



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

FIRST SECTION

CASE OF KHAYDAYEVA AND OTHERS v. RUSSIA

(Application no. 1848/04)

JUDGMENT

STRASBOURG

5 February 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Khaydayeva and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 1848/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by eight Russian nationals, listed below (“the applicants”), on 26 November 2003.

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 Mr P. Laptev and subsequently by Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2005 the Court decided to grant priority treatment to the application (Rule 41 of the Rules of Court).

4. On 9 May 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 15 January 2009 the Court dismissed the Government’s objection concerning the application of Article 29 § 3 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

1. Ms Polla Usmanovna Malikova, born in 1954,
2. Mr Khamzat Dudayevich Malikov, born in 1950,
3. Ms Yakha Dudushevna Khaydayeva, born in 1951,
4. Mr Alvi Dakayevich Khatuyev, born in 1941,
5. Ms Aset Abdurakhmanovna Akhmatova, born in 1953,
6. Ms Saneta Kirgizbayevna Akhmatova, born in 1981,
7. Ms Malika Akhmarovna Salamkhanova, born in 1951,
8. Mr Luisa Said-Khusinovna Ismailova, born in 1971.

7. The applicants are Russian nationals who live in Duba-Yurt, Shalinskiy District, in the Chechen Republic. They were represented before the Court by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia.

8. The first and second applicants are spouses and are the parents of Mr Suliman Khamzatovich Malikov, born in 1975. The third and fourth applicants are spouses and are the parents of Mr Adlan Alviyevich Khatuyev, born in 1977 and Mr Aslan Alviyevich Khatuyev, born in 1983. The fifth and sixth applicants are the mother and sister of Mr Sayd-Salu Kirgizbayevich Akhmatov, born in 1975. The seventh and eighth applicants are the mother and sister of Mr Mansur Sayd-Khusinovich Ismailov, born in 1984.

9. Mr Suliman Malikov, Mr Aslan Khatuyev, Mr Mansur Ismailov and Mr Sayd-Salu Akhmatov had no permanent employment at the material time. Mr Sayd-Salu Akhmatov, following his father’s death in 2001, was working on the restoration of his family’s house, which had been destroyed. Mr Adlan Khatuyev was a student at the Grozny State Oil Institute.

A. Apprehension and subsequent disappearance of Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov

1. The applicants’ account

10. Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov lived in Duba-Yurt, Shalinskiy District, in the Chechen Republic. On 9 June 2002 at 3 p.m. they were driving in a white VAZ 21061 car (*BA3 21061*) through checkpoint no. 113 located in the south of Duba-Yurt. They were stopped at the

checkpoint and apprehended by servicemen. After they had been apprehended a Ural truck and two armoured personnel carriers (APC) with licence plates “II-232” and “Ч-221” approached the checkpoint. Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov were put in the Ural truck. When the fifth and seventh applicants saw that their sons had been apprehended and put in the truck, they got into the truck themselves and demanded that the servicemen tell them why they were taking away their sons. The servicemen pushed them out of the truck and drove it away, escorted by the two APCs.

11. The apprehension was witnessed by A.M., Z.M. and A.Sh., residents of Duba-Yurt. In their written statement of 30 November 2003 they submitted that on 9 June 2002 they had been working in an orchard close to checkpoint no. 113. A white VAZ car had driven towards the checkpoint. The servicemen approached the car and checked the identity papers of the people in it. Then the servicemen took the people into the checkpoint building and pulled their clothes over their heads. The youngest of them fell down on the ground. When the witnesses saw this, they approached the servicemen and asked what the people had done to be subjected to such treatment. The servicemen replied that they had received instructions from the town of Shatoy to check the car because it had darkened windows. Then an Ural truck and two APCs approached the checkpoint and the people who arrived took the applicants’ relatives away. When two of the applicants tried to intervene, they were pushed away by the servicemen.

12. A., an engineer with the special police forces (OMON) unit of the Republic of Buryatiya, and V., deputy commander of the OMON unit of the Republic of Buryatiya, were questioned by the Prosecutor’s Office of the Republic of Buryatiya on 30 January 2003.

13. A. submitted that on 9 June 2002 he had been on duty at checkpoint no. 113. At the time a “sweeping” operation (*зачистка*) was being conducted in Duba-Yurt. The servicemen of the special unit of Interior Ministry troops apprehended five men in a white VAZ 21061 car and put them in a yellow Ural truck. The servicemen were wearing masks. The most senior of them introduced himself, but A. could not remember his name. Since A. was in charge of the checkpoint, he asked whether he should make a report on the apprehension. The senior serviceman replied that, should any questions arise, their unit had been deployed in Urus-Martan, they had been conducting the “sweeping” operation in Duba-Yurt and had received information about the car in question. A. submitted that everything had happened very fast because relatives of the apprehended persons had appeared and threatened the servicemen, as they thought that the servicemen in charge of the checkpoint were taking away their sons.

14. V. submitted that from April to October 2002 he had served as commander of a joint unit in the Chechen Republic. The unit had been

deployed at the temporary deployment point in Belgatoy and served at the checkpoint no. 113 in Duba-Yurt. On 9 June 2002, when V. was in Belgatoy, he received information that a white VAZ 21061 car had been stopped at checkpoint no. 113 and that the five men in it had been apprehended. According to the Shatoy District Department of the Federal Security Service (FSB), a search had been conducted for the car. V. was informed that the car and the men had been taken away by servicemen of the special unit of the Interior Ministry troops deployed in Urus-Martan who had been driving two APCs and a yellow Ural truck. A report concerning the events was submitted to the Shalinskiy Temporary Office of the Interior (VOVD). The order to conduct the “sweeping” operation in Duba-Yurt had been signed by the commander of the Shalinskiy District. Representatives of the military commanders’ office were in charge of directing the operation.

