



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

FIRST SECTION

CASE OF ABDURZAKOVA AND ABDURZAKOV v. RUSSIA

(Application no. 35080/04)

JUDGMENT

This version was rectified on 8 July 2009
under Rule 81 of the Rules of the Court

STRASBOURG

15 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Abdurzakova and Abdurzakov 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 Malinvernì,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 35080/04) 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 two Russian nationals, Ms Taisa Sayd-Aliyevna (also spelled as Said-Aliyevna) Abdurzakova¹ and Mr Khavazh Khozh-Akhmedovich Abdurzakov (“the applicants”), on 19 August 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 13 June 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.

¹ Rectified on 8 July 2009: the text was “Ms Taisa Sayd Aliyevna Abdurzakova...”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1962 and 1949 respectively. They live in Urus-Martan in the Chechen Republic.

7. The applicants are married. They are the parents of Mr Vakha Khavazhovich Abdurzakov, born in 1981.

A. Disappearance of Vakha Abdurzakov

1. The applicants' account

(a) Abduction of Vakha Abdurzakov

8. On the night of 24 to 25 October 2002 the Abdurzakovs were sleeping in their family house at 234 Sheripov Street, Urus-Martan.

9. At about 3 a.m. on 25 October 2002 barking dogs woke the applicants. The second applicant heard human voices, looked out of the window and saw four armed men wearing camouflage uniforms and masks.

10. The second applicant stepped outside the house and saw in the courtyard around thirty armed men who ordered him in Russian to stop. He also heard the engine of an armoured personnel carrier ("APC").

11. The armed men ordered the second applicant to raise his hands and entered the house. There they forced him to his knees and searched the house without producing any warrant. Some of them pointed their machine guns at the first applicant.

12. Meanwhile several armed men entered Vakha Abdurzakov's room and ordered him to identify himself. The first applicant produced her son's identity papers. The armed men examined them and ordered Vakha Abdurzakov to rise and took him to the entrance door. When the first applicant begged them not to take her son away, they replied that she should "thank" her neighbours.

13. The armed men pushed the first applicant into a room and blocked its door with a refrigerator. Then they left the house taking Vakha Abdurzakov with them.

14. The second applicant unblocked the door and let his wife out of the room. She ran into the street and noticed two UAZ vehicles going towards the town centre. Then she saw two APCs parked nearby. When she had almost reached them they drove away.

15. In the morning of 25 October 2002 the applicants and their neighbours found bloodstains on the road which led from the applicants' house to Titov Street, where traces of UAZ tyres were visible.

16. The applicants concluded that those who had abducted their son were Russian servicemen because they had freely moved around the town during the curfew, had driven military vehicles and had spoken Russian without an accent.

(b) Money demanded from the applicants

17. Two or three days before 25 October 2002 Ms Yu., an inhabitant of Urus-Martan, had visited the applicants and told them that Russian law enforcement agencies had been told that their son was participating in illegal armed groups and had been planning to detain him. Ms Yu. had said that she would prevent Vakha Abdurzakov's arrest if the applicants paid her 400 United States dollars (USD). The applicants had declined her offer as they were convinced that their son had not been involved in any illegal activities.

18. A few days after Vakha Abdurzakov's disappearance Ms Yu. again visited the applicants and told them that their son had originally been kept in the Urus-Martan temporary department of the interior ("VOVD") and then transferred to the military commander's office of the Urus-Martan District ("the district military commander's office"). She also mentioned names of two persons involved in Vakha Abdurzakov's disappearance, "Volodya" and "Sergey", and said that the latter was the head of the Urus-Martan District Department of the Federal Security Service ("the FSB department"). Later the applicants learned that at the material time the FSB department had been headed by Mr Sergey Konstantinov.

19. The applicants gave Ms Yu. a parcel with some food and clothing for their son. Later she said that she had transferred the parcel to Vakha Abdurzakov, in detention in the district military commander's office, and that "Sergey" and "Volodya" had offered to release him for USD 3,000. The applicants did not have the money and promised Ms Yu. that they would consider the offer.

