



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

FIRST SECTION

CASE OF ABDULKADYROVA AND OTHERS v. RUSSIA

(Application no. 27180/03)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Abdulkadyrova and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Sverre Erik Jebens,

Giorgio Malinverni, *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. 27180/03) 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 the four Russian nationals listed below (“the applicants”), on 20 July 2003.

2. The applicants were represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. 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 relative had disappeared after being detained by servicemen in Chechnya on 8 September 2002 and that on the same day their house had been searched and their property damaged.

4. On 11 October 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 24 January 2008, the Court declared the application partly 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) Mrs Nurzhan Supyanovna Abdulkadyrova, born in 1973;
- (2) Mr Shamkhan Ayndayevich Dzhabayev, born in 1995;
- (3) Mr Zumrat Ayndayevich Dzhabayev, born in 1993;
- (4) Ms Kheda Ayndayevna Dzhabayeva, born in 1991.

8. The applicants live in Urus-Martan, Chechnya.

A. Arrest and detention of Ayndi Dzhabayev

9. The first applicant is the wife of Ayndi Aliyevich Dzhabayev, born in 1967. The second, third and fourth applicants are their children. The first applicant is a librarian by profession, but is currently unemployed. The sole breadwinner of the family was her husband Ayndi Dzhabayev, who worked as a bricklayer in a construction company.

10. The applicants live in their own house at 26 Krasnoarmeyskaya Street in the town of Urus-Martan. At this address there are three houses, sharing a common courtyard. Two other houses are occupied by their relatives. One house is occupied by Said-Magomed D., his wife Fatima (also called Petimat) A. and their two daughters, who were six and three years old in September 2002.

11. There is a direct passage between their courtyard and the house of their neighbours who live at 28 Krasnoarmeyskaya Street.

12. On 8 September 2002 the first applicant had been at the market since early morning. Her three children – the second, third and fourth applicants – were at home with their father, Ayndi Dzhabayev, who was ill. The applicants' presentation of the events related to Ayndi Dzhabayev's detention is based on statements by the third and fourth applicants, Fatima A. and two neighbours, Roza P. and Kheda A., who were eyewitnesses to these events.

13. According to these statements, on 8 September 2002 at about midday, a group of military servicemen in several armoured personnel carriers (APCs) surrounded the house at 28 Krasnoarmeyskaya Street, next door to the applicants' house. The second, third and fourth applicants were playing in the street outside their house. When the military arrived, they went into their house, together with their friend Kh.

14. At house no. 28 there was an exchange of automatic gunfire. The first applicant's sister-in-law Fatima A. and her two children ran into the first applicant's house. The shooting in the neighbouring house lasted for

about five to ten minutes. When it stopped, Fatima A. went over to her house with her younger daughter.

15. Then a serviceman broke down the door which separated the applicants' courtyard from that of their neighbours at no. 28 and entered their courtyard. The serviceman was wearing a balaclava mask and was armed with an automatic weapon. He shouted in Russian: "Everybody out in the street, bitches!"

16. Fatima A. ran into the street with her daughter. She was scared to return for the other children and called them from the street to come out. The second and fourth applicants heard the shouting and immediately went outside. Their father Ayndi Dzhabayev told them to go outside, while he was dressing and looking for his passport. The third applicant was late coming out of the house. While in the courtyard he heard the serviceman ordering someone "Hands on the wall, animal!" He turned back and saw the soldier aiming a gun at his father, who quickly walked to the wall and put his hands up. He had not had time to put on his shoes. The serviceman walked up to Ayndi Dzhabayev. The third applicant was scared to remain and went out into the street.

17. At that point Fatima A. realised that her elder daughter had remained inside the house and asked the fourth applicant to go and get her. When the fourth applicant entered the courtyard it was empty and her father and the serviceman had gone. She picked up her cousin from the house and they went to join the rest of the family at the house of their neighbour Kheda A. There they were joined by a neighbour from 29 Krasnoarmeyskaya Street, Roza P., who had also been ordered to leave her house by the servicemen.

18. From there the applicants heard shooting at no. 28 and then at their own house. They submitted that it had not been an exchange of fire, because there had been only one machine-gun firing and the soldiers standing in the street had not reacted to it and had remained calm.

19. At around 3 p.m. the servicemen gathered in the street in front of house no. 28 where the initial shooting had broken out. The soldiers laughed and said that they had killed one fighter ("*boyevik*") and another one had run away. At about 3.30 p.m. the head of the town administration and the head of the Urus-Martan district administration arrived. Both men talked to the senior officers among the military. Then the local residents started to come out of their houses and approach the military.

20. Witnesses Roza P. and Kheda A. submitted that they had seen a lot of military vehicles in the streets, including APCs and Ural trucks. Some of the servicemen had gone to the office of the district military commander, located about 300 metres from the applicants' house.

21. Fatima A. with her children and the second, third and fourth applicants returned to their house. Ayndi Dzhabayev was not there. Inside the house everything had been turned upside down, and things had been thrown out of wardrobes. The furniture and clothes were covered with bullet

holes and there were a lot of cartridges from automatic weapons scattered on the floor. In the vegetable patch behind the house were the tracks of an APC.

22. Roza P. walked up to the heads of the town and district administrations and asked them where Ayndi Dzhabayev was. The men replied that no one had been detained.

23. Roza P. and Kheda A. were among the local residents in front of no. 28 Krasnoarmeyskaya Street. They testified that the gates of the house had been opened and they could see that inside there had been a minibus and an Ural military truck. Under the fence-roof they had seen the body of a man (presumably the “fighter”) who had been killed there during the shooting. Several servicemen put the body on a blanket and carried it to the minibus. In the crowd there was the wife of Magomed A., the owner of house no. 28, who had apparently been sought by the military. She identified the man killed as a friend of Magomed’s, while Magomed himself had escaped.

