



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

FIRST SECTION

CASE OF ZAKRIYEVA AND OTHERS v. RUSSIA

(Application no. 20583/04)

This version was rectified on 17 March 2009
under Rule 81 of the Rules of the Court

JUDGMENT

STRASBOURG

8 January 2009

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Zakriyeva 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 that date:

PROCEDURE

1. The case originated in an application (no. 20583/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by eight Russian nationals listed below (“the applicants”) on 18 May 2004.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

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

4. On 21 May 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- (1) Ms Tamara Adnanovna Zakriyeva, who was born in 1951;
- (2) Ms Amnat Khasiyevna Khakimova, who was born in 1978;
- (3) Ms Movsar Aslanbekovich Khamzayev, who was born in 1999;
- (4) Ms Iman Aslanbekovna Khamzayeva, who was born in 2002;
- (5) Mr Ilyas Aslanbekovich Khamzayev, who was born in 2003;
- (6) Mr Duk-Vakha Esikayevich Khamzayev, who was born in 1972;
- (7) Mr Aslan Esikovich Khamzayev, who was born in 1980; and
- (8) Mr Khavazh Esikovich Khamzayev, who was born in 1983.

The second applicant lives in the village of Achkhoy-Martan, in the Chechen Republic. The other applicants live in the village of Gekhi, the Urus-Martan District, in the Chechen Republic.

7. The first applicant is the mother of the sixth, seventh and eighth applicants and of Mr Aslanbek Esikovich Khamzayev, who was born in 1974. Aslanbek Khamzayev was married to the second applicant; they are the parents of the third, fourth and fifth applicants.

A. Disappearance of Aslanbek Khamzayev

1. The applicants' account

8. The applicants did not witness the disappearance of Aslanbek Khamzayev. The account below is based on statements by third parties submitted by the applicants.

9. On 25 June 2002 Aslanbek Khamzayev was visiting his aunt, Ms Yu., in Grozny. At about 3 p.m., while driving a car in the direction of his home village, he was stopped by a group of armed men at a Russian military checkpoint near the village of Aldy. The servicemen ordered Aslanbek Khamzayev to get out of the car and then put him into one of several armoured personnel carriers ("APCs") parked next to the checkpoint. That APC's registration number was covered with mud so that only two figures, "2" and "8", out of three were visible. Then all the APCs drove off in the direction of Grozny.

10. Meanwhile a rumour spread that Russian military units were carrying out a special operation on the outskirts of Grozny. Ms Yu. was concerned for her nephew's safety and drove towards Gekhi to meet him. Near the Aldy checkpoint she encountered a group of women who had witnessed Aslanbek Khamzayev's abduction and told her about it. Ms Yu.

drove to Grozny in pursuit of the APCs, which she eventually overtook and followed to the secured courtyard of the military commander's office of the Zavodskoy District of Grozny ("the Zavodskoy military commander's office").

11. Later the same day the applicants visited the Zavodskoy military commander's office and enquired about Aslanbek Khamzayev's whereabouts but received no information.

12. Some eighteen months later the applicants were told by unknown persons that not all of the APCs had arrived at the Zavodskoy military commander's office on 25 July 2002 as one of them had left the group and driven in the direction of the Oktyabrskiy District of Grozny.

2. Information submitted by the Government

13. The Government stated that on 25 June 2002 unidentified persons in camouflage uniforms had kidnapped Aslanbek Khamzayev in the village of Aldy in the Zavodskiy District of Grozny in the Chechen Republic.

B. The search for Aslanbek Khamzayev and the investigation

1. The applicants' account

14. On 28 June 2002 the second applicant wrote to the Memorial Human Rights Centre ("Memorial"), an NGO based in Moscow, informing it that her husband had been arrested by Russian servicemen and asking for its help in searching for him. On the same date lawyers from Memorial wrote to the Grozny prosecutor's office ("the city prosecutor's office") requesting that criminal proceedings be instituted in respect of Aslanbek Khamzayev's disappearance.

