, it does not appear that they established the dates of the deaths with any degree of precision.

151. The Government did not dispute the circumstances of the finding of the bodies. The link between the kidnappings and deaths has furthermore been assumed in the domestic proceedings, and the Court takes this into account. The Government have not given any version of events differing from the one presented by the applicants.

152. The Court finds that the facts of the present case strongly suggest that the deaths of these detainees were part of the same sequence of events as their apprehension and support the assumption that they were extrajudicially executed by State agents. In these circumstances, the Court finds that the State bears the responsibility for the deaths of the applicants' four relatives.

153. For the above reasons the Court considers that it has been established beyond reasonable doubt that Magomed Shakhgiriye, Ali Magomadov, Ismail Umarov and Umalat Abayev were killed following their unacknowledged detention by State servicemen.

2. As regards Aslan Israilov and Khasin Yunusov

154. The applicants likewise submitted that Aslan Israilov and Khasin Yunusov had been unlawfully detained by State servicemen on 3 November 2002, allegedly in Grozny. They had later been killed by the same servicemen and their bodies had been found in the vicinity of the Khankala military base. The Government regarded this version as unfounded. They reiterated that the applicants had not given this information to the investigation and that Khasin Yunusov's death had been found to be linked to his professional activities as a member of the police force.

155. The Court observes that it has found the Russian State authorities responsible for extrajudicial executions or disappearances of civilians in the Chechen Republic in a number of cases, even in the absence of final conclusions from the domestic investigation (see, among other examples, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luhuyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII; *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). It has done so primarily on the basis of witness statements and other documents attesting to the presence of military or security personnel in the area concerned at the relevant time. It has relied on references to military vehicles and equipment, on other information on security operations and on the undisputed effective control of the areas in question by the Russian military. On that basis, it has concluded that the areas in question were “within the exclusive control of the authorities of the State” in view of the military or security operations being conducted there and the presence of servicemen (see, *mutatis mutandis*, *Akkum and Others*, cited above, § 211, and *Zubayrayev v. Russia*, no. 67797/01, § 82, 10 January 2008).

156. However, in the present case the Court has little evidence on which to draw such conclusions. The only verifiable information about the applicant's two relatives indicates that they were last seen in the afternoon of 3 November 2002 on the road between Grozny and Tolstoy-Yurt. The exact circumstances or the timing of their alleged abduction and death have not been elucidated.

157. The Court notes that some information about the alleged detention of the applicants' two relatives on 3 November 2002 was indeed communicated by them to the authorities. In particular, the undated letter from the village authorities and the letter of 7 November 2002 from the seventh applicant stated that the three men had been illegally arrested in Minutka Square in Grozny and that they had been detained in the Khankala military base (see paragraphs 66 and 67 above). However, the applicants could not point to any more specific information concerning the alleged kidnapping. They themselves were not eyewitnesses to the events, and no witnesses were ever identified by them or by the investigation. The seventh applicant's letter referred to "rumours" as the basis of her suspicion that her husband had been detained in the Khankala military base. Furthermore, from the documents reviewed by the Court it does not appear that the applicants informed the investigation about the alleged link between the disappearance of their relatives and the security operations in Grozny following the downing of the helicopter, which they assumed in the submissions to the Court. Nor does it appear that they ever relayed to the investigating authorities the information about the meetings with the head of the village administration and the head of the Grozny ROVD (see paragraph 67 above).

158. The bodies of the three missing men were found six months later with signs of violent death, but there is no information allowing the Court to draw inferences about the implication of State agents in their deaths to the extent proposed by the applicants. The fact that the bodies were found several hundred metres away from the fence of the military base cannot serve as the sole basis for such a conclusion, since it was not alleged that the area in question had been guarded by the military servicemen or could otherwise be described as being under their "undisputed effective control". Nor has this link been assumed in the domestic investigation, which, on the contrary, connected Khasin Yunusov's death with his service in the police force.