15. According to the applicants, the apprehension was also witnessed by the following servicemen of the Duba-Yurt infantry company: Sergeant I. E., Sergeant-Major S.-M. Z. and Privates Sh. Yu., S. Ya., S.-S. Yu., S.-E. Yu. and S.-A. S.

16. Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov have not been seen since.

2. The Government’s account

17. On 4 June 2002 members of illegal armed groups attacked several buildings belonging to various State authorities in the village of Shatoy. As a result of the attacks two officers from the military commander’s office and several officials of the VOVVD received shotgun wounds.

18. On 9 June 2002 a special operation was conducted in the village of Duba-Yurt in the Shalinskiy District, adjacent to the Shatoy District. The operation was aimed at locating and apprehending members of illegal armed groups involved in the attacks on 4 June 2002.

19. On the same date at around 3 p.m. representatives of federal forces apprehended Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov at the checkpoint on the southern outskirts of Duba-Yurt on suspicion of having been involved in the attacks of 4 June 2002. The above persons were travelling from the Shatoy District to their home village of Duba-Yurt in a white VAZ 2106 car with registration plates C 294 AT 06.

20. According to the Government, since the information concerning the applicants’ relatives’ involvement in the events of 4 June 2002 had not been confirmed, they were released on 10 June 2002 at around 4 p.m. The Government submitted no documents to this effect. The Government further stated that the whereabouts of the above persons following their release had not been established.

B. Search for Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov, and investigation

1. Applicants' own enquiries

21. The applicants took certain steps of their own initiative to establish their relatives' whereabouts. They found out that the two APCs that had approached the checkpoint belonged to battalion no. 348 of the Ministry of the Interior troops deployed in Urus-Martan, headed by captain L. Major K. had driven the VAZ 21061 car away from the checkpoint and D., who was nicknamed "Boomerang", had driven the Ural truck. According to the information obtained by the applicants, their relatives had been taken initially to the battalion no. 348 headquarters, where they remained for two days.

22. The applicants transmitted this information to the Shalinskiy district prosecutor's office for verification. However, according to the applicants, the investigator ignored it and no investigative measures were taken.

2. Criminal investigation

23. The applicants thought at first that their relatives had been taken to the temporary detention centre of the Shalinskiy VOVD. They went there on 9 June 2002 after their relatives had been apprehended, but their relatives were not there. They then applied to the Shalinskiy district prosecutor's office seeking to have a criminal investigation instituted. The applicants applied in writing and in person to numerous State authorities, seeking to establish their relatives' whereabouts. It appears that they first applied in writing on 18 June 2002. Copies of the applications were submitted to the Court.

24. On 18 June 2002 the Shalinskiy district prosecutor's office instituted a criminal investigation into the abduction. It appears that initially the case file was given the number 59117, which was later changed to 34/33/0252-03 and then to 34/33/0013-03. At some stage it may have been given the number 69117.

25. On 16 July 2002 the Northern Caucasus Department of the Ministry of the Interior informed the military prosecutor's office of the Northern Caucasus Military District that on 9 June 2002 certain units of the Interior Ministry troops had been involved in a special operation in Duba-Yurt. The units' task had been to seal off the districts where the operation was being conducted and to provide cover for the officers of the local Departments of the Interior. Apprehending persons had not been the task of the Interior Ministry troops. Accordingly, they had not apprehended the applicants' relatives and had no information concerning their whereabouts.

26. On 24 July 2002 the FSB informed the third applicant that, according to the results of the investigation that had been carried out, neither Mr Adlan Khatuyev nor Mr Aslan Khatuyev was among the persons apprehended by the federal forces. The FSB had no information concerning their whereabouts.

27. On 26 July 2002 the military prosecutor's office of the Northern Caucasus Military District informed the third applicant that neither Mr Adlan Khatuyev nor Mr Aslan Khatuyev had been apprehended by servicemen of the Ministry of Defence, the FSB or the Interior Ministry troops. On 18 June 2002 the Shalinskiy district prosecutor's office instituted criminal investigation no. 59117 into the abduction of the applicant's sons by unidentified persons.

28. On 18 August 2002 the Shalinskiy district prosecutor's office informed the first and fourth applicants that the preliminary investigation in case no. 59117 had been suspended because the person to be charged had not been identified.

29. On 20 August 2002 the fifth applicant was granted the status of victim in the criminal proceedings.

30. On 26 September 2002 the Administration of Duba-Yurt issued the first, third and seventh applicants with certificates stating that Mr Suliman Malikov, Mr Aslan Khatuyev, Mr Adlan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov had been apprehended on 9 June 2002 at checkpoint no. 113 in the course of a special operation conducted in Duba-Yurt, and had been taken away by unidentified servicemen.

31. On 21 November 2002, following a complaint by the applicants that the investigation had not been thorough, the Prosecutor's Office of the Chechen Republic quashed the decision to suspend the investigation and remitted the case to the Shalinskiy district prosecutor's office.