15. On 6 August 2002 the city prosecutor's office instituted an investigation into Aslanbek Khamzayev's disappearance under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 50115.

16. On 22 August 2002 the city prosecutor's office granted the first applicant victim status in the case.

17. On 6 November 2002 the city prosecutor's office suspended the investigation on the grounds that it had not been possible to identify those responsible for the crime.

18. On 6 March 2003 the first applicant sent a letter to the prosecutor's office of the Chechen Republic with a copy to the Special Envoy of the Russian President in the Chechen Republic for Rights and Freedoms. She said that her son had been arrested by Russian servicemen in the course of a "sweeping" operation in the village of Aldy and taken away in an APC. She requested that the crime be investigated.

19. On 3 June 2003 the Main Military Prosecutor's Office forwarded the first applicant's complaint to the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office").

20. On 7 July 2003 the prosecutor's office of the Chechen Republic resumed the investigation into Aslanbek Khamzayev's kidnapping and informed the first applicant accordingly. They also invited her to send any further queries to the prosecutor's office of the Zavodskoy District of Grozny ("the district prosecutor's office").

21. On 11 July 2003 the UGA prosecutor's office forwarded the first applicant's complaint to the military prosecutor's office of military unit no. 20102 ("the unit prosecutor's office").

22. On 21 July 2003 the department of the interior of the Zavodskoy District of Grozny ("ROVD") issued a certificate confirming that Aslanbek Khamzayev had been missing since 25 June 2002 and that search case no. 02027 was pending before the ROVD.

23. On 15 August 2003 the unit prosecutor's office informed the first applicant that an inquiry into Aslanbek Khamzayev's disappearance had established that her son had not been arrested in the course of "sweeping" operations on 25 June 2002. No implication of the Russian military in the crime had been established. They also noted that her complaint had been forwarded to the prosecutor's office of the Urus-Martan District.

24. On 20 August 2003 the Prosecutor General's Office for the Southern Federal Circuit informed the first applicant that her complaint had been forwarded to the prosecutor's office of the Chechen Republic.

25. On 4 September 2003 the unit prosecutor's office forwarded the first applicant's complaint to the military commander of the Urus-Martan District.

26. On 25 November 2003 the SRJI requested the district prosecutor's office to inform them whether an investigation into Aslabek Khamzayev's kidnapping by Russian servicemen had been opened and what investigative measures, if any, had been taken. They also requested the investigators to interrogate certain witnesses of the crime.

27. On 27 November 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's letter to the district prosecutor's office ordering that it be included in the investigation file in case no. 50115.

28. On 2 February 2005 the SRJI requested the district prosecutor's office to inform them of progress in the investigation in case no. 50115.

2. Information submitted by the Government

29. On 5 August 2002 the first applicant complained about her son's abduction to the city prosecutor's office.

30. On 6 August 2002 the city prosecutor's office instituted an investigation into Aslanbek Khamzayev's abduction under Article 126 § 2

of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 50115.

31. On 22 August 2002 the first applicant was granted victim status and questioned. She submitted that Aslanbek Khamzayev had resided in the village of Gekhi. On 24 July 2002 he had gone to the Zavodskoy District to visit his relative, Ms Yu. On 25 July 2002 Ms Yu. had told the first applicant that earlier that day federal servicemen carrying out a “sweeping” security operation had checked Aslanbek Khamzayev’s identity papers and then let him go. He had then left for his home village. At about 5 p.m. a woman had told Ms Yu. that unknown men in camouflage uniforms had apprehended a young man near a dam. To protect the young man, the woman had told the men that she was his mother. The men in camouflage uniforms had proved that that was not the case by showing her identity papers in the name of A. Khamzayev and left.

32. On 27 July 2003 Ms V. was questioned as a witness. She stated that on 25 July 2002 she had overheard an elderly lady saying that she had witnessed the arrest of a young man by federal servicemen. When the lady told the servicemen that the arrested man was her son, they had produced identity papers in the name of Aslanbek Khamzayev. The lady had also mentioned that she had seen an APC with numbers “2” and “8” on a muddied registration number plate.

