



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

FIRST SECTION

CASE OF ASTAMIROVA AND OTHERS v. RUSSIA

(Application no. 27256/03)

JUDGMENT

STRASBOURG

26 February 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Astamirova 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,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 27256/03) 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 seven Russian nationals, listed below (“the applicants”), on 11 July 2003.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their relative had disappeared after being detained by servicemen in Chechnya on 5 August 2002. They complained under Articles 2, 3, 5, 13 and 14.

4. On 29 August 2004 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 13 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 relatives. They are:

1. Ms Rumisa Zayndyevna Astamirova, born in 1978;
2. Ms Zoya Khamzatovna Astamirova, born in 1944;
3. Ms Roza Zayndyevna Astamirova, born in 1970;
4. Ms Petimat Shaitovna Algiriyeva, born in 1976;
5. Ms Kheda Aslanbekovna Algiriyeva, born in 2001;
6. Ms Dinara Aslanbekovna Algiriyeva, born in 2003;
7. Ms Raisa Zayndyevna Astamirova, born in 1968.

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

A. The applicants' relative's arrest

9. The first, third and seventh applicants are sisters of Aslanbek Zayndyevich Astamirov (born in 1974). The second applicant is Aslanbek Astamirov's mother. The fourth applicant is his wife, and the fifth and sixth applicants are their daughters (the sixth applicant was born in March 2003). The seventh applicant is deaf mute. The applicants submitted that their relative Aslanbek Astamirov had suffered from TB for the previous seven years and that he had been in need of regular medical assistance.

10. The applicants live in their own six-room house at 45 Sheripova Street in the village of Gekhi, in the Urus-Martan district. In the same courtyard there is another house, owned by the family of Aslanbek Astamirov's brother, Alkha A.

11. According to the applicants' submissions, on 5 August 2002 at around 3 a.m. a group of about thirty masked men in blue camouflage uniforms forcibly entered the applicants' house. The applicants believed that they were servicemen, as they were armed with machine guns and spoke Russian without an accent. The servicemen did not produce identity papers or any documents to justify their actions and gave no explanations.

12. The fourth applicant submitted that she had been sleeping in the room with her husband, Aslanbek Astamirov, and their daughter, the fifth applicant. The first applicant, Aslanbek Astamirov's sister, and her two daughters had been in another room, and the second and seventh applicants had been sleeping in another room.

13. The fourth applicant submitted that she had been woken at 3 a.m. by the sound of Russian being spoken in their courtyard. Then the door to their room opened and four or five men in camouflage and masks, armed with automatic weapons, rushed into the room. They shouted "Lie down" and

approached the fourth applicant's husband. One of the servicemen pushed the fourth applicant against the wall and she fell down. Another serviceman gave her the crying child and ordered her to calm her down and to remain seated.

14. The men tied Aslanbek Astamirov's hands behind his back and escorted him out of the room. They took along his slippers, trousers and a shirt. Two men remained in the room and searched it, but did not take anything. One of them found Aslanbek Astamirov's passport and took it with him. Then the fourth applicant was permitted to come out of her room and into the courtyard, where she saw her sisters-in-law and mother-in-law. The servicemen were leaving and told them to be quiet. About five minutes later the electricity went off in the village and the applicants returned to the house. They submitted that the intruders had remained in their house for about twenty to twenty-five minutes.

15. The first applicant submitted that about five minutes after the men and her brother had left they had heard the sound of a military Ural truck leaving from the direction of the main road. They did not follow the armed men into the street because there was no electricity and because they were afraid.

16. The applicants submitted that the following morning the neighbours told them that they had seen an armoured personnel carrier (APC) and a military all-terrain UAZ vehicle in the village. They also submitted that both exits from the village on the main road were controlled by the Russian military and that there was a curfew in place, so no movement of vehicles or of such a large group was possible without the knowledge of the personnel at the roadblocks. The applicants submitted a copy of the published order of the Urus-Martan district military commander no. 263 of 25 September 2001 by which a curfew had been established in the district between 8 p.m. and 6 a.m.

