



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

FIRST SECTION

CASE OF IDALOVA AND IDALOV v. RUSSIA

(Application no. 41515/04)

JUDGMENT

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

STRASBOURG

5 February 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Idalova and Idalov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

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 the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 41515/04) 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 Adeni Abumuslimovna Idalova¹ and Mr Agdulumsum Abdulkhalimovich Idalov (“the applicants”), on 6 October 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 12 June 2007 the Court decided to apply Rule 41 of the Rules of Court and to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. 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 Adeni Abumuslinovna Idalova...”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1952 and 1949 respectively. At the material time they lived in the village of Akhkinchu-Borzoy, in the Kurchaloy District of the Chechen Republic. They are currently residing in the village of Noyber, in the Gudermes District of the Chechen Republic.

6. The applicants are the parents of Mr Marvan Agdulmusumovich Idalov, born in 1985. They also have three other sons: Khizir, Vakhid and Alikhan Idalov.

A. Disappearance of Marvan Idalov

1. The applicants' account

7. At the material time Marvan Idalov was a student at a secondary school. A certificate issued by the local authorities confirmed that Marvan Idalov had not participated in any illegal armed groups.

8. According to inhabitants of Akhkinchu-Borzoy, special military unit no. 24 of the Russian Ministry of the Defence («24-е стрелковое спецподразделение МО РФ», hereinafter “military unit no. 24”) was based near their village in 2002.

9. On the night of 21 to 22 November 2002 the applicants and Marvan Idalov were sleeping at their family home. Early in the morning the first applicant went outside the house to perform an ablution.

10. At about 6 a.m. an armoured personnel carrier (“APC”), an infantry battle vehicle (“IBV”) and a Ural vehicle arrived at the Idalovs' house; a group of armed men wearing camouflage uniforms and masks descended from them. The first applicant inferred that the men belonged to the Russian military.

11. The servicemen started breaking the entrance door and windows. The first applicant asked them why they were doing so. In reply the servicemen shouted at her and forced her to enter the house.

12. Meanwhile five or six servicemen broke into the house without producing any documents or search warrants. The first applicant saw the faces of two unmasked servicemen who had Slavic features; they spoke Russian without an accent. The servicemen hit the second applicant, tied his arms behind his back, forced him to the floor and pointed a machine gun at him.

13. Marvan Idalov was studying when the servicemen entered his room. They tied his arms, put a sack on his head and took him to the street. It

appears that they then put Marvan Idalov in one of the vehicles parked at the house and left. Some neighbours submitted that the vehicles drove away in the direction of the base of military unit no. 24.

2. Information submitted by the Government

14. According to the decision of the district prosecutor's office of 20 December 2004 to grant the second applicant victim status in criminal case no. 44034, on 22 November 2002 at least ten unidentified armed men wearing camouflage uniforms and masks travelling in an APC, an IBV and a lorry with an anti-aircraft gun on it unlawfully entered the applicants' house, kidnapped Marvan Idalov and took him away to an unknown destination.

B. The search for Marvan Idalov and the investigation

1. The applicants' account

15. Immediately after their son's abduction the applicants requested information on his whereabouts from the head of special military unit no. 24, Mr K., who replied that the military servicemen under his command had not carried out any special operations in the morning of 22 November 2002 and had not apprehended Marvan Idalov.

16. The applicants continued searching for their son. They applied to various official bodies, such as the prosecutors' offices at different levels, the departments of the interior, the Administration of the Chechen Republic, the Russian State Duma and the Special Envoy of the Russian President in the Chechen Republic for Rights and Freedoms, asking to help them to find Marvan Idalov. In their efforts the applicants were assisted by the SRJI. It appears that those complaints were futile.

17. On 26 February 2003 the first applicant complained about her son's disappearance to the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office").

18. On 27 March 2003 the military prosecutor's office of military unit no. 20116 ("the prosecutor's office of unit no. 20116") sent a letter to the UGA prosecutor's office and the first applicant concerning Marvan Idalov's disappearance. The copy of the letter submitted to the Court is illegible.

