



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

FIRST SECTION

CASE OF MESHAYEVA AND OTHERS v. RUSSIA

(Application no. 27248/03)

JUDGMENT

STRASBOURG

12 February 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Meshayeva and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Giorgio Malinvernì,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 January 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 27248/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 16 Russian nationals, listed below (“the applicants”), on 9 July 2003.

2. The applicants, who had been granted legal aid, 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 Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that two of their relatives had disappeared after being detained by servicemen in Chechnya on 17 December 2002. They complained under Articles 2, 3, 5 and 13.

4. On 10 April 2006 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. By a decision of 27 March 2008, the Court declared the application partly admissible.

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are:

1. Ms Salamat Magomedsalievna Meshayeva, born in 1961;
2. Mr Lom-Ali Akhiadovich Meshayev, born in 1950;
3. Ms Ayshat Lom-Aliyevna Meshayeva, born in 1975;
4. Ms Petimat Lemayevna Elmurzayeva, born in 1989;
5. Ms Kheda Leomayevna Meshayeva, born in 1992;
6. Mr Khasan Leomayevich Meshayev, born in 1993;
7. Mr Khuseyn Leomayevich Meshayev, born in 1993;
8. Mr Mokhdan Lom-Aliyevich Meshayev, born in 1974;
9. Mr Mukhtar Suleymanovich Saydayev, born in 1971;
10. Ms Zharman Gazikhadzhiyevna Saydayeva, born in 1940;
11. Mr Aslan Suleymanovich Saydayev, born in 1963;
12. Ms Milana Aslanovna Saydayeva, born in 1997;
13. Ms Rumisa Dzhabrailovna Musayeva, born in 1965;
14. Mr Uvays Suleymanovich Saydayev, born in 1968;
15. Mr Islam Suleymanovich Saydayev, born in 1983;
16. Mr Magomed Uvaysovich Saydayev, born in 2000.

8. They live in the village of Martan-Chu, Urus-Martan district, Chechnya.

A. The applicants' relatives' arrest

9. The applicants represent two families. Two of their relatives were detained on the night of 16 to 17 December 2002 in Martan-Chu. The two men have not been seen since the day of detention, and the families have been conducting a search for them together.

1. Apprehension of Leoma Meshayev

10. The first eight applicants are relatives of Leoma Akhiatovich Meshayev, who was born in 1952. The first applicant is his wife, the second applicant is his brother, the fourth, fifth, sixth and the seventh applicants are his children. The third and eighth applicants are his niece and nephew. Leoma Meshayev worked as a driver and tractor mechanic. The first applicant suffers from a number of chronic diseases and has category 3 disabled status. The fifth applicant, the Meshayevs' minor daughter, is seriously ill and has category 1 disabled status. The applicants submitted that Leoma Meshayev had suffered from tuberculosis. In March 2003 the heads of administration of Martan-Chu and of the Urus-Martan district

certified that there was no information to suspect Mr Meshayev of involvement in illegal armed groups or any other criminal activities.

11. The Meshayev family live in their own house at 12 Rechnaya Street. About 3 a.m. on 17 December 2002 a group of five or seven men wearing camouflage uniforms and white camouflage cloaks entered the house. They were all armed and masked and spoke Russian and Chechen.

12. One of the men woke up Leoma Meshayev and told him in Chechen “Leoma, wake up!” They threw him on the floor and handcuffed him. When one of the intruders pointed his automatic rifle at Meshayev’s nine-year-old son, another told him in Chechen “Don’t touch the children, they are not guilty”. Then the armed men escorted Leoma Meshayev out of the room, without permitting him to put on warm clothes. He was wearing a short-sleeved T-shirt, trousers and was allowed to put on a pair of boots.

13. The first applicant submitted that she had cried and asked them not to take her husband away and that he hadn’t done anything. The armed men had ordered her to keep quiet, or they would use the firearms. They took her husband’s passport with them, in which documents for his Ural truck were inserted. When they were leaving the house, one of the men hit the first applicant with a rifle butt on the head, as a result of which she briefly lost consciousness. The first applicant was able to see this person quite closely and submitted that he was short and plump, had large blue eyes visible in the opening of his mask and spoke Russian.

14. When the first applicant came round, she found that the men had closed the entrance door to the house by pushing a wardrobe against it. The first applicant managed to open it, with difficulty, and went out into the courtyard. The servicemen there tried to start her husband’s Ural truck, but failed. They then proceeded along Svoboda Street towards the cemetery. The first applicant ran after them, but they started to shoot at her with machine guns with silencers and she had to keep a distance.

15. The first applicant reached the cemetery and there she lost sight of the men. A woman who lived near the cemetery told her on the following day that she had seen military vehicles – an armoured personnel carrier (APC), two Ural trucks and a UAS vehicle – all without registration numbers, parked near her house. She had also seen a group of armed men around these vehicles, who had loaded her neighbour’s winter supply of wood into one of the vehicles before they left.

16. Leoma Meshayev’s brother, the second applicant, stated that in the early hours of 17 December 2002 he had been awoken by the cries of his sister-in-law, the first applicant, who asked for help and said that his brother had been taken away. The second applicant ran from his house into the nearby main street leading towards Urus-Martan and saw an APC, Ural trucks and a UAZ vehicle passing through the military roadblock towards Urus-Martan. In the moonlight the witness clearly saw that the cars were not stopped or detained at the roadblock.