20. After a certain lapse of time the applicants agreed to pay the money demanded, borrowed USD 2,800 from their acquaintances and gave it to Ms Yu. on 7 January 2003. Nevertheless, they had no news from Vakha Abdurzakov. Ms Yu. explained them that "Sergey" had swindled her out of the money and left Urus-Martan.

2. Information submitted by the Government

21. At about 3 a.m. on 25 October 2002 unknown armed persons wearing camouflage uniforms entered the house at 234 Sharipov Street, Urus-Martan, apprehended Vakha Abdurzakov and took him away to an unknown destination.

B. The search for Vakha Abdurzakov and the investigation

1. The applicants' account

22. In the morning of 25 October 2002 the applicants visited various law enforcement agencies of the Urus-Martan District but received no information on Vakha Abdurzakov's detention. On the same day they lodged written complaints with the prosecutor's office of the Urus-Martan District ("the district prosecutor's office"), the department of the interior of the Urus-Martan District ("ROVD") and the Urus-Martan District Court ("the district court").

23. In the following months the applicants continued to search for their son and contacted various official bodies, such as the Special Envoy of the Russian President in Chechnya for Rights and Freedoms ("the Special Envoy"), the President of the Chechen Republic, the Russian Ministry of the Defence and the prosecutors' offices at different levels. In their applications they described in detail the circumstances of Vakha Abdurzakov's abduction and asked for assistance in establishing his fate and whereabouts. It appears that those applications were to no avail.

24. On 3 November 2002 the district prosecutor's office instituted an investigation into the disappearance of Vakha Abdurzakov under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was given the number 61146.

25. On 29 November 2002 the district prosecutor's office granted the first applicant victim status in case no. 61146.

26. On 14 January 2003 the district prosecutor's office informed the first applicant that the investigation in case no. 61146 had been suspended for a failure to identify those responsible and that the ROVD had been instructed to search for Vakha Abdurzakov.

27. On 21 May 2003 the district prosecutor's office informed the Special Envoy's office that the investigation into Vakha Abdurzakov's kidnapping had been opened on 3 November 2002, that all requisite investigative measures had been taken and that the ROVD had been instructed to search actively for perpetrators.

28. On 16 March 2004 the first applicant requested the South Federal Circuit Department of the Prosecutor General's Office to help her to find her son. Her letter was then forwarded to the prosecutor's office of the Chechen Republic.

29. On 22 April 2004 the prosecutor's office of the Chechen Republic forwarded to the district office the first applicant's letter of 16 March 2004 and ordered that the search for Vakha Abdurzakov be actively pursued.

30. On 16 June 2004 the district prosecutor's office informed the first applicant that the investigation in case no. 61146 had been suspended and that investigative measures were being taken to solve the crime.

31. On 22 June 2004 the first applicant requested the district prosecutor's office to resume the investigation into her son's kidnapping, to take the requisite steps to solve the crime, to allow her access to the investigation file and, if necessary, to transfer the case to a military prosecutor's office.

32. On 1 July 2004 the district prosecutor's office replied that, despite the requisite investigative measures taken in case no. 61146, the perpetrators had not been identified. They further noted that other measures were being taken and that the investigation would be resumed once new information on the case was obtained.

33. On an unspecified date in August-September 2004 the investigation into Vakha Abdurzakov's kidnapping was resumed.

34. On 2 September 2004 the first applicant requested the district prosecutor's office to question Ms Yu. as a witness.

35. On 17 September 2004 the district prosecutor's office suspended the investigation in case no. 61146 for failure to identify those responsible and informed the first applicant accordingly on 20 September 2004.

36. On 11 October 2004 the district prosecutor's office granted the first applicant's request to question Ms Yu. On an unspecified date Ms Yu. submitted that Vakha Abdurzakov had been detained in the district military commander's office and that she had given the applicants' money to "Sergey" and "Volodya" as a payment for his release.

37. On 19 December 2005 the first applicant requested the district military commander's office to help in the search for her son.

38. On 23 December 2005 the first applicant requested assistance from the prosecutor's office of the Chechen Republic in establishing her son's whereabouts.