33. On 31 July 2003 Ms Yu. was questioned and stated that on 25 July 2005 she had seen a large group of people at a bus stop being subjected to an identity check. Her nephew Aslanbek Khamzayev was among them. An hour later he had come to her home, packed his belongings and gone home. Later that day her sister, Ms R.Yu., had told her that according to an unknown woman then nephew had been taken away by armed men in an APC.

34. On 3 August 2003 Mr Kh., Aslanbek Khamzayev’s father, was questioned. He said that on 24 July 2002 his son had gone to the village of Aldy. On 25 July 2003 Ms Yu. had informed him that earlier that day servicemen had checked his son’s identity papers. Later Ms Yu. had been told that at 5 p.m. unidentified persons had taken a young man away in an APC.

35. On 18 May 2004 Ms R.Yu. was questioned and stated that on 25 July 2002 she, her son and Ms Yu. had been travelling on a bus, which had broken down and stopped near the dam in the village of Chernorechye. Servicemen had taken Ms R.Yu.’s son away for an identity check; her sister had gone with them. On her return, her sister had told Ms R.Yu. that an acquaintance had informed her that their nephew Aslanbek Khamzayev had been arrested by unknown servicemen and taken away in an APC in the direction of school no. 39 in the Zavodskoy District of Grozny.

36. On 18 May 2004 Ms Yu. was again questioned. She stated that on 25 July 2002 she and her sister Mrs R. Yu. had been travelling on a bus

which had broken down near the dam. She had approached a crowd standing at the bus stop, where servicemen were carrying out identity checks. Her nephew Aslanbek Khamzayev had been there. Ms Yu. had observed the servicemen checking his identity using a computer before returning his identity papers. A half an hour later her nephew had returned to her house and then fallen asleep. Ms Yu. and her husband had driven back to the bus stop to give a lift to her sister who had been waiting by the bus. Her sister had shown them a piece of paper marked with the words “Khamzayev Aslanbek” which she explained an unknown woman had given her after saying that she had witnessed servicemen placing Aslanbek Khamzayev in an APC and driving away. Ms Yu. had immediately asked servicemen standing near the dam about her nephew, but they had replied that they knew nothing about him.

37. On 19 May 2004 Mr Yu., Ms Yu.’s husband, was questioned. He is said that in June 2002 his wife had told him that servicemen had arrested her nephew and taken him away in an APC. On the same day he and his wife had gone to the village of Chernorechye. They had overtaken a motorcade consisting of APCs and asked the servicemen about Aslanbek Khamzayev but they had given them no information. Mr Yu. had taken a look inside several APCs but found nobody there.

38. On an unspecified date Ms E. was questioned. She stated that on 25 July 2002 in the village of Aldy she had seen an APC and servicemen standing next to it. She had looked into through the window of one of the APCs and noticed a young man; she had not seen his face. Ms E. had asked the servicemen to let the young man go, claiming that he was her son. The servicemen had asked her the man’s name and she had said “Magomed”. One of the servicemen had shown her identity papers in the name of Aslanbek Yesikovich Khamzayev. The APC’s registration number plate was covered in mud and illegible.

39. On 28 August 2007 the first applicant was questioned and submitted that her son had been kidnapped not on 25 July 2002, but on 25 June 2002.

40. The Government stated that the investigating authorities had sent a number of queries to various State bodies and had taken other investigative measures, but did not specify what those measures had been. According to various law-enforcement agencies of the Chechen Republic, no special operations had been carried out on 25 June 2002 in the village of Aldy.

41. The investigation failed to identify the perpetrators. The implication of any law-enforcement agencies in the crime had not been established. Aslanbek Khamzayev had not been prosecuted, arrested or placed in a temporary detention facility in the Chechen Republic.

42. The investigation had been suspended on several occasions for failure to identify the perpetrators and then resumed. The applicants had been duly informed of all decisions taken during the investigation, which

was still pending under the supervision of the Russian Prosecutor General's Office.