17. The first and the second applicants submitted detailed statements about the events of the night of 16-17 December 2002. The applicants also submitted a hand-drawn plan of Martan-Chu indicating the places to which they referred.

18. The applicants have had no news from Mr Meshayev since that night.

19. The Government in their observations did not dispute the facts as presented by the applicants. They stated that it had been established that on 17 December 2002 unidentified armed men wearing masks had entered the applicants' house at 12 Rechnaya Street and taken away Leoma Meshayev, whose whereabouts had not been established.

2. Apprehension of Bislan Saydayev

20. Applicants nine to sixteen are relatives of Bislan Suleymanovich Saydayev, who was born in 1977. The ninth, eleventh, fourteenth and fifteenth applicants are his brothers. The tenth applicant is his mother. The twelfth and sixteenth applicants are his niece and nephew and the thirteenth applicant is his sister-in-law. The applicants submitted that in November 2005 the eleventh applicant had been abducted by unknown persons at the market in Grozny and the family have had no news of him since. The applicants did not submit any complaints in that connection.

21. In March 2003 the heads of administrations of Martan-Chu and of the Urus-Martan district certified that there was no information to suspect Mr Saydayev of involvement in illegal armed groups or any other crimes. The applicants submitted that several days prior to Bislan Saydayev's detention he, together with the fourteenth applicant, had travelled in the latter's Kamaz truck together with the military commander of the village and his staff to Mozdok in North Ossetia, to collect New Year presents for the servicemen stationed in the village.

22. The Saydayev family live in their own house in Svoboda Street. In the night of 16 to 17 December 2002 the applicants and their family members were at home sleeping. At about 3 a.m. a group of about 30 men entered the house. They were all armed with machine guns equipped with silencers and masked. Some were dressed in green or black camouflage uniforms, others wore white camouflage cloaks on top. They spoke Russian and Chechen. They did not explain anything to the applicants and did not produce any papers. They proceeded to check the documents of all the men in the family.

23. The tenth applicant, Bislan Saydayev's mother, submitted that she had been awoken in the night to find the room filled with armed servicemen. A group of soldiers were standing over Bislan Saydayev's bed. They briefly searched the room and ordered Bislan Saydayev to dress. The tenth applicant asked why they were taking him away and they told her not to worry. They also took Bislan Saydayev's identity documents with them.

24. The fourteenth applicant, Bislan Saydayev's brother, submitted that in the early hours of 17 December 2002 he had been awoken by the light of several torches pointed at him. He was ordered not to move and to produce his documents. The fourteenth applicant showed them where his documents were, the men checked them and ordered him to get out of bed and to show them who was sleeping in which room. When the servicemen were taking his brother away, the fourteenth applicant asked where they could find him, but received no reply.

25. The eleventh applicant, Bislan Saydayev's other brother, submitted that on the night of 17 December 2002 he was sleeping with his family in a separate house within the same courtyard. He was awoken at about 3 a.m. by his mother, the tenth applicant, who knocked on his door and said that Bislan had been taken away. The eleventh applicant rushed into the courtyard and his mother pointed towards the back of the yard, to the vegetable patch. The eleventh and fourteenth applicant tried to pursue the men who had taken their brother away, but they shouted at them to get back and made a few warning shots from automatic guns with silencers, so the applicants had to stop. The applicants noticed an APC, an Ural truck and a UAZ vehicle that had been stationed about 200 metres from their house in the Rechnaya Street. The vehicles left in the direction of Urus-Martan.

26. The eleventh applicant submitted that he had immediately gone to the village military commander's office but was not allowed to see anyone. Then he had met a fellow villager Sultan M. who confirmed that he had just seen a convoy of an APC, an Ural and a UAZ passing through the military roadblock at the exit from Martan-Chu towards Urus-Martan.

27. In addition to their own detailed statements of facts, the applicants also submitted a hand-drawn plan of Martan-Chu indicating the places to which they referred.

28. The applicants have had no news from Mr Saydayev since that night.

29. The Government in their observations did not dispute the facts as presented by the applicants. They stated that it had been established that on 17 December 2002 unidentified armed men wearing camouflage uniforms and masks had entered the applicants' house at Svoboda Street in Martan-Chu and taken away Bislan Saydayev to an unknown destination.

B. The search for Leoma Meshayev and Bislan Saydayev and the investigation

30. Immediately after the detention of their family members the applicants started to search for them. On numerous occasions, both in person and in writing, the applicants and their family members applied to prosecutors of various levels, to the Ministry of the Interior, to the Special Envoy of the Russian President in the Chechen Republic for rights and freedoms, to military commanders, the Federal Security Service (FSB), to

the administrative authorities, media and public figures. The applicants also personally visited detention centres in Chechnya as well as further afield in the Northern Caucasus. The search was primarily carried out by the first and the ninth applicant in respect of their husband and brother, respectively.

31. Besides personal visits, the applicants submitted letters to the prosecutors and other authorities in which they stated the facts of their relatives' detention and asked for assistance and details on the investigation. The applicants have submitted copies of some of the letters they had written.

32. The applicants received hardly any substantive information from official bodies about the investigations into the disappearances and their results. On several occasions they were sent copies of letters by which their requests had been forwarded to the different prosecutors' services. Below is a summary of the letters retained by the applicants and the replies they received from the authorities.