19. On 31 March 2003 the prosecutor's office of unit no. 20116 sent a letter to the UGA prosecutor's office and the second applicant concerning Marvan Idalov's disappearance. The copy of the letter submitted to the Court is illegible.

20. On 3 April 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint about her son's disappearance to

the prosecutor's office of the Kurchaloy District of the Chechen Republic ("the district prosecutor's office").

21. On 27 May 2003 the district prosecutor's office invited the first applicant to send her queries concerning her son's kidnapping to the prosecutor's office of unit no. 20116.

22. On 5 November 2003 the UGA prosecutor's office informed the first applicant that an inquiry into her son's alleged kidnapping by unidentified military servicemen had been carried out. The inquiry established that on 22 November 2002 the Russian military had not organised any special operations and had not apprehended Marvan Idalov. No traces of military personnel implication in Marvan Idalov's kidnapping had been found.

23. On 13 November 2003 the North-Caucasus Operational Department of the Main Department of the Russian Ministry of the Interior for the Southern Federal Circuit informed the first applicant that it had verified the facts relating to her son's disappearance and had sent the collected materials to the prosecutor's office of the Chechen Republic.

24. On 8 December 2003 the SRJI wrote to the district prosecutor's office, the prosecutor's office of the Chechen Republic and the prosecutor's office of unit no. 20116, requesting them to inform it whether an investigation into Marvan Idalov's disappearance had been instituted and, if so, to provide details on the course of the investigation and to grant the first applicant the status of victim of a crime.

25. On 2 February 2004 the prosecutor's office of the Chechen Republic replied to the SRJI that Marvan Idalov had not been apprehended by servicemen of the department of the interior of the Kurchaloy District ("ROVD") or kept in the temporary detention facility of the ROVD. They further noted that the prosecutor's office of unit no. 20116 had inquired into Marvan Idalov's kidnapping.

26. On 1 June 2004 the SRJI repeated their requests concerning Marvan Idalov's fate to the district prosecutor's office and to the prosecutor's office of unit no. 20116.

27. On 5 August 2004 the prosecutor's office of the Chechen Republic instituted an investigation into the disappearance of Marvan Idalov under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping) and ordered the district prosecutor's office to assign a number to the case file. On 6 August 2004 they informed the first applicant accordingly and invited her to send further queries to the district prosecutor's office.

28. On 4 October 2004 the SRJI wrote to the district prosecutor's office and to the prosecutor's office of unit no. 20116, repeating their requests of 8 December 2003 and 1 June 2004.

29. On 21 October 2004 the prosecutor's office of the Chechen Republic informed the SRJI that it had instituted criminal proceedings in relation to Marvan Idalov's disappearance and that the investigation was under way.

30. On 13 November 2004 the prosecutor's office of unit no. 20116 forwarded the SRJI's complaint about Marvan Idalov's kidnapping to the military prosecutor's office of military unit no. 20102 ("the prosecutor's office of unit no. 20102") and requested that the SRJI submit a detailed description of the crime to that office.

31. On 27 November 2004 the prosecutor's office of unit no. 20116 forwarded the SRJI's complaint to the military prosecutor's office of military unit no. 20119 ("the prosecutor's office of unit no. 20119") and requested that the SRJI submit a detailed description of Marvan Idalov's kidnapping to that office.

32. On 26 January 2005 the district prosecutor's office granted the first applicant victim status in case no. 44034, instituted in relation to Marvan Idalov's kidnapping by unidentified armed persons. On the same date the second applicant was informed of the decision to grant him the status of victim of a crime in case no. 44034, issued by the district prosecutor's office on an unspecified date.

33. On 26 March 2005 the prosecutor's office of unit no. 20116 forwarded the SRJI's complaint about Marvan Idalov's kidnapping to the prosecutor's office of unit no. 20102.

34. On 4 April 2005 the SRJI sent the prosecutor's office of unit no. 20102 information on Marvan Idalov's kidnapping as requested by the prosecutor's office of unit no. 20116.

35. On 1 June 2005 the prosecutor's office of unit no. 20119 forwarded the SRJI's letter to the prosecutor's office of unit no. 20116.