17. The applicants have had no news of Aslanbek Astamirov since 5 August 2002.

18. The Government in their observations did not challenge most of the facts as presented by the applicants. They stated that it had been established that on 5 August 2002 at about 3 a.m. unidentified men wearing camouflage uniforms and armed with automatic weapons had entered the applicants' house and taken Aslanbek Astamirov away to an unknown destination. His whereabouts could not be established. The Government objected to the term "servicemen" used by the applicants because in their opinion there were no grounds to believe that the persons who had apprehended Mr Astamirov were servicemen of the Russian Federation.

19. The Government also disputed the applicants' reference to the presence of military vehicles on that night. They argued that the statements taken during the investigation from the victims of and witnesses to the

crime had not mentioned military vehicles. The Government did not submit copies of any of the statements to which they referred (see below).

B. The search for Aslanbek Astamirov and the investigation

20. Immediately after Aslanbek Astamirov's abduction the applicants started looking for him. In the morning of 5 August 2002 the first and second applicants, accompanied by Alkha A. and another man, went to Urus-Martan. They approached the district military commander's office, the head of the district administration and other authorities, but did not find out anything about their missing relative. After that for about two weeks the applicants and their relatives continued to travel daily to Urus-Martan in the hope of finding out about Aslanbek Astamirov, but also in the hope that he would be released because, as the first applicant submitted, they were certain that he had been detained by mistake. The first applicant also submitted that they had been afraid to ask for a criminal investigation because they thought it could have harmed her brother. According to the first applicant, they only submitted an application to the prosecutor's office two weeks after the arrest.

21. On numerous occasions, both in person and in writing, the applicants applied to prosecutors at various levels, to the Ministry of the Interior, to the administrative authorities and to public figures. The first applicant went to look at unidentified bodies found in Urus-Martan and in Grozny on several occasions. In the letters to the authorities the applicants stated the facts of Mr. Astamirov's disappearance and asked for assistance and details of the investigation. Most of these enquiries remained unanswered, and the rest received only formal replies by which the respective requests were forwarded to various prosecutors' offices "for examination". The applicants did not retain copies of all the letters, especially during the first months following the apprehension, but they submitted a number of them to the Court. Below is a summary of their correspondence with the authorities.

22. On 10 November 2002 the second applicant wrote to the Prosecutor General's Office, to the South Federal Circuit Department of the Prosecutor General's Office, to the military prosecutor of Chechnya, to the National Public Commission for Investigation of Offences and Protection of Human Rights in the North Caucasus (*Национальная общественная комиссия по расследованию правонарушений и соблюдению прав человека на Северном Кавказе*) and to the member of the State Duma for Chechnya. She stated the details of her son's disappearance and asked for assistance in finding him. She stressed that Aslanbek Astamirov was suffering from TB and was in need of medical help. She mentioned that she had applied to the Urus-Martan district prosecutor's office but that she had received no news about the missing man.

23. On 20 November 2002 the Urus-Martan district prosecutor's office (the district prosecutor's office) forwarded the second applicant's complaint to the Urus-Martan district department of the interior (ROVD) for a check.

24. On 6 December 2002 (or on 1 January 2003 – see below) the district prosecutor's office opened criminal investigation file no. 34001 into the abduction of Aslanbek Astamirov on 5 August 2002 by unidentified armed persons wearing camouflage uniforms and masks. An investigation was opened into a kidnapping committed by a group under Article 126 part 2 of the Criminal Code.

25. On 12 December 2002 the Urus-Martan district prosecutor's office summoned Maret T., the wife of Alkha A., for questioning as a witness.

26. On 13 January 2003 the first applicant was granted victim status in the criminal investigation into her brother's abduction.

27. On 20 January 2003 the military prosecutor of military unit no. 20102 (based in Khankala, the main Russian military base in Chechnya) informed the second applicant that the investigation should be conducted by the local district prosecutor's office, unless it had been established that servicemen of the Ministry of Defence or of the Interior Troops of the Ministry of the Interior had been implicated in the crime.

28. On 7 April 2003 the first applicant asked the district prosecutor's office to provide her with an update on criminal investigation no. 34001 into her brother's abduction.

29. On 3 June 2003 the Chechnya prosecutor's office forwarded a complaint by the fourth applicant of inefficiency of the investigation to the district prosecutor's office and instructed them to inform the Chechnya prosecutor's office about the investigation into the abduction.

30. On 20 June 2003 the district prosecutor's office informed the SRJI that on 1 March 2003 the investigation in criminal case no. 34001 had been suspended due to failure to identify the culprits. The letter also stated that the ROVD had been instructed to take "active measures" to solve the crime.

