



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

FIRST SECTION

CASE OF BANTAYEVA AND OTHERS v. RUSSIA

(Application no. 20727/04)

JUDGMENT

STRASBOURG

12 February 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Bantayeva and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 20727/04) 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 eleven Russian nationals, listed below (“the applicants”), on 18 May 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 the former Representative of the Russian Federation at the European Court of Human Rights Ms V. Milinchuk.

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

4. On 23 May 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- 1) Ms Dagman Bantayeva, born in 1932,
- 2) Ms Kometa Mauladiyevna Manayeva, born in 1966,
- 3) Ms Zina Rashedovna Bantayeva, born in 1970,
- 4) Ms Khava Abubakarovna Bantayeva, born in 1988,
- 5) Ms Petimat Salmanovna Bantayeva, born in 1991,
- 6) Mr Islam Abubakarovich Manayev, born in 1998,
- 7) Ms Amnat Abubakarovna Bantayeva, born in 1996,
- 8) Mr Magomed Salmanovich Bantayev, born in 1989,
- 9) Ms Rayana Salmanovna Bantayeva, born in 2003,
- 10) Mr Dzhokhar Salmanovich Bantayev, born in 1998, and
- 11) Ms Amina Abubakarovna Manayeva, born in 1993.

7. The applicants are Russian nationals who live in the village of Komsomolskoye, in the Gudermes district of Chechnya.

8. The applicants are relatives. The first applicant is the mother of Mr Abubakar Aliyevich Bantayev (also known as Bakra Manayev), born in 1957, and Mr Salman Aliyevich Bantayev, born in 1962. Abubakar Bantayev is married to the second applicant; they are the parents of the fourth, sixth, seventh and the eleventh applicants. Salman Bantayev is married to the third applicant; they are the parents of the fifth, eighth, ninth and tenth applicants. The first applicant has two other children, Ms Madina Bantayeva and Mr Shamil Bantayev, who are not applicants in this case.

9. Prior to 2000 Abubakar and Salman Bantayev participated in illegal armed groups. In 2000 they quitted paramilitary activities and voluntarily handed their arms over to the Chechnya Department of the Federal Security Service (the Chechnya FSB). On 21 January 2000 Abubakar and Salman Bantayev were provided with individual statements to this effect by the Department of the Federal Security Service of Gudermes District (the Gudermes FSB) together with the military commander of the security zone of Gudermes District (*комендант зоны безопасности*).

10. At the material time Russian federal forces checkpoints were located on roads leading to and from the village of Komsomolskoye.

A. Disappearance of Abubakar Bantayev and Salman Bantayev

1. The applicants' account

I. Events prior to 2 January 2003

11. According to the first applicant, about five months prior to 2 January 2003, that is, in the summer of 2002, she, her son Salman Bantayev and their neighbour were in a KAMAZ lorry driving from their village to the village of Engel-Yurt in the Gudermes district of Chechnya. On the road between Kadi-Yurt and Engel-Yurt their lorry was stopped by Russian military servicemen in an APC (armoured personnel carrier). They checked the identity papers of Salman Bantayev and his neighbour. The servicemen had a list against which they checked Salman Bantayev's name. After that they told the first applicant that they would take her son away with them. They put Salman Bantayev into the APC and took him to a military unit stationed near Gudermes. The applicant's other son, Abubakar Bantayev, went to the military unit on the same day to find out the reasons for his brother's detention. Later in the evening of the same day Salman Bantayev was released.

II. Events of 2 January 2003

i. Abduction of Abubakar Bantayev

12. On the night of 1-2 January 2003 Abubakar Bantayev and his children were sleeping in one part of the house at 1 Zapadnaya Street, in the village of Komsomolskoye. Abubakar Bantayev's brother, Shamil Bantayev, was sleeping in another part of the house. Abubakar Bantayev's wife was not at home that night as she was visiting her relatives in another village.

13. Between 3 a.m. and 4 a.m. a group of masked men wearing camouflage uniforms and armed with machine guns broke into the house. The men did not introduce themselves; they spoke Russian without an accent. The fourth applicant thought they were Russian servicemen.

14. The servicemen pointed their guns at the family members and lined them up along the wall. When the fourth applicant started to cry, one of them ordered her in Russian to keep silent.