1. Search for Leoma Meshayev

33. The applicants submitted that in the weeks following Leoma Meshayev's arrest they had applied in person to the district military commander's office, the district department of the FSB, the district department of the interior (ROVD), the Urus-Martan District Prosecutor's Office (the district prosecutor's office) with inquiries about the fate of their relative.

34. Within this initial period the applicants also submitted written applications stating the circumstances of Mr Meshayev's detention and requesting assistance in finding him. They did not retain copies of these applications, but on 5 January 2003 the district prosecutor's office opened criminal investigation file no. 34002 into Leoma Meshayev's abduction by unidentified armed persons in camouflage uniforms under Article 126 of the Criminal Code. The applicants submitted that they had learnt of the investigation only on 5 March 2003 when the first and the second applicants were questioned and granted victim status in the proceedings.

35. On 13 March 2003 the district prosecutor's office informed the first applicant that the criminal investigation into her husband's abduction had been adjourned due to failure to identify the culprits. In response to this information, the first applicant requested the district prosecutor to allow her to have access to the case-file.

36. On 3 April 2003 the first applicant submitted a statement about a missing person to the Special Envoy of the Russian President in the Chechen Republic for rights and freedoms.

37. On 18 April 2003 the first applicant wrote to the district prosecutor's office and the ROVD and asked them to carry out a proper investigation into her husband's abduction.

38. On 21 April 2003 the district prosecutor's office replied to the first applicant that although the investigators had taken all possible steps to identify the perpetrators of the crime they had failed to do so. She was invited to inform the prosecutors of any new information about the kidnapping which came to her knowledge.

39. On 29 April 2003 the applicants published a notice in the *Marsho* newspaper, with a description of the circumstances of their relatives' apprehension and a call for any information about them.

40. On 18 June 2003 the first applicant again requested the district prosecutor to give her access to the documents of the criminal investigation. On 1 July 2003 the prosecutor's office invited the first applicant to consult the file.

41. On 10 July 2003 the military prosecutor of the United Group Alliance (UGA) in Chechnya forwarded the first applicant's complaint to the military prosecutor of military unit no. 20102 in Khankala.

42. On 28 July 2003 the district military commander informed the first applicant that, following an internal investigation, it had been established that his office had had no part in the apprehension of her husband and had no information about his whereabouts or the identity of the perpetrators.

43. On 30 July 2003 the first applicant appealed the adjournment of the criminal investigation to the Chechnya Prosecutor's Office. She reasoned that Leoma Meshayev, and also Bislan Saydayev, who had been detained on the same night by the same group of persons, could only have been detained by servicemen because of the use of military vehicles and the fact that these vehicles had been allowed to travel freely through the roadblock, despite the curfew in place. The first applicant requested the prosecutor to resume the investigation, to question the servicemen from the roadblock, the military commander's office and other law-enforcement bodies of the district about the details of the operation, to identify and question witnesses among local residents, and to collect and examine the bullets and cartridges left behind by the abductors who had shot at the applicant as she was trying to pursue them. He was requested to carry out the investigation urgently, before the traces of the detained men had been lost. The first applicant also requested the prosecutor to join the investigation to the one opened into the abduction of Bislan Saydayev.

44. On 4 September 2003 the district prosecutor's office replied to the first applicant that the investigation had taken all possible steps to solve the crime, but had failed to identify the culprits.

45. On 17 November 2003 the SRJI wrote to the district prosecutor on behalf of the first and ninth applicants and asked him to inform them of the state of the investigation in files nos. 34002 and 34041. The letter further asked him to join the investigations. A copy of that letter was forwarded to the Chechnya Prosecutor's Office.

46. On 17 December 2003 the Chechnya Prosecutor's Office informed the SRJI that on 10 December 2003 the criminal investigations into the abductions of Mr Meshayev and Mr Saydayev had been joined. Further details would be communicated to the applicants directly.

47. On 7 July 2004 the SRJI wrote to the district prosecutor's office and again asked for information about the progress of the investigation.

48. On 21 July 2004 the district prosecutor's office replied to the SRJI that the two criminal cases had been joined under file number 34002 and that on 13 December 2004 (to quote the text) the investigation had been adjourned. Efforts to find the two men would continue.

49. On 14 November 2005 the SRJI asked the district prosecutor's office to inform them of the progress in the investigation and to carry out the following actions: to identify the provenance of the military vehicles involved in the abduction, to locate and review all registration documents related to the movement of military vehicles in the district on the night in question, to identify the authorities that had carried out special operations in the district on 17 December 2002 and to question their officers about the detention of Leoma Meshayev and Bislan Saydayev, and to question the servicemen of the Urus-Martan military commander's office and other officials in charge of enforcing the curfew.

2. Search for Bislan Saydayev

50. In the morning after his brother's abduction, on 17 December 2002, the fourteenth applicant went to the military commander of the village. He submitted that the commander had told him that he did not know who had detained his brother. The commander also told him that on the previous day, on 16 December 2002, he had received a warning that an operation was being prepared in their village, but that later this operation had been cancelled. He had not been informed about the reasons for the operation or for its cancellation. He also allegedly promised to help them if Bislan Saydayev had been detained by the military, but said that he would not be able to do anything if he had been detained by the FSB.

