



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

FIRST SECTION

CASE OF ELSIYEV AND OTHERS v. RUSSIA

(Application no. 21816/03)

This version was rectified on 26 March 2009
Under Rule 81 of the Rules of Court

JUDGMENT

STRASBOURG

12 March 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Elsiyev and Others v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinvernì,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 February 2009

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

PROCEDURE

1. The case originated in an application (no. 21816/03) 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 eight Russian nationals listed below (“the applicants”), on 19 June 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 Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

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 9 May 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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) Mr Magomed Abdulvadudovich¹ Elsiyev, born in 1941,
- (2) Mr Isa Noshayevich Demelkhanov, born in 1956,
- (3) Mr Vakhid Boltiyev, born in 1937,
- (4) Ms Petimat Dzhamaldiyevna² Nakayeva, born in 1954,
- (5) Ms Shurka Abubakarova, born in 1939,
- (6) Mr Khozhbaudi Abdul-Vakhitovich Mandiyev, born in 1957,
- (7) Ms Zavra Saidselimovna Demilkhanova, born in 1961, and
- (8) Ms Shakhadat (also spelled as Shakhadad) Alieyvna Agmerzayeva, born in 1962.

7. The applicants live in the village of Tsotsi-Yurt, in the Kurchaloy district of Chechnya. The applicants' relatives have been detained and subsequently disappeared.

A. Events of 1 to 8 September 2002

1. The applicants' account

(a) Special operation in Tsotsi-Yurt between 1 and 8 September 2002

8. On 31 August 2002 the Russian military troops surrounded the village of Tsotsi-Yurt (also known as Oktyabrskoye). Between 1 and 8 September 2002 they carried out a large-scale special security operation in the village. The military, under the command of General Studenikin (also spelled as Studenkin), based their headquarters and a temporary filtration point on the outskirts of the village. The filtration point, known to the local residents as "the flour mill" and "the brigade", consisted of an old barn, a former repair station and a fenced yard. Military division no. 4 (*4-я дивизия*) was among the units which participated in the special operation. At least 86 persons were apprehended during the operation and taken to the filtration point by "AvtoZak" vehicles (GAZ-53 lorries equipped for transportation of detainees), one of which had the registration number 112 BM 61.

¹ Rectified on 26 March 2009: the text was "(1) Mr Magomed Abdulvadulovich Elsiyev,..."

² Rectified on 26 March 2009: the text was "(4) Ms Petimat Dzhamaldayevna Nakayeva,..."

(b) Apprehension of Salakh Elsiyev and subsequent events

9. The first applicant is the father of Mr Salakh Magomedovich Elsiyev, who was born in 1972.

10. On 2 September 2002 the Elsiyevs were at home, at 21 Shosseinaya Street, in the village of Tsotsi-Yurt. At about 3 p.m. two armoured personnel carriers ("APCs") and a UAZ car arrived at their house. The vehicles' registration numbers were covered with mud.

11. The first applicant went outside. Twelve or thirteen armed men wearing camouflage uniforms and masks, equipped with portable radio systems and armed with Stechkin pistols and machine guns, entered the yard and ordered the first applicant to prostrate himself. He disobeyed their order. The men forced him against the wall and asked how many men were in the house. The first applicant named his son and himself.

12. The servicemen entered the house, dragged Salakh Elsiyev outside and put him on the ground. When the first applicant requested the soldiers to explain what was happening, one of them pointed a Stechkin gun at him and ordered him to keep silent. Three or four servicemen entered the Elsiyevs' house and searched it. They did not produce any search warrant.

13. The servicemen searched Salakh Elsiyev, then put him in the APC and drove away in the direction of the western outskirts of the village, where the special operation's headquarters were stationed. The apprehension of the first applicant's son was witnessed by the first applicant's neighbour, Mr Sh.G., who provided a witness statement similar to that of the first applicant.

14. On 3 September 2002 the first applicant and his wife went to the filtration point. They saw that the apprehended men were being kept in the barn. From the date of Salakh Elsiyev's apprehension the applicant went to the point every day, waiting for the release of his son. In the morning of 7 September 2002 the first applicant returned to the filtration point and saw that all the military vehicles had left in an unknown direction.