159. Taking the above into account, the Court finds that it has not been established to the required standard of proof of "beyond reasonable doubt" that the security forces were implicated in the deaths of Aslan Israilov and Khasin Yunusov. Nor can the Court conclude that in the present case the burden of proof can be entirely shifted to the Government.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

160. The applicants complained under Article 2 of the Convention that their relatives had been killed 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. Alleged violation of the right to life of Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev

161. The Court has already found it established that the applicants' relatives' deaths can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev.

B. Alleged violation of the right to life of Aslan Israilov and Khasin Yunusov

162. The Court has established above that, in the absence of relevant information, it is unable to find that the security forces were implicated in the deaths of the applicants' relatives. In such circumstances the Court finds no State responsibility and thus no violation of the substantive limb of Article 2 in respect of Aslan Israilov and Khasin Yunusov.

C. Alleged inadequacy of the investigation into the abduction of Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev

163. The applicants argued that the investigation had not been effective and adequate, as required by the Court's case-law on Article 2. They noted

that it had been adjourned and reopened a number of times and that the taking of the most basic steps had thus been protracted, and that the applicants had not been informed properly of the most important investigative steps. They argued that the fact that the investigation had been pending for such a long period of time without producing any known results had been 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.

164. The Government claimed that the investigation into the disappearance of the applicants' relatives met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators. They argued that the decisions to adjourn and to reopen the investigation signified that the authorities had continued to take steps in order to resolve the crime. They also noted that the investigation had been opened on the same day as the kidnapping, and that on that day a large number of witnesses had been questioned, that the prosecutor's office had forwarded numerous information requests to various bodies, trying to check the applicants' version of the events. The absence of results could not be treated as a breach of the positive obligations under Article 2, which entailed an obligation to use particular means.

165. The Court has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

166. In the present case, an investigation of the abduction was carried out. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

167. 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 produced by the Government.

168. Turning to the facts of the case, the Court notes that the authorities were immediately aware of the crime through the applicants' submissions. The investigation was opened on 23 October 2002. It also appears that on that day and within the following days some applicants, members of the detained men's families and their neighbours were questioned and the scene of the crime inspected. On 25 October 2002 the local military commander's office informed the investigation that none of its servicemen had been involved in the special operation in question. Following the discovery and identification of the five bodies on 8 November 2002, a new investigation was opened. Within the following days the site of the crime was examined, two witnesses were questioned and forensic and ballistic expert examinations were carried out. Members of the kidnapped men's families were granted victim status between October and December 2002. However,

it appears that after that a number of crucial steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all.

169. In particular, the Court notes that, as appears from the documents and information provided by the Government, many eyewitnesses and other victims of the events were questioned in 2006 (see paragraphs 96, 99 and 100 above).

170. A number of essential steps were never taken. First, it does not appear that the investigation attempted to find out whether any special operations had been carried out in Chechen-Aul on the night in question, or identified and questioned any of the servicemen who had carried it out and were involved in the detention of Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev, or their fellow detainees.

171. Further, it does not appear that the investigation fully established the circumstances of the applicants' relatives' deaths. Even though a forensic examination of the bodies was carried out, it does not appear that it established the timing of the deaths or that it addressed any injuries except for firearm wounds, as described by the relatives and a medical doctor in Chechen-Aul (see paragraphs 46 and 47 above). There has been no explanation for the difference in the results communicated by the Government, according to which the deaths of all the victims had been caused by firearm wounds, and the medical report issued by the Chechen-Aul medical service to the effect that the death of Ali Magomadov had resulted from strangulation and numerous blows (see paragraph 48 above). The Court also notes that the death certificates issued by the local registration office indicated 23 October and 9 November 2002 as the dates of the deaths (see paragraphs 49, 51, 55 and 58 above).

172. The Court also notes that even though some of the applicants and other relatives of the disappeared men were granted victim status, they were only informed of the adjournment and reopening of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

173. Lastly, the Court notes that the investigation was adjourned and resumed a number of times and that there were long periods of inactivity during the years when it was pending.

174. The Government raised the possibility for the applicants to make use of 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, the investigation was resumed by the prosecuting authorities themselves a number of times owing to the need to take additional

investigative steps. However, they still failed to investigate the applicants' allegations properly. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

175. 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 deaths of Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev, in breach of Article 2.