51. The applicants submitted that in the following weeks they applied in person with inquiries about the fate of their relative to the district military commander's office, the FSB, ROVD and the prosecutor's office. The ninth applicant also asked the head of the Administration of Chechnya to order an investigation of his brother's detention by unidentified servicemen.

52. At some point the applicants submitted written applications to the authorities stating the circumstances of Mr Saydayev's detention and requesting assistance in finding him. They did not retain copies of these applications, but kept copies of the later applications. On 24 March 2003 the ninth applicant requested the district prosecutor's office to open a criminal investigation into his brother's abduction or to inform him if his brother had

been accused of any crime. He referred to their previous unsuccessful applications to various law-enforcement structures.

53. On 6 April 2003 the ninth applicant wrote to the member of the State Duma elected from Chechnya and to the Speaker of the State Duma, complaining about his brother's disappearance. He stated that they had applied to various law-enforcement bodies in vain. The ninth applicant asked the Duma to create a commission to investigate the phenomenon of "disappearances" in Chechnya.

54. On 11 April 2003 the district prosecutor's office informed the ninth applicant that their office had opened criminal proceedings into his brother's kidnapping.

55. On 23 April 2003 the ninth applicant was granted victim status in criminal investigation file no. 34041 opened into his brother's abduction by unidentified persons.

56. On 5 May 2003 the tenth, eleventh, fourteenth and fifteenth applicants asked the district prosecutor's office to grant them victim status in the proceedings concerning the abduction of their son and brother. It is unclear if these requests were granted.

57. On 10 June 2003 the district prosecutor's office informed the ninth applicant that on 10 June 2003 criminal investigation no. 34041, opened on 10 April 2003, had been adjourned due to failure to identify the culprits. The applicant was informed of the possibility to appeal.

58. On 17 June 2003 the military prosecutor of military unit no. 20102 forwarded the ninth applicant's complaint to the district prosecutor's office and stated that there were no grounds to suspect the involvement of military servicemen.

59. On 28 July 2003 the ninth applicant appealed against the adjournment of the criminal investigation to the Chechnya Prosecutor's Office. He reasoned that his brother could only have been detained by servicemen because of the use of military vehicles and the fact that the vehicles had been allowed to travel freely through the roadblock, despite the curfew in place. The ninth applicant requested the prosecutor to resume the investigation, to question the servicemen of the roadblock, of the military commander's office and other law-enforcement bodies of the district about the details of the operation, to identify and question witnesses among local residents, to collect and examine bullets and cartridges left behind by the abductors who had shot at the eleventh and fourteenth applicant as they were trying to pursue them. The complaint requested that the investigation be carried out urgently, before the traces of Bislan Saydayev had been lost.

60. On 9 August 2003 the Chechnya Prosecutor's Office forwarded the ninth applicant's complaint to the district prosecutor's office.

61. On 29 September 2003 the ninth applicant requested the district prosecutor's office to allow him access to the materials of the adjourned criminal investigation into his brother's abduction.

C. Information from the Government

62. In their observations the Government did not dispute the information concerning the investigations as presented by the applicants. Relying on information obtained from the General Prosecutor's Office, they referred to other procedural steps which had not been mentioned by the applicants. However, despite specific requests from the Court, the Government did not submit copies of most of the documents to which they referred (see below). The Government submitted the following.

63. On 5 January 2003 the district prosecutor's office opened criminal investigation file no. 34002 concerning the abduction of Leoma Meshayev on 17 December 2002. According to a document issued on 21 June 2006 by the acting district prosecutor, the main version of the crime examined by the investigation was the involvement of "power structures and military units" (*"силовых структур и воинских подразделений"*).

64. On 8 January 2003 the first applicant was questioned and granted victim status in the proceedings. She was also questioned again on several occasions. She stated that on the night of 16 to 17 December 2002 about five armed persons wearing military uniforms who had spoken Russian and Chechen had entered their house and abducted her husband. The second applicant was questioned on 8 January 2003 and gave similar statements; however, he stated that there had been about ten abductors.

65. On 10 April 2003 the district prosecutor's office opened criminal investigation file no. 34041 concerning the abduction of Bislan Saydayev on 17 December 2002.

66. According to the Government, on 23 April 2003 the investigators granted victim status to the ninth applicant. When questioned he stated that at about noon on 17 December 2002 he had returned from Grozny and had learnt from his brother, the fourteenth applicant, that at about 3 a.m. on that night unknown armed persons had entered their house and taken away their other brother, Bislan Saydayev. The tenth and the fifteenth applicants gave similar statements on unspecified dates.

67. The Government stated that other relatives of Bislan Saydayev, notably, the tenth, fourteenth and fifteenth applicants, had not sought the status of victims in the proceedings related to his disappearance and had not been accorded it.

68. On 13 December 2003 the investigation of the two cases was joined and the case file was assigned number 34001 (to quote the text).

69. The Government submitted to the Court one witness statement made by the first applicant, dated 23 June 2006, in which she described the circumstances of her husband's arrest and the fact that she had been hit in the face by one of the intruders. No other statements were produced.

70. In their observations the Government referred to witness G.'s statement of 10 December 2003 that on the night of 16 December 2003

[should probably be 2002] a large part of his supply of cut wood for winter, which had been stored near the cemetery, had been stolen. He had seen the tracks of heavy military vehicles, such as APCs or Ural trucks, near that place. On 23 June 2006 the investigation decided not to open criminal proceedings in relation to the theft in view of the expiration of the statutory time-limits.