15. The servicemen searched the house and took the family's TV set, Abubakar Bantayev's identity papers and the documents for his car. After that they took Abubakar Bantayev outside, put him into a UAZ vehicle parked next to the house and drove away to an unknown destination.

16. Immediately after Abubakar Bantayev's apprehension Shamil Bantayev rushed to see their mother in the house of his brother Salman

Bantayev. The latter's house was located just a few minutes' walk from Abubakar Bantayev's house. On his way there he met his sister Madina Bantayeva who told him that their brother Salman had also been abducted by armed men.

ii. Abduction of Salman Bantayev

17. On the night of 1-2 January 2003 the first applicant, Madina Bantayeva, Salman Bantayev and his children were sleeping in Salman Bantayev's house at 8 Stalskogo Street (also spelled Stalskaya Street), in the village of Komsomolskoye. The house was located about 50 metres from the local military commander's office.

18. Between 3 a.m. and 4 a.m. on 2 January 2003 a group of around ten men broke into the house. They wore masks and camouflage uniforms with no insignia and were armed with machine guns. They spoke both Russian and Chechen. The applicants thought they were Russian military servicemen. A group of ten servicemen waited outside, next to the grey and khaki-coloured UAZ vehicles parked in the yard.

19. The servicemen tied up Madina Bantayeva and the eighth applicant and put them in one of the rooms. Then they searched the house, ripping upholstery, turning furniture upside down and demanding gold and money from Salman Bantayev. From the window of their room Madina Bantayeva saw the intruders taking some items of their family property and putting them in one of the UAZ vehicles. When Madina Bantayeva saw from the window one of the intruders taking a TV set into the UAZ vehicle, she started screaming that their house was being robbed. The serviceman with the TV set heard this and put the TV set back in the house.

20. The servicemen took a number of items of the family's property, including a video camera, as well as Salman Bantayev's identity papers, marriage certificate, documents for his car and the family photograph albums. After that they took Salman Bantayev into the yard. Without letting him put on clothing or shoes, the servicemen put Salman Bantayev in one of the UAZ vehicles and drove away towards Gudermes.

21. The applicants' neighbour Mrs M.M. testified that late at night on 2 January 2003 she had seen military UAZ cars and a grey UAZ car ("таблетка") pulling over by Salman Bantayev's house. About twenty armed men in camouflage uniforms and masks went into the yard. Mrs M.M. thought these men belonged to the Russian military. Having spent about half an hour in the applicants' house, the servicemen left. Then Mrs M.M. saw the first applicant and her daughter stepping outside the house; the two women told her that the servicemen had taken Abubakar and Salman Bantayev away. Mrs M.M. went into the applicants' house and saw that everything there had been turned upside down.

iii. The first applicant's visits to State agencies

22. Shortly after Salman Bantayev's abduction and the meeting with his sister Madina on the way, Shamil Bantayev came over to his mother's house and told her that Russian servicemen had also taken Abubakar Bantayev away.

23. The first applicant and Shamil Bantayev immediately went to the Gudermes District military commander's office (the district military commander's office) and requested information about their relatives from a duty officer who refused to identify himself. The officer replied that he knew nothing about the Bantayev brothers and that he would not bother his superiors in the middle of the night.

24. In the morning of 2 January 2003 the first applicant reported her sons' disappearance to the Gudermes District department of the interior (the Gudermes ROVD). Later on the same day the police visited the houses of the Bantayev brothers and collected witness statements.

25. The applicants have had no news of Abubakar and Salman Bantayev since 2 January 2003.

26. In support of their statements, the applicants submitted the following documents: witness statement of the first applicant, provided on 27 February 2005; witness statement of the fourth applicant, provided on 2 March 2005; witness statement of the eighth applicant, provided on 2 March 2005; witness statement of the first applicant's daughter Mrs Madina Bantayeva, provided on 7 November 2003; witness statement of the first applicant's neighbour Mrs M.M., provided on 23 March 2004; witness statement of the applicants' relative Mrs A.R., provided on 27 March 2003; hand-drawn map of the first applicant's house; copies of statements no. 002 and no. 606 issued by the Gudermes FSB and the military commander of the Gudermes district security zone in respect of Abubakar Bantayev and Salman Bantayev accordingly, confirming that they had surrendered their weapons and quitted their participation in illegal armed groups, both documents dated 21 January 2000.