24. The first applicant returned home at about 4 p.m. By that time the military had left. Her eldest daughter, the fourth applicant, told her that they had been forced out of the house by the military, and when they returned their father had no longer been there. The first applicant found the walls and furniture covered with bullet holes. She went into the vegetable patch behind the house and noted APC tracks which led towards the buildings of the Urus-Martan district administration, the district military commander’s office and the premises of a former clothes factory, which at the time was being used to house a military unit. In the passage between their house and no. 28 the applicant found a pack of “Karsil” medicine, used by her husband, who had a liver problem. In the courtyard she found his cigarettes and cigarette holder. She also found his shoes on the porch of the house and concluded that her husband had been taken away barefoot.

25. On the same day the first applicant went to the town administration, but found it already closed and returned home.

26. On the same day at about 6 p.m. a group of about 30 servicemen again arrived at 28 Krasnoarmeyskaya Street in three APCs and one UAZ vehicle. Seven or eight men were wearing masks, the rest were without masks. A large group of servicemen entered no. 28 and probably conducted a search there. Then the military searched the vegetable patches. When the first applicant asked what they were looking for, they said that they were looking for weapons.

27. Then the military wanted to search the third house off the applicants’ courtyard which belonged to their relatives. The first applicant asked them not to break the door down and they waited for her to fetch the key. She explained that the house belonged to their relatives who lived in another region and the military searched it, without showing any papers.

28. The first applicant talked to one of the servicemen and said that earlier on the same day her husband had been driven away by the military. One serviceman who was not wearing a mask told her that if her husband was not guilty of anything, he would be released. Another serviceman told her that they had not detained anyone. When the applicant insisted, he told her that the operation earlier that day had been carried out by other servicemen and that they had come only to carry out the search. They refused to answer any more questions and left after about half an hour.

29. The first applicant submitted that later that day officers from the Urus-Martan District Prosecutor's Office had questioned her neighbours at no. 28. No one came to the applicants' house to question them or their relatives.

30. The applicants have had no news of their husband and father Ayndi Dzhabayev since that day.

31. The Government in their observations did not challenge the facts as presented by the applicants. In their earlier observations they stated that it had been established that on 8 September 2002 at about 12.30 p.m. unidentified armed men wearing camouflage uniforms had entered the applicants' house, destroyed some property and taken Ayndi Dzhabayev away to an unknown destination. His whereabouts could not be established. In their latest observations, submitted in March 2008, the Government referred to the absence of eyewitness accounts of Ayndi Dzhabayev being taken away by the armed men.

B. Search and investigation into the "disappearance"

32. The first applicant began searching for her husband on 9 September 2002. She applied to various official bodies, both in person and in writing, trying to find out the whereabouts and the fate of Ayndi Dzhabayev. The first applicant also travelled around Chechnya when she heard of unidentified bodies being found, hoping to find him. At the same time she complained about the damage caused to their property by gunfire.

33. In the morning of 9 September 2002 the first applicant visited the local military commander's office, the Department of the Interior and the Urus-Martan District Prosecutor's Office ("the district prosecutor's office"). Everywhere she was told that they did not know who had detained her husband or where he was.

34. The applicants received hardly any substantive information about the fate of their husband and father or about the investigation. On several occasions they were sent copies of letters by which their requests had been forwarded to different prosecutors' services. They submitted these documents to the Court, and they can be summarised as follows.

35. On 9 September 2002 the first applicant submitted a written application to the district prosecutor's office. Her application was registered

under no. 1755 and the applicant was informed that it had been assigned to investigator L. The applicant stressed that at that time, in their house, cartridges from the automatic weapons were still lying around and the tracks of the APC were still visible behind the house.

36. On 10 September 2002 the applicant submitted an application to the local military commander, to the head of the district administration, and to the Office of the Special Envoy of the Russian President for rights and freedoms in Chechnya. She also wrote to the NGO Memorial Human Rights Centre.

37. For several days afterwards the first applicant visited all the law-enforcement and military offices in the district. Everywhere the officers denied that her husband had been detained and that they had been responsible for the operation on 8 September 2002.

38. On 18 September 2002 the first applicant managed for the first time to meet investigator L. He showed her a plan of her neighbours' house at 28 Krasnoarmeyskaya Street and asked in which room her husband had been detained. The first applicant realised that the investigator had information that Ayndi Dzhabayev had been detained at their neighbours' house, and not at theirs. The first applicant tried to persuade him otherwise, but the investigator insisted that at the moment of detention her husband had been in no. 28. Then the investigator asked her about the neighbours. He promised to call her if there was a need for further clarification. He did not take any other action, such as examining the applicant's house or questioning the neighbours and relatives.

39. On 23 September 2002 the district newspaper *Marsho* published an article entitled "Police should work", in which the Urus-Martan district military commander was quoted as saying that there had been "combat action" in Krasnoarmeyskaya Street, as a result of which one man who had mounted active resistance had been killed and his body had been transferred to the district administration.

40. On 7 October 2002 the first applicant again visited the district prosecutor's office and found out that her application of 9 September 2002 had been lost, though the registration number existed. The investigator who was responsible for her case had been dismissed, and he had failed to take any action on her complaint.

41. On 8 October 2002 the applicant again submitted an application to the district prosecutor. She stated that her husband had been detained by military servicemen on 8 September 2002 during a special operation, which had been reported in a local newspaper. She also referred to the killing of an unknown young man during the operation and the involvement of a large group of servicemen and military vehicles. The applicant asked the prosecutor to inform her of the progress made in the investigation and to grant her victim status in the proceedings.

42. On 11 October 2002 the applicant was told at the district prosecutor's office that her complaint had been forwarded by that office to the district department of the interior (ROVD). The applicant submitted that she had managed to see the officer at the ROVD who was responsible for her case only one month later. That officer questioned her and the fourth applicant, and then returned the case to the district prosecutor's office.

43. On 4 November 2002 the first applicant addressed the district prosecutor, asking for help in finding her husband and complaining of inactivity in the investigation.

44. On 20 November 2002 an investigator of the district prosecutor's office informed the first applicant that on 20 November 2002 they had opened criminal investigation file no. 61152 into the kidnapping of Ayndi Dzhabayev, which had occurred on 8 September 2002 in Urus-Martan.