39. On 13 January 2006 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office.

40. On 18 January 2006 the district prosecutor's office informed the first applicant that investigative measures were being taken to solve the crime.

41. On 10 July 2006 the first applicant requested an update on progress in the investigation from the district prosecutor's office.

42. On 10 September 2007 the first applicant was informed that the investigation in case no. 61146 had been resumed.

2. Information submitted by the Government

43. On 3 November 2002 the district prosecutor's office instituted an investigation of Vakha Abdurzakov's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 61146.

44. On 10 November 2002 the district prosecutor's office requested information on Vakha Abdurzakov's whereabouts to the FSB Department, the district military commander's office, the temporary unit of the Ministry

of the Interior and military unit no. 6779. According to the replies received, Vakha Abdurzakov had not been detained by those agencies or kept in a temporary detention facility and no criminal proceedings had been instituted against him.

45. On 29 November 2002 the first applicant was granted victim status and questioned. She submitted that at about 3 a.m. on 25 October 2002 her son had heard dogs barking and had gone into the street. Someone had ordered him not to move and threatened to open fire. Vakha Abdurzakov had gone back inside the house and told the first applicant that there were soldiers in the courtyard. Then unknown armed men in masks had entered the house, asked her son's last name and demanded his identity papers. Having taken the identity papers and a gold ring, the men had led Vakha Abdurzakov out of the house.

46. On 4 December 2002 the district prosecutor's office questioned the second applicant. He submitted that at about 3 a.m. on 25 October 2002 six unknown armed men wearing camouflage uniforms and masks had entered his house, made his son get out of bed and taken his identity papers.

47. On 3 January 2003 the district prosecutor's office suspended the investigation for failure to identify those responsible and informed the first applicant accordingly.

48. On 23 September 2003 the first applicant informed the district prosecutor's office that two APCs and two UAZ vehicles had been used by her son's kidnappers.

49. On 17 August 2004 the district prosecutor's office quashed the decision of 3 January 2003 and resumed the investigation because of the necessity to verify newly discovered information.

50. On 17 September 2004 the district prosecutor's office suspended the investigation and notified the first applicant accordingly.

51. On 8 October 2004 the first applicant requested the district prosecutor's office to question Ms Yu. as a witness.

52. On 11 October 2004 the investigation was resumed to verify newly discovered information.

53. On 23 October 2004 Mr Yu., Ms Yu.'s son, was questioned. He submitted that in the winter of 2003 the second applicant had told him that Ms Yu. had taken USD 2,800 from him promising that his son would be released but had not kept her word. The second applicant had demanded that Mr Yu. pay him back. Mr Yu. had requested an explanation from his mother who had confirmed that she had taken the money from the second applicant and given it to a policeman of the Urus-Martan District. Mr Yu. could not tell whether his mother was sincere but he had sold his plot of land to pay the second applicant back.

54. On 11 November 2004 the investigation in case no. 61146 was again suspended for failure to identify the perpetrators and the first applicant was notified accordingly.

55. On 25 October 2005 the district prosecutor's office questioned Ms Yu. She submitted that in August 2002 an acquaintance of hers, a VOVD serviceman named "Sergey" had asked her whether Abdurzakov the Wahhabi was her neighbour. She had replied that the Abdurzakovs were not Wahhabi. A month later Ms Yu. had told the first applicant that the VOVD had had something against Vakha Abdurzakov and mentioned that other people had been buying up materials compromising their children. After Vakha Abdurzakov's abduction the first applicant had come to Ms Yu. and asked her for assistance. The following morning the two women had gone to the VOVD premises and asked "Sergey" whether the police had detained Vakha Abdurzakov. He had replied that the police had not been involved and promised to check whether the district military commander's office was implicated. Later that afternoon "Sergey" had told Ms Yu. that Vakha Abdurzakov had been arrested by the FSB department. Some three months later "Sergey" had told Ms Yu. that FSB servicemen had demanded USD 3,000 as a payment for release of Vakha Abdurzakov. Two days later "Sergey" had come to her place and told her that Vakha Abdurzakov would be released in the morning if the sum was paid. The second applicant had given Ms Yu. USD 2,800. She had added USD 200 of her own and given "Sergey" the money. Vakha Abdurzakov had not come home. A few days later Ms Yu. had learned that "Sergey" and "Volodya" had left the Chechen Republic after the completion of their mission.