2. Information submitted by the Government

27. The Government did not dispute the circumstances of the abduction of Abubakar and Salman Bantayev. According to their submission, "during the night of 2 January 2003, unidentified persons in camouflage uniforms and masks, armed with automatic weapons, abducted Salman Aliyevich Bantayev from his house at 8 Stalskaya Street and Abubakar Aliyevich Bantayev from his house at 1 Zapadnaya Street in the village of Komsomolskoye in the Gudermes district of the Chechen Republic".

28. The Government further submitted that the applicants had not been consistent in their description of the facts as, according to the first applicant, the abductors spoke Russian and Chechen, whereas the eighth applicant had

stated that they spoke only Russian. According to the Government, communication in Chechen was not typical for representatives of Russian federal forces.

B. The search for Abubakar and Salman Bantayev and the official investigation into their abduction

1. The applicants' account

29. Since 2 January 2003 the first applicant has repeatedly applied in person and in writing to various public bodies. She has been supported in her efforts by the SRJI NGO. In her letters to the authorities the first applicant referred to her sons' detention and asked for assistance and details of the investigation. Mostly these enquiries have remained unanswered, or purely formal replies have been given in which her requests have been forwarded to various prosecutors' offices. The applicants submitted some of the letters to the authorities and their replies to the Court. These documents are summarised below.

30. On 4 March 2003 the first applicant requested the head of the Chechen administration, the Chechnya prosecutor and the Chechnya military prosecutor to assist her in the search for her sons. In her letter she stated that her sons had been abducted by unidentified men in camouflage uniforms who had arrived in two UAZ vehicles. She also pointed out that her sons had quitted their participation in illegal armed groups in 2000 and that since then they had been law-abiding citizens.

31. On 22 September 2003 the first applicant wrote to the Prosecutor General, the Chechnya prosecutor's office, the military prosecutor of the United Group Alignment (the military prosecutor of the UGA) and the Chief Federal Inspector of the Southern Federal Circuit in Chechnya requesting assistance in the search for her sons. In her letters she stated that her sons had been abducted by unidentified men in camouflage uniforms who had arrived in two UAZ vehicles. She also pointed out that her sons had quitted their participation in illegal armed groups in 2000 and since then they had been law-abiding citizens. The applicant requested to be informed whether the authorities had brought any charges against her sons and what had been the reasons for their arrest.

32. On 22 September 2003 the first applicant requested the district prosecutor's office to institute an investigation into her sons' disappearance and provide her with information about its progress.

33. On 5 November 2003 the SRJI wrote on behalf of the first applicant to the district prosecutor's office. They stated that the applicant's two sons had been taken away by representatives of federal forces in camouflage uniforms who had arrived in two UAZ cars. The SRJI requested to be informed whether an investigation into the Bantayev brothers'

disappearance had been instituted and, if so, which investigative measures had been taken to solve the crime. They also requested that the first applicant be granted victim status in the criminal proceedings.

34. On 4 December 2003 the district prosecutor's office replied to the SRJI stating that the investigation into the Bantayev brothers' kidnapping had been instituted on 6 January 2003 and that it had been suspended on an unspecified date for failure to identify the culprits. They further noted that victim status in the criminal proceedings had already been granted to Shamil Bantayev.

35. On 20 January 2004 the SRJI requested the district prosecutor's office to be informed about progress in the investigation, to have the criminal proceedings resumed and to be provided with information about the measures taken to solve the crime. No response was given to this request.

36. The applicants were not informed about any further progress in the criminal investigation.

2. Information submitted by the Government

37. On 2 January 2003 operational search officer A. of the Gudermes ROVD carried out a crime scene examination in the houses of the abducted Bantayev brothers. It does not appear that any evidence was collected from the crime scene.

38. On 6 January 2003 the district prosecutor's office instituted an investigation into the abduction of Abubakar Bantayev and Salman Bantayev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 32000.

39. On 24 January 2003 the first applicant's son Mr Shamil Bantayev was granted victim status in the criminal case. On the same date he was questioned by the investigators and testified that Abubakar Bantayev's children had told him that at about 4 a.m. on 2 January 2003 their father had been abducted by unknown masked men. The abductors had also taken away a number of items of their property and documents. The witness had decided to inform his other brother Salman about Abubakar's abduction. On the way to his house he had met his sister Madina who had told him that Salman had also been abducted by unidentified armed men who had arrived at their house in UAZ cars. Salman Bantayev's abductors had also taken away documents and a number of items of property from the applicants' house, including a video camera.