32. On 23 November 2002 Colonel G. of the FSB department in military unit no. 6732 issued certificate no. 407 to the effect that Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov had been members of an illegal armed group and, according to information subject to further verification, had died as a result of the explosion of an unidentified makeshift explosive device.

33. On 20 December 2002 the Shalinskiy district prosecutor's office resumed the investigation.

34. On 27 December 2002 the acting head of the FSB department in military unit no. 6732 informed the Shalinskiy district prosecutor's office that no certificate no. 407 of 23 November 2002 had been registered and that Colonel G. had never served in the FSB.

35. On 12 January 2003 the deputy head of the FSB Department for the Chechen Republic informed the Shalinskiy district prosecutor's office that the servicemen identified by the applicants as having been involved in the apprehension of their relatives had never served in the FSB. Checks were

being conducted to establish whether they had served in “special investigative group 2” (“SSG-2”). The APCs with the licence plates referred to did not belong to the FSB either. Judging from the numbers on the plates, the vehicles might have belonged to the Ministry of the Interior. The FSB had no information concerning the apprehension of the applicants’ relatives.

36. On 20 January 2003 the Shalinskiy district prosecutor’s office again suspended the investigation.

37. On 30 January 2003 the Prosecutor’s Office of the Republic of Buryatiya questioned A. and V., servicemen with the OMON unit of the Republic of Buryatiya, who had been on duty at checkpoint no. 113 at the relevant time (see paragraphs 13-14 above).

38. On 7 March 2003 the investigation was resumed.

39. On 11 March 2003 officer B. of the United Group Alignment (UGA) informed the Shalinskiy district prosecutor’s office that he had no information concerning the apprehension of the applicants’ relatives. Furthermore, Captain L. had never served with the Interior Ministry troops deployed in Urus-Martan. The APCs with the licence plates referred to did not belong to the Interior Ministry troops either.

40. On 25 March 2003 the prosecutor’s office of military unit no. 20116, based in Shali, informed the third and fifth applicants that no servicemen of the unit had been involved in the apprehension and that neither battalion no. 348 of the Interior Ministry troops headed by captain L. nor the OMON unit of the Republic of Buryatiya was subordinate to military unit no. 20116.

41. On 28 March 2003 the Prosecutor’s Office of the Chechen Republic informed the third applicant that, as stated in the FSB’s reply of 13 March 2003, the FSB had no information to the effect that Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov had been members of an illegal armed group, or information concerning their apprehension.

42. On 1 April 2003 the Shalinskiy district prosecutor’s office extended the term of the preliminary investigation in the case to five months, until 7 May 2003. On the same date the case was transmitted to the military prosecutor’s office of military unit no. 20102, based in Khankala.

43. On 14 April 2003 the case file was received by the military prosecutor’s office of military unit no. 20102.

44. On 28 April 2003 the military prosecutor’s office of military unit no. 20116, having regard to the applicants’ application, informed the military prosecutor’s office of the UGA that no servicemen of the units subordinate to military unit no. 20116 had either apprehended anybody at the indicated time and place or handed anybody over to the law-enforcement agencies.

45. On 6 May 2003 the term of the preliminary investigation in the case was extended to six months, until 7 June 2003.

46. On 8 May 2003 the military prosecutor's office of military unit no. 20102 informed the third applicant that investigative measures were being taken in order to establish whether servicemen of the Ministry of Defence, the Ministry of the Interior and the FSB deployed in the Urus-Martan District and the Achkhoy-Martan District had been involved in the abduction of the applicants' relatives.

47. On 19 May 2003 the preliminary investigation was again suspended and the case was transmitted to the military prosecutor's office of military unit no. 20116.

48. On 23 June 2003, after the decision of 19 May 2003 was quashed, the case file was again received by the military prosecutor's office of military unit no. 20102.

49. On 27 June 2003 the Administration of Duba-Yurt issued the fifth applicant with a certificate stating that Mr Sayd-Salu Akhmatov had been apprehended on 9 June 2002 in the course of a special operation conducted in Duba-Yurt and had been taken away.

50. On 7 July 2003 the military prosecutor of the UGA informed the applicants that the criminal case was under the supervision of the Chief Military Prosecutor's Office and the military prosecutor's office of the UGA.

51. On 23 July 2003 the preliminary investigation was again suspended.

52. On 12 September 2003 the military prosecutor's office of the UGA transmitted the case to the military prosecutor's office of military unit no. 20102 and instructed it to resume the investigation.

53. On 25 September 2003 the military prosecutor's office of military unit no. 20102 quashed the decision to suspend the investigation of 23 July 2003 and resumed the investigation.

54. On 18 October 2003 the military prosecutor's office of military unit no. 20102 informed the applicants that it had requested the UGA to establish the whereabouts of the servicemen in question, belonging to battalion no. 348 of the Interior Ministry troops.

55. On 29 October 2003 the case file was received by the military prosecutor's office of the UGA.

56. On 13 November 2003 the military prosecutor's office of the UGA questioned Colonel D. ["Boomerang"], who stated that in June 2002 he had served as commander of "SSG-2", deployed at the northern boundary of the village of Stariye Atagi in the Grozny District. He had served as a commander from February 2002 to 10 January 2003. He had headed a special joint group of servicemen from different types of troops subordinate to the Ministry of the Interior and the Ministry of Defence.