(c) Apprehension of Iskhadzhi Demelkhanov and Akhmed Demilkhanov

15. The second applicant is the father of Mr Iskhadzhi Isayevich Demelkhanov (also spelled as Demilkhanov), who was born in 1980. The seventh applicant is the mother of Mr Akhmed Musayevich Demilkhanov (also spelled as Demelkhanov), who was born in 1984. Iskhadzhi Demelkhanov and Akhmed Demilkhanov are cousins and grandchildren of Mr Nozha (also spelled as Nazha) Demelkhanov, who also lives in Tsotsi-Yurt.

16. At about 7 p.m. on 2 September 2002 two APCs and an infantry battle vehicle ("BMP") arrived at the second applicant's house in Vostochnaya Street (the house did not have a number). Around thirty men in camouflage uniforms, some of whom were wearing masks, entered

inside. They did not introduce themselves. They were armed with machine guns and grenade launchers and spoke unaccented Russian.

17. The men took all the family members outside and lined them up along the wall. Then the servicemen searched the house and took several items of the family's property. Having spent about an hour at the applicant's house, they drove away.

18. Fearing for their sons' safety, the second and seventh applicants sent Iskhadzhi Demelkhanov and Akhmed Demilkhanov to the house of their grandfather, Mr Nozha Demelkhanov.

19. At about 11 a.m. on 3 September 2002 a Ural and a UAZ vehicle arrived at Nozha Demelkhanov's gate at 61 Gagarina Street in Tsotsi-Yurt. Ten to twelve armed men rushed into the house, forced its residents outside, ordered the younger men to undress and checked their identity papers. Then the servicemen put Iskhadzhi Demelkhanov and Akhmed Demilkhanov on the ground, beat them with gun butts and loaded them into the UAZ vehicle.

20. According to a witness, whose name was not disclosed by the applicants out of fear for his safety, for three days following their apprehension Iskhadzhi Demelkhanov and Akhmed Demilkhanov were kept in an "AvtoZak" vehicle parked next to the old mill house.

(d) Apprehension of Adam Boltiyev

21. The third applicant is the father of Mr Adam Vakhidovich Boltiyev, who was born in 1980.

22. At about 9 a.m. on 3 September 2002 two APCs arrived at the Boltiyevs' house at 1 Rechnaya Street in Tsotsi-Yurt. A group of servicemen in camouflage uniforms, armed with machine guns and knives, got out of the vehicles and entered the applicant's house. They did not introduce themselves.

23. The servicemen checked the Boltiyevs' identity documents. Adam Boltiyev produced a certificate confirming that his passport was being exchanged. The servicemen decided to take him with them. The third applicant insisted on accompanying his son. Then the servicemen took Adam Boltiyev and the third applicant to a Ural lorry and drove them to the old mill house.

24. Upon arrival at the filtration point the servicemen ordered the third applicant and his son to lie down on the floor. For several hours the Boltiyevs were not allowed to move. In the evening of 3 September 2002 the servicemen ordered the third applicant to leave and promised to release Adam Boltiyev in a few hours. The third applicant returned home. He has not seen his son ever since.

(e) Apprehension of Dzhabrail Debishev

25. The fourth applicant is the mother of Mr Dzhabrail Abdulovich Debishev, who was born in 1977.

26. At about 9 a.m. on 3 September 2002 an APC pulled up in front of the fourth applicant's house at 5 Ovrazhnaya Street in Tsotsi-Yurt. A group of armed servicemen in camouflage uniforms emerged from the APC, entered the house, ordered the family members to go outside and demanded their identity documents. The soldiers also searched the house and the yard.

27. After examining Dzhabrail Debishev's papers the servicemen loaded him into the APC. The fourth applicant followed her son and got into the vehicle, but the servicemen ordered her to come out, threatening to shoot Dzhabrail. She obeyed. The APC drove away in the direction of the old mill house. Some witnesses reported that they had seen Dzhabrail Debishev at the temporary filtration point shortly afterwards.

(f) Apprehension of Lom-Ali Abubakarov

28. The fifth applicant is the mother of Mr Lom-Ali Borisovich Abubakarov, who was born in 1968.

29. At about 11 a.m. on 3 September 2002 two APCs and one UAZ car without registration numbers arrived at the fifth applicant's house in Gagarina Street (the house did not have a number). Twenty to twenty-five armed men wearing camouflage uniforms surrounded the house. Ten of them went inside, examined all the wardrobes and asked whether there were any weapons hidden. They spoke unaccented Russian.