71. The Government noted that the applicants' statements that their relatives had been detained by servicemen could not be confirmed. The applicants did not recall any details of the clothing, arms or distinctive marks on the uniforms of the abductors.

72. The Government also noted that the investigation had found no grounds to support the first applicant's allegations that she had been hit during the arrest of her husband, as she and other witnesses had not mentioned this during questioning. As to the first applicant's statement that the armed men had also taken her husband's passport, the Government informed the Court that the investigators had decided not to open criminal proceedings in this respect, due to expiration of statutory time-limits. Finally, the Government contended that Leoma Meshayev had not been on the register of the local tuberculosis health centre, despite the applicants' allegation that he had suffered from that disease.

73. According to the Government, the investigators had sought information about the two men from various State authorities. On unspecified dates the district military commander's office, the Urus-Martan district department of the FSB and "other power structures" stated that they had no information about the carrying out of special activities on the night in question in Martan-Chu. Their offices had not detained Leoma Meshayev and Bislan Saydayev. The law-enforcement agencies of Chechnya informed the investigators that they had never detained or arrested the two missing men, nor carried out a criminal investigation in their respect. The investigation failed to establish the whereabouts of Mr Meshayev and Mr Saydayev. Requests for information sent by the investigators in 2007 and 2008 produced no new results in the investigation of the crime.

74. As it appears from the documents submitted by the Government, the investigation had been suspended and reopened a number of times. The applicants had been occasionally informed of these developments. According to the Government, the investigation was under the control of the Prosecutor General's Office.

75. Despite specific requests by the Court the Government did not submit a copy of the file in criminal case no. 34002, providing only copies of decisions to suspend and resume the investigation and to grant victim status, notifications to the applicants of the suspension and reopening of the proceedings and one witness statement mentioned above. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the

documents would be in breach of Article 161 of the Russian Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

D. Proceedings against law-enforcement officials

76. On 6 April 2006 the first and ninth applicants applied to the Urus-Martan Town Court (“the town court”). They complained that the district prosecutor’s office had failed to effectively investigate the disappearances and requested to be granted access to the case file.

77. On 4 May 2005 the town court partially allowed the complaint based on the district prosecutor’s office’s failure to take effective steps and to investigate the abduction. The court ordered the district prosecutor’s office to resume the investigation and to carry out a number of investigative actions as requested by the applicants, such as questioning the residents of Martan-Chu and the servicemen of the military roadblock situated on the road towards Urus-Martan who had been on duty on the night of 16-17 December 2002. The court refused to grant the applicants access to the case file, stating that that right was accorded to victims only on completion of the investigation, and not when the proceedings were adjourned. On 7 July 2005 the Chechnya Supreme Court upheld this decision.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

A. Arguments of the parties

79. 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 Leoma Meshayev and Bislan Saydayev had not yet been completed. They further argued that it had been open to the applicants to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, but that the applicants

had not systematically availed themselves of any such remedy. The applicants were furthermore entitled to sue the investigation bodies in civil proceedings for pecuniary and non-pecuniary damage.

80. The applicants contested that objection. With reference to the Court's practice, they argued that they had not been obliged to apply to civil courts in order to exhaust domestic remedies. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect, including the application to the court, had been futile.

B. The Court's assessment

81. In the present case, the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will now proceed to examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

82. 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.

83. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The preliminary objection in this regard is thus dismissed.

84. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities after the detention of Leoma Meshayev and Bislan Saydayev and that an investigation is still pending. The applicants and the Government dispute the effectiveness of this investigation.

85. The Court considers that this limb of the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicants' complaints. Thus, it considers that these matters fall to be examined below under the substantive provisions of the Convention.

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

A. The parties' arguments

86. The applicants maintained that it was beyond reasonable doubt that the men who had intruded into their homes and taken away Leoma Meshayev and Bislan Saydayev had been State agents. Their two relatives had been detained on the same night in identical circumstances by servicemen who had been carrying out a security operation. Military vehicles had been seen on the night in question in the village. Moreover, the men had arrived late at night, which indicated that they were able to circulate freely during the curfew. Since their relatives had been missing for a very lengthy period of time, they could be presumed dead. That presumption was further supported by the circumstances in which they had been arrested, which should be recognised as life-threatening. The applicants also pointed out that the ground for the Government's refusal to submit the file in criminal case no. 34002 was that it contained "information of a military nature disclosing the location and nature of actions by military and special security forces".

87. The Government submitted that on 17 December 2002 unidentified armed masked men in camouflage uniforms had abducted Leoma Meshayev and Bislan Saydayev from their homes. The investigation into the incident had been pending, but there was no evidence that the men had been State agents and 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' relatives were dead, given that their whereabouts had not been established and their bodies had not been found. The Government further noted that one of the main arguments all the applicants had used to allege State responsibility for the abduction of their relatives had been the fact that the abductors had worn camouflage uniforms and used automatic weapons. The Government informed the Court, however, that camouflage uniforms similar to that used by servicemen were freely available for purchase all over Russia. The applicants had been unable to identify any specific insignia or other features on the uniforms and masks of the abductors to show that the abductors were indeed servicemen on duty. The Government also suggested that the crime could have been committed by members of illegal armed groups and referred to several cases in Chechnya of crimes being committed with the help of illegally obtained uniforms and forged documents.