36. On 9 August 2005 the prosecutor's office of unit no. 20102 informed the SRJI that there was no evidence of the implication of military personnel in the crime and that the investigation should therefore be carried out by a civilian prosecutor's office.

37. On 15 August 2005 the SRJI requested the district prosecutor's office, the prosecutor's office of the Chechen Republic and the prosecutor's office of unit no. 20116 to inform it of the state of the proceedings instituted in relation to Marvan Idalov's kidnapping.

38. On 5 October 2005 the prosecutor's office of the Chechen Republic informed the SRJI that the first applicant had been granted victim status and that she would be updated on progress in the investigation.

39. On 2 August 2007 the Ministry of the Interior of the Chechen Republic forwarded the applicants' letter dated 25 July 2007 to the ROVD and requested it to search for Marvan Idalov and his kidnappers more actively and to inform the applicants of measures taken.

40. On 17 August 2007 the ROVD informed the applicants that the investigation into the kidnapping of Marvan and Alikhan Idalov in case no. 44034 had been commenced on 5 August 2004 and that investigative measures were being taken to solve the crime.

41. On 30 August 2007 the district prosecutor's office informed the applicants that the investigation into the kidnapping of Marvan Idalov had been resumed on 30 September 2007.

2. Information submitted by the Government

42. On 13 December 2003 the district prosecutor's office received a complaint by the first applicant dated 29 August 2003 and addressed to the Administration of the President of Russia. According to the complaint, on an unspecified date during the month of Sawm unidentified men wearing camouflage uniforms and masks had entered the Idalovs' house in the village of Akhkinchu-Borzoy and kidnapped Marvan Idalov.

43. On 18 December 2003 the district prosecutor's office ordered the ROVD to ensure the first applicant's appearance before the investigators, to collect depositions by her relatives and to examine the scene of the incident.

44. Later the ROVD reported that the first applicant's whereabouts were unknown and that her neighbours had no information concerning the merits of her complaint.

45. On 23 January 2004 the district prosecutor's office informed the prosecutor's office of the Chechen Republic that it was impossible to give a decision on the first applicant's complaint owing to the failure to establish her whereabouts or to find any evidence of the facts complained of.

46. On an unspecified date the temporary department of the interior of the Kurchaloy District ("VOVD") informed the district prosecutor's office of the following. They had established that Vakhid and Alikhan Idalov had been active members of illegal armed groups and that Marvan Idalov had been an accomplice of insurgents. Vakhid Idalov had been killed in June 2000 in a fight with federal servicemen. Alikhan and Marvan Idalov had not been arrested by the VOVD servicemen and had been hiding from the federal authorities.

47. Several residents of Akhkinchu-Borzoy informed the investigation that three of the first applicant's sons had been involved in unlawful activities of illegal armed groups.

48. On 23 April 2004 the district prosecutor's office decided on the basis of the inquiry's results to refuse to institute criminal proceedings in the absence of any crime.

49. On 5 August 2004 the prosecutor's office of the Chechen Republic quashed the decision of 23 April 2004 and ordered the district prosecutor's office to institute an investigation into Marvan Idalov's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping).

50. On 20 December 2004 the second applicant was granted victim status and questioned. He submitted that Marvan Idalov had been kidnapped on 22 November 2002 by unknown persons in masks.

51. On 26 January 2005 the first applicant was granted victim status and questioned. She made a statement similar to that by her husband.

52. The investigators requested information from law-enforcement agencies of the Chechen Republic and were told in reply that Marvan Idalov had not been arrested, prosecuted or held in any detention facilities and that no special operations had been carried out in Akhkinchu-Borzoy on 22 November 2002.

53. The Idalovs' relatives and neighbours were questioned in the course of the investigation and submitted that they had no information concerning the circumstances of Marvan Idalov's kidnapping.

54. On 15 February 2005 the district prosecutor's office suspended the investigation in case no. 44034 concerning the kidnapping of Marvan Idalov on 22 November 2002 on account of the failure to identify those responsible and notified the applicants accordingly.

55. On 21 May 2005 the district prosecutor's office resumed the investigation in case no. 44034 and notified the applicants accordingly.