56. On 7 September 2007 the decision of 11 November 2004 was quashed and the investigation in case no. 61146 was resumed. The first applicant was notified accordingly.

57. On 10 September 2007 the first applicant was questioned. She submitted that after her son had been taken away, she had gone into the street and seen two APCs and two UAZ vehicles parked some 500 metres away from her house. The vehicles had been moving in the direction of the town centre of Urus-Martan. The first applicant had not seen the registration numbers of the vehicles. She had spotted her neighbour on the street. When the first applicant had returned home, she had realised that nine shirts, a man's suit and a gold ring had been stolen.

58. On 11 September 2007 the first applicant's neighbour allegedly seen on the night of 25 October 2002 was questioned and submitted that he had not left his house that night and had not heard any military vehicles.

59. The investigation, although so far fruitless, was ongoing. The law enforcement authorities of the Chechen Republic had never arrested or detained Vakha Abdurzakov on criminal or administrative charges and had not carried out a criminal investigation in his respect. According to the Government, the applicants had been duly informed of all decisions taken during the investigation.

60. Despite specific requests by the Court the Government did not disclose most of the contents of the investigation file in case no. 61146,

providing only copies of decisions to suspend and resume the investigation and to grant victim status. 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.

C. Court proceedings against the investigators

61. On 21 July 2004 the first applicant complained of unlawful actions of the district prosecutor's office to the district court and requested that the investigation into her son's kidnapping be resumed and that she be allowed to study the case file.

62. On 6 August 2004 the district court established that the district prosecutor's office had failed to take all possible investigative measures, in particular to question servicemen of the district military commander's office and other law enforcement agencies, and ordered that the investigation in case no. 61146 be resumed. The remaining claims were dismissed for the reason that under domestic law access to a criminal case file was only permitted upon completion of an investigation.

63. On 24 August 2004 the Supreme Court of the Chechen Republic dismissed the first applicant's appeal and upheld the first-instance judgment.

64. On 9 November 2004 the first applicant complained to the district court about unlawful actions of the district prosecutor's office, in particular about the decision of 17 September 2004, and requested that the investigation be resumed and steps be taken to solve the crime.

65. On 16 December 2004 the district court dismissed the first applicant's claims arguing that the district prosecutor's office had taken all necessary investigative measures in case no. 61146.

66. On 26 January 2005 the Supreme Court of the Chechen Republic dismissed the first applicant's appeal and upheld the first-instance judgment.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

68. The Government submitted that the applicants' representatives had apparently used templates for filling in application forms in a number of similar cases, including the one in the present case. They regarded such a practice as an abuse of the right of petition and concluded that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

69. The Court observes in this respect that the application form submitted by the applicants' representatives contained necessary information concerning the particular circumstances of the present case. The materials in the Court's possession do not reveal any appearance of abuse of the applicants' right of individual petition. Accordingly, the Government's objection must be dismissed.

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

A. The parties' submissions

70. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Vakha Abdurzakov had not yet been completed. They further argued that it had been open to the applicants to challenge in court or before a higher prosecutor any actions or omissions of the investigating or other law enforcement authorities. They also submitted that it had been open to the applicants to lodge civil claims for damages caused by actions of State agencies but they had failed to do so.

71. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. Referring to the other cases concerning such crimes reviewed by the Court, they also alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in the Chechen Republic rendered any potentially effective remedies inadequate and illusory in their case.

B. The Court's assessment

72. 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).

73. 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 *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

74. 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.

75. 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). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

76. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement authorities immediately after the kidnapping of Vakha

Abdurzakov and that an investigation has been pending since 3 November 2002. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

77. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints. Thus, it considers that this matter must be joined to merits and falls to be examined below under the substantive provisions of the Convention.