57. On 15 November 2003 the military prosecutor's office of the UGA informed the first, third, fifth and eighth applicants that investigative measures were being taken.

58. On 27 November 2003 the headquarters of the Interior Ministry troops informed the applicants that certain units of the troops had been involved in a special operation to disband an illegal armed group in the neighbourhood of Duba-Yurt, conducted on 9 June 2002. However, neither the Administration of Duba-Yurt nor the residents had had any complaints concerning the conduct of the operation. No unlawful acts had been committed by the troops, a fact which was confirmed by a statement issued by the Administration of Duba-Yurt. It was not possible to establish whether the APCs belonged to the Interior Ministry troops since the information submitted concerning their licence plates was incomplete. The servicemen referred to by the applicants had not served with the Interior Ministry troops.

59. On 31 December 2003 the military prosecutor's office of the UGA informed the third applicant that the Shalinskiy district prosecutor's office had instituted a criminal investigation into the facts set out in her application. The whereabouts of the servicemen referred to in the application had been established. The military prosecutors of the military units concerned had been instructed to question the witnesses.

60. On 15 January 2004 the military prosecutor's office of the UGA informed the third and fifth applicants that investigative measures were being taken and that the servicemen who had taken part in the special operation in Duba-Yurt, including captain L., had been identified and questioned in the course of the preliminary investigation.

61. On 9 March 2004 the military prosecutor's office of the UGA transmitted the case to the Prosecutor's Office of the Chechen Republic. In the letter of the same date the military prosecutor's office of the UGA also informed the fourth and fifth applicants that in the course of the preliminary investigation it had been established that on 10 June 2002 their relatives had been brought to Kh., the deputy prosecutor of the Shatoy inter-district prosecutor's office.

62. On 23 March 2004 the Prosecutor's Office of the Chechen Republic transmitted the case to the military prosecutor's office of the UGA in the Northern Caucasus.

63. On 29 March 2004 the applicants applied in writing to the military prosecutor's office of the UGA. They stated that they had seen the VAZ 21061 car on numerous occasions in the town of Khankala and once had seen D., the "Boomerang", in it. The applicants alleged that D. had been in charge of the "sweeping" operations in Duba-Yurt and asked that these events be investigated.

64. On 5 May 2004 the military prosecutor's office of the UGA informed the first, third, fifth and seventh applicants that during the preliminary investigation it had been established that no servicemen had been involved in the abduction of their relatives, and that the case had

therefore been transmitted to the Prosecutor's Office of the Chechen Republic.

65. On 21 May 2004 the Shatoy inter-district prosecutor's office informed the third applicant that the applicants' relatives had never been brought either to the prosecutor's office or to any of its officials, including the deputy prosecutor Kh. They had never been detained, questioned or put on a wanted list by the Shatoy inter-district prosecutor's office. Nor had they ever been placed in the temporary detention centre of the Shatoy VOVD.

66. On 11 June 2004 the Prosecutor's Office of the Chechen Republic informed the third applicant that the criminal case had been transmitted to the Southern District Department of the Prosecutor General's Office for inspection.

67. On 26 June 2004 the military prosecutor's office of military unit no. 20116 informed the fifth applicant that the Shalinskiy district prosecutor's office had instituted an investigation into the abduction of the applicants' relatives, in criminal case no. 69117.

68. On 25 September 2004 the military prosecutor's office of the UGA informed the first and third applicants that on 24 September 2004 it had resumed the preliminary investigation.

69. On 24 October 2004 the investigation was suspended on the ground of the absence of *corpus delicti*.

70. The applicants submitted a document with neither a letterhead nor signatures. At the top of the document it was written in pen that it had been issued by T., senior investigator of the UGA, on 16 November 2004. The document reads as follows:

"Witness [D.], commander of ["SSG-2"], stated that on 9 June 2002 during the special passport-checking operation at checkpoint no. 113 located on the southern outskirts of Duba-Yurt in the Shalinskiy District of the Chechen Republic, servicemen of military unit [no.] 6779 had apprehended [Mr] Malikov, [Mr] Akhmatov, [Mr] Adlan Khatuyev, [Mr] Aslan Khatuyev and [Mr] Ismailov. On 10 June 2002 the apprehended persons had been handed over to six servicemen of the Shatoy Department of [the FSB]; [however] he could remember neither their names nor their positions. The servicemen of the Shatoy Department of [the FSB] had taken the apprehended persons with them and he knew nothing of their fate."

71. On 17 November 2004 the first, third, fifth and seventh applicants wrote to the Prosecutor General asking him to ensure that an adequate investigation was conducted into their sons' disappearance. They noted that they were particularly appalled by the reply of the military prosecutor's office of the UGA of 9 March 2004 stating that on 10 June 2002 their sons had been brought to Kh., the deputy prosecutor of the Shatoy inter-district prosecutor's office, whereas Kh. had died five months before that date.

72. On 21 March 2005 the decision of 24 October 2004 to suspend the investigation was quashed and the investigation was resumed.

73. On 15 June 2005 the Shalinskiy district military commander replied to the third applicant that, according to the information available, no servicemen of the Ministry of the Interior troops deployed in the territory within the jurisdiction of the military commander's office had been involved in the abduction of her sons.

74. According to the Government's observations of 10 October 2007, the investigation was under way.

3. Proceedings concerning the inaction of the investigating authorities

75. On 25 October 2004 the third applicant lodged a complaint concerning the inaction of the military prosecutor's office with the Military Court of the Groznenskiy Garrison.