45. On 3 March 2003 the first applicant applied to the Urus-Martan District Court ("the district court"), complaining about the actions of the district military commander. She stated that the special operation on 8 September 2002 had been carried out by the military who reported to the local military commander. She requested the court to order the military commander to disclose information concerning her husband's whereabouts and reasons for his detention, to grant her access to a lawyer and to allow her to challenge the lawfulness of the detention. The applicant submitted that her complaint had not been adjudicated. The Government in their submissions stated, without providing any documents, that on 18 April 2003 the claim had been left without consideration owing to the repeated failure of both parties to appear.

46. On 15 April 2003 the first applicant again applied to the district court, complaining about the actions of the district prosecutor's office. She requested the court to oblige the prosecutor's office to carry out an investigation into her complaint concerning the detention and disappearance of her husband and to take a number of actions, such as to grant her victim status, to question her children, sister-in-law and neighbours, to collect the bullets and cartridges from her house and to identify and question those responsible for the operation. The applicant also requested the court to evaluate the damage caused to her property and identify those responsible. The applicant received no answer to this complaint.

47. On 14 May 2003 the district prosecutor's office replied to the first applicant and stated that the investigator responsible for the case at the initial stage had been dismissed for negligence. In the context of criminal case no. 61152 the first applicant, her children and other witnesses had been questioned. The question of damage to her property was to be resolved by a court. The question of the examination of the site and collection of evidence could be resolved only if there was agreement among all residents of the household and if the evidence of the crime, such as bullets and cartridges, was still present.

48. On 15 May 2003 the applicant, during one of her visits to the district prosecutor's office, received from an investigator a copy of the document in the case file which, as he told her, proved that her husband had been detained by the military. The "administrative report" was drawn up by the Urus-Martan military commander Colonel G. on 8 September 2002. The document stated:

"I, the military commander of the Urus-Martan district Colonel G., on 8 September 2002 carried out an administrative investigation concerning the wounding of a serviceman of the military commander's office, senior assistant to the head of the intelligence unit Captain I. The investigation established the following.

On 8 September 2002 an operation was carried out under the command of Colonel G. in order to check the operative information in Urus-Martan, at the crossroads of Krasnoarmeyskaya and Budyennogo Streets. At 10.10 a.m., at 28 Krasnoarmeyskaya Street, during the inspection of the premises, bandits who were staying there mounted armed resistance. During the battle engagement a serviceman of the special forces of the Interior Troops was wounded. Upon the order of Colonel G. the district was cordoned off by the servicemen of the commander's company, the district FSB [Federal Security Service] and the Ministry of the Interior.

During the continuation of the special operation at 11.55 a.m., as a result of an exchange of fire, Captain I. received a firearm wound to the head. ... During the special operation two members of the ILG [illegal armed groups] were killed, and arms and ammunition were seized. ...The wounding of Captain I. was brought to the attention of the Urus-Martan district prosecutor."

49. On 19 June 2003 the Chechnya Prosecutor's Office ordered the district prosecutor's office to check the first applicant's submissions that her husband had been detained by the officers of the FSB during a special operation aimed at detention of their neighbour, A. The letter referred to her statements that during the special operation A. had wounded two officers of the FSB and then escaped. The FSB officers had then carried out unlawful searches in the neighbouring houses and detained Ayndi Dzhabayev at his house, after which he had disappeared. The prosecutor issued an order to investigate the applicant's statements about the involvement of the FSB, to find her husband's whereabouts, to decide if the case should be forwarded to the military prosecutor for further investigation and to inform the applicant and the Chechnya Prosecutor's Office of the progress of the case.

50. On 5 August 2003 the first applicant wrote to the Chechnya Prosecutor and complained about inactivity in the investigation. She referred to the publication of 23 September 2002 and to the administrative report of 8 September 2002, copies of which she attached to the letter. The applicant suggested that only one "fighter" had been killed on 8 September 2002 and that the military had taken away her husband and later killed him in order to "boost" the figures. She stressed that the military had only released one body for burial, and that the name of the second person killed had not been disclosed. The applicant requested the prosecutor to question

Colonel G., who had been in command of the operation on 8 September 2002, to identify the second person who had been killed on that day, to find out his place of burial, to transfer the case to the military prosecutor's office, and to inform her of the results of the investigation.

51. On 22 August 2003 the applicant was granted victim status in criminal case no. 61152. The order stated that the investigation had established that "on 8 September 2002 at about 12.30 p.m. unknown persons armed with automatic weapons and wearing masks entered a private household at 26 Krasnoarmeyskaya Street, Urus-Martan, kidnapped Ayndi Dzhabayev, born in 1967, destroyed his property and left in the direction of the Urus-Martan district military commander's office". The decision also stated that the first applicant had suffered pecuniary and non-pecuniary damage.

52. It appears that some time in the summer of 2003 an investigator visited the applicants' home and collected bullets from the bullet holes in the walls of their house. The applicants were not aware whether a ballistic study had been carried out on them and if so, what results it had produced.

53. On 1 September 2003 the Chechnya Prosecutor's Office informed the first applicant that on 20 January 2003 the investigation of the criminal case into the kidnapping of her husband had been adjourned owing to failure to identify the culprits. After an additional review by the Chechnya Prosecutor's Office, on 21 August 2003 that decision had been quashed and the case was forwarded for additional investigation to the district prosecutor's office.

54. On 24 September 2003 the first applicant again complained to the Chechnya Prosecutor that the local prosecutor had failed to act. She asked him to identify and question the servicemen who had participated in the special operation of 8 September 2002, to question Colonel G., to identify the place of burial of the second "fighter" killed on that day, to collect bullets and cartridges from her home and to examine the site and to question her neighbours. The applicant received no response, and on 8 December 2003 again wrote to the Chechnya Prosecutor and asked him to oblige the local prosecutor to carry out the investigative actions as listed in her letters.

55. On 1 October 2003 the District Court, upon the first applicant's request, declared her husband Ayndi Dzhabayev a missing person, with effect from 8 September 2002. The court took into account statements by two eyewitnesses about Dzhabayev's detention by unknown persons dressed in camouflage and the first applicant's statement that she had had no news of her husband ever since.