56. The investigation in case no. 44034 was suspended on 21 June 2005 and then resumed on 15 October 2005.

57. On 15 November 2005 the district prosecutor's office again suspended the investigation.

58. On 30 August 2007 the district prosecutor's office resumed the investigation in case no. 44034.

59. The Government submitted a copy of an undated document entitled "Explanation", signed with the name of the first applicant and addressed to the prosecutor's office of the Chechen Republic. The document stated that in May 2000 a group of servicemen had found bags with firearms and ammunition in a cemetery in Akhkinchu-Borzoy near the Idalovs' house. The first applicant had been detained for questioning for some time. Then she had found out that her son Vakhid had been killed in unknown circumstances. In December 2000 her son Alikhan had gone to the forest with insurgents. Two or three months later he had returned home and started hiding from the authorities. Then he had tried to flee the country and to go to Turkey. The first applicant had no information on his whereabouts. He might have been arrested by federal servicemen. At about 5.30 a.m. on 22 November 2002 the first applicant had seen an APC, an IBV and a vehicle fitted with an anti-aircraft gun arriving at her house. Around ten armed men had entered the house; all the men but one had been wearing masks, and the unmasked man was tall and had red hair. The armed men had taken away Marvan Idalov. The first applicant had told of the kidnapping to officials of the district prosecutor's office whom she had seen on the VOVD premises.

60. The investigation failed to identify the perpetrators. The involvement of federal troops in the kidnapping was not proven. The investigation was suspended several times owing to the failure to identify those responsible and was then resumed in order to verify certain items of information. It was pending under the supervision of the Russian Prosecutor General's Office.

61. Despite specific requests by the Court, the Government did not disclose most of the contents of the file in criminal case no. 44034, providing only copies of the first applicant's "explanation", several witnesses' interviews, decisions to grant the applicants victim status and a few notifications to the applicants concerning the suspension and resumption of the investigation. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

62. 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 REGARDING ABUSE OF THE RIGHT OF PETITION

63. The Government submitted that the application had not been lodged in order to restore the allegedly violated rights of the applicants. The actual object and purpose of the application was clearly political as the applicants wanted to accuse the Russian Federation of being a State which allegedly carried out a policy of violation of human rights in the Chechen Republic. The Government concluded that there had been an abuse of the right of petition on the part of the applicants and that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

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

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

65. The Government suggested that the applicants had probably been unaware of the contents of the application form, which had been signed not by the applicants, but by the lawyers working for SRJI.

66. In so far as the Government may be understood to claim a lack of *locus standi* in the present case, the Court observes that the applicants gave the SRJI powers of attorney, thus duly authorising this NGO to represent their interests in the Strasbourg proceedings, and in particular to sign on their behalf application forms submitted to the Registry. There are no grounds to believe that the applicants issued those powers of attorney against their will. Accordingly, the Government's objection must be dismissed.

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

A. The parties' submissions

67. 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 Marvan Idalov had not yet been completed. They further argued that it had been open to the applicants to challenge in court or before higher prosecutors any actions or omissions of the investigating authorities, but that the applicants had not availed themselves of that remedy. They also argued that the applicants could have brought civil claims for damages but had failed to do so.

68. The applicants contested that objection. They stated that the criminal investigation and other remedies had proved to be ineffective.

B. The Court's assessment

69. 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, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

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

71. 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.

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

73. As regards the criminal-law remedies provided for by the Russian legal system, the Court observes that the applicants complained of Marvan Idalov's kidnapping to the law-enforcement authorities and that an investigation into the incident has been pending since 5 August 2004. The applicants and the Government dispute the effectiveness of this investigation.

74. The Court considers that the Government's objection regarding the criminal-law remedies raises issues concerning the effectiveness of the 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.

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

A. The parties' arguments

75. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Marvan Idalov had been State agents. In

support of their complaint they referred to the following facts. The kidnappers had travelled in heavy military vehicles, such as the APC and IBV. They would have had to pass through a military checkpoint to get to the Idalovs' house. The military vehicles had moved in the direction of military unit no. 24. The armed men had Slavic features and spoke unaccented Russian. The applicants asserted that there was no proof that Marvan Idalov had ever been involved in illegal activities.