88. The Government also questioned the credibility of the applicants' statements about the circumstances in which their relatives had been detained and how they had seen the military vehicles. They pointed out the

discrepancies in their statements made to the Court and the ones made to the domestic investigating authorities.

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

89. The Court has on many occasions reiterated that the Contracting States are required to furnish all necessary facilities to the Court and that a failure on a Government's part to submit information which is in their hands, without a satisfactory explanation, may reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI).

90. In the present case the applicants alleged that their relatives had been illegally arrested by the authorities and had then disappeared. They also alleged that no proper investigation had taken place. In view of these allegations, the Court asked the Government to produce documents from the criminal investigation file opened in relation to the kidnapping. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the present case.

91. The Government confirmed the principal facts as presented by the applicants. They refused to disclose any of the documents of substance from the criminal investigation file, relying on Article 161 of the Code of Criminal Procedure. The Government also argued that the Court's procedure contained no guarantees as to the confidentiality of documents, in the absence of sanctions against applicants in the event of a breach of the obligation not to disclose the contents of such documents to the public. They cited, by way of comparison, the Rome Statute of the International Criminal Court of 17 July 1998 (Articles 70 and 72) and the Statute of the International Criminal Tribunal for the former Yugoslavia (Articles 15 and 22) and argued that these instruments provided for personal responsibility for a breach of the rules of confidentiality and laid down a detailed procedure for the pre-trial examination of evidence.

92. The Court notes that Rule 33 § 2 of the Rules of Court permits a restriction on the principle of the public character of documents deposited with the Court for legitimate purposes, such as the protection of national security, the private life of the parties or the interests of justice. The Court cannot speculate as to whether the information contained in the criminal investigation file in the present case was indeed of such nature, since the Government did not request the application of this Rule and it is the obligation of the party requesting confidentiality to substantiate its request.

93. Furthermore, the two international courts whose statutes were cited by the Government operate in the context of international criminal prosecution of individuals and have jurisdiction over offences contrary to their own administration of justice. The Court observes that it has

previously stated that criminal-law liability is distinct from international-law responsibility under the Convention. The Court's competence is confined to the latter and is based on its own provisions, which are to be interpreted and applied on the basis of the objectives of the Convention and in the light of the relevant principles of international law (see, *mutatis mutandis*, *Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII).

94. The Court lastly notes that it has already found on a number of occasions that the provisions of Article 161 of the Code of Criminal Procedure do not preclude the disclosure of documents from a pending investigation file, but rather set out a procedure for and limits to such disclosure (see *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006, and *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII). For these reasons the Court considers the Government's explanation insufficient to justify the withholding of the key information requested by it.

95. Reiterating the importance of a respondent Government's cooperation in Convention proceedings, the Court finds that there has been a breach of the obligation laid down in Article 38 § 1 (a) of the Convention to furnish all necessary facilities to assist the Court in its task of establishing the facts.

C. The Court's evaluation of the facts

96. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161). In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relatives can be presumed dead and whether their deaths can be attributed to the authorities.

97. The applicants alleged that the persons who had taken Leoma Meshayev and Bislan Saydayev away on 17 December 2002 and then killed them had been State agents.

98. The Government suggested in their submission that the persons who had detained Leoma Meshayev and Bislan Saydayev could be members of paramilitary groups. However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary

value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

99. The Court notes that the applicants' version of the events is supported by the witness statements collected by them and by the investigators. The applicants stated that the perpetrators had acted in a manner similar to that of a security operation – they had arrived in a large group, checked the identity documents of the residents, spoken Russian among themselves and to the residents and taken two men away along with their documents. Some witnesses also referred to the use of military vehicles such as APCs, which were not available to paramilitary groups (see paragraphs 16, 25 and 26 above). In their applications to the authorities the applicants consistently maintained that their relatives had been detained by unknown servicemen and requested the investigating authorities to look into that possibility.

100. The Government questioned the credibility of the applicants' statements in view of certain discrepancies relating to the circumstances of the arrests and the sighting of military vehicles contained in their submissions to the Court and to the domestic investigating authorities. As regards the statements made in the context of the domestic investigation, as noted above, the Government did not submit copies of the transcripts, except for the first applicant's additional statement of 23 June 2006. It is therefore unable to judge their accuracy independently. In any event, in the Court's view, the fact that over a period of several years the applicants' recollection of an extremely traumatic and stressful event differed in rather insignificant details does not in itself suffice to cast doubt on the overall veracity of their statements, especially in so far as they were supported by other independent evidence collected during the investigation (see paragraph 70 above).

101. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of relevant 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).

102. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were detained by State servicemen. The Government's statement that the investigation did not uncover any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the

Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Leoma Meshayev and Bislan Saydayev were arrested on 17 December 2002 at their houses in Martan-Chu by State servicemen during an unacknowledged security operation.

103. There has been no reliable news of the applicants' relatives' since 17 December 2002. Their names have not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to them after their arrest.

104. The Court notes with great concern that a number of cases have come before it which suggest that the phenomenon of "disappearances" is well known in Chechnya (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007). The Court has already found that, in the context of the conflict in Chechnya, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Leoma Meshayev and Bislan Saydayev or of any news of them for six years supports this assumption. For the above reasons the Court considers that they must be presumed dead following unacknowledged detention by State servicemen.