31. On 29 September 2003 the first applicant wrote to the district prosecutor's office and asked him to grant her access to case file no. 34001.

32. On 17 December 2003 and on 6 January 2004 the Chechnya prosecutor's office informed the SRJI, in identical wording, that the criminal investigation into Aslanbek Astamirov's abduction had been opened by the district prosecutor's office on 1 January 2003 and suspended on 1 March 2003. On 15 December 2003 the investigation had been reopened and all the necessary steps taken to find Mr. Astamirov and to identify the culprits.

33. On 16 February 2004 the SRJI requested the Chechnya and the district prosecutors' offices to clarify if the criminal investigation into the abduction of Aslanbek Astamirov had been opened on 6 December 2002 or on 1 January 2003. They also asked them to inform them about the progress of the investigation.

34. On 23 June 2005 the SRJI, acting on the second applicant's behalf, again asked the district prosecutor's office to give them information about the date on which the criminal investigation had been opened, to inform them about the progress of the proceedings and to allow the second applicant, as a victim, to access the case file.

35. On 12 July 2005 the district prosecutor's office informed the second applicant and the SRJI that the investigation into the crime was ongoing and that she could access the case file at that office.

36. The applicants submitted that they received no further information about the investigation into Aslanbek Astamirov's abduction and that they were not aware of the exact date on which the case had been opened.

37. The applicants submitted that as a result of the severe stress following her son's disappearance the health of the second applicant had deteriorated significantly and that she had often been forced to remain in bed.

C. Information from the Government

38. In their observations the Government did not dispute the information concerning the investigation of the abduction of Aslanbek Astamirov as presented by the applicants. Relying on information obtained from the General Prosecutor's Office, they referred to a number of other procedural steps taken by the investigation 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). In reply to the Court's requests, the Government submitted the following information concerning the progress of the investigation.

39. The criminal investigation into Mr Astamirov's abduction had been opened on 1 January 2003 by the district prosecutor's office.

40. The first applicant had been questioned by the investigators on 13 January 2003, and then again on unspecified dates. On 13 January 2003 she had been granted the status of a victim in the criminal proceedings related to her brother's abduction. According to the Government, the first applicant stated that she and other family members had not been subjected to violence and that no valuables had been taken from the house. She also stated that they had not seen the vehicles used by the abductors.

41. Furthermore, the Government stated that on 28 July 2005 the investigators had questioned and granted victim status to the second applicant, the mother of Aslanbek Astamirov. According to the Government, she stated that she had not applied to the law-enforcement bodies for several months because they had been hoping that her son would come back. She also stated that the abductors had not damaged the door to the house and had not fired any shots.

42. According to the Government, the fourth applicant was questioned on 9 January 2003. She stated that on 5 August 2002 at about 3 a.m. unknown armed and masked men had burst into their house and taken away her husband. He had been allowed to dress. No valuables had been taken. She was again questioned in July 2006, when she specified that the men who had entered their home and taken away her husband had also taken away his passport and driving licence.

43. The Government stated that on 10 January 2003 Markha T., Aslanbek Astamirov's sister-in-law, had been questioned and had confirmed the latter's abduction.

44. According to the Government, another family member was questioned in July 2006 and stated that one of the men who had intruded into their house on 5 August 2002 had been armed with a sniper's rifle. She added that she would be unable to identify any of them since all the men had been wearing masks.

45. The Government submitted that in March and April 2006 the investigators had questioned at least seven of the applicants' neighbours, who had stated that on the night in question they had seen a group of armed and masked men walking down Sheripova Street. They had not seen any special vehicles or cars around. Later they had learnt of Aslanbek Astamirov's abduction. In July 2006 one neighbour was questioned and submitted that on the night of 5 August 2003 he had heard the sound of engines in the street and had seen a group of about ten persons wearing black uniforms and masks and walking along Sheripova Street towards the Astamirovs' house. The investigators questioned another four neighbours in July 2006, who had not heard anything on that night.

46. Also in April 2006 the investigators questioned the former head of administration of Urus-Martan district. He stated that he had received a lot of inquiries from relatives of missing persons, but he could not recall the applicants' case.