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

A. The parties' arguments

78. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Vakha Abdurzakov had been State agents. In support of their complaint they referred to the following facts. In 2002 Urus-Martan was under the total control of federal troops. The armed men who had abducted Vakha Abdurzakov had Slavic features and had spoken Russian without an accent, which proved that they were not of Chechen origin. The men had arrived in military vehicles, including APCs, late at night past curfew. The applicants also pointed out that the ground given for the Government's refusal to submit the investigation file in case no. 61146 was that it contained information of a military nature.

79. The Government submitted that unidentified armed men had kidnapped Vakha Abdurzakov. They further contended that the investigation of the incident was pending; that there was no evidence that the men had been State agents; and that there was no convincing evidence that the applicants' relative was dead. In 2002 the FSB Department had not employed a person named "Sergey Konstantinov". The Government also stated that the crime could have been committed by members of illegal armed groups. In particular, they noted that no-one had seen Vakha Abdurzakov being placed inside an APC. Criminals in the Chechen Republic could have possessed camouflage uniforms and firearms stolen from the federal arsenals in the 1990s. Groups of Ukrainian, Belorussian and ethnic Russian mercenaries had committed crimes in the territory of the Chechen Republic and, therefore, the fact that the perpetrators had Slavic features and spoke Russian did not prove their attachment to the Russian military. The fact that some items had been stolen from the Abdurzakovs' house also proved that the armed men were criminals, not State agents. Furthermore, the Government observed that the applicants had made contradictory statements during their interviews in 2002, 2003 and 2007. They had never informed the investigation of blood traces allegedly found

near their house. Statements by other witnesses had also been inconsistent. The Government emphasised that the applicants and other witnesses had been obliged to give truthful testimony under domestic law but there was no legal obligation as regards their submissions to the Court and inferred that the testimonies given in the course of the investigation were more reliable and correct than the information sent to Strasbourg.

B. The Court's evaluation of the facts

1. General principles

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

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

82. 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, Series A no. 336, § 32, and *Avşar v. Turkey*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

83. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a

satisfactory and convincing explanation (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A, *Ribitsch*, cited above, § 34, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

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

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

2. Establishment of the facts

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

87. In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relative can be presumed dead and whether his death can be attributed to the authorities.

88. The applicants alleged that the persons who had taken Vakha Abdurzakov away on 25 October 2002 and then killed him had been State agents.

89. The Government suggested in their submission that the persons who had detained Vakha Abdurzakov could be members of paramilitary groups.

However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

90. The Court takes note of the Government's allegation that firearms and camouflage uniforms were probably stolen by insurgents from Russian arsenals in the 1990s. Nevertheless, it considers it very unlikely that several military vehicles, such as APCs and UAZ vehicles, unlawfully possessed by members of illegal armed groups could have moved freely through Russian military checkpoints without being noticed.

91. The Government pointed out that no-one had seen Vakha Abdurzakov being placed into an APC. However, they did not claim that no APCs or UAZ vehicles had been circulating in Urus-Martan between 24 and 25 October 2002. The Court refers in this respect to the first applicant's depositions made before the domestic investigating authorities, in which she claimed to have seen two APCs and two UAZ vehicles parked in the vicinity of her house on the night of the crime (see paragraphs 48 and 57 above). It appears that the first applicant had reasonable grounds to assume that the armed men who had broken into her house had travelled in and driven away in those four vehicles. Moreover, it is highly unlikely that members of illegal armed groups could have kidnapped a person while four military vehicles most probably belonging to State agencies were parked nearby.

92. Furthermore, the Court points out that Ms Yu. told both the applicants and the investigators that she had given the money as ransom to a police officer named "Sergey".

93. The Court finds therefore that the fact that a large group of armed men in uniform travelling in the APCs and UAZ vehicles arrived in the town of Urus-Martan at 3 a.m. strongly supports the applicants' assertion that these were State servicemen conducting a security operation.