105. The Court has already noted above that it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose the documents from the file. Nevertheless, it is clear that the investigation did not lead to the identification of the perpetrators of the kidnapping. Furthermore, in cases involving disappearances, the Court finds it particularly regrettable that there should have been no thorough investigation of the relevant facts by the domestic prosecutors or courts. The few documents submitted by the Government from the investigation files opened by the district prosecutor do not suggest that any progress has been made for several years and, if anything, show the incomplete and inadequate nature of those proceedings. Moreover, the stance taken by the prosecutor's office and the other law-enforcement authorities after the news of the abductions was communicated to them by the applicants contributed significantly to the likelihood of their relatives' disappearance, as no necessary steps were taken in the crucial first days and weeks after the arrests. The authorities' behaviour in the face of the applicants' well-substantiated complaints gives rise to a strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation.

106. For the above reasons the Court considers that Leoma Meshayev and Bislan Saydayev must be presumed dead following their unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

107. 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 alleged violation of the right to life of Leoma Meshayev and Bislan Saydayev

108. The Court has already found that the applicants’ relatives must be presumed dead following unacknowledged arrest by State servicemen and that the deaths 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 Leoma Meshayev and Bislan Saydayev.

B. The alleged inadequacy of the investigation into the abduction

109. The applicants argued that the investigation had not been effective and adequate, as required by the Court’s case-law on Article 2. They noted that it had been opened belatedly, that the taking of the most basic steps had been protracted, and that the applicants had not been informed properly of its progress. They argued that the fact that the investigation had been ongoing for such a long period of time without producing any known results had been further proof of its ineffectiveness. The applicants invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the case file to them or to the Court.

110. The Government claimed that the investigation met the Convention requirements, as all measures envisaged in national law were being taken to identify the perpetrators. They argued that the first and ninth applicants had

been granted victim status and had had every opportunity to participate effectively in the proceedings.

111. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

112. 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 its effectiveness on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

113. Turning to the facts of the case, the Court notes that while the applicants immediately informed the authorities of the crimes, the investigation into Leoma Meshayev's kidnapping was opened on 5 January 2003 and the investigation into Bislan Saydayev's kidnapping on 10 April 2003. Despite the fact that both crimes had been committed in the village on the same night and in all evidence by the same group of persons, the investigations into the two episodes were joined only in December 2003. These delays in themselves were liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action has to be taken in the days immediately following the event.

114. It also appears that only the first and the second applicants were questioned in January 2003. The ninth applicant gave testimony in April 2003. The first and ninth applicants were granted victim status in January and April 2003, accordingly. In December 2003 the investigation identified and questioned one resident who had seen the tracks of military vehicles on the night in question and whose winter supply of wood had disappeared.

115. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. These delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

116. A number of essential steps were never taken. Most notably, it does not appear that the investigation tried to identify and question the servicemen who had manned the roadblock to which the witnesses referred or that they had tried to find out whether any special operations had been carried out in Martan-Chu on the night in question.

117. The Court also notes that even though two applicants were granted victim status, they were only informed of the adjournment and reopening of

the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

118. Finally, the Court notes that the investigation was adjourned and resumed a number of times and thus the taking of the most important measures was protracted unnecessarily.

119. The Government raised the possibility for the applicants to apply for judicial review in the context of exhaustion of domestic remedies. The Court observes that in May 2005 the Urus-Martan District Court partially allowed the first and ninth applicants' complaints against the actions of the prosecutor's office. However, their access to the case file was refused and it does not appear from the information reviewed by the Court that the investigation had complied with the directions of the court. In any event, having no access to the case file and not being properly informed of its progress, the applicants could not be expected to effectively challenge the actions or omissions of the investigating authorities. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been taken much earlier could no longer usefully be conducted. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

120. 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 Leoma Meshayev and Bislan Saydayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

121. The applicants also relied on Article 3 of the Convention, submitting that as a result of their relatives' disappearance and the State's failure to investigate those events properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

122. 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 to be a direct victim of the authorities’ conduct (see, among other authorities, *Orhan*, cited above, § 358).

123. In the present case the Court notes that the first, second and fourth to seventh applicants are the wife, brother and children of Leoma Meshayev. The ninth, tenth, eleventh, fourteenth and fifteenth applicants are brothers and mother of Bislan Saydayev. Most of them were eyewitnesses to the arrest. For six years they have not had any news of them. During this period the applicants have applied to various official bodies with enquiries about their family members, both in writing and in person. Despite their attempts, they have never received any plausible explanation or information as to what became of their family members following their detention. The responses received by the applicants mostly denied that the State was responsible for their arrest or simply informed them that an investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

124. In view of the above, the Court finds that the first, second, fourth to seventh, ninth, tenth, eleventh, fourteenth and fifteenth applicants suffered, and continue to suffer, 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 have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

125. In relation to the complaint under Article 3 brought by the third, eighth, twelfth, thirteenth and sixteenth applicants, the Court notes that their relationship with the disappeared individuals is much more distant. Nor has it been demonstrated that any of the special considerations listed above in paragraph 123 apply to these applicants. In such circumstances, the Court, while accepting that the events of 17 December 2002 might have been a source of considerable distress to this group of applicants, is nevertheless unable to conclude that their mental suffering was distinct from the inevitable emotional distress in a situation such as the one in the present case and that it was serious enough to fall within the ambit of Article 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

126. The applicants further stated that Leoma Meshayev and Bislan Saydayev 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.”