76. On 10 June 2005 the Military Court of the Groznenskiy Garrison allowed the complaint, finding that the suspension of the investigation on 24 October 2004 had been unlawful. The court noted that the investigation had been resumed on 21 March 2005.

C. Proceedings for compensation for non-pecuniary damage

77. In April 2003 the first, fifth and seventh applicants brought claims against the Ministry of Finance for compensation in respect of non-pecuniary damage caused by the abduction of their sons by State agents.

1. Proceedings concerning the first applicant's claim

78. On 23 December 2003 the Basmanniy District Court of Moscow dismissed the first applicant's claim. The court found that on 9 June 2002 the applicant's son had been apprehended in Duba-Yurt by unknown servicemen and then taken away to an unknown destination. The court further held that the evidence presented at the hearing did not show that the disappearance of Mr Suliman Malikov had been caused by any unlawful actions on the part of the State authorities. The first applicant appealed.

79. On 26 October 2004 the Moscow City Court upheld the judgment.

2. Proceedings concerning the fifth applicant's claim

80. On 14 July 2003 the Basmanniy District Court of Moscow stayed the proceedings concerning the fifth applicant's claim on account of her omission to pay the court fees and enclose supporting documents. The applicant was ordered to rectify the omission by 28 August 2003. The fifth applicant appealed against this decision.

81. On 16 June 2004 the Moscow City Court dismissed the appeal.

82. On 25 February 2005 the Basmanniy District Court returned the fifth applicant's claim without examination as she had not rectified the omission

to comply with the procedural requirements within the time-limit set by the court.

3. Proceedings concerning the seventh applicant's claim

83. On 15 June 2004 the Basmanniy District Court of Moscow dismissed the seventh applicant's claim. The court found that on 9 June 2002 the applicant's son had been apprehended in Duba-Yurt by unknown persons and that his whereabouts were unknown. The court further held that the evidence presented at the hearing did not show that the disappearance of Mr Mansur Ismailov had been caused by any unlawful actions on the part of the State authorities. The seventh applicant appealed.

84. On 25 February 2005 the Moscow City Court stayed examination of the seventh applicant's appeal on account of her failure to comply with certain procedural requirements for lodging an appeal. The applicant had to rectify them by 9 December 2004. Since she failed to do so, on 25 February 2005 the Moscow City Court returned the appeal statement without examination.

D. The Court's request for the case file

85. Despite the Court's specific requests to submit a copy of the file in the criminal case instituted into the abduction of the applicants' relatives, the Government did not provide any documents from the case file. They submitted a copy of the court decision delivered in respect of the third applicant's complaint concerning the inaction of the investigating authorities, copies of the first, fifth and seventh applicants' claims for damages and court decisions delivered in this respect. They stated that the investigation was in progress and that disclosure of the documents would be in violation 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. At the same time the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted, with the exception of documents of a confidential nature and without the right to make copies.

II. RELEVANT DOMESTIC LAW

1. The Code of Criminal Procedure

86. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR (Russian Soviet Federative

Socialist Republic). On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation.

87. Article 125 of the new CCP lays down a judicial procedure for the examination of complaints. Orders of an investigator or prosecutor refusing to institute criminal proceedings or to terminate a case, and other orders and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede a citizen's access to justice, may be appealed against to a local district court, which is empowered to check the lawfulness and grounds of the impugned decisions.

88. Article 161 of the new CCP prohibits the disclosure of information from the preliminary investigation file. Under part 3 of the Article, information from the investigation file may be divulged only with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the parties to the criminal proceedings or prejudice the investigation. Divulging information about the private lives of parties to criminal proceedings without their permission is prohibited.

2. Legislation applicable to counter-terrorist operations

89. Federal Law no. 130-FZ of 25 July 1998 on the suppression of terrorism (*Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом»*) provides as follows:

Section 13. Legal regime in the zone of an anti-terrorist operation

“1. In the zone of an anti-terrorist operation, the persons conducting the operation shall be entitled:

... (2) to check the identity documents of private persons and officials and, where they have no identity documents, to detain them for identification;

(3) to detain persons who have committed or are committing offences or other acts in defiance of the lawful demands of persons engaged in an anti-terrorist operation, including acts of unauthorised entry or attempted entry to the zone of the anti-terrorist operation, and to convey such persons to the local bodies of the Ministry of the Interior of the Russian Federation; ...”

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

90. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies since the investigation into the disappearance of the applicants' relatives had not yet been completed.

91. The applicants contested that objection. They argued that the criminal investigation had proved to be ineffective, having produced no meaningful results after six years.

92. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a summary thereof, see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

93. The Court observes that the applicants complained to the law-enforcement authorities shortly after the apprehension of their relatives and that the criminal proceedings have been pending since 18 June 2002. The applicants and the Government disagreed as to the effectiveness of the investigation into the complaint.

94. The Court considers that the Government's 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 this objection should be joined to the merits and falls to be examined below under the substantive provisions of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

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

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

A. The parties’ submissions

96. The Government admitted that Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov had been detained on 9 June 2002. However, they submitted that the applicants’ relatives had been released the next day and that the domestic investigation had obtained no evidence to the effect that they were dead or that any servicemen of the federal law-enforcement agencies had been involved in their alleged killing. The Government further contended that the domestic investigation had been effective. They pointed out, in particular, that the first, third, fifth and seventh applicants had been granted victim status.