56. On 19 December 2003 the district prosecutor's office informed the first applicant that the investigation into the kidnapping of Mr Dzhabayev had been resumed on 19 November 2003. On 19 December 2003 it had again been adjourned for failure to identify the culprits. The applicant was informed of the possibility of appeal to a prosecutor or to a court.

57. On 5 January 2004 the district prosecutor's office informed the first applicant that the investigation had resumed on that day.

58. On 19 April 2004 the first applicant asked the district prosecutor's office to inform her, as a victim, of the progress and results of the investigation and to tell her if the actions requested by her had been taken.

59. On 29 May 2004 the Urus-Martan ROVD issued a note, based on the neighbours' statements, which described Ayndi Dzhabayev as a respectable member of the community who had had no trouble with the law.

60. On 29 December 2005 the first applicant requested the district prosecutor's office to grant her, as a victim, access to case file no. 61152.

61. On 2 March 2006 an investigator of the district prosecutor's office replied to her that she had no right to review the file while the proceedings were pending. Under Article 42 of the Criminal Procedural Code she could only review the documents relating to the investigative steps carried out with her participation.

62. On several occasions higher-ranking prosecutor's offices forwarded the applicant's complaints to the district prosecutor's office and requested them to inform them and the applicant of the progress of the proceedings.

63. On 6 May 2006 the District Court, upon the first applicant's application, declared her husband dead as of that day. A death certificate was issued by the district civil registration office on 15 May 2006. The place of death had not been established.

64. The first applicant furthermore submitted that on 7 December 2007 she had been summoned to the Achkhoy-Martan inter-district prosecutor's office. There she was for the first time informed that the investigation into her husband's kidnapping had been transferred to that office. The investigator in charge of the case questioned the first applicant who informed him of the document entitled "administrative report" (see paragraph 48 above). The investigator went through the investigation file comprising one thick folder, but did not find that document. On the following day the first applicant gave a copy of that document to the investigator.

C. Information from the Government

65. In their observations the Government did not dispute the information concerning the investigation into the abduction of Ayndi Dzhabayev as presented by the applicants. Relying on information obtained from the General Prosecutor's Office, they referred to a number of other procedural steps taken in 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).

66. With reference to the information provided by the Prosecutor General's Office, the Government submitted that the investigation into the abduction of Ayndi Dzhabayev by "unidentified masked men in camouflage uniforms with machine guns" had commenced on 20 November 2002. The file was assigned no. 61152.

67. On 21 November 2002 the investigators questioned the third and fourth applicants, who stated that on 8 September 2002 they had heard shooting in the street, and that soon afterwards their father had been taken away by armed persons.

68. Similar statements had been given by the relatives and neighbours, including the first applicant and Fatima A., both questioned on 25 November 2002.

69. On 20 January 2003 the investigation was adjourned owing to a failure to identify the culprits.

70. On 21 August 2003 the investigation was resumed. On 22 August 2003 the first applicant was questioned and granted victim status in the proceedings.

71. On 21 September 2003 the investigation was adjourned.

72. On 17 November 2003 the investigation was resumed upon the order of the deputy to the Chechnya Prosecutor. On 20 November 2003 the investigators examined the Dzhabayevs' house and collected two bullets and one cartridge. On 21 November 2003 the first applicant was again questioned. On the same day a ballistic study was ordered and carried out. The Government did not specify what the results were. From 5 to 10 December 2003 the investigators questioned witnesses Kheda A., Fatima A. and another neighbour.

73. On 19 December 2003 the investigation was adjourned.

74. On 4 January 2004 the investigation was resumed. On 5 January 2004 the investigators forwarded requests to the pre-trial detention centres in the Northern Caucasus and to all district prosecutors' offices in Chechnya.

75. On 5 February 2004 the investigation was adjourned.

76. On 20 May 2004 the investigation was resumed. On 1 June 2004 the first applicant was granted the status of civil claimant in the case.

77. On 2 - 19 June 2004 the investigators questioned Roza P. and Kheda A., as well as the first applicant and some other persons (presumably neighbours).

78. On 24 June 2004 the investigation was adjourned.

79. On 20 December 2005 the investigation was resumed. On 28 December 2005 the investigators questioned Kheda A., the first, third and fourth applicants and two other persons.

80. The Government further stated that in December 2005 the investigators had questioned the head of the Urus-Martan administration, who had stated that on 8 September 2002 he had seen the cordon of

servicemen in Krasnoarmeyskaya Street, but had had no information about the detention of Ayndi Dzhabayev. According to him, the district military commander, G., had been in charge of the operation, but he could not be questioned because he had died.

81. In their observations produced in March 2008 the Government indicated that on 28 December 2005 the investigation had been closed in the part concerning the damage to the applicants' property, in view of the expiry of time-limits. They did not specify whether the applicants had been informed of this decision.

82. On 20 January 2006 the investigation was adjourned.

83. On 27 March 2006 the investigation was resumed. The Government stated that at that time Kheda A. and Roza P. had stated to the investigation that they had not been eyewitnesses to the detention of Mr Ayndi Dzhabayev. A similar statement had been made by Fatima A.'s husband, who had not been at home on the day in question. It appears that the investigation was then again adjourned.

84. In their observations of 24 March 2008 the Government additionally submitted that the investigation had resumed on 27 March 2006. A number of answers from various departments of the Ministry of the Interior and the FSB testified that these bodies had no information about Ayndi Dzhabayev's whereabouts.

85. On 25 and 26 April 2006 the investigators questioned two neighbours of the applicants. One of them testified that on 8 September 2002 at about 11 a.m. he had been stopped at the intersection of Budennogo and Krasnoarmeyskaya Streets by a group of military servicemen wearing camouflage uniforms and armed with automatic weapons. They explained to her that a "sweeping operation" was under way and did not allow her to pass through. She also saw military vehicles, including APCs, and heard shots being fired. Later she learnt that Ayndi Dzhabayev had been kidnapped. Another neighbour testified that on that day at about 11 a.m. a group of armed men came into the courtyard of her house and ordered her, in Russian, to remain at home. About 30 minutes later she went outside and saw the dead body of a young man in the courtyard nearby. Later she learnt that the armed men had kidnapped Ayndi Dzhabayev.