76. The Government submitted that there was no evidence that Marvan Idalov had been kidnapped by State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' son was dead. They pointed out that the first applicant had not lodged her first official complaint concerning the abduction until August 2003. At some point the first applicant had informed the investigation that on 22 November 2002 armed men wearing camouflage uniforms and masks travelling in an APC, an IBV and a vehicle fitted with an anti-aircraft gun had entered her house and kidnapped Marvan Idalov. She had not mentioned that the men had been servicemen or ethnic Russians. The Government noted that the first applicant was surprisingly competent as she could easily distinguish an APC from an IBV and knew what an anti-aircraft gun looked like.

77. According to some villagers, the Idalovs' sons had been insurgents. Vakhid Idalov had been killed in a fight with the federal troops; Alikhan Idalov had gone into hiding in the forests with rebels, had then returned home and at some point had "disappeared". Hidden firearms and ammunition had been found near the Idalovs' plot of land. The fact that the first applicant had not complained to the Court about the death and disappearance of her two other sons proved, in the Government's view, that the Idalov brothers had participated in illegal armed groups.

78. The hypothesis of the involvement of State servicemen in Marvan Idalov's kidnapping had not been proved. The missing man could have been kidnapped by insurgents recruiting future rebel fighters.

79. The Government noted that groups of Ukrainian, Belarusian and ethnic Russian mercenaries had committed crimes in the territory of the Chechen Republic; thus, the fact that the perpetrators had Slavic features and spoke Russian did not prove their attachment to the Russian military. They further observed that a considerable number of weapons and armoured vehicles had been stolen by illegal armed groups from Russian arsenals in the 1990s and that anyone could purchase masks and camouflage uniforms.

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-VIII).

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). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted 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, § 32, Series A no. 336; and *Avşar*, 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 and Others*, cited above, § 160).

85. Lastly, 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 file on the investigation into the abduction of Marvan Idalov, the Government produced only a small part 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-XIII).

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' son can be presumed dead and whether his death can be attributed to the authorities.

88. The applicants alleged that the persons who had taken Marvan Idalov away on 22 November 2002 had been State agents.

89. The Government suggested in their submission that the persons who had detained Marvan Idalov could have been insurgents wishing to recruit the young man to an illegal armed group. 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 considers it very unlikely that several military vehicles stolen by insurgents from the federal troops in the 1990s could have moved freely through Russian military checkpoints without being noticed. It thus

finds that the fact that a large group of armed men in uniform travelling in the APC and IBV arrived in the village of Akhkinchu-Borzoy at 6 a.m. on 22 November 2002 strongly supports the applicants' assertion that these were State servicemen conducting a security operation.

91. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies or the military had been involved in the kidnapping (see paragraphs 22 and 52 above).

92. 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).

93. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their son was apprehended by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the military or law enforcers 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 Marvan Idalov was apprehended on 22 November 2002 by State servicemen during an unacknowledged security operation.

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

95. 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-XIII; *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), 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 Marvan Idalov or any news of him for almost seven years supports this assumption.

96. Accordingly, the Court finds that the evidence available permits it to establish that Marvan Idalov must be presumed dead following his unacknowledged detention by State servicemen.

V. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

97. 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

98. The Government contended that the domestic investigation had obtained no evidence to the effect that Marvan Idalov 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 all measures envisaged in national law were being taken to identify the perpetrators. The delay in commencing the investigation was attributable to the first applicant as she had officially reported the crime only in August 2003 and not to a prosecutor's office, but to the President's Administration. The first applicant had allegedly mentioned the crime to officials from a prosecutor's office, whom she had seen on the VOVD premises, but their identities remained unknown. Furthermore, the Idalovs had moved out of Akhkinchu-Borzoy and thus impeded the investigation. The first applicant had a right of access to non-confidential case documents. The prosecutors' offices dealing with the case were independent and impartial.