97. The applicants argued that while it had been established that their relatives had been detained by servicemen on 9 June 2002, the Government had failed to submit any explanations as to their fate. In the absence of any reliable news of them for several years, they should be presumed dead following their unlawful detention. The applicants also argued that the investigation had not met the standards of effectiveness and adequacy required by the Court’s case-law on Article 2. The applicants pointed out that it had been suspended and resumed a number of times, thus delaying the taking of the most basic steps, and that the applicants had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for over six years without producing any known results was further proof of its ineffectiveness. The applicants invited the Court to draw inferences from the Government’s unjustified failure to provide the documents from the case file to them or to the Court.

B. The Court’s assessment

1. Admissibility

98. 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. 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 94 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 Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov

(i) General principles

99. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, 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 *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

(ii) Establishment of the facts

100. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

101. The Court notes that it is common ground between the parties that Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd Salu Akhmatov and Mr Mansur Ismailov were apprehended at around 3 p.m. on 9 June 2002 by servicemen involved in a security operation in Duba-Yurt. As regards the subsequent events, the Government alleged that the applicants' relatives had been released at around 4 p.m. on 10 June 2002. The applicants contended that their relatives had remained under the control of the authorities and, since no news had been received from them since their arrest, must be presumed dead.

102. The Court observes that the Government submitted no evidence, such as detention facility records, to corroborate their contention that the applicants' relatives had been released on 10 June 2002. In the absence of

such evidence, the Court finds it established that Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov remained under the control of the authorities after that date.

103. The Court further notes that no documents pertaining to the applicants' relatives' detention were made available to the Court. Furthermore, for two years after their apprehension the State authorities consistently denied that they had ever detained them. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-... (extracts), and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts)), 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 his or her detention, this can be regarded as life-threatening. The disappearance of Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov and the absence of any news of them for over six years corroborate this assumption. Furthermore, the Government have failed to provide any explanation for the applicants' relatives' disappearance and the official investigation into their abduction, which has gone on for over six years, has produced no tangible results.

104. Accordingly, the Court finds that the evidence available permits it to find it established to the requisite standard of proof that on 9 June 2002 Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov were apprehended by State servicemen and that they must be presumed dead following their unacknowledged detention.

(iii) The State's compliance with Article 2

105. 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, to 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, §§ 146-147, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

106. The Court has already found it established that the applicants' relatives must be presumed dead following their unacknowledged detention by State servicemen. Noting that the authorities do not rely on any ground justifying the use of lethal force by their agents, or otherwise accounting for

their deaths, it follows that liability for their presumed death is attributable to the respondent Government.

107. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov.

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

108. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such an investigation is to secure 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, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

109. The Court notes at the outset that no documents from the investigation file were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicants and the brief information about its progress presented by the Government.

110. Turning to the facts of the present case, the Court notes that from the information available it appears that the applicants first applied in writing on 18 June 2002 to have an investigation launched into their relatives' abduction. The investigation was instituted on that date. Accordingly, the Court is satisfied that the authorities' reaction was sufficiently prompt.

111. It observes, however, that a number of crucial investigative steps were delayed or not taken at all. In particular, A. and V., servicemen with the OMON unit of Buryatiya who had been on duty at the checkpoint at the relevant time, were not questioned until more than six months after the institution of the proceedings. No explanation was provided for this delay. Although they both confirmed that on 9 June 2002 servicemen at the

checkpoint had stopped a white VAZ 21061 car and apprehended five persons in the car, the Court has no information as to the investigative actions taken in order to establish which military units and which individual servicemen were involved in the apprehension.

112. The Court further notes that, although in the early stages of the investigation the applicants indicated the names of servicemen who, according to the results of their private search, had been involved in their relatives' apprehension, it took the investigating authorities several years to identify and question some of them. In particular, D., whom the applicants alleged to have taken part in the apprehension of their relatives, was not questioned until more than a year following the institution of the investigation. It appears that he provided rather general information concerning his service in Chechnya and there is no indication that any questions concerning the specific events at issue were even put to him. As regards L., after having received conflicting replies as to whether he had served with the Interior Ministry troops at all (see paragraphs 39-40 above), the applicants were informed that he had been finally identified and questioned only in a letter of 15 January 2004, that is, one and a half years after the institution of the investigation. No explanation was provided for this delay.

113. Furthermore, it appears that a number of the most elementary investigative steps were never taken. In particular, there is no information to suggest that the applicants, including those who witnessed the apprehension of Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov, or other residents of Duba-Yurt who witnessed the events, were ever questioned. No information was made available to the Court concerning the efforts, if any, to establish to which units the vehicles in which the applicants' relatives were taken away belonged. Nor is any information available on any efforts, such as checking detention facilities' records, aimed at establishing the whereabouts of the applicants' relatives. Likewise, it appears that none of the servicemen in charge of the special operation was questioned, apart from D. and L., who were identified by the applicants themselves and questioned with a substantial delay. Finally, the Court notes that for several years the authorities consistently denied that the applicants' relatives had been detained at all, and it was only in the Government's observations of 10 October 2007 that the fact of their detention was acknowledged for the first time. No explanation was provided to the Court as to why the establishment of this simple fact required so many years of investigation.