86. The Government also submitted that on 30 May 2006 the head of Urus-Martan administration was again questioned. He confirmed his previous submissions that in early September 2002 he had been present at Krasnoarmeyskaya Street where a "special operation" was being carried out. He saw a large number of civilian and military persons and witnessed the military taking away the body of a man. He also saw ammunition and military gear thrown around. On 27 June 2006 the then first deputy to the Urus-Martan district administration M.G. gave similar information. He was not aware which agency had conducted the operation or of the circumstances of Dzhabayev's kidnapping.

87. In June 2005 the investigation forwarded additional information requests to the local departments of the Interior, the FSB and the regional headquarters of the Ministry of the Interior. None of these agencies had any information about the crime, but continued to take steps to resolve it.

88. At some point the central archive of the Ministry of Defence replied to the investigation that they had no information about the conducting of a special operation in Urus-Martan on 8 September 2002.

89. Attempts to find the body of Dzhabayev among unidentified corpses had equally been futile. No criminal proceedings had been pending against Ayndi Dzhabayev either.

90. On 15 November 2007 the investigators additionally questioned the first applicant and another neighbour. The neighbour testified that she had seen armed men in camouflage uniforms in the street on 8 September 2002, but was not a witness to Dzhabayev's kidnapping.

91. On 26 November 2007 the investigation was adjourned, of which the first applicant was informed.

92. Between 4 December 2007 and 12 March 2008 the investigation was resumed and adjourned on two more occasions; a number of information requests were sent to various bodies of the Interior and of the United Group Alliance. The aim of these requests was to obtain information about the carrying-out of the special operation of 8 September 2002 and to identify the officers of the military commander's office of Urus-Martan. No relevant information has been obtained.

93. The investigation failed to establish the whereabouts of Mr Ayndi Dzhabayev. The investigation found no trustworthy information about the carrying-out of a special operation in Krasnoarmeyskaya Street in Urus-Martan on 8 September 2002.

94. Despite specific requests by the Court, the Government did not submit copies of any documents from the file in criminal case no. 61152, providing only several copies of decisions to suspend and resume the investigation and to grant victim status, as well as of the notifications to the first applicant of the adjournment and reopening of the proceedings. 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 breach of Article 161 of the Russian 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.

D. The applicants' property complaints

95. The applicants claimed that they had lost property as a result of unlawful acts. On 10 September 2002 the first applicant and her neighbours

Roza P. and Kheda A. drew up a list of property destroyed by gunfire in her house, which included a TV, furniture, household items and clothes.

96. In October 2003 a private trading company made an evaluation of damage for the applicants, based on the average prices for the given items in the market of Urus-Martan. According to these calculations, the damage to the applicants' property amounted to 55,460 Russian roubles (RUB).

II. RELEVANT DOMESTIC LAW

97. 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

98. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the first applicant had not made use of the rights accorded to her as a victim in criminal proceedings, such as lodging applications and requests with the investigators or a court. She could also have appealed to a court against the investigation decisions. The applicants were furthermore entitled to sue the investigation bodies in civil proceedings for pecuniary and non-pecuniary damage. In fact, the Government noted that in March 2003 the first applicant had turned to the District Court but had failed to appear and the proceedings had been suspended.

99. The applicants contested that objection. With reference to the Court's practice, they argued that they had not been obliged to apply to civil 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, including the application to the court, had been futile. In the absence of any conclusions from the investigation, and since the State continued to deny its responsibility for their relative's kidnapping, they could not realistically rely on any other remedy.

B. The Court's assessment

100. 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).

101. 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.

102. 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 (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.

103. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement authorities immediately after the detention of Ayndi Dzhabayev and that an investigation has been pending since November 2002. The applicants and the Government dispute the effectiveness of this investigation.

104. 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

105. The applicants maintained that it was beyond reasonable doubt that the men who had intruded into their home and taken away Ayndi Dzhabayev had been State agents. In support of their complaint they referred to the fact that a "sweeping" operation had taken place in Urus-Martan on 8 September 2002, as supported by a large amount of evidence in the file. The applicants referred to statements by witnesses, including the

press and local officials, to the effect that on the day of the incident they had seen military vehicles and armed men walking towards the building of the local military commander's office.

106. The Government submitted that on 8 September 2002 Ayndi Dzhabayev had disappeared from his house. While in their observations of April 2006 they accepted as an established fact that he had been taken away by unidentified armed men who had also destroyed the applicants' property, in their latest submissions of 24 March 2008 they argued that there was not enough information to conclude that a kidnapping had taken place. They stressed that no eyewitnesses had testified that Mr Dzhabayev had been taken away by the armed men, but rather that he had last been seen in the courtyard of his house in the presence of armed men. In such circumstances, the Government suggested, it could not be excluded that Mr Dzhabayev had gone away on his own or escaped, as might be suggested by the information referred to by some witnesses with reference to security forces. The Government argued that kidnapping remained only one version of the events under investigation, albeit the principal one. They concluded that since there was no proof that Mr Dzhabayev had been kidnapped, there were no grounds to suspect that State agents had been involved in the crime. They further argued that there was no convincing evidence that the applicants' relative was dead, given that his whereabouts had not been established and his body had not been found.

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

107. 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).

108. In the present case the applicants alleged that their relative had been illegally arrested by the authorities and had then disappeared. 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 criminal investigation file 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.

109. The Government confirmed the principal facts as presented by the applicants. They refused to disclose any of the documents of substance from the criminal investigation file, relying on Article 161 of the Code of Criminal Procedure. The Government also argued that the Court's procedure contained no guarantees as to the confidentiality of documents, in

the absence of sanctions against applicants in the event of a breach of the obligation not to disclose the contents of such documents to the public. They cited, by way of comparison, the Rome Statute of the International Criminal Court of 17 July 1998 (Articles 70 and 72) and the Statute of the International Criminal Tribunal for the former Yugoslavia (Articles 15 and 22) and argued that these instruments provided for personal responsibility for a breach of the rules of confidentiality and laid down a detailed procedure for the pre-trial examination of evidence.