99. The applicants argued that Marvan Idalov had been detained by State servicemen and should be presumed dead in the absence of any reliable

news of him for almost seven 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 of the Convention. They had verbally informed the authorities of Marvan Idalov's kidnapping immediately after the crime, but had not considered it necessary to lodge written complaints owing to their lack of legal background. In any event, the first written reply to their complaints had been sent by the prosecutor's office of unit no. 20116 on 27 March 2003, which proved that the applicants had complained before that date. The applicants pointed out that the investigating authorities had not tried to establish the owners of the APC and IBV or to question the servicemen of military unit no. 24. The investigation had several times been suspended and then resumed, which illustrated its ineffectiveness. The applicants invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

100. 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 74 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 Marvan Idalov

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

102. The Court has already found it established that the applicants' son must be presumed dead following his 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 Marvan Idalov.

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

103. 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; and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

104. In the present case, the kidnapping of Marvan Idalov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

105. 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.

106. The Court observes that the applicants submitted that they had verbally reported Marvan Idalov's abduction to the investigating authorities immediately after 22 November 2002 (see paragraphs 15 and 16 above). The investigation in case no. 44034 was instituted on 5 August 2004, that is, one year, eight months and thirteen days after the crime.

107. The Government attributed the delay in commencing the investigation to the applicants, arguing that the first applicant had filed a complaint with the President's Administration only on 29 August 2003. The Court is not in a position to establish whether the applicants visited any law-enforcement authorities immediately after 22 November 2002 in the absence of any material evidence of such a visit or to the contrary, but it

does not deem it necessary to go into such details for the following reason. In December 2003 the district prosecutor's office received the first applicant's complaint of 29 August 2003 (see paragraph 42 above); it refused to investigate the kidnapping in the absence of any crime as late as April 2004 (see paragraph 48 above). The investigation commenced only after that decision had been quashed by the prosecutor's office of the Chechen Republic. The Government provided no explanation whatsoever of the fact that the district prosecutor's office had not taken any procedural decision on a report of a serious crime for more than four months.

108. The Court is not persuaded that the applicants' move to another village within the territory of the Chechen Republic indeed impeded the investigation as suggested by the Government. Moreover, it does not accept the Government's argument that the first applicant should have applied not to the President's Administration but to the district prosecutor's office. It reiterates in this connection that the issue of whether the applicants have lodged a formal complaint about their son's disappearance with the competent investigating authorities is not decisive since the authorities' mere knowledge of a kidnapping in life-threatening circumstances gives rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the incident (see, *mutatis mutandis*, *Ergi v. Turkey*, 28 July 1998, § 82, *Reports of Judgments and Decisions* 1998-IV; and *Yaşa v. Turkey*, 2 September 1998, § 100, *Reports of Judgments and Decisions* 1998-VI).

109. Accordingly, the Court finds that the investigating authorities should be held responsible for the delay in commencing the investigation between 29 August 2003 and 5 August 2004. In the Court's view, this significant delay was in itself liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in a timely fashion.

110. Furthermore, the Court notes that even after the commencement of the proceedings certain requisite investigating measures were delayed. For example, it appears reasonable to assume that the applicants, being the parents of the missing young man and eyewitnesses to his abduction, should have been considered key witnesses in the criminal case. However, the investigators questioned them for the first time several months after the proceedings had been instituted (see paragraphs 50 and 51 above). It is obvious that these interviews, if they were to produce any meaningful results, should have been conducted as soon as the investigation had commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

111. The Court also points out that some crucial investigative steps have apparently not been taken. In particular, nothing in the material in the Court's possession suggests that the district prosecutor's office has ever tried to question the servicemen of military unit no. 24 who were based near the applicants' home village or to establish the owner of the APC and IBV that allegedly moved around Akhkinchu-Borzoy on 22 November 2002.

112. The Court also notes that even though the applicants were eventually granted victim status in case no. 44034, they were 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 legitimate interests of the next of kin of the victim in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

113. Lastly, the Court notes that the investigation in case no. 44034 was suspended and then resumed at least three times and that no proceedings whatsoever were pending between 15 November 2005 and 30 August 2007.