47. According to the Government, the investigators also requested information about Mr Astamirov's disappearance from various State authorities. On 19 December 2003 the Urus-Martan district department of the Federal Security Service stated that their office had not detained Mr Astamirov nor carried out a criminal investigation into his activities. The Ministry of the Interior of Chechnya also replied on an unspecified date that their agents had not detained the applicants' relative and had not carried out any investigation in respect of him. Also on unspecified dates all the district departments of the interior in Chechnya informed the investigation that they had never detained or delivered Aslanbek Astamirov to a temporary detention facility. On 4 February 2006 the remand centre in Chechnya IZ-20/1 informed the investigation that the missing man had never been detained there. In April 2006 the pre-trial detention centres of

the Southern Federal Circuit informed the investigators that Mr Astamirov had not been detained in any of them.

48. After April 2006 various bodies of the interior and the headquarters of the United Group Alliance (UGA) informed the investigators that they had no information about a special operation in Gekhi on 5 August 2002.

49. The investigation failed to establish the whereabouts of Mr Aslanbek Astamirov. The investigation found no evidence to support the involvement of the “special branches” (*специальных подразделений*) in the crime. The law enforcement authorities of Chechnya had never arrested or detained Mr Astamirov on criminal or administrative charges and had not carried out a criminal investigation in his respect. No special operations had been carried out in respect of the applicants’ relative.

50. The Government also noted that the investigation had found no grounds to support the fourth applicant’s allegations that she had been ill-treated during the arrest of her husband.

51. As to the applicants’ complaint about inability to access the case file, the Government noted that the victims had the right to access the materials of the investigation in full after the investigation had been completed. Since the investigation had still been ongoing, and at times had been suspended, the victims could not be granted access to the entire case file. Furthermore, the Government noted that in July 2005 the applicants and their representatives had been invited to access the available documents from the case file at the district prosecutor’s office.

52. The Government stated that the investigation into the abduction of Aslanbek Astamirov had been suspended and reopened a number of times. The latest decision to reopen the proceedings had been taken on 21 March 2008. The applicants had been duly informed of these developments. The investigation was under the control of the Prosecutor General’s Office.

53. Despite specific requests by the Court the Government did not submit a copy of the file in criminal case no. 34001, providing only copies of decisions to suspend and resume the investigation and to grant victim status, as well as of the notifications to the applicants of the suspension and reopening of the proceedings. 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.

II. RELEVANT DOMESTIC LAW

54. 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

55 The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They noted in this regard that the investigation into the abduction of the applicants' relative had not yet been completed. They submitted that the applicants had not made use of the rights accorded to them as victims in criminal proceedings, such as lodging applications and requests with the investigators or a court. They could have appealed to a court the investigators' decisions. The applicants were furthermore entitled to sue the investigation bodies in civil proceedings for pecuniary and non-pecuniary damage.

56. The applicants disputed the Government's objection. They argued that the criminal investigation had proved to be ineffective and that their complaints to that effect had been futile. They also alleged the existence of an administrative practice of non-investigation of crimes committed by State servicemen in Chechnya and referred to the other cases concerning such crimes reviewed by the Court, as well as reports of various NGOs and international bodies.

B. The Court's assessment

57. 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).

58. 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.

59. 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.

60. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities after the detention of Aslanbek Astamirov and that an investigation has been pending since December 2002. The applicants and the Government dispute the effectiveness of this investigation.

61. 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

62. The applicants submitted that the representatives of the State should be held responsible for the unlawful detention and killing of Aslanbek Astamirov. They stated that since their relative had been missing for a very lengthy period, it could be presumed that he was dead. That presumption was further supported by the circumstances in which he had been arrested, which should be recognised as life-threatening. The applicants contended that their relative had been detained within the context of a security operation. In support of their complaint they referred to the facts that the men had spoken Russian without any accent, worn camouflage uniforms and were armed with automatic weapons. Moreover, the men had arrived late at night, which indicated that they were able to circulate freely during the curfew, despite the presence of roadblocks in the village. They also stated that the Government's failure to produce the documents from the case file or to provide a plausible explanation of the events had put the burden of proof on the Government, who should be obliged to prove that their agents were not responsible for the arbitrary detention and killing of Mr Astamirov.