43. Despite specific requests by the Court the Government did not disclose any documents from the investigation file in case no. 50115. 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

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

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING ABUSE OF THE RIGHT OF PETITION

45. The Government submitted that the application had not been lodged in order to restore the allegedly violated rights of the applicants. Its actual object and purpose was clearly political and it had been "lodged for ... purposes contrary to the goals and objectives of justice administered by the European Court of Human Rights". The Government concluded that there had been an abuse of the right of petition on the part of the applicants and that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

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

II. THE GOVERNMENT'S OBJECTION REGARDING *LOCUS STANDI*

47. The Government suggested that the applicants had been unaware of the contents of the application form, which had been signed not by the applicants, but by their representatives and two other collaborators of the SRJI. Furthermore, they doubted that the SRJI had prepared the observations on the admissibility and merits of the application of

20 December 2007 “with [the] participation and ... consent” of the applicants. Referring to the Court’s decision in *Vasila and Petre Constantin in the name of Mihai Ciobanu v. Romania* (no. 52414/99, 16 December 2003), the Government concluded that there was a lack of *locus standi* in the present case.

48. The Court notes that the applicants issued the SRJI with powers of attorney to represent their interests in the Strasbourg proceedings, in particular, to sign application forms and other materials submitted to the Registry on their behalf. There are no reasons to believe that the applicants issued the authorities against their will. Accordingly, the Government’s objection must be dismissed.

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

A. The parties’ submissions

49. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into Aslanbek Khamzayev’s disappearance had not yet been completed. They further argued that it had been open to the applicants to challenge in court or before higher prosecutors any acts or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of that remedy. They also submitted that it had been open to the applicants to file civil claims for damages but they had failed to do so.

50. The applicants contested that objection and stated that the criminal investigation had proved to be ineffective.

B. The Court’s assessment

51. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to

remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

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

53. 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.

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

55. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law-enforcement authorities shortly after the disappearance of Aslanbek Khamzayev and that an investigation has been pending since 6 August 2002. The applicants and the Government disagreed about the effectiveness of the investigation into the disappearance.

56. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints and that therefore this objection should be joined to the merits and examined below.

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

A. The parties' arguments

57. The applicants claimed that Aslanbek Khamzayev had been arrested on 25 June 2002 and that the date of 25 July 2002 had been mentioned in the statements by the first applicant and Ms E. by mistake. They further pointed out that in all other respects different witnesses had given a consistent account of the events. In their submission, it was beyond reasonable doubt that the men who had taken away Aslanbek Khamzayev were State agents. In support of their complaint they noted that Russian servicemen had carried out a special "sweeping" operation on the day of the disappearance; Aslanbek Khamzayev had been subjected to an identity check shortly before his disappearance; and an APC could only be used by federal troops.

58. The Government submitted that unidentified armed men had kidnapped Aslanbek Khamzayev. They further pointed out that the applicants were not sure of the exact date of the disappearance. According to the Government, the crime was committed on 25 June 2002. The information related by Ms E. to the applicants and investigators was not coherent. The applicants and their relatives had not given a consistent and corroborated account of the circumstances of their relative's kidnapping. The Government submitted that the investigation of the incident was pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relative was dead.

B. The Court's evaluation of the facts

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

60. The Court points out that a number of principles have been developed in its case-law as regards cases where it is faced with the task of establishing facts on which the parties disagree. As to the facts that are in

dispute, the Court reiterates its jurisprudence requiring the standard of proof “beyond reasonable doubt” in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others*, cited above, § 160).

61. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336; and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

62. The Court reiterates that it has noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

63. The Court notes that despite its requests for a copy of the investigation file into the kidnapping of Aslanbek Khamzayev, the Government produced no documents from the file on the grounds that they were precluded from doing so by Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

64. The Court has found the Russian State authorities responsible for extra-judicial executions or disappearances of civilians in the Chechen Republic in a number of cases, even in the absence of final conclusions from the domestic investigation (see *Khashiyev and Akayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Estamirov and Others*, cited above; and *Baysayeva v. Russia*, no. 74237/01, 5 April 2007). It has done so primarily on the basis of witness statements

and other documents attesting to the presence of military or security personnel in the area concerned at the relevant time. It has relied on references to military vehicles and equipment, on witness accounts, on other information on security operations and on the undisputed effective control of the areas in question by the Russian military. On that basis, it has concluded that the areas in question were “within the exclusive control of the authorities of the State” in view of military or security operations being conducted there and the presence of servicemen (see, *mutatis mutandis*, *Akkum v. Turkey*, cited above, § 211, and *Zubayrayev v. Russia*, no. 67797/01, § 82, 10 January 2008).

65. However, in the present case the Court has little evidence on which to draw such conclusions as the account of the events made by the applicants on the basis of the witnesses’ submissions is rather disjointed.

66. First, neither the applicants nor any other witnesses have ever stated that they saw Aslanbek Khamzayev being arrested by armed men and placed in an APC or other military vehicle. On the contrary, Ms Yu. informed the investigators that she had observed her nephew while his identity papers were being checked and that later he had arrived at her home (see paragraph 33 above). It follows that the servicemen carrying out the identity check decided not to arrest Aslanbek Khamzayev on the spot.

67. Secondly, it is noteworthy that the witnesses’ statements regarding certain facts made before the investigators and the Court differ substantially, if not drastically. Moreover, the fact that the confusion over the date of the incident persisted throughout the witnesses’ statements from August 2002 until August 2007 (see paragraphs 31–39 above) also gives reasons to doubt the coherence of the applicants’ version.

68. Lastly, in their submissions both before the domestic authorities and the Court the applicants relied heavily on a witness statement by Ms E. (see paragraph 38 above). Owing to its subsidiary role, the Court is not in a position to establish the veracity of Ms E.’s account of events. However, it refers to Mr Yu.’s statement that he overtook a motorcade of APCs and looked inside the vehicles but found no trace of Aslanbek Khamzayev (see paragraph 37 above). It is highly unlikely that two motorcades of APCs were moving in the area at the same time. Accordingly, the Court is disinclined to consider Ms E.’s statement in itself as persuasive evidence that Aslanbek Khamzayev was held in the APC by Russian servicemen.

69. Accordingly, the information in the Court’s possession does not suffice to establish that Aslanbek Khamzayev was kidnapped by State agents in the course of a security operation. In such circumstances, the Court cannot attribute responsibility for the unlawful acts in the present case to the respondent State without additional evidence to that effect.

70. To sum up, it has not been established to the required standard of proof “beyond reasonable doubt” that the security forces were implicated in

the disappearance of Aslanbek Khamzayev; nor does the Court consider that the burden of proof can be entirely shifted to the Government.

V. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

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

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

A. The parties’ submissions

72. The Government contended that the domestic investigation had obtained no evidence that Aslanbek Khamzayev was dead or that any servicemen from federal law-enforcement agencies had been involved in his kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants’ relative met the Convention requirement of effectiveness, as all measures available in national law were being taken to identify the perpetrators. The applicants themselves had been responsible for the delay in opening the investigation as they had reported the crime to the district prosecutor’s office only on 5 August 2002.

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

B. The Court's assessment

1. Admissibility

74. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of criminal domestic remedies should be joined to the merits of the complaint (see paragraph 55 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Aslanbek Khamzayev

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

76. As noted above, the domestic investigation failed to produce any tangible results as to the identities of the persons responsible for the alleged kidnapping of Aslanbek Khamzayev. The applicants have not submitted persuasive evidence to support their allegations that State agents were the perpetrators of such a crime. The Court has already found above that, in the absence of relevant information, it is unable to find that security forces were implicated in the disappearance of the applicants' relative (see paragraph 70 above). Neither has it established "beyond reasonable doubt" that Aslanbek Khamzayev was deprived of his life by State agents.