40. On 27 February 2003 the investigators questioned the applicants' relative Mr A.Sh. who testified that he did not have any information about the reasons for the abduction of Abubakar and Salman Bantayev; he also stated that he was aware that in the past the brothers had participated in illegal armed groups.

41. On 6 March 2003 the investigation in criminal case no. 32000 was suspended for failure to identify the perpetrators.

42. On 25 December 2003 the deputy Chechnya prosecutor overruled the decision of 6 March 2003 and the investigation was resumed.

43. On 24 January 2004 the first applicant's daughter, Mrs Madina Bantayeva, was granted victim status in the criminal proceedings and testified that on 1 January 2003 she had arrived at her mother's house. Her mother was living with her brother Salman and his family. At about 3 a.m. on 2 January 2003 a group of unidentified armed men in masks had arrived at their house in two UAZ cars, which they had parked in the yard. The men entered the house, turned everything upside down, slashed the furniture's upholstery, bound her hands with adhesive tape and put her with the first applicant in one of the rooms. Madina Bantayeva had not witnessed the abduction, but the eighth applicant had told her that the abductors had demanded money and gold. Madina Bantayeva stated that she had seen from the window the abductors taking away their property. When she had started screaming that their house was being robbed by the intruders, one of them had returned the TV set to the house.

44. On 24 January 2004 the investigation in the criminal case was suspended for failure to identify the perpetrators.

45. On 21 March 2005 the Gudermes district acting prosecutor overruled the decision of 24 January 2004 and the investigation was resumed. The applicants were informed about this decision.

46. On 22 August 2007 the investigators questioned the eighth and fourth applicants as well as Salman Bantayev's neighbour, Mrs M.M. The eighth applicant testified that on an unspecified date in January 2003 he had woken up and had seen a group of armed masked men in camouflage uniforms in the house. They had demanded money and gold; having spent about twenty minutes in the house, they had left with his father Salman Bantayev. They had also taken away some of their family's valuables. The fourth applicant testified that on an unspecified date in January 2003 she had woken up and had seen a group of armed masked men in camouflage uniforms. They had demanded money and gold; having spent about twenty minutes in the house, they had left with her father Abubakar Bantayev. They had also taken away their family's TV set. Mrs M.M. testified that about 3 a.m. on 2 January 2003 she had seen from her window two UAZ cars next to the Bantayevs' house. A group of seven or eight men in masks and camouflage uniforms had got out of the cars, entered Salman Bantayev's house and had left about fifteen minutes later.

47. On the same day, i.e. on 22 August 2007, the investigators refused to open criminal proceedings in connection with the unlawful entry into the home and the theft of documents from the houses of Abubakar and Salman Bantayev due to the expiration of the statutory time-limits, but the district prosecutor's office instituted an investigation into the theft from the houses

of Abubakar and Salman Bantayev on the night of their abduction under Article 162 of the Criminal Code (aggravated robbery). The criminal case file was assigned number 15086. The investigators also granted Shamil Bantayev the status of civil plaintiff in criminal case no. 32000. On 23 August 2007 Madina Bantayeva was granted the same status in the criminal proceedings.

48. On an unspecified date the investigators requested information from the Gudermes ROVD about the passage of military vehicles through the checkpoints in the village of Komsomolskoye on the night of the abduction of the Bantayev brothers. According to the response from the ROVD, no passage of military vehicles had been registered that night.

49. According to the Government, the investigators also requested information from various law enforcement agencies in Chechnya concerning the disappearance of the Bantayev brothers. The Temporary Operational Troops of the Ministry of the Interior in Chechnya (*временная оперативная группировка МВД РФ в Чечне*), the Chechnya FSB and the Northern-Caucasus Operational Headquarters of Ministry of the Interior (*Северокавказское оперативное управление МВД РФ*) and other agencies submitted that they had no information concerning the whereabouts of the Bantayev brothers. Law enforcement agencies in Chechnya informed the investigators that their agents had not detained Abubakar Bantayev and Salman Bantayev and had not carried out any investigation in respect of them. The brothers had not been detained on administrative or criminal charges. No special operations had been carried out in respect of the disappeared men.