94. The Government noted that the applicants' statements had been inconsistent throughout the investigation. The Court, however, has not found any major inconsistencies in the applicants' accounts of events presented in the course of both domestic and Strasbourg proceedings.

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

2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

96. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was apprehended by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Vakha Abdurzakov was abducted on 25 October 2002 by State servicemen during an unacknowledged security operation.

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

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

99. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Vakha Abdurzakov must be dead following his unacknowledged detention by State servicemen.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

100. 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 parties’ submissions

101. The Government contended that the domestic investigation had obtained no evidence to the effect that Vakha Abdurzakov was dead or that any servicemen of the 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 it had been opened within the ten-day term established by domestic law for institution of criminal proceedings and all measures envisaged in national law were being taken to identify the perpetrators. The applicants themselves had been responsible for delays in the investigation as they had not promptly reported to the investigating authorities all the information they had had.

102. The applicants argued that Vakha Abdurzakov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for more than five years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court’s case-law on Article 2. The applicants pointed out that by 6 August 2004 the district prosecutor’s office had not taken any investigative measures apart from questioning the applicants. By January 2008 the crime scene had not been inspected at all. The investigation into Vakha Abdurzakov’s kidnapping had been opened nine days after the events. The applicants had not been properly informed of the course of the investigation most important investigative measures. The fact that the investigation had been pending for more than five years without producing any known results had been further proof of its ineffectiveness. The applicants invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the investigation file to them or to the Court.

B. The Court’s assessment

1. Admissibility

103. The Court considers, in the light of the parties’ submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the

Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 77 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 Vakha Abdurzakov

104. 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 v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

105. The Court has already found it established that the applicants' son must be dead following unacknowledged detention 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 Vakha Abdurzakov.

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

106. 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).

107. In the present case, the kidnapping of Vakha Abdurzakov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

108. 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.

109. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation in case no. 61146 was instituted on 3 November 2002, that is, nine days after Vakha Abdurzakov's abduction. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. The applicants, eyewitnesses to their son's abduction, were questioned for the first time more than a month after the kidnapping. Furthermore, the Court observes that, as can be seen from the decision of the district court, by 6 August 2004 the investigators had not questioned servicemen of the district military commander's office and other law enforcement agencies. 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).

110. A number of essential steps were never taken. Most notably, it does not appear that the investigation tried to identify and question the police officer of the VOVD named "Sergey" who had allegedly taken the money from Ms Yu. The Court takes a note of the Government's comment that it was checked whether a person "Sergey Konstantinov" had served in the FSB Department. Nevertheless, it does not transpire from the materials submitted to the Court that any measures have ever been taken to identify two policemen, "Sergey" and "Volodya", who had allegedly been in the Chechen Republic on a mission at the time of the events.

111. The Court also notes that even though the first applicant was granted victim status in case no. 61146, she was only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

112. Finally, the Court notes that the investigation in case no. 61146 was suspended and resumed three times and that there were lengthy periods of

inactivity of the district prosecutor's office. In particular, no proceedings whatsoever were pending between 11 November 2004 and 7 September 2007. It appears that the investigation was resumed only after the Court had given notice of the present application to the Government.

113. The Court will now examine the limb of the Government's objection that was joined to the merits of the complaint (see paragraph 77 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. Furthermore, the Government mentioned that the applicants had the opportunity to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants did, in fact, make use of that remedy (see paragraphs 61-66 above). On one occasion it even led to the resumption of the investigation (see paragraph 62 above). However, the authorities still failed to investigate the applicants' allegations properly. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. In such circumstances, the Court considers that the applicants could not be required to challenge in court every single decision of the district prosecutor's office. Accordingly, the Court finds that the criminal-law remedies relied on by the Government were ineffective in the circumstances of the case and rejects their objection as regards the applicants' failure to exhaust these domestic remedies.

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

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. The parties' submissions

116. 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.

117. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

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

2. Merits

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

120. In the present case the Court notes that the applicants are the parents of the missing person who witnessed his abduction. For more than five years they have not had any news of Vakha Abdurzakov. During this period the applicants have applied to various official bodies with enquiries about their son, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of Vakha Abdurzakov following his kidnapping. The responses received by the applicants mostly denied that the State was responsible for his arrest or simply informed them that an investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

123. The applicants further stated that Vakha Abdurzakov had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

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

...