30. The applicant's family members were forced to go to the yard and asked to produce their identity documents. In the yard the fifth applicant lost consciousness. The servicemen did not allow Lom-Ali Abubakarov to approach her.

31. After that a Ural lorry without a registration number arrived at the house. The servicemen told the Abubakarovs that they were taking Lom-Ali for an identity check and that in about three hours he would return home. They put him in the lorry and drove away.

(g) Apprehension of Ramzan Mandiyev

32. The sixth applicant is the father of Mr Ramzan Khozhbaudiyevich Mandiyev, who was born in 1981.

33. On 3 September 2002 the Mandiyev family and their relatives were holding a funeral ceremony at the Mandiyevs' house in Vostochnaya Street in Tsotsi-Yurt. A group of servicemen arrived at the house in a Ural vehicle, entered inside, examined the corpse, loaded all those present into the vehicle and drove them to the old mill house. There they checked the identity papers of the detained persons and released all of them except for Ramzan Mandiyev. The sixth applicant has not seen him ever since.

(h) Apprehension of Aslambek Agmerzayev

34. The eighth applicant is the wife of Mr Aslambek Vakhayevich Agmerzayev (also spelled as Agamerzayev), who was born in 1956.

35. On 3 September 2002 an APC arrived at the applicant's house at 8 Kommunisticheskaya Street in Tsotsi-Yurt; the vehicle's registration number was painted over. Around fifteen armed men in camouflage uniforms emerged from the vehicle. Some of them wore masks. The men, who spoke unaccented Russian, did not introduce themselves. They ordered the Agmerzayevs to go outside and searched them in the yard. Then they checked Aslambek Agmerzayev's identity documents and said that something was wrong with them.

36. After that, without producing any search warrant, the servicemen searched the house. They took some items of the family's property, forced Aslambek Agmerzayev into the APC and drove away.

(i) Completion of the special operation

37. On 4 September 2002 the head of the Chechen administration, Mr A. Kadyrov, and the chief commander of the United Group Alignment (UGA), General V. Moltenskoy, arrived in the village of Tsotsi-Yurt and negotiated the release of the majority of the persons being kept at the temporary filtration point. However, the applicants' relatives remained in detention.

38. For several days after that, the applicants visited the old mill house and waited for their relatives' release. General Studenikin, who was in charge of the security operation in Tsotsi-Yurt, repeatedly promised them that the detainees would be released upon completion of the operation.

39. On 7 September 2002 the security operation in Tsotsi-Yurt was finished. The servicemen did not release the applicants' relatives. The applicants have not seen Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev dead or alive ever since.

40. In support of their statements, the applicants submitted the following documents: a hand-drawn map of the area of Tsotsi-Yurt; a witness statement by the eighth applicant, dated 10 October 2002; a witness statement by the fourth applicant, dated 10 October 2002; a witness statement by the first applicant, dated 10 October 2002; a witness statement by the fifth applicant's relative Mrs L.B., dated 12 June 2003; a witness statement by the fifth applicant's relative Mrs M.A., dated 12 June 2003; a witness statement by the sixth applicant's wife, Mrs R.M., dated 20 June 2003; two witness statements by the second and seventh applicants' relative Mr N.D., dated 21 June 2003 and 19 April 2004; a witness statement by the second and seventh applicants' relative Mrs E.D., dated 21 June 2003; a witness statement by the sixth applicant, dated 22 July 2003; a witness statement by the first applicant's neighbour Mr Sh.G., dated 4 November 2003; a witness statement by the second applicant, dated 4 April 2004; a witness statement by the third applicant, dated 19 April 2004; and a character reference for Dzhabrail Debishev, undated.

2. Information submitted by the Government

(a) Information concerning the special operation in Tsotsi-Yurt

41. According to the Government's submission, "between 2 and 8 September 2002, on the basis of a military order issued by the Chechnya military commander, the Kurchaloy district military commander's office conducted a special security operation (*рассечение*) in the settlement of Tsotsi-Yurt along the river Khunkhulau. A number of vehicles took part in the operation, including one APC-80, two ARVs (armoured reconnaissance vehicle – *бронированная разведывательно-дозорная машина (БРДМ)*), and KAMAZ (*КАМАЗ*) and ZIL (*ЗИЛ*) lorries. A representative of the United Group Alignment was in charge of the operation. An identity check was also conducted during the operation."