50. The investigation in the criminal case failed to establish the whereabouts of Abubakar and Salman Bantayev. However, it found no evidence to support the involvement of servicemen of federal forces in the abduction of the applicants' relatives.

51. The Government further submitted that the investigation into the abduction of the Bantayev brothers had been suspended and resumed on several occasions, and so far it had failed to identify the perpetrators. The applicants had been duly informed of all decisions taken during the investigation.

52. Despite specific requests by the Court the Government did not disclose any documents from criminal case no. 32000. 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

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

THE LAW

I. THE GOVERNMENT’S OBJECTION AS TO ABUSE OF PETITION

54. The Government submitted that the application had not been lodged in order to restore the allegedly violated rights of the applicants. Its actual object and purpose were clearly of a political nature as the applicants wanted to “incriminate the Russian Federation as allegedly adopting a policy of violating human rights in the Chechen Republic”. They concluded that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

55. The Court considers that the Government may be understood to be suggesting that there was an abuse of the right of petition on the part of the applicants. It observes in this respect that the complaints which the applicants brought to its attention concerned 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 NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties’ submissions

56. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Abubakar Bantayev and Salman Bantayev had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints about the allegedly unlawful detention of their relatives or to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil complaints but they had failed to do so.

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

B. The Court's assessment

58. 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*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52; *Akdivar and Others*, cited above, p. 1210, §§ 65-67; and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

59. The Court will 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).

60. 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.

61. 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, §§ 119-121, 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.

62. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities immediately after the kidnapping of Abubakar Bantayev and Salman Bantayev and that an investigation has been pending since 6 January 2003. The applicants and the Government dispute the effectiveness of the investigation.

63. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints under Article 2. Thus, it decides to join this objection to the merits and considers that these matters fall to be examined below under the relevant substantive provisions of the Convention.

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

A. The parties' arguments

64. The applicants maintained that the men who had taken away Abubakar Bantayev and Salman Bantayev were State agents. In support of their complaint they referred to the following facts. At the material time the village of Komsomolskoye was under total control of federal troops. There had been Russian military checkpoints on the roads leading to and from the village of Komsomolskoye. The armed men who had abducted Abubakar Bantayev and Salman Bantayev had arrived in military vehicles late at night, which indicated that they had been able to pass through the checkpoints. The men had broken into the applicants' houses which had been located in the vicinity of the local military commander's office; they had acted in a manner similar to that of special forces carrying out identity checks. The applicants also pointed out that the ground given for the Government's refusal to submit the file in criminal case no. 32000 was that it contained "information of a military nature disclosing the location and nature of actions by military and special security forces".

65. The Government submitted that unidentified armed men had kidnapped Abubakar Bantayev and Salman Bantayev. They further contended that the investigation of the incident was pending, that there was no evidence that the men were 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' relatives were dead. The Government also stated that, according to one of the versions of the events seen by the

investigation, the crime could have been committed by members of illegal armed groups.

B. The Court's evaluation of the facts

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

67. The Court notes that despite its requests for a copy of the investigation file into the abduction of Abubakar Bantayev and Salman Bantayev, the Government did not produce any documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

68. 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.

69. The applicants alleged that the persons who had taken Abubakar Bantayev and Salman Bantayev away on 2 January 2003 and then killed were State agents.

70. The Government suggested in their submission that the persons who had detained Abubakar Bantayev and Salman Bantayev 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).

71. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. It finds that the fact that two large groups of armed men in uniform, simultaneously breaking into two different houses located within close proximity to the district military commander's office, at night time,

equipped with vehicles, were able to move freely through military roadblocks and apprehended the Bantayev brothers at their homes strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their application to the authorities the applicants pointed out that Abubakar Bantayev and Salman Bantayev were detained by unknown servicemen and requested the investigation to look into that possibility (see paragraphs 33 above). The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies were involved in the kidnapping, but it does not appear that any serious measures have been taken in that direction.

72. 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).

73. The Government seemed to question the credibility of the applicants' statements concerning the factual circumstances of the abduction of Abubakar and Salman Bantayev (see paragraph 28 above). The Court notes in this respect that no other elements underlying the applicants' submissions of facts have been disputed by the Government. The Court finds that the inconsistency pointed out by the Government is so insignificant that it cannot cast doubt on the overall credibility of the applicants' submissions.

74. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were abducted by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Abubakar Bantayev and Salman Bantayev were detained on 2 January 2003 by State servicemen during an unacknowledged security operation.

75. There has been no reliable news of Abubakar Bantayev and Salman Bantayev since the date of their kidnapping. 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.

76. Having regard to the previous cases concerning disappearances in Chechnya which have come before the Court (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), in the context of the conflict in the Republic, 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 Abubakar and Salman Bantayev or of any news of them for several years supports this assumption.

77. The Court further notes that, regrettably, it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose most of the documents from the file (see paragraph 56 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

78. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Abubakar Bantayev and Salman Bantayev must be dead following their unacknowledged detention by State servicemen.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

79. 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 events. 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

80. The Government contended that the domestic investigation had obtained no evidence to the effect that Abubakar Bantayev and Salman Bantayev were dead or that any servicemen of the federal law-enforcement agencies had been involved in their kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants' relatives met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

81. The applicants argued that Abubakar Bantayev and Salman Bantayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court's case-law on Article 2. The applicants pointed out that the district prosecutor's office had not taken some crucial investigative steps, such as questioning the servicemen of the military commander's office located in the vicinity of the houses of the disappeared Bantayev brothers. The investigation into Abubakar Bantayev and Salman Bantayev's kidnapping had been opened four days after the events and then had been suspended and resumed a number of times; it had lasted for several years without producing any tangible results. The applicants had not been properly informed of the most important investigative measures. 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

82. 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 67 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 Abubakar Bantayev and Salman Bantayev

83. 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*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

84. The Court has already found it established that the applicants' relatives must be presumed dead following unacknowledged detention by State servicemen and that the deaths can be attributed to the State. In the absence of any justification put forward by the Government, the Court finds that there has been a violation of Article 2 in respect of Abubakar Bantayev and Salman Bantayev.

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

85. 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).

86. In the present case, the kidnapping of Abubakar Bantayev and Salman Bantayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

87. The Court notes at the outset that the documents from the investigation file 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 applicants and the information about its progress presented by the Government.

88. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation in case no. 32000 was instituted on 6 January 2003, that is, four days after Abubakar and Salman Bantayev's abduction. While this delay, in itself, was not very long, the Court, having regard to the absence of any explanations by the Government in this respect, cannot accept that it was justified in a

situation where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all. For instance, the Court notes that, for the first two months of the investigation, the investigators had questioned only one witness to the abduction (see paragraph 39 above) and one witness who had provided generic information about the disappeared men (see paragraph 40 above). The second witness to the abduction of the Bantayev brothers was questioned more than a year after the events (see paragraph 43 above) and the other three witnesses of the abduction were questioned only in August 2007, that is, more than four and a half years after the events and only after the communication of the application to the respondent Government (see paragraph 46 above). The investigators had failed to take such essential steps as identification or questioning of the Russian federal servicemen who had manned the checkpoints in the village of Komsomolskoye on the night of abduction; questioning of the servicemen of the military commander's office which had been located in the vicinity of the houses of the Bantayev brothers; establishing the owner of the UAZ vehicles that had moved around the village on the night of 2 January 2003; establishing whether any special operations had been carried out in the village of Komsomolskoye on the night in question; identification and questioning of the servicemen who had carried out the operation in the village of Komsomolskoye and could have been involved in the detention of Abubakar and Salman Bantayev. It is obvious that these investigative 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. 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).

89. The Court also notes that even though the applicants' relatives were granted victim status in case no. 32000, 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 interests of the next of kin in the proceedings.

90. Finally, the Court notes that the investigation in case no. 32000 was suspended and resumed several times and that there were lengthy periods of inactivity of the investigators when no proceedings were pending. For instance, no proceedings whatsoever were pending between 6 March 2003 and 25 December 2003, between 24 January 2004 and 21 March 2005, between April 2005 and 22 August 2007.

91. Having regard to the limb of the Government's objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years having produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

92. 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 Abubakar Bantayev and Salman Bantayev, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

93. The applicants relied on Article 3 of the Convention, alleging that upon their abduction Abubakar and Salman Bantayev were subjected to inhuman or degrading treatment. The applicants further complained that as a result of their relatives' disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

94. The Government disagreed with these allegations and argued that the investigation had not established that the applicants, Abubakar Bantayev and Salman Bantayev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

95. In their observations on the admissibility and merits of the application the applicants submitted that they no longer wished to have the complaint regarding alleged ill-treatment of Abubakar and Salman Bantayev examined. They further reiterated the complaint concerning the mental suffering endured.