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

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

78. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result

of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161; and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

79. The Court notes that there is no proof that Aslanbek Khamzayev has been killed. However, it reiterates that the above-mentioned obligations also apply to cases where a person has disappeared in circumstances which may be regarded as life-threatening (see *Toğcu*, cited above, § 112). The applicants informed the investigating authorities that Aslanbek Khamzayev had disappeared in suspicious circumstances. Given the considerable number of reported enforced disappearances of persons in the Chechen Republic and the enduring confrontation between illegal armed groups and federal troops in the region in the early 2000s, the Court considers that the disappearance of Aslanbek Khamzayev could be regarded as life-threatening. Furthermore, it must be accepted that the more time that goes by without any news of the person who has disappeared, the greater the likelihood that he or she has died (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 226, ECHR 2004-...). Accordingly, after a certain lapse of time during which no information on the fate of Aslanbek Khamzayev had been received, a presumption arose that he could have been deprived of his life at the hands of any kidnappers. Accordingly, the Court concludes that the State authorities were under a positive obligation to investigate the crime in question.

80. Given that there was an investigation into the disappearance of Aslanbek Khamzayev, the Court must now assess whether it met the requirements of Article 2 of the Convention.

81. The Court notes at the outset that the documents from the investigation file in case no. 50115 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 applicants and the scant information on its progress presented by the Government.

82. The Court observes that on 28 June 2008, that is, three days after Aslanbek Khamzayev's disappearance, the applicants contacted lawyers from Memorial who, in turn, immediately informed the city prosecutor's

office of the crime (see paragraph 14 above). The investigation in case no. 50115 was instituted on 6 August 2002, that is, more than a month after Aslanbek Khamzayev's disappearance.

83. The Government attributed the delay in commencing the investigation to the applicants arguing that the first applicant had filed a complaint with the city prosecutor's office only on 5 August 2002. The Court considers in this respect that the issue of whether members of Aslanbek Khamzayev's family or others have lodged a formal complaint about his disappearance with the competent investigating authorities is not decisive. The mere knowledge of the disappearance in life-threatening circumstances on the part of the authorities gave rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the incident (see, *mutatis mutandis*, *Ergi v. Turkey*, 28 July 1998, § 82, *Reports* 1998-IV, and *Yaşa v. Turkey*, 2 September 1998, § 100, *Reports* 1998-VI). The Government did not contest the applicants' assertion that the lawyers from Memorial had reported the crime to the city prosecutor's office on 28 June 2002. Accordingly, the Court finds it established that the competent investigating authorities were notified of Aslanbek Khamzayev's disappearance shortly after it took place. In such circumstances, they and not the applicants were responsible for the substantial delay in commencing the investigation. In the Court's view, this delay was in itself liable to affect the investigation into the disappearance in life-threatening circumstances, when crucial action was required in the first days.

84. Furthermore, a number of essential investigative measures, such as interviews of key witnesses, were delayed for a considerable time. For instance, Aslanbek Khamzayev's¹ father and aunt were questioned for the first time a year after the incident, while Ms R.Yu. and Mr Yu. were interviewed only in May 2004 (see paragraphs 33-35 and 37 above). It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

85. The Court notes that, regrettably, it is unable to build a timeline of the investigation because of the Government's failure to submit not only the case documents, but also a detailed account of the relevant events. In these circumstances and drawing inferences from the Government's failure to submit information on the course of the proceedings, it concludes that a

¹ Rectified on 17 March 2009: the text was "Aslanbek Khamzatov's..."

number of essential investigative measures were either delayed or not taken at all.

86. Most notably, it does not appear from the materials in the Court's possession that the investigators ever tried to find out whether an identity check was carried out at the bus stop near the dam on 25 June 2002 and, if so, which State agency was in charge of it. According to the Government, the investigators demanded information on special operations from various law-enforcement agencies and established that no such operations had taken place in the area at the material time (see paragraph 40 above). However, the Government have not clarified whether a standard identity checkpoint is to be regarded as a "special operation" or not. In the absence of an unequivocal answer the Court is inclined to assume that not every identity check constitutes a "special operation". Given that a number of witnesses confirmed that they had seen the identity check at the bus stop, it considers that the investigators should have been more specific and precise when formulating their requests to the law-enforcement agencies. Moreover, the investigators have taken no steps to verify, on the basis of Mr Yu.'s submissions (see paragraph 37 above), whether any motorcades composed of APCs were circulating near the village of Chernorechye on 25 June 2002.