42. The Government further referred to a number of documents obtained by the domestic investigation opened into the abduction of the applicants' relatives. These documents are summarised below.

43. On 11 September 2002 the interim district prosecutor requested that the Kurchaloy district military commander's office (the district military commander's office), the Kurchaloy district department of the Federal Security Service (the district department of the FSB), the Kurchaloy district department of the interior (the ROVD) and the Kurchaloy interim district department of the interior (the VOVD) provide the investigators with information concerning the security operation conducted in Tsotsi-Yurt between 2 and 7 September 2002.

44. According to a letter received from the district military commander on 13 September 2002, upon the order of the Chechnya military commander, the district military commander's office had conducted a security operation from 2 to 8 September 2002 in Tsotsi-Yurt, Chechnya. A representative of the UGA had been in charge of the operation. The following military vehicles had been used during the operation: one APC, two BMPs, and KAMAZ and ZIL military lorries. The letter also stated that the servicemen of the district military commander's office had not participated in the search of the houses and the identity check.

45. According to a letter from the deputy head of the district department of the FSB, from 1 to 8 September 2002 an identity check was conducted in Tsotsi-Yurt as the authorities had received information that a leader of an illegal armed group, Mr R.Ch., might be hiding in the village.

46. According to a letter of 13 September 2002 from the head of the VOVD, a special operational-investigating group of the Ministry of the Interior (the MVD), had been stationed outside Tsotsi-Yurt. The group had participated in the security operation in the village from 2 to 7 September 2002.

47. According to a letter of 14 September 2002 from the head of the ROVD, officers of the ROVD participated in the security operation in Tsotsi-Yurt only between 6 and 8 September 2002.

(b) Information concerning the apprehension of the applicants' relatives

48. The Government did not challenge most of the facts as submitted by the applicants. In their observations of 9 November 2007 the Government stated that "between 2 and 4 September 2002 in the village of Tsotsi-Yurt in the Kurchaloy district of the Chechen Republic unidentified armed persons kidnapped R. Mandiyev, D. Debishev, A. Demilkhanov, I. Demilkhanov, ... A. Agamerzayev, S. Elsiyev, A. Boltiyev and L.-A. Abubakarov".

49. However, further in the same submission, without mentioning that the applicants' relatives had been detained by State servicemen, the Government stated that "the material in the investigation file does not provide grounds to assume that the detained [applicants' relatives] were not released [by military servicemen] along with other residents of the village of Tsotsi-Yurt and that they did not return to their places of residence because of the actions of the military forces rather than other circumstances".

50. In their further observations of 11 March 2008 the Government stated that "the authorities of the Russian Federation insist on their position stated in the Memorandum [of 9 November 2007] that the applicants' relatives were indeed detained [by Russian servicemen] but were later released. The reason for their failure to return home is unknown ..." and that "the Government insist on their position that the detention of [the applicants' relatives] was lawful, as a special operation was being conducted".

51. Referring to the information obtained by the official investigation into the abduction of the applicants' relatives, the Government submitted to the Court the following information concerning the circumstances surrounding the apprehension of the applicants' relatives.

52. Between 7 and 11 September 2002 the investigators conducted preliminary questioning of the second, sixth, first, eighth, fourth and third applicants and the daughter-in-law of the fifth applicant. A summary of their statements, as submitted by the Government, is provided below.

53. According to the second applicant, at about 11 a.m. on 3 September 2002 unknown armed men in camouflage uniforms and masks arrived at his house in an APC and a Ural lorry without registration numbers. They took away some items of his family's property.

54. According to the sixth applicant, on 3 September 2002 his family was holding a funeral ceremony. At about 10.30 a.m. a group of armed men arrived at his house in an APC and a URAL vehicle without registration numbers. The armed men put all the men who had been attending the ceremony into the Ural vehicle and took them to the headquarters of the security operation. There the armed men checked the identity papers of the

sixth applicant and his guests and released the applicant and some of the other men. However, four men were not released, including two of the sixth applicant's sons. Several days later, on 6 September 2002, the sixth applicant's son Ruslan was released. On the same day, 6 September 2002, at about 5.40 p.m. a Russian general gave a speech on the outskirts of Tsotsi-Yurt and announced that all the detainees had been released. However, the applicant's other son, Ramzan, did not return home.