114. Having regard to the foregoing, the Court observes that in the present case the investigating authorities not only did not comply with 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), but failed to take the most elementary investigative measures.

115. The Court further notes that, according to the Government, the first, third, fifth and seventh applicants were granted victim status in the proceedings. The Court only has a document corroborating the assertion that victim status was granted to the fifth applicant. However, even assuming the accuracy of the Government's submissions, it appears that the applicants in any event were not informed of any significant developments in the investigation. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, and to safeguard the interests of the next of kin in the proceedings.

116. Finally, the Court notes that the investigation was adjourned and resumed a number of times and, even as regards the periods when the investigation was officially pending, the Court has very scant information concerning any investigative actions taken and notes lengthy periods of inactivity on the part of the investigating authorities. This manner of conducting the investigation could only be detrimental to the prospects of establishing the fate of the applicants' relatives and ensuring the accountability of those responsible for their abduction.

117. Having regard to the Government's objection that was joined to the merits of the complaint, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for many years without producing any tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection.

118. 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 Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

119. The applicants relied on Article 3 of the Convention, submitting that as a result of their relatives' disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. They also stated that their relatives had been subjected to ill-treatment contrary to that provision. Article 3 of the Convention reads as follows:

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

A. The parties' submissions

120. The Government disagreed with these allegations and argued that the investigation had not established that either the applicants or Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. Furthermore, they submitted that those applicants who had witnessed their relatives' apprehension had themselves acted aggressively towards the servicemen at the checkpoint.

121. In their observations on the admissibility and merits of the application the applicants submitted that they no longer wished to have the complaint regarding the alleged ill-treatment of their relatives examined. They reiterated their complaint concerning the mental suffering they themselves had endured.

B. The Court's assessment

1. Admissibility

(a) The complaint concerning Suliman Malikov, Adlan Khatuyev, Aslan Khatuyev, Sayd-Salu Akhmatov and Mansur Ismailov

122. 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 relating to respect for human rights as defined in the Convention which require it to continue the examination of the present complaints under Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unpublished; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

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

(b) The complaint concerning the applicants' mental suffering

124. 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

125. 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*, cited above, § 358, and *Imakayeva*, cited above, § 164).

126. In the present case the Court notes that the first, second, third, fourth, fifth and seventh applicants were parents of the disappeared persons and thus belonged to their immediate family. To a certain extent this applies also to the sixth and eighth applicants, who were sisters of the disappeared persons. The fifth and the seventh applicants witnessed their sons’ apprehension. For more than six years the applicants have not had any news of their close relatives. During this period the applicants, including sisters of the disappeared persons (see, in particular, paragraph 57 above), have applied to various official bodies with enquiries about their family members, both in writing and in person. For these reasons, in the present case the Court does not consider it necessary to distinguish any family members who could not have standing as victims for the purposes of Article 3 of the Convention (see *Luluyev and Others*, cited above, §§ 112-113).

127. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of their family members following their apprehension. The responses received by the applicants mostly denied that the State was responsible for their detention or simply informed them that an investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

130. The applicants further stated that Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

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

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

...

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

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

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

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

A. The parties' submissions

131. The Government submitted that on 9 June 2002 Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov had been detained in accordance with Article 5 § 1 (c) of the Convention with a view to checking their identity and verifying whether they were members of an illegal armed group. Their detention had been effected in accordance with Article 13 of the Suppression of Terrorism Act. They had been released the next day. Accordingly, there had been no violation of Article 5 of the Convention.

132. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

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

135. The Court has found it established that Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov were apprehended by State servicemen on 9 June 2002 and have not been seen since.

136. The Court takes note of the Government's argument that the men were detained in accordance with Article 5 § 1 (c) of the Convention. However, no documents authorising their detention, such as an arrest warrant or detention report, were submitted to the Court. Having regard to the State authorities' consistent denials of the very fact of detention of the applicants' relatives, which they maintained for several years, the Court doubts whether such documents ever existed. No custody records pertaining to the detention of the applicants' relatives were provided to the Court either.

137. As to the Government's contention that the applicants' relatives were released on 10 June 2002, the Court has already noted in paragraph 104 above that no evidence, such as detention facility records, was provided to it to corroborate this assertion. It has therefore found it established that Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov remained under the control of the authorities after that date.

138. Accordingly, the Court concludes that from 9 June 2002 the applicants' relatives were held in unacknowledged detention which was not logged in any custody records and that there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this 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).

139. 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 relatives 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 the applicants' relatives against the risk of disappearance.

140. In view of the foregoing, the Court finds that Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

141. The applicants complained that under national law they were barred from filing a civil claim to obtain compensation for their relatives' unlawful detention or death pending the outcome of the criminal investigation. They relied on Article 6 § 1 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..."

A. The parties' submissions

142. The Government disputed this allegation.

143. The applicants made no further submissions.

B. The Court's assessment

1. Admissibility

144. 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

145. 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.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

146. The applicants complained that they had been deprived of effective remedies in respect of the violation of Articles 2 and 3 of the Convention, 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

147. The Government submitted that the applicants had been able to actively participate in the investigation and appeal against actions or omissions of the investigating authorities before the courts. In particular, the third applicant's complaint concerning the inaction of the prosecuting authorities had been allowed by a court.

148. The applicants argued that in their case the State had failed to conduct an adequate investigation into the abduction and killing of their relatives, a failure which undermined the effectiveness of other possible remedies.