87. The Court also notes that even though the first applicant was granted victim status in case no. 50115, the city prosecutor's office only informed her of one of its decisions (the decision of 6 November 2002 to suspend the investigation), while it is clear from the Government's submissions that the investigation was suspended and subsequently resumed a number of times. In such circumstances, and the Court considers that the investigators clearly and blatantly failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the legitimate interests of the next of kin of the victim in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

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

89. The Court will now examine the limb of the Government's objection that was joined to the merits of the complaint (see paragraph 55 above). Inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the authorities' failure to take necessary and urgent investigative measures undermined the effectiveness of the investigation in its early stages. Moreover, although the Government mentioned the applicants' right to apply for judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies, without access to the case file or proper information on the progress of the investigation, the applicants could not have effectively challenged acts or omissions of the investigating authorities before a court.

Furthermore, given that the effectiveness of the investigation had already been undermined, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the criminal-law remedies relied on by the Government were ineffective in the circumstances and rejects their objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

90. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding Aslanbek Khamzayev's¹ disappearance in life-threatening circumstances, in breach of Article 2 in its procedural aspect.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. The parties' submissions

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

93. The applicants maintained their submissions.

B. The Court's assessment

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

¹ Rectified on 17 March 2009: the text was “Aslanbek Khamzatov's...”

95. Turning to the circumstances of the present case, the Court notes that the applicants are close relatives of Aslanbek Khamzayev¹. Accordingly, it has no doubt that the applicants have indeed suffered from grave emotional distress following the disappearance of their son, husband and brother.

96. The Court notes that it has already found violations of Article 3 of the Convention in respect of relatives of missing persons in a series of cases concerning the phenomenon of “disappearances” in the Chechen Republic (see, for example, *Luluyev and Others*, cited above, §§ 117-18; *Khamila Isayeva v. Russia*, no. 6846/02, § 143-45, 15 November 2007; and *Kukayev v. Russia*, no. 29361/02, §§ 107-10, 15 November 2007). It is noteworthy, however, that in those cases the State was found to be responsible for the disappearance of the applicants’ relatives. In the present case, by contrast, it has not been established to the required standard of proof “beyond reasonable doubt” that the Russian authorities were implicated in Aslanbek Khamzayev’s² disappearance (see paragraph 70 above). In such circumstances the Court considers that this case is clearly distinguishable from those mentioned above and therefore concludes that the State cannot be held responsible for the applicants’ mental distress caused by the commission of the crime itself.

97. Furthermore, in the absence of a finding of State responsibility for Aslanbek Khamzayev’s³ disappearance, the Court is not persuaded that the investigating authorities’ conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicants mental distress in excess of the minimum level of severity which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among other authorities, *Cruz Varas and Others v. Sweden*, 20 March 1991, § 83, Series A no. 201).

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

VII. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

99. The applicants further stated that Aslanbek Khamzayev⁴ 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:...

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² Rectified on 17 March 2009: the text was “Aslanbek Khamzatov’s...”

³ Rectified on 17 March 2009: the text was “Aslanbek Khamzatov’s...”

⁴ Rectified on 17 March 2009: the text was “Aslanbek Khamzatov...”

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. The parties’ submissions

100. In the Government’s opinion, no evidence had been obtained by the investigators to confirm that Aslanbek Khamzayev¹ had been deprived of his liberty by State agents in breach of the guarantees set out in Article 5 of the Convention.

101. The applicants reiterated their complaint.

B. The Court’s assessment

102. 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).