63. In their observations submitted in April 2006 the Government submitted that on 5 August 2002 "unidentified masked men in camouflage uniforms armed with machine guns" had abducted Aslanbek Astamirov. They further contended that the investigation into the incident was still pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. No information had been obtained by the investigation about special operations in Gekhi on that day.

They also referred to some other criminal investigations where gangs in Chechnya had been equipped with camouflage uniforms, weapons and forged documents belonging to members of the security forces. Finally, in their submissions of May 2008 the Government questioned the credibility and accuracy of the applicants' statements submitted to the Court and to the investigation. They drew attention to the fact that the fourth applicant had submitted to the Court that the men who had entered their room had pushed her against the wall, while she did not give this information to the investigation. They also noted certain discrepancies in the description of the clothes Mr Astamirov had been wearing upon detention in their witness statements given to the investigation. They also noted inconsistencies in the descriptions by the applicants and witnesses of the clothes and weapons of the intruders given to the Court and to the investigation. The Government concluded that the applicants' submissions were so confused and contradictory that they had probably been invented by them. In any event, they could not constitute a basis for making findings of State responsibility according to the standards developed by the Court. It could not be excluded that Aslanbek Astamirov had voluntarily left the village or escaped, especially in view of the relatives' failure to apply to the authorities immediately after his alleged arrest.

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

64. 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).

65. In the present case the applicants alleged that their relative had been illegally arrested by the authorities and 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.

66. The Government refused to disclose almost all 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 of the confidentiality of documents, in the absence of sanctions for applicants in the event of a breach of confidentiality. They also argued that the applicants were represented by

foreign nationals who could not be brought to account in Russia in the event of such a breach.

67. The Court notes that the Government did not request the application of Rule 33 § 2 of the Rules of Court, which 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 and the private life of the parties, as well as 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 a 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.

68. The Court further 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 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-... (extracts)). For these reasons the Court considers the Government's explanation insufficient to justify the withholding of the key information requested by the Court.

69. Referring to the importance of a respondent government's cooperation in Convention proceedings, the Court notes that there has been a breach of the obligations laid down in Article 38 § 1 (a) of the Convention to furnish all necessary facilities to the Court in its task of establishing the facts.

C. The Court's evaluation of the facts

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

71. The applicants alleged that the persons who had taken Aslanbek Astamirov away on 5 August 2002 had been State agents.

72. The Government seemed to suggest in their submission that the persons who had detained Aslanbek Astamirov could be members of paramilitary groups. They also alleged, alternatively, that he could have left his home on his own. However, these allegations were not specific and they did not submit any material to support them. 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).

73. The Court notes that, on the contrary, the applicants' version of the events is supported by their statements and by the information collected by the investigation. The applicants and the neighbours stated that the perpetrators had acted in a manner similar to that of a security operation – they had checked the residents' passports and they had spoken Russian among themselves and to the applicants. Some witnesses also referred to the use of military vehicles such as APCs, which would not have been available to paramilitary groups (see paragraph 16 above). In their applications to the authorities the applicants consistently maintained that their relative had been detained by unknown servicemen and requested the investigation to look into that possibility.

74. The Court finds that the fact that a large group of armed men in uniform during curfew hours, equipped with military vehicles, was able to move freely through military roadblocks and proceeded to check identity documents and to arrest a person at his home in a town area strongly supports the applicants' allegation that these were State servicemen. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check the involvement of law-enforcement bodies in the arrest. The investigation was unable to establish which precise military or security units had carried out the operation, but it does not appear that any serious steps were taken in that direction.

75. 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).

76. The Government questioned the credibility of the applicants' statements in view of some discrepancies related to the details of the intruders' and the detained man's clothes and the descriptions of the exact sequence of events during the detention. However, the Court reiterates that

the witness statements of the applicants and of the neighbours to which the Government refers have not been submitted to the Court. It is therefore unable to evaluate their accuracy and consistency. As to the minor inconsistencies noted by the Government in the applicants' submissions to the Court, in the Court's view, the fact that after several years the applicants' statements differed in rather insignificant details in the recollection of an extremely traumatic and stressful event, does not in itself suffice to cast doubt on the overall veracity of their statements.

77. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was detained 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 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 Aslanbek Astamirov was arrested on 5 August 2002 at his house in Gekhi by State servicemen during an unacknowledged security operation.