B. The Court's assessment

(a) The complaint concerning the ill-treatment of Abubakar and Salman Bantayev

96. 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 further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unpublished; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

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

(b) The complaint concerning the applicants' mental suffering

1. Admissibility

98. The Court notes that this part of the complaint under Article 3 of the Convention 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

99. 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).

100. In the present case, the Court observes that the disappeared Bantayev brothers were the applicants' close relatives. They were the sons of the first applicant; Abubakar Bantayev was the husband of the second applicant and the father of the fourth, sixth, seventh and eleventh applicants; Salman Bantayev was the husband of the third applicant and the father of the fifth, eighth, ninth and tenth applicants. For more than five years the applicants have not had any news of their close relatives. 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, the applicants have never received any plausible explanation or information as to what became of their family members following their kidnapping. 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.

101. In view of the above, the Court finds that the applicants suffered distress and anguish as a result of the disappearance of their close relatives 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. At the same time the Court notes that the ninth applicant was born in August 2003, more than seven months after Salman Bantayev's disappearance. Having regard to this the Court does not find that this applicant has suffered such distress and anguish as a result of the disappearance of her father that it would amount to a violation of Article 3 of the Convention.

102. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the applicants, except the ninth applicant. It further finds that there has been no violation of Article 3 of the Convention in respect of the ninth applicant.

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

103. The applicants further stated that Abubakar Bantayev and Salman Bantayev 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

104. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Abubakar Bantayev and Salman Bantayev had been deprived of their liberty in breach of the guarantees set out in Article 5 of the Convention.

105. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

106. 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

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

108. The Court has found it established that Abubakar Bantayev and Salman Bantayev were apprehended by State servicemen on 2 January 2003 and have not been seen since. Their detention was not acknowledged, was

not logged in any custody records and there exists no official trace of their 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).

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

110. In view of the foregoing, the Court finds that Abubakar Bantayev and Salman Bantayev 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.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

111. 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

112. The Government contended that the applicants had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had an opportunity to challenge the actions or omissions of the investigating authorities in court pursuant article 125 of the Code of Criminal Procedure. In addition, they could have lodged a claim for compensation under Article 151 of the Civil Code of Russian Federation. In sum, the Government submitted that there had been no violation of Article 13.

113. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

114. 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

115. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, judgment of 25 June 1997, *Reports of Judgments and Decisions* 1997-III, p. 1020, § 64).

116. As regards the complaint of lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyra 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).

117. 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*, judgment of 27 April 1988, Series A no. 131, § 52). 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.

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

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

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

121. 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 and in view of its above findings of a violation of Article 5 of the Convention resulting unacknowledged detention, 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.

VIII. ALLEGED VIOLATIONS OF ARTICLES 8, 14 AND ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

122. In their initial application form the applicants complained under Article 8 of an unlawful search of their houses on the night of their relatives' abduction; under Article 14 they alleged that they had been discriminated against on the grounds of their ethnic origin and under Article 1 of Protocol No. 1 they alleged a violation of their property rights.

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

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

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

Article 14 of the Convention 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.”

Article 1 of Protocol 1 of the Convention 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.”

124. In their observations on admissibility and merits of the application lodged on 20 December 2007 the applicants stated that they no longer wished their complaints under Articles 8, 14 and Article 1 of Protocol No. 1 of the Convention to be examined.

125. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character affecting respect for human rights as defined in the Convention which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, among other authorities, *Stamatios Karagiannis*, cited above).

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. 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. The Government’s objection

128. The Government submitted that the document containing the applicants’ claims for just satisfaction had been signed by Mr O. Solvang and Mr R. Lemaitre while, in the Government’s opinion, the applicants had been represented by Ms E. Ezhova, Ms A. Maltseva, Mr A. Sakalov and Mr A. Nikolayev. They insisted therefore that the applicants’ claims for just satisfaction were invalid.

129. The Court points out that the applicants issued powers of attorney in the name of the SRJI, an NGO that collaborates with a number of lawyers. Since the SRJI lists Mr O. Solvang and Mr R. Lemaitre as staff members and members of its governing board, the Court has no doubts that

they were duly authorised to sign the claims for just satisfaction on behalf of the applicants. The Government's objection must therefore be dismissed.