55. According to the first applicant, at about 3.15 p.m. on 2 September 2002, a group of armed men in camouflage uniforms arrived at his house in two APCs and a UAZ car; the APCs' registration numbers were covered with mud. The men were armed with Stechkin automatic pistols and machine guns.

56. According to the eighth applicant, at about 10 a.m. on 2 September 2002 a group of armed men in camouflage uniforms arrived at her house in APCs and a URAL lorry. They took away her husband, A. Agmerzayev. On the following day, 3 September 2002, two APCs again arrived at her house. The same armed men looked around her house and the yard and took away some items of their family's property. They found her husband's jacket and burned it, along with his passport and other documents. On 5 September 2002, one of the residents of Tsotsi-Yurt, a doctor, Mr A.Kh., told the applicant that from 3 to 4 September 2002 he had been detained during the night together with her husband in the same vehicle; on the following morning he had been released, but her husband had not.

57. According to the fourth applicant, at about 8 a.m. on 3 September 2002, a group of armed men in camouflage uniforms and masks entered her house and took away her son D. Debishev.

58. According to the third applicant, on 3 September 2002, a group of armed men in camouflage uniforms arrived at his house in APCs and a URAL vehicle. They put the applicant and his son, A. Boltiyev, in the URAL lorry and took them to the place situated between "the flour mill" and "the brigade". In the evening the applicant was allowed to return home, but his son remained there.

59. According to the fifth applicant's daughter-in-law, at about 11 a.m. on 3 September 2002, a group of armed men in camouflage uniforms took away her husband, L.-A. Abubakarov. According to the witness, another resident of the village, Mr I.A., was also apprehended by the armed men on the same date, but he was released on 4 September 2002.

B. The official investigation into the abduction of the applicants' relatives

1. The applicants' account

60. Immediately after their relatives had been apprehended, the applicants, together with the head of the local administration, wrote to the head of the Chechen administration, Mr A. Kadyrov, describing in detail the circumstances of their relatives' apprehension and requesting information about their whereabouts. The applicants and their relatives submitted similar complaints to various official bodies, such as the prosecutors' offices at different levels and the Special Envoy of the Russian President in Chechnya for Rights and Freedoms ("the Special Envoy"). They were assisted in their efforts by the SRJI. The applicants retained copies of a number of their complaints and the authorities' responses and submitted them to the Court. These documents are summarised below.

61. On 11 September 2002 the prosecutor's office of the Kurchaloy district of Chechnya ("the district prosecutor's office") instituted an investigation into the disappearances of Salakh Elsiyev, Iskhadzhi Demelkhanov, Akhmed Demilkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev and Aslambek Agmerzayev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 75089.

62. On 26 September, 3 October, 20 October and 5 November 2002 the applicants wrote to various State authorities, including the district military commander, the Chechnya military commander, the military prosecutor's office of the UGA and the Prosecutor General's office, asking for assistance in the search for their disappeared relatives.

63. On 18 November 2002 the SRJI wrote to the Chechnya prosecutor's office describing the events of 1 to 7 September 2002 in Tsotsi-Yurt and requesting to be provided with information on the whereabouts of the disappeared men.

64. On 26 December 2002 the military prosecutor's office of military unit no. 20102 (the unit military prosecutor's office) informed the Special Envoy that an inquiry had been conducted which had established that no military personnel had been involved in the disappearance of the applicants' relatives and that the criminal investigation into the events was under way.

65. On 31 March 2003 the military prosecutor's office of the UGA informed the Special Envoy that the Shali district prosecutor's office had opened an investigation into the disappearances of the applicants' relatives, and that this investigation had found no evidence implicating military servicemen in the abduction of the applicants' relatives. It appears that the letter provided incorrect information as the investigation was being conducted by the Kurchaloy district prosecutor's office.

66. On 18 April 2003 the SRJI requested the district prosecutor's office to provide the applicants with copies of the decision to open the investigation in criminal case no. 75089, to grant the applicants victim status in the proceedings and to inform them about the progress of the investigation. On 20 May 2003 the district prosecutor's office rejected the SRJI's request, stating that information concerning a pending