B. The Court's assessment

1. Admissibility

149. 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

150. 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* 1997-III).

151. As regards the complaint concerning the 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 v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

152. 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.

153. 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.

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

155. As regards the violation of Article 3 of the Convention found on account of the applicants’ mental suffering as a result of the disappearance of their close relatives, their inability to find out what had happened to them and the way the authorities handled their complaints, the Court notes that it 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 under Article 13 in conjunction with Article 3 of the Convention.

VII. ALLEGED VIOLATIONS OF ARTICLE 14 OF THE CONVENTION

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

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

157. In their observations on admissibility and merits of 28 January 2008 the applicants stated that they no longer wished their complaints under Article 14 of the Convention to be examined.

158. 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 relating to respect for human rights as defined in the Convention which require it to continue the examination of the present complaints under Article 37 § 1 of the Convention *in fine* (see *Stamatios Karagiannis*, cited above, § 28).

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

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

160. 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

161. The third and fourth applicants claimed that they had sustained damage in respect of the loss of earnings of their son, Mr Adlan Khatuyev, following his apprehension and subsequent disappearance. They claimed a total of 234,375.22 roubles (RUR) under this head (approximately 6,747 euros (EUR)).

162. They submitted that Mr Adlan Khatuyev had been a sixth-year student at the Grozny State Oil Institute and, upon graduation, would have

started working to support his family. Having regard to the provisions of the Civil Code on calculation of lost earnings, they claimed that the amount of their son's earnings should be equal to the average remuneration of a person with similar qualifications and should not be based on an amount lower than the subsistence level determined by federal laws. The third and fourth applicants submitted that they had to raise Mr Adlan Khatuyev's daughter, born in August 2002 after his disappearance. According to them, they would have benefited from his financial support for her upbringing in an amount equal to 30% of his earnings. Their calculations were based on provisions of the Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("the Ogden tables").

163. The Government argued that no compensation for pecuniary damage should be awarded to the third and fourth applicants since it had not been established in domestic proceedings that Mr Adlan Khatuyev was dead. They also objected to the applicants' having based their claims on the Ogden tables.

164. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants 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".

165. The Court finds that there is indeed a direct causal link between the violation of Article 2 in respect of Mr Adlan Khatuyev and the loss by the third and fourth applicants of the financial support which he could have provided. Although their son was a student at the time of his disappearance, the Court finds it reasonable to assume that upon graduation he would eventually have had some earnings and that the third and fourth applicants would have benefited from them. Having regard to the third and fourth applicants' submissions, the Court awards them EUR 6,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

166. The applicants claimed the following amounts in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives:

1. the first applicant claimed EUR 40,000;
2. the second applicant claimed EUR 40,000;
3. the third applicant claimed EUR 80,000;
4. the fourth applicant claimed EUR 80,000;

5. the fifth applicant claimed EUR 40,000;
6. the sixth applicant claimed EUR 25,000;
7. the seventh applicant claimed EUR 40,000;
8. the eighth applicant claimed EUR 25,000.

167. The Government found the amounts claimed exaggerated.

168. The Court has found violations of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relatives. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the first and second applicants jointly EUR 35,000, to the third and fourth applicants jointly EUR 70,000, to the fifth and sixth applicants jointly EUR 35,000 and to the seventh and eighth applicants jointly EUR 35,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

169. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, 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 translation expenses in the amount of EUR 88.04, as certified by invoices, and administrative expenses in the amount of EUR 545.89. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 8,432.43.

170. The Government did not dispute the details of the calculations submitted by the applicants, but pointed out that they should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had been actually incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They also objected to the part of the applicants' representatives' claim related to the work of lawyers other than those specified in the authority form.

171. The Court has to establish first whether the costs and expenses indicated by the applicants were actually incurred and, second, whether they were necessary and reasonable (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

172. Having regard to the details available, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives. 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, however, that, due to the application of Article 29 § 3, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that the legal drafting was necessarily time-consuming to the extent claimed by the representatives.

173. As regards the Government's objection, the Court notes that the applicants were represented by the SRJI. It is satisfied that the lawyers indicated in the applicants' claim were members of the SRJI staff. Accordingly, the objection must be dismissed.

174. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them EUR 6,000, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

175. 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 join to the merits the Government's objection concerning non-exhaustion of domestic remedies and reject it;
2. *Declares* the complaints under Articles 2, 3, 5, 6 and 13 of the Convention admissible and *decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaints under Article 3 of the Convention in respect of their relatives and under Article 14 of the Convention;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov;
4. *Holds* that there has been a violation of Article 2 of the Convention on account of the failure to conduct an effective investigation into the disappearance of Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the mental suffering endured by the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Mr Suliman Malikov, Mr Adlan Khatuyev, Mr Aslan Khatuyev, Mr Sayd-Salu Akhmatov and Mr Mansur Ismailov;
7. *Holds* that no separate issues arise under Article 6 of the Convention;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Article 3 of the Convention;
10. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 6,000 (six thousand euros) to the third and fourth 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;
 - (ii) EUR 35,000 (thirty-five thousand euros) to the first and second applicants jointly, EUR 70,000 (seventy thousand euros) to the third and fourth applicants jointly, EUR 35,000 (thirty-five thousand euros) to the fifth and sixth applicants jointly and EUR 35,000 (thirty-five thousand euros) to the seventh and eighth 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;
 - (iii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President