78. There has been no reliable news of the applicants' relative since 5 August 2002. His name has not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to him after his arrest.

79. 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 Aslanbek Astamirov or of any news of him for over six years supports this assumption. For the above reasons the Court considers that it has been established that he must be presumed dead following unacknowledged detention by State servicemen.

80. Furthermore, in a case involving disappearance, 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 file opened by the district prosecutor do not suggest any progress in several years and if anything show the incomplete and inadequate nature of those proceedings. Moreover, the stance of the prosecutor's office and the other

law-enforcement authorities after the news of his detention had been communicated to them by the applicants contributed significantly to the likelihood of the disappearance, as no necessary steps were taken in the crucial first days and weeks after the arrest. 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.

81. For the above reasons the Court considers that Aslanbek Astamirov must be presumed dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. The alleged violation of the right to life of Aslanbek Astamirov

83. The Court has already found that the applicants' relative must be presumed dead following unacknowledged arrest by State servicemen and that the death can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Aslanbek Astamirov.

B. The alleged inadequacy of the investigation of the abduction

84. As regards the procedural obligation under Article 2, the applicants argued that even though an investigation had been mounted into the

disappearance, it was inefficient and the authorities had been unable to demonstrate any progress over a period of several years. A number of important steps had been taken too late, or not taken at all, such as identifying and questioning the State agents who could have been involved in the abduction. The applicants had had no opportunity to acquaint themselves with the case file. 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.

85. The Government claimed that the investigation of the disappearance of the applicants' relative met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators. They argued that the applicants had been granted victim status and had had every opportunity to participate effectively in the proceedings.

86. 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).

87. In the present case, an investigation of the abduction was carried out. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

88. The Court notes at the outset that most of the documents from the investigation were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

89. Turning to the facts of the case, the Court notes that the applicants submit that they had immediately approached the authorities after the arrest of their family member, though they did not submit a formal complaint to the district prosecutor's office until two weeks after the event. Although the exact date of their application is unclear, on 10 November 2002 the second applicant wrote to a number of authorities and complained of inaction on the part of the district prosecutor's office. The investigation was opened on 1 January 2003 (some documents contained the date of 6 December 2002). Thus, the criminal proceedings into the alleged kidnapping started almost five months after the event occurred. Even though some of the initial delay can be attributed to the applicants, such a slow response from the law-enforcement bodies once the news of Aslanbek Astamirov's detention had become known to them remains without any explanation. This delay in itself was liable to affect the investigation of a crime such as abduction in life-threatening circumstances. It also appears that once the investigation was commenced, the first and fourth applicants as well as another female

relative were questioned. The first applicant was granted victim status. However, it appears that after that a number of crucial steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all.

90. In particular, the Court notes that, as it appears from the information submitted by the Government, other relatives and witnesses of the events were only questioned in July 2005 and then in 2006. An official from the Urus-Martan district administration was questioned in April 2006. Information from military and law-enforcement bodies was collected in December 2003 and then in 2006.

91. 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).

92. 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 roadblocks controlling the entry and exit to the village, or that they had tried to contact the military authorities in order to find out whether any special operations had been carried out in Gekhi.

93. The Court also notes that even though the first and second 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.

94. Finally, the Court notes that the investigation was adjourned and resumed a number of times and that there were long periods of inactivity during the years when it was pending.

95. The Government raised the possibility for the applicants to make use of the judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions of investigating authorities before a court. Furthermore, the investigation has been resumed by the prosecuting authorities themselves a number of times due to the need to take additional investigative steps. However, they still failed to investigate the applicants' allegations properly. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be

taken. 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 applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

96. 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 Aslanbek Astamirov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

97. The applicants further relied on Article 3 of the Convention, submitting that as a result of their relative's 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."

98. The Government disagreed with these allegations and argued that in the absence of any evidence suggesting that the applicants' relative had been abducted by representatives of the State, there were no grounds for alleging a violation of Article 3 of the Convention on account of the applicants' mental suffering.