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

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

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

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

A. The parties' submissions

124. In the Government's opinion, no evidence was obtained by the investigators to confirm that Vakha Abdurzakov had been deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention.

125. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

127. 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).

128. The Court has found it established that Vakha Abdurzakov was abducted by State servicemen on 25 October 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).

129. 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.

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

VII. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

131. The applicants complained that the judicial proceedings against the investigators instituted on 21 July 2004 were unfair, that the judge was not independent and that the equality of arms principle had been breached. They relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

132. The Court finds that Article 6 § 1 of the Convention is, in principle, inapplicable to the proceedings in question, as they clearly have not involved the determination of the applicants’ civil rights or obligations or a criminal charge against the applicants, within the meaning of the Convention (see *Akhmadov and Others v. Russia* (dec.), no. 21586/02, 3 May 2007).

133. It follows that these complaints are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

134. The applicants complained that they had been deprived of effective remedies in respect of the above violations of Articles 2 and 3, 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

135. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the actions or omissions of the investigating authorities in court and had availed themselves of it. In sum, the Government submitted that there had been no violation of Article 13.

136. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

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

139. As regards the complaint of lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

140. In view of the Court's above findings with regard to Article 2, this complaint is clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and

punishment of those responsible and to an award of compensation for the purposes of Article 13.

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

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

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

IX. ALLEGED VIOLATIONS OF ARTICLES 8 and 14 OF THE CONVENTION

144. In their initial application form the applicants stated that their house had been unlawfully searched and that their right to family life had been violated as a result of their son's disappearance in breach of Article 8 of the Convention. They also stated that they had been discriminated against on the grounds of their ethnic origin in breach of Article 14 of the Convention.

Article 8 of the Convention, in so far as relevant, provides:

"1. Everyone has the right to respect for his ... family life ... home ...

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 14, in so far as relevant, provides:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... national ... origin ..."

145. In the observations on admissibility and merits of 19 February 2008 the applicants stated that they no longer wished their complaints under Articles 8 and 14 of the Convention to be examined.

146. 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, for example, *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000, and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

147. 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

148. 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. Damage

149. The applicants did not submit any claims for pecuniary damage. As regards non-pecuniary damage, the applicants claimed 50,000 euros (EUR) each as a compensation for the suffering they had endured as a result of the loss of their son and the indifference shown by the authorities towards them.

150. The Government found the amounts claimed exaggerated.

151. 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’ son. A violation of Article 3 of the Convention has been found in respect of the applicants themselves. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award the applicants jointly EUR 35,000, plus any tax that may be chargeable thereon.

B. Costs and expenses

152. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. They also claimed administrative expenses not supported by any evidence and translation and international courier fees confirmed by

relevant invoices. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 8,771.18.

153. The Government disputed the reasonableness and the justification of the amount claimed as courier mail fees. They also submitted that the applicants' observations on admissibility and merits of the case and their claims for just satisfaction had been signed by six lawyers, while three of them had not been mentioned in the powers of attorney issued by the applicants.

154. The Court points out 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 them appeared in the powers of attorney, while three other lawyers collaborated with the SRJI. In such circumstances the Court sees no reasons to doubt that the six lawyers mentioned in the applicants' claims for costs and expenses took part in preparation of the applicants' observations. Moreover, there are no grounds to conclude that the applicants were not entitled to send their submissions to the Court via courier mail.

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

156. 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.

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

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

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaints under Articles 8 and 14 of the Convention;
2. *Dismisses* the Government's objection regarding abuse of the right of petition;
3. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
4. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of Vakha Abdurzakov;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Vakha Abdurzakov had disappeared;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Vakha Abdurzakov;
9. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
10. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Article 3;

11. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

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

(ii) EUR 3,650 (three thousand six hundred and fifty euros), in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;

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

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

Done in English, and notified in writing on 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President