D. Alleged inadequacy of the investigation of the deaths of Aslan Israilov and Khasin Yunusov

176. The applicants further alleged a violation of the positive obligation under Article 2 to investigate the deaths of Aslan Israilov and Khasin Yunusov. The Government disputed this allegation.

177. The Court first notes that the authorities were aware of the applicants' two relatives' disappearance at the latest by 11 November 2002 (see paragraph 106 above). Nevertheless, the investigation into the murder was not opened until 15 December 2002. This delay in itself was liable to affect the investigation of such a serious crime, where crucial action had to be taken within the first days after the reported disappearance.

178. From the documents submitted by the Court it does not appear that since the finding and the identification of the bodies in April 2003 any progress whatsoever has been made in the investigation of the murders. It does not appear, for example, that the timing of the deaths has been established, or that the investigation has taken any steps at all in order to check the applicants' version, however vague, that Aslan Israilov and Khasin Yunusov could have been arrested by servicemen in Grozny or that in November 2002 they could have been detained at the military base in Khankala. It is true that the obligation to carry out an effective investigation is not an obligation of result, but of means. However, any deficiency in the investigation which undermines its ability to establish the cause of death of the person will risk falling below this standard (see *Tanrıku*, cited above, § 109).

179. Furthermore, the Court notes that the applicants were not fully informed about the progress of the investigation, except for occasional communication to them of the decisions to reopen and adjourn it. In such circumstances, and for reasons similar to those listed in paragraph 174 above, the Court finds that the Government's preliminary objection about

the failure to exhaust domestic remedies in the context of the criminal investigation should be dismissed.

180. In view of the above, and drawing inferences from the Government's failure to disclose most of the documents from the criminal investigation file, the Court finds that there has been a violation of the obligation to carry out an effective investigation into the deaths of Aslan Israilov and Khasin Yunusov.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

181. The applicants further relied on Article 3 of the Convention, submitting that as a result of their relatives' abduction and murder and the State's failure to investigate those events properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

182. The Government disagreed with these allegations and argued that in the absence of any evidence suggesting that the applicant's relatives had been abducted and murdered by representatives of the State, there were no grounds for alleging a violation of Article 3 of the Convention on account of the applicant's mental suffering.

183. The Court notes that while a family member of a “disappeared person” can claim to be a victim of treatment contrary to Article 3 in view of the suffering endured as a result of uncertainty about the fate of their relatives and the authorities' inadequate reaction (see *Kurt v. Turkey*, 25 May 1998, §§ 130-34, *Reports of Judgments and Decisions* 1998-III, and *Bazorkina*, cited above, §§ 139-41), the same principle would not usually apply to cases where the person taken into custody has later been found dead (see, for example, *Tanlı v. Turkey*, no. 26129/95, § 159, ECHR 2001-III). In such cases the Court would limit its findings to Article 2. However, if a period of initial disappearance is long it may in certain circumstances give rise to a separate issue under Article 3 (see *Gongadze v. Ukraine*, no. 34056/02, §§ 184-86, ECHR 2005-XI, and *Luluyev and Others*, cited above, §§ 114-15).

184. In the present case, in so far as the complaint was brought by the relatives of Magomed Shakhgiriyeve, Ali Magomadov, Ismail Umarov and Umalat Abayev, the news of the applicants' relatives' deaths was preceded by a period of about ten days during which they were deemed to have disappeared. They immediately notified the authorities of the kidnappings, and on 23 October 2002, i.e. on the day following the events, the district prosecutor's office commenced a criminal investigation. While not doubting that the situation caused the applicants profound distress and anxiety, the Court does not find, in the circumstances of the present case, that a separate

issue arises under Article 3 as distinct from its above conclusions concerning the double violation of Article 2.