127. The Court has found that Leoma Meshayev and Bislan Saydayev were detained by State servicemen on 17 December 2002 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and no official trace of their subsequent whereabouts or fate exists. The Court has found before that unacknowledged detention is a complete negation of the above 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).

128. Consequently, the Court finds that Leoma Meshayev and Bislan Saydayev 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.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

129. 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.”

130. The Government contended that the applicants had had effective remedies at their disposal and that the authorities had not prevented them from using them. They referred to Article 125 of the Code of Criminal Procedure, which allowed participants in criminal proceedings to complain to a court about measures taken during an investigation. This was an effective remedy to ensure the observation of their rights. They had also failed to claim damages in civil proceedings.

131. The Court reiterates that in circumstances where, as here, the criminal investigation into the violent deaths was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

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

VII APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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

135. The first, fourth, fifth, sixth, seventh and tenth applicants claimed that they had suffered pecuniary damage in respect of the lost wages of their relatives following their arrests and subsequent disappearances. They claimed that their relatives had been unemployed at the time of their arrest,

or that they were unable to obtain salary statements for them, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. They calculated their earnings for the period, taking into account an average inflation rate of 10%. Their calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2004 ("Ogden tables").

136. The first applicant claimed a total of 85,494 Russian roubles (RUB) under this heading (2,419 euros (EUR)). She claimed that she could have counted on 20% of her husband's earnings.

137. The fourth applicant claimed a total of RUB 15,735 (EUR 445). The fifth applicant claimed RUB 28,077 (EUR 795). The sixth and the seventh applicant claimed 35,335 (EUR 1,000) each. They claimed that they could have counted on 10% of their father Leoma Meshayev's earnings until they reached the age of majority.

138. The tenth applicant submitted that she could have counted on 30% of her son Bislav Saydayev's earnings. She claimed a total of RUB 371,638 (EUR 10,517).

139. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. The Court further finds that the loss of earnings also applies to the dependent children and elderly parents and that it is reasonable to assume that the two men would eventually have had some earnings from which the applicants would have benefited (see *Imakayeva*, cited above, § 213). Having regard to the above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' husband, father and son and the loss by the applicants of the financial support which they could have provided.

140. Having regard to the applicants' submissions and accepting that it would be reasonable to assume that their relatives would have eventually had some earnings resulting in the financial support of their families, the Court awards EUR 5,500 to the first, fourth, fifth, sixth and seventh applicants jointly and EUR 3,000 to the tenth applicant in respect of pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Non-pecuniary damage

141. The applicants, save for the thirteenth applicant, claimed various sums ranging from EUR 5,000 to EUR 50,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the failure to provide any information about their fate and the indifference shown by the authorities towards them.

142. The Government found the amounts claimed exaggerated.

143. 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' relatives. The first, second, fourth to seventh, ninth, tenth, eleventh, fourteenth and fifteenth applicants have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that these applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicants the following amounts, plus any tax that may be chargeable thereon:

- (i) EUR 25,000 to the first, fourth, fifth, sixth and seventh applicants jointly;
- (ii) EUR 10,000 to the second applicant;
- (iii) EUR 35,000 to the ninth, tenth, eleventh, fourteenth and fifteenth applicants jointly.

C. Costs and expenses

144. 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 for the work in the area of exhausting domestic remedies and of EUR 150 per hour for the drafting of submissions to the Court. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 9,553.

145. The Government disputed the reasonableness and the justification of the amounts claimed under this head. They questioned, in particular, whether all the lawyers working for the SRJI had been involved in the present case and whether it had been necessary for the applicants to rely on courier mail.

146. The Court has to establish first whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

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

148. The Court further notes that this case was relatively complex and required a certain amount of research and preparation. It notes, however, that the applicants did not submit any additional observations on the merits and that 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 research was necessary to the extent claimed by the representatives.

149. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 6,000, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to them.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Leoma Meshayev and Bislan Saydayev;
4. *Holds* that there has been a violation of the positive obligations under Article 2 of the Convention on account of the failure to conduct an effective investigation into the circumstances in which Leoma Meshayev and Bislan Saydayev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first, second, fourth to seventh, ninth, tenth, eleventh, fourteenth and fifteenth applicants, and no violation of Article 3 of the Convention in respect of the remaining applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Leoma Meshayev and Bislan Saydayev;
7. *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;
8. *Holds* that no separate issues arise under Article 13 in respect of the alleged violations of Articles 3 and 5;

9. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Russian roubles at the rate applicable at the date of settlement, save in respect of costs and expenses:

(i) EUR 5,500 (five thousand five hundred euros) to the first, fourth, fifth, sixth and seventh applicants jointly in respect of pecuniary damage;

(ii) EUR 3,000 (three thousand euros) to the tenth applicant in respect of pecuniary damage;

(iii) EUR 25,000 (twenty-five thousand euros) to the first, fourth, fifth, sixth and seventh applicants jointly in respect of non-pecuniary damage;

(iv) EUR 10,000 (ten thousand euros) to the second applicant in respect of non-pecuniary damage;

(v) EUR 35,000 (thirty-five thousand euros) to the ninth, tenth, eleventh, fourteenth and fifteenth applicants jointly in respect of non-pecuniary damage;

(vi) EUR 5,150 (five thousand one hundred and fifty 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;

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

Done in English, and notified in writing on 12 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President