103. Nevertheless, the Court has not found it established “beyond reasonable doubt” that Aslanbek Khamzayev² was arrested by Russian servicemen (see paragraph 70 above). Nor is there any basis to presume that

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the missing man was ever placed in unacknowledged detention under the control of State agents.

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

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

105. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties’ submissions

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

107. The applicants reiterated the complaint.

B. The Court’s assessment

108. The Court observes that the complaint made by the applicants under this Article has already been examined in the context of Article 2 of the Convention. Having regard to the findings of a violation of Article 2 in its procedural aspect (see paragraph 90 above), the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 2 is admissible, there is no need for a separate examination of this complaint on its merits (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 84-86, ECHR 2004-XI, and *Anık and Others v. Turkey*, no. 63758/00, § 86, 5 June 2007).

IX. ALLEGED VIOLATIONS OF ARTICLE 14 OF THE CONVENTION

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

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

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

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

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

X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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

114. The first, fourth and fifth applicants claimed damages in respect of their relative's loss of earnings. They submitted that, although Aslanbek Khamzayev¹ was unemployed at the time of his disappearance, he could have been expected to earn at least the minimum wage and to support them financially. The first applicant claimed under this heading a total of 296,086.21 Russian roubles (RUB) (approximately 8,300 euros (EUR)), the fourth applicant RUB 102,958.51 (approximately EUR 2,900) and the fifth applicant RUB 93,326.21 (approximately EUR 2,600).

115. The Government regarded these claims as unfounded.

¹ Rectified on 17 March 2009: the text was “Aslanbek Khamzatov...”

116. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions that there has been no violation of Article 2 in its substantive aspect, the Court finds that there is no direct causal link between the alleged violation of Aslanbek Khamzayev's¹ right to life and the loss by the first, fourth and fifth applicants of the financial support which he could have provided. Accordingly, it makes no award under this head.

B. Non-pecuniary damage

117. The first applicant claimed EUR 40,000, the fourth and fifth applicants EUR 30,000 each and the sixth, seventh and eighth applicants EUR 5,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member and the indifference shown by the authorities towards them.

118. The Government found the amounts claimed exaggerated.

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

C. Costs and expenses

120. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research at a rate of EUR 50 per hour and drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. They also claimed courier service expenses and translation fees confirmed by relevant invoices, as well as administrative costs that were not supported by any documents. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,773.17.

121. The Government disputed the reasonableness and the justification of the amounts claimed under this head. They also submitted that the applicants' claims for just satisfaction had been signed by six lawyers, two of whom had not been mentioned in the powers of attorney issued by the

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

122. The Court notes that the applicants had given authority to act to the SRJI and its four lawyers. The applicants' observations and claims for just satisfaction were signed by six persons in total. The names of three of these persons appeared in the powers of attorney, while three other lawyers collaborated with the SRJI. In these circumstances, the Court sees no reasons to doubt that the six lawyers mentioned in the applicants' claims for costs and expenses took part in the preparation of the applicants' observations. Moreover, there are no grounds to conclude that the applicants were not entitled to send their submissions to the Court via courier service.

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

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

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

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

D. Default interest

127. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaints under Article 14 of the Convention;
2. *Dismisses* the Government's objection regarding abuse of the right of petition;
3. *Dismisses* the Government's objection regarding *locus standi*;
4. *Decides* to join to the merits the Government's objection regarding the non-exhaustion of criminal domestic remedies and rejects it;
5. *Declares* the complaints under Articles 2 and 13 of the Convention admissible and the remainder of the application inadmissible;
6. *Holds* that there has been no violation of Article 2 of the Convention in its substantive limb in respect of Aslanbek Khamzayev¹;
7. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Aslanbek Khamzayev² had disappeared;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Article 2;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage to the first, fourth and fifth applicants each and EUR 850 (eight hundred and fifty euros) to the sixth, seventh and eighth applicants each, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;
 - (iii) EUR 3,650 (three thousand six hundred and fifty euros), in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;

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

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

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

Søren Nielsen
Registrar

Christos Rozakis
President