185. In so far as the sixth and seventh applicants complained about the disappearance and deaths of Aslan Israilov and Khasin Yunusov, the Court notes that it has been unable to reach the conclusion suggested by the applicants that their two relatives were abducted and killed by State agents. In view of this, and having already found a violation of the obligation to investigate effectively under Article 2 of the Convention, the Court does not find that additional questions arise under Article 3 in the present case.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

186. The applicant further stated that Magomed Shakhgiriye, Ali Magomadov, Ismail Umarov, Umalat Abayev, Aslan Israilov and Khasin Yunusov 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.”

187. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*,

no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others*, cited above, § 122).

188. The Court has found it established that Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev were detained by State servicemen on 23 October 2002 and then unlawfully deprived of their lives. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate.

189. Consequently, the Court finds that Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

190. In so far as the complaint concerns Aslan Israilov and Khasin Yunusov, the Court observes that it has not found it established to the requisite standard of proof that the two men were detained by representatives of the State. Therefore, no violation of Article 5 can be found in respect of them.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

191. 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.”

192. 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. They referred to Article 125 of the Code of Criminal Procedure, which allowed participants in criminal proceedings to complain to a court about measures taken during an investigation. This was an effective remedy to ensure the observation of their rights. They had also not claimed damages in civil proceedings.

193. The Court reiterates that in circumstances where, as here, the criminal investigation into the violent deaths was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

VII APPLICATION OF ARTICLE 41 OF THE CONVENTION

195. 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

196. The applicants claimed damages in respect of the lost wages of their relatives following their arrests and subsequent deaths. They claimed that their relatives had been unemployed at the time of their arrest, or that they were unable to obtain salary statements for them, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. They calculated their earnings for the period, taking into account an average 10% inflation rate. Their calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2004 (“Ogden tables”).

197. The second applicant claimed a total of 429,354 Russian roubles (RUB) under this heading (12,084 euros (EUR)). She claimed that she could have counted on 20% of her husband's earnings for herself and 10% for each of their four children until they reached the age of majority.

198. The third applicant, who retired in 1977, submitted that she could have counted on 10% of her son's earnings. She claimed a total of RUB 51,590 (EUR 1,448).

199. The fourth applicant, who is the sister of Ismail Umarov, submitted that she was taking care of his three minor children and that she could have counted on 10% of his earnings for each of the children until they reached the age of majority. She claimed a total of RUB 234,510 (EUR 6,583).

200. The fifth applicant, the widow of Umalat Abayev, claimed a total of RUB 679,497 (EUR 19,074). She submitted that she could have counted on 30% of her husband's earnings for herself and on 20% for their daughter until the age of 18.

201. The sixth applicant, who is the widow of Aslan Israilov, claimed RUB 461,479 (EUR 12,954) and the seventh applicant, who is the sister of Khasin Yunusov, claimed RUB 216,937 (EUR 6,090) in respect of pecuniary damage.

202. The Government regarded these claims as based on suppositions and unfounded. In particular, they noted that in the national proceedings the applicants had never claimed compensation for the loss of a breadwinner, although such a possibility was provided for. As to the relatives of Khasin Yunusov, who had been a police officer, his family had received

compensation arising out of his compulsory State personal insurance, because his death had been found to have been connected to his professional duties. His mother, in respect of whom the claim had been brought by the seventh applicant, had also received a monthly pension for the loss of a breadwinner as of 1 May 2003.

203. 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 appropriate cases, include compensation in respect of loss of earnings. 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, “failing which the Chamber may reject the claim in whole or in part”. The Court further finds that the loss of earnings also applies to dependent children (see, among other authorities, *Imakayeva*, cited above, § 213). 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 second, third and fifth applicants' family members and the loss by these applicants of the financial support which they could have provided.

204. As to the claim brought by the fourth applicant, the Court notes that she submitted no documents or any other evidence to support her claim that she took care of her late brother's three minor children. In such circumstances, the Court finds that there is no reason to award her compensation for pecuniary damage.

205. As to the claims brought by the sixth and the seventh applicants, the Court observes that it has been unable to establish the State's responsibility for the deaths of the applicants' relatives. It therefore does not discern a causal link between the violations found and the damage claimed.