B. Pecuniary damage

130. The applicants claimed damages in respect of the lost wages of their abducted relatives. The applicants claimed a total of 849,269 Russian roubles (RUR) under this heading (24,265 euros (EUR)): the first applicant claimed RUR 141,755 (EUR 4,050); the applicants of Abubakar Bantayev's family, that is the second, fourth, sixth, seventh and eleventh applicants, claimed RUR 320,834 (EUR 9,167); the applicants of Salman Bantayev's family, that is the third, fifth, eighth, ninth and tenth applicants, claimed RUR 386,682 (EUR 11,048). Their calculations were based on the provisions of the Russian Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("Ogden tables").

131. The Government regarded these claims as unsubstantiated.

132. 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. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relatives and the loss by the applicants of the financial support which they could have provided. Having regard to the applicants' submissions and the fact that Abubakar and Salman Bantayev were not employed on a regular basis at the time of their apprehension, the Court awards EUR 3,000 to the first applicant; EUR 7,500 to the applicants of Abubakar Bantayev's family, that is, to the second, fourth, sixth, seventh and eleventh applicants jointly; EUR 7,500 to the applicants of Salman Bantayev's family, that is, to the third, fifth, eighth, ninth and tenth applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

C. Non-pecuniary damage

133. The applicants claimed a total of EUR 340,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives. The first applicant claimed EUR 70,000; the applicants of Abubakar Bantayev's family, that is, the second, fourth, sixth, seventh and eleventh applicants, jointly claimed EUR 135,000; the applicants of Salman Bantayev's family, the third, fifth, eighth, ninth and tenth applicants jointly claimed EUR 135,000.

134. The Government found the amounts claimed exaggerated.

135. 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 applicant has been found to have been victim of a violation of Article 3 the Convention. The Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the first applicant EUR 20,000; the second, fourth, sixth, seventh and the eleventh applicants jointly 25,000 and the third, fifth, eighth, ninth and tenth applicants jointly 25,000, plus any tax that may be chargeable thereon.

D. Costs and expenses

136. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Chechnya and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,430.

137. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. They further pointed out that the applicants had not enclosed any documents supporting the amount claimed under postal costs.

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

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

140. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives. In addition, the case involved little documentary evidence, in view of the Government's refusal to submit the case file. Therefore, the Court doubts that research was necessary to the extent claimed by the representative. The Court also notes that the applicants did not submit any documents in support of their claim for administrative costs.

141. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them the amount of EUR 5,000 together with any value-added tax that may be chargeable to them, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

E. Default interest

142. 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 objection as to the abuse of the right of petition;
2. *Decides* to join to the merits the Government's objection concerning the non-exhaustion of domestic remedies and rejects it;
3. *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 3 about the alleged ill-treatment of Abubakar Bantayev and Salman Bantayev and the applicants' complaints under Articles 8, 14 and Article 1 of Protocol No. 1 of the Convention;
4. *Declares* the complaints under Articles 2, 3, 5 and 13 admissible;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of Abubakar Bantayev and Salman Bantayev;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Abubakar Bantayev and Salman Bantayev had disappeared;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants, save for the ninth applicant;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Abubakar Bantayev and Salman Bantayev;

9. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
10. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
11. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save for the payment in respect of costs and expenses:
 - (i) EUR 3,000 (three thousand euros) plus any tax that may be chargeable, in respect of pecuniary damage to the first applicant;
 - (ii) EUR 7,500 (seven thousand five hundred euros) plus any tax that may be chargeable, in respect of pecuniary damage to the second, fourth, sixth, seventh and the eleventh applicants jointly;
 - (iii) EUR 7,500 (seven thousand five hundred euros) plus any tax that may be chargeable, in respect of pecuniary damage to the third, fifth, eighth, ninth and the tenth applicants jointly;
 - (iv) EUR 20,000 (twenty thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the first applicant;
 - (v) EUR 25,000 (twenty five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the second, fourth, sixth, seventh and the eleventh applicants jointly;
 - (vi) EUR 25,000 (twenty five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the third, fifth, eighth, ninth and the tenth applicants jointly;
 - (vii) EUR 5,000 (five thousand euros) plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
12. *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