114. The Court will now examine the limb of the Government's objection that was joined to the merits of the complaint (see paragraph 74 above). Inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the authorities' failure to take necessary and urgent investigative measures undermined the effectiveness of the investigation in its early stages. Moreover, the Government mentioned the possibility for the applicants 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, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions of investigating authorities before a court. Besides, given that the effectiveness of the investigation had already been undermined, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the criminal-law remedies relied on by the Government were ineffective in the circumstances and rejects their objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

115. 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 Marvan Idalov, in breach of Article 2 of the Convention in its procedural aspect.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

116. The applicants complained that as a result of their son's disappearance and the State's failure to investigate it properly they had

endured moral suffering in breach of Article 3 of the Convention, which reads:

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

A. The parties' submissions

117. 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.

118. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

119. 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

120. 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; and *Imakayeva*, cited above, § 164).

121. In the present case the Court notes that the applicants are the parents of the missing man. For almost seven years they have not had any news of Marvan Idalov. During this period the applicants have applied to

various official bodies with enquiries about their son. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of Marvan Idalov following his kidnapping. The responses received by the applicants mostly denied that the State was responsible for his abduction or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 of the Convention are also of direct relevance here.

122. 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 of the Convention.

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

VII. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

124. The applicants further stated that Marvan Idalov 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

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

126. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

127. 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

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

129. The Court has found it established that Marvan Idalov was apprehended by State servicemen on 22 November 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).

130. In view of the foregoing, the Court finds that Marvan Idalov 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.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. The parties' submissions

132. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and had not been prevented from using them. The applicants had had an opportunity to challenge the actions or omissions of the investigating authorities in court pursuant to Article 125 of the Russian Code of Criminal Procedure or to bring civil claims for damages.

133. The applicants reiterated the complaint.

B. The Court's assessment

1. *Admissibility*

134. 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*

135. The Court reiterates that Article 13 of the Convention guarantees the availability at 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).

136. 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, 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, §§ 161-162, 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).

137. 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.

138. 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 the civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

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

140. 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' moral suffering as a result of the disappearance of their son, their inability to find out what happened to him and the way the authorities 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.

141. As regards the applicants' reference to Article 5 of the Convention, the Court reiterates that according to its established case-law, the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements. In view of its above findings of a violation of Article 5 of the Convention resulting from the unacknowledged detention of Marvan Idalov, the Court considers that no separate issue arises

in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

IX. ALLEGED VIOLATIONS OF ARTICLE 14 OF THE CONVENTION

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

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

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

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

145. 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

146. 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

147. The applicants did not submit any claims for pecuniary damage. As regards non-pecuniary damage, the applicants claimed 50,000 euros (EUR) each for the suffering they had endured as a result of the loss of their son, the indifference shown by the authorities towards them and the failure to provide any information about the fate of Marvan Idalov.

148. The Government found the amounts claimed exaggerated.

149. 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. 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. Accordingly, it finds it appropriate to award under this head the applicants EUR 35,000 jointly, plus any tax that may be chargeable on that amount.

B. Costs and expenses

150. 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 at rates of EUR 50 and EUR 150 per hour. They also claimed international courier mail fees and translation fees, as confirmed by relevant invoices, and administrative expenses unsubstantiated by any evidence. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,263.88.

151. The Government disputed the reasonableness and the justification of the amounts claimed under this head. They also submitted that the applicants' claims for just satisfaction had been signed by six lawyers, whereas two of them had not been mentioned in the powers of attorney issued by the applicants. They also doubted that it had been necessary to send the correspondence to the Registry via courier mail.

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

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

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

155. 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, owing 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.

Moreover, 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 legal drafting was necessarily time-consuming to the extent claimed by the representatives.

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

C. Default interest

157. 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' complaint under Article 14 of the Convention;
2. *Dismisses* the Government's objection regarding abuse of the right of petition;
3. *Dismisses* the Government's objection regarding *locus standi*;
4. *Decides* to join to the merits the Government's objection regarding non-exhaustion of criminal domestic remedies and rejects it;
5. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of Marvan Idalov;
7. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Marvan Idalov disappeared;

8. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
9. *Holds* that there has been a violation of Article 5 of the Convention in respect of Marvan Idalov;
10. 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;
11. Holds that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
12. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 35,000 (thirty-five thousand euros) in respect of non-pecuniary damage to the applicants jointly, 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;
13. *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