206. Having regard to the above and to the second, third and fifth applicants' submissions, and accepting that it would be reasonable to assume that their relatives would have eventually had some earnings resulting in the financial support of their families, the Court awards the following sums in respect of pecuniary damage, plus any tax that may be chargeable on these amounts:

- (i) EUR 12,000 to the second applicant;
- (ii) EUR 1,400 to the third applicant; and
- (iii) EUR 10,000 to the fifth applicant.

B. Non-pecuniary damage

207. The applicants claimed financial compensation in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members and the indifference shown by the authorities towards them. They sought the following amounts:

- (i) EUR 80,000 for the first applicant;

- (ii) EUR 40,000 for the second applicant;
- (iii) EUR 40,000 for the third applicant;
- (iv) EUR 80,000 for the fourth applicant;
- (v) EUR 60,000 for the fifth applicant;
- (vi) EUR 60,000 for the sixth applicant;
- (vii) EUR 80,000 for the seventh applicant.

208. The Government found these amounts exaggerated.

209. The Court has found a violation of Articles 2, 3, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the first, second, third, fourth and fifth applicants' relatives. It has also found a procedural violation of Article 2 and of Article 13 on account of the ineffectiveness of the investigation into the deaths of the sixth and seventh applicants' relatives. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the following amounts to the applicants, plus any tax that may be chargeable on them:

- (i) EUR 35,000 to the first applicant;
- (ii) EUR 35,000 to the second and third applicants jointly;
- (iii) EUR 35,000 to the fourth applicant;
- (iv) EUR 35,000 to the fifth applicant;
- (v) EUR 10,000 to the sixth applicant; and
- (vi) EUR 10,000 to the seventh applicant.

C. Costs and expenses

210. 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 for the work in the area of exhausting domestic remedies and of EUR 150 per hour for the drafting of submissions to the Court. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 8,957.

211. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. They questioned, in particular, whether all the lawyers working for the SRJI had been involved in the present case and whether it had been necessary for the applicants to rely on courier mail.

212. The Court has to establish first whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

213. Having regard to the details of the information submitted and the contracts for legal representation concluded between the SRJI and the applicants, the Court is satisfied that these rates are reasonable and reflect

the expenses actually incurred by the applicants' representatives. The Court notes that this case was rather complex and required the amount of research and preparation claimed by the applicants.

214. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 8,957, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

215. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
3. *Holds* that there has been a violation of the substantive aspect of Article 2 of the Convention in respect of Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov and Umalat Abayev;
4. *Holds* that there has been no violation of the substantive aspect of Article 2 of the Convention in respect of Aslan Israilov and Khasin Yunusov;
5. *Holds* that there has been a violation of the positive obligations under Article 2 of the Convention on account of the failure to conduct an effective investigation into the circumstances in which Magomed Shakhgiriyeu, Ali Magomadov, Ismail Umarov, Umalat Abayev, Aslan Israilov and Khasin Yunusov died;
6. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicants;

7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Magomed Shakhgiriyevev, Ali Magomadov, Ismail Umarov and Umalat Abayev;
8. *Holds* that there has been no violation of Article 5 of the Convention in respect of Aslan Israilov and Khasin Yunusov;
9. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
10. *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 to be converted into Russian roubles at the rate applicable at the date of settlement, save in the case of the sixth applicant and the payment in respect of costs and expenses:
 - (i) EUR 12,000 (twelve thousand euros) to the second applicant in respect of pecuniary damage;
 - (ii) EUR 1,400 (one thousand four hundred euros) to the third applicant in respect of pecuniary damage;
 - (iii) EUR 10,000 (ten thousand euros) to the fifth applicant in respect of pecuniary damage;
 - (iv) EUR 35,000 (thirty-five thousand euros) to the first, fourth and fifth applicants each in respect of non-pecuniary damage;
 - (v) EUR 35,000 (thirty-five thousand euros) to the second and third applicants jointly in respect of non-pecuniary damage;
 - (vi) EUR 10,000 (ten thousand euros) to the sixth and seventh applicants each in respect of non-pecuniary damage;
 - (vii) EUR 8,107 (eight thousand one hundred and seven 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;
11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President