110. 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.

111. Furthermore, the two international courts whose statutes were cited by the Government operate in the context of international criminal prosecution of individuals and have jurisdiction over offences contrary to their own administration of justice. The Court observes that it has previously stated that criminal-law liability is distinct from international-law responsibility under the Convention. The Court's competence is confined to the latter and is based on its own provisions, which are to be interpreted and applied on the basis of the objectives of the Convention and in the light of the relevant principles of international law (see, *mutatis mutandis*, *Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII).

112. The Court lastly 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.

113. 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

114. First, the Court notes that on 3 October 2003 the Urus-Martan District Court declared Ayndi Dzhabayev a missing person following his

kidnapping by unknown armed persons from his house on 8 September 2002. On 6 May 2006 the same court declared him dead. These domestic decisions remain valid, their conclusions were not challenged by the Government and the Court will accept them as established facts. The parties' remaining arguments concern State responsibility for the death.

115. 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*, cited above, § 161). 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 when deciding whether the death of the applicants' relative can be attributed to the authorities.

116. The applicants alleged that the persons who had taken Ayndi Dzhabayev away on 8 September 2002 and then killed him had been State agents. The Government did not dispute any of the essential factual elements underlying the application and did not provide a different explanation of the events.

117. The Court notes that the applicants and the neighbours stated that there had been a special operation on 8 September 2002 in their street. The armed servicemen had cordoned off an area in the town, checked the identity documents of the residents and had spoken Russian among themselves and to the residents. The witnesses also indicated that the men had then gone towards the building of the local military commander's office, and referred to the use of military vehicles such as APCs, which could not be available to paramilitary groups. The witnesses themselves had been convinced that this was a security operation. Importantly, information about the carrying-out of a security operation was confirmed by senior civil servants in the town and district administrations and by information published in the newspaper (see paragraphs 22, 39 and 80 above). In their applications to the authorities the applicants consistently maintained that their relative had been detained by unknown servicemen and requested the investigation to look into that possibility (see paragraphs 41, 45, 46, 49, 50, 54 and 86 above). Lastly, the Government did not question the validity of the "administrative report" drawn up by the military commander of Urus-Martan on 8 September 2002 and describing the actions of the military and security forces on that day in Krasnoarmeyskaya and Budennogo Streets (see paragraph 48 above).

118. The Court finds that all the material reviewed by it supports the applicants' allegation that there was a special operation carried out by State

servicemen. 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.

119. 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).

120. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Ayndi Dzhabayev was arrested on 8 September 2002 at his house in Urus-Martan by State servicemen during an unacknowledged security operation.

121. There has been no reliable news of the applicants' relative since 8 September 2002. His name has not been found in any official detention facilities' records. Lastly, the Government did not submit any explanation as to what had happened to him after his arrest. On 6 May 2006 he was declared dead by the District Court.

122. The Court notes with great concern that a number of cases have come before it which suggest that the phenomenon of "disappearances" is well known in Chechnya (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007). A number of international reports point to the same conclusion. The Court has already noted above that it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose most of the documents from the file. Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping. The Court reiterates that in a case involving

disappearance, it is particularly regrettable that there should have been no thorough investigation of the relevant facts by the domestic prosecutors or courts. The few documents submitted by the Government from the investigation file do not suggest any progress in five and a half years and, if anything, show the incomplete and inadequate nature of those proceedings. Moreover, the stance of the prosecutor's office and the other law-enforcement authorities after the news of the relative's detention had been communicated to them by the applicants contributed significantly to the likelihood of the disappearance, as no necessary steps were taken in the crucial first days and weeks after the arrest. The authorities' conduct in the face of the applicants' well-substantiated complaints gives rise to a strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation.

123. For the above reasons the Court considers that it has been established beyond reasonable doubt that Ayndi Dzhabayev died following his unacknowledged detention by State servicemen. The Court also finds it established that the lack of a proper investigation into the abduction contributed to the eventual disappearance.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

124. 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 of the matter. Article 2 reads:

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

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

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

A. The alleged violation of the right to life of Ayndi Dzhabayev

125. The applicants maintained their complaint.

126. The Government referred to the fact that the investigation had obtained no evidence to the effect that this person was dead, or that

representatives of the State had been involved in his abduction or alleged killing.

127. It has already been established that the applicants' relative died following an unacknowledged arrest by State servicemen and that the death 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 Ayndi Dzhabayev.

B. The alleged inadequacy of the investigation into the abduction

128. The applicants argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court's case-law on Article 2. They noted that it had been opened after some delay, that it was adjourned and reopened a number of times, and that the taking of the most basic steps had thus been protracted, and that they 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 stressed that one of the most important documents in the case file, the "administrative report" about the special operation of 8 September 2002, had gone missing from the file (see paragraph 64 above). 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.

129. The Government claimed that the investigation met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators. They argued that the first applicant had been granted victim status and had had every opportunity to participate effectively in the proceedings.

130. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of 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. It 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*, §§ 117-119, cited above).

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

132. The Court notes at the outset that most of the documents from the investigation were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

133. Turning to the facts of the case, the Court notes that the authorities were immediately made aware of the crime through the applicants' submissions. Despite that, the investigation was opened on 20 November 2002, two and a half months after the detention occurred. This delay in itself was liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It also appears that in the following weeks the applicants and some of their neighbours were questioned. Subsequently, however, a number of crucial steps were apparently delayed and eventually taken much later, or were not taken at all.

134. In particular, the Court notes that the first applicant was granted victim status only in August 2003, the crime scene was inspected in November 2003, and the applicant's relatives and neighbours were questioned in December 2003 and June 2004. The head of the district administration was questioned for the first time in December 2005, and his deputy not until June 2006. Information from the relevant bodies of the Ministry of the Interior and the FSB about the conducting of a special operation was requested for the first time in 2005 (see the Government's submissions about the progress of the investigation, paragraphs 66-92 above).

135. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation had commenced. These 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).

136. A number of essential steps were never taken. Most significantly, it does not appear that the investigators sought to identify or question any of the servicemen who had conducted the operation in Urus-Martan and might have been involved in Ayndi Dzhabayev's detention. Despite the presence of ample evidence in the file, as late as 2008 the investigators were still trying to find out whether the operation had taken place and to identify the officers of the Urus-Martan military commander's office (see paragraph 92 above).

137. The Court also notes that even though the first applicant was eventually granted victim status, she was 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.

138. Lastly, the Court notes that the investigation was adjourned and resumed on no less than nine occasions, for no apparent reasons and

sometimes without taking the most basic procedural steps between adjournments.

139. The Government refer to a possibility for the applicants to apply for judicial review of the decisions of the investigating authorities in the context of exhausting 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 taken much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. 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 applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

140. In the light of the foregoing, the Court dismisses the Government's preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation, and holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Ayndi Dzhabayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

141. The applicants further relied on Article 3 of the Convention, submitting that as a result of their relative's disappearance 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."

142. The Government disagreed with these allegations and argued that, in the absence of any evidence suggesting that the applicants' relative had been abducted by representatives of the authorities, there were no grounds for alleging a violation of Article 3 of the Convention on account of the applicants' mental suffering.

143. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the "disappearance" of the family

member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

144. In the present case the Court notes that the applicants are the wife and children of the individual who has disappeared. The second, third and fourth applicants, who are minors, were eyewitnesses to the arrest of their father. For more than six years they have not had any news of him. During this period the applicants have applied to various official bodies with enquiries about their family member, both in writing and in person. Despite their attempts, they have never received any plausible explanation or information as to what became of him following his detention. The responses received by the applicants mostly denied that the State was responsible for his arrest or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

146. The applicants further stated that Ayndi Dzhabayev 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.”

147. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Ayndi Dzhabayev had been detained in breach of the guarantees set out in Article 5 of the Convention. He was not listed among the persons held in detention centres.

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

149. The Court has found it established that Ayndi Dzhabayev was detained by State servicemen on 8 September 2002 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

151. Consequently, the Court finds that Ayndi Dzhabayev was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

152. The applicants stated that they had been deprived of access to a court, contrary to the provisions of Article 6 of the Convention, the relevant parts of which provide:

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

153. The Government disputed this allegation.

154. The Court finds that the applicants’ complaint under Article 6 concerns essentially the same issues as those discussed under the procedural aspect of Article 2 and under Article 13. In these circumstances, the Court finds that no separate issues arise under Article 6 of the Convention.

VII. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO 1 TO THE CONVENTION

155. The applicants alleged that the disappearance of their relative had amounted to a violation of their right to family life. They also complained that the search carried out at their house on 8 September 2002 had been illegal and constituted a violation of their right to respect for their home. It thus disclosed a violation of Article 8 of the Convention. They also referred to the damage caused to their property during the search and relied on Article 1 of Protocol No. 1 to the Convention. These Articles provide as follows:

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 1 of Protocol No. 1 (protection of property)

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

156. The Government objected that those complaints were unfounded. In so far as the applicants complained about the search, the Government stressed that in the investigation no information had been found to support the applicants' claim that a search had taken place. They informed the Court that in December 2005 criminal proceedings in respect of damage to the applicants' property had been closed owing to the expiry of time-limits.

157. In so far as the applicants complained about the disappearance of their husband and father under Article 8 of the Convention, the Court observes that these complaints concern the same facts as those examined under Articles 2 and 3 and, having regard to its conclusion under those provisions, considers it unnecessary to examine them separately.

158. In so far as the complaint relates to the unauthorised search and the damage to their property, the Court notes that the applicants have submitted to the Court their own testimonies, as well as testimonies of their neighbours, which confirmed that on 8 September 2002 a search had been carried at their home by the same armed persons who had detained Ayndi Dzhabayev, after which their property had been damaged (see paragraphs 21, 24 and 95). Furthermore, this information was communicated by them to the domestic law-enforcement authorities, which investigated the events under the head of damage to property and granted the first applicant victim status in this connection (see paragraph 51). Although the Government denied State responsibility for the acts in question, the Court has already found it established that the persons who entered the applicants' home and detained their relative belonged to the military or security forces. Therefore, the acts in question are imputable to the respondent Government.

159. In so far as the Government claimed that the investigation in this connection had been closed on 28 December 2005, the Court remarks that this information was submitted by the Government only in March 2008, and without producing any documents (see paragraph 81 above). It is unclear whether the first applicant was ever made aware of this development. The Court notes that on 29 December 2005 the first applicant requested the investigator to grant her access to the investigation file, but that request was turned down in March 2006 (see paragraphs 60-61 above). She therefore could not find out about this development by consulting the file either. Thus, the applicant could not appeal against this decision.

160. Accordingly, there was an interference with the applicants' right to respect for their home and for the protection of their property. In the absence of any reference on the part of the Government to the lawfulness and proportionality of these measures, the Court finds that there has been a violation of the applicants' rights guaranteed by Article 8 of the Convention and by Article 1 of Protocol No. 1 to the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

161. 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.”

162. 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 those remedies. In particular, the applicants had had an opportunity to appeal to a court against the actions or omissions of the investigating authorities. 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. The applicants had not made use of this possibility, which required the initiative of the participants in criminal proceedings, and thus the absence of court action could not constitute a violation of Article 13.

163. The Court reiterates that in circumstances where, as here, the criminal investigation into a violent death was ineffective and the effectiveness of any other remedy that might 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).

164. The Court notes, equally, that it found above that in the present case the first applicant had no means of appealing against the decision to terminate criminal proceedings in relation to her complaints about an unlawful search and damage to her property (see paragraph 159 above).

165. Consequently, there has been a violation of Article 13 in conjunction with Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1.