99. In the present case the Court notes that the applicants are the mother, sisters, wife and children of the individual who has disappeared. They were eyewitnesses to the arrest. For more than six years they have not had any news of him. During this period the applicants have applied to various official bodies with enquiries about their family member, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of him following his detention. The responses received by the applicants mostly denied that the State was responsible for his arrest or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here. In line with the Court's established practice, these elements 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 (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

100. In view of the above, the Court finds that the applicants suffered, and continue to suffer, distress and anguish as a result of the disappearance of Aslanbek Astamirov and their inability to find out what happened to him. The manner in which their complaints have been dealt with by the

authorities must be considered to constitute inhuman treatment contrary to Article 3.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

102. The applicants further stated that Aslanbek Astamirov 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.”

103. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Aslanbek Astamirov was detained in breach of the guarantees set out in Article 5 of the Convention. He was not listed among the persons kept in detention centres.

104. 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).

105. The Court has found it established that Aslanbek Astamirov was detained by State servicemen on 5 August 2002 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relative had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

106. Consequently, the Court finds that Aslanbek Astamirov was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

107. 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.”

108. 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. In particular, the applicants received reasoned replies to all their complaints lodged in the context of criminal proceedings. Besides, the applicants had an opportunity to appeal against the actions or omissions of the investigating authorities in court. 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. The applicants never made use of this possibility, which required the initiative of the participants in criminal proceedings, and thus the absence of court action could not constitute a violation of Article 13.

109. The Court reiterates that in circumstances where, as here, the criminal investigation into the violent death 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 *Khassiyev and Akayeva*, cited above, § 183).

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

111. 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 conjunction with Articles 3 and 5 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

112. The applicants complained that they had been discriminated against in the enjoyment of their Convention rights, as the violations of which they complained had taken place because of them being resident in Chechnya and their ethnic background as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

“The enjoyment of the right 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.”

113. The Government contended that the applicants had never been discriminated against in the enjoyment of their Convention rights on any ground.

114. The Court observes that no evidence has been submitted to it that suggests that the applicants were treated differently from persons in an analogous situation because of their residence or ethnic background, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated. Accordingly, the Court finds that there has been no violation of Article 14 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. 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

116. The applicants sought an award in respect of Aslanbek Astamirov's lost wages after his arrest and subsequent disappearance. The second applicant claimed a total of 142,286 Russian roubles (RUB) (4,099 euros (EUR)) under this head, the fourth applicant claimed RUB 306,449

(EUR 8,828), the fifth applicant claimed RUB 150,648 (EUR 4,340) and the sixth applicant claimed RUB 169,465 (EUR 4,882).

117. They submitted that Aslanbek Astamirov was unemployed at the time of his arrest, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. 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"). The applicants assumed that his wife, mother and children would have been financially dependent on him. They calculated his earnings, with an adjustment for 10% yearly inflation rate, and argued that the first applicant could count on 10%, and his wife and each child (until the age of majority) on 20% of the total.

118. The Government regarded these claims as based on suppositions and unfounded. In particular, they noted that in the national proceedings the applicants had never claimed compensation for the loss of a breadwinner, although such a possibility was provided for.

119. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part". The Court further finds that the loss of earnings also applies to dependent children and, in some cases, to elderly parents (see, among other authorities, *Imakayeva*, cited above, § 213).

120. 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 second, fourth, fifth and sixth applicants' family member and the loss by these applicants of the financial support which he could have provided.

121. Having regard to the applicants' submissions and the fact that Aslanbek Astamirov was not employed at the time of his apprehension, the Court awards EUR 12,000 to the second, fourth, fifth and sixth applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

122. The applicants claimed financial compensation in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member and the authorities' indifference. They sought amounts ranging from EUR 5,000 to EUR 50,000 each, depending on the closeness of family ties with the disappeared man.

123. The Government found the amounts claimed exaggerated.

124. 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' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicants jointly EUR 35,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

125. 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 7,903.

126. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. 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.

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

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

129. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that these cases were rather complex and required a certain amount of research and preparation.

130. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount as claimed of EUR 7,903, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

131. 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 Aslanbek Astamirov;
4. *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 Aslanbek Astamirov had disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Aslanbek Astamirov;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds* that there has been no violation of Article 14 of the Convention;
10. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts,:
 - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the second, fourth, fifth and sixth applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) EUR 7,903 (seven thousand nine hundred and three euros), plus any tax that may be chargeable to the applicants, in respect of

costs and expenses, to be paid into the representatives' bank account in the Netherlands;

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

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

Done in English, and notified in writing on 26 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President