166. As regards the applicants’ reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in conjunction with Articles 3 and 5 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

IX APPLICATION OF ARTICLE 41 OF THE CONVENTION

167. 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

1. Damage to the applicants' property

168. First, the applicants claimed compensation for damage caused to their property. They referred to the list of damaged household items drawn up by the first applicant and her neighbours on 10 September 2002, as well as to the document issued by a local trading company in October 2003 (see paragraphs 95-96 above). They claimed a total of 55,460 Russian roubles (RUB; equivalent to 1,509 euros (EUR)) under this head.

169. The Government did not make any comments on this claim, apart from denying State responsibility for the imputed acts.

170. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

171. The Court has found above that the applicants suffered a violation of Article 1 of Protocol No. 1 as a result of the actions of unidentified State agents. The Court agrees that the applicants must have borne some costs in relation to this, and that there is a clear causal connection between these costs and the violation found above.

172. As to the amount of the losses, the Court notes that at the time of their initial submissions the applicants submitted a list of damaged property, drawn up by the first applicant and two neighbours on 10 September 2002, two days after the incident. In 2003 the applicants obtained a calculation of costs of similar items at the market in Urus-Martan. On 15 April 2003 the first applicant requested the Urus-Martan court to evaluate the damage to her property, but this complaint has not been reviewed. The domestic investigation reached no conclusions in this connection either. The Government did not dispute the method of the applicants' calculations.

173. In these circumstances, the Court awards the amount of EUR 1,509 to the applicants jointly, as compensation for the pecuniary losses sustained.

2. *Damage resulting from the loss of earnings*

174. The applicants also sought an award in respect of Ayndi Dzhabayev's lost wages after his arrest and subsequent disappearance. The first applicant claimed a total of RUB 108,814 (EUR 2,947) under this head, the second applicant claimed RUB 172,510 (EUR 4,672), the third applicant claimed RUB 134,037 (EUR 3,630) and the fourth applicant claimed RUB 112,795 (EUR 3,055).

175. They claimed that Ayndi Dzhabayev had been employed as a bricklayer in a private construction company, with an annual salary of RUB 79,836. They submitted an undated certificate from a limited liability company "Kavkaz" to the effect that Ayndi Dzhabayev had earned there as a bricklayer the following amounts: January – RUB 6,444, February – RUB 6,784, March – RUB 7,150, April – RUB 5,748, May – RUB 6,200, June – RUB 6,920 and July – RUB 7,200. The applicants submitted that his average monthly salary for 2002 was thus RUB 6,653. The applicants also submitted a certificate issued on 9 October 2003 by the Urus-Martan administration to the effect that the applicants had been dependent on Ayndi Dzhabayev prior to his disappearance.

176. The second, third and fourth applicants claimed that they would have been financially dependent on their father from September 2002 until the time the youngest of the applicants reached the age of majority at 18, and the first applicant claimed that she would have been dependent on her husband until the youngest child reached the age of 14. Each of the applicants could count on 20% of the total earnings for the respective periods.

177. The Government regarded these claims as based on suppositions and unfounded. They argued first that it had not been established that Ayndi Dzhabayev was dead and that the State authorities had been responsible for his death. They also argued that since he had been declared dead in domestic proceedings, the applicants could obtain compensation for the loss of a breadwinner at domestic level.

178. In so far as the applicants sought to recover the loss of earnings of their husband and father, the Court finds that there is a direct causal link between the violation of Article 2 in respect of Ayndi Dzhabayev and the loss by the applicants of the financial support which he could have provided. The Court further finds that the loss of earnings also applies to the dependent children and that it is reasonable to assume that Ayndi Dzhabayev would have had earnings from which the applicants would have benefited (see, among other authorities, *Imakayeva* cited above, § 213). However, the Court cannot accept the undated certificate submitted by the applicants as the sole conclusive evidence of Ayndi Dzhabayev's annual earnings. Having regard to the applicants' submissions, the Court awards EUR 10,000 to the applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

179. The applicants claimed EUR 100,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their husband and father and the indifference shown by the authorities towards them.

180. The Government found the amounts claimed exaggerated.

181. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to be victims of violations of Articles 3 and 8 of the Convention. The Court accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicants jointly EUR 35,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

182. The applicants were represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to 1,837 pounds sterling (GBP). They claimed that for reasons related to the application of Russian legislation they could not claim sums for the work performed by their Moscow-based lawyers. As to the legal work by a United Kingdom-based lawyer, they sought GBP 300 for three hours at a rate of GBP 100 per hour. They also claimed GBP 1,362 for translation costs, as certified by invoices, and GBP 70 for administrative and postal costs.

183. The Government disputed, in general terms, the reasonableness of and justification for the amounts claimed under this head.

184. Having regard to the details of the information, the Court is satisfied that these rates are reasonable and reflect the expenses actually and necessarily incurred by the applicants' representatives (see *McCann and Others*, cited above, § 220).

185. The Court awards the amount of GBP 1,837, to be paid in pounds sterling into the representatives' bank account in the United Kingdom, as identified by the applicants.

D. Default interest

186. 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 Article 2 of the Convention in respect of Ayndi Dzhabayev;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Ayndi Dzhabayev disappeared;
5. *Holds* that there has been a violation of Article 3 on account of the applicants' mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ayndi Dzhabayev;
7. *Holds* that no separate issues arise under Article 6 of the Convention or under Article 8, in so far as the applicants complained of a violation of their right to family life;
8. *Holds* that there has been a violation of Article 8 of the Convention in respect of the search at the applicants' home;
9. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the damage caused to the applicants' property;
10. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Articles 2 and 8 of the Convention and of Article 1 of Protocol No. 1 to the Convention;
11. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
12. *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 1,509 (one thousand five hundred and nine euros) to the applicants jointly, plus any tax that may be chargeable, to be

converted into Russian roubles at the rate applicable at the date of settlement, in respect of pecuniary damage caused to the applicants' property;

(ii) EUR 10,000 (ten thousand euros) to the applicants jointly, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of pecuniary damage resulting from the loss of earnings;

(iii) EUR 35,000 (thirty-five thousand euros) to the applicants jointly, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage;

(iv) GBP 1,837 (one thousand eight hundred and thirty-seven pounds sterling), 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 United Kingdom;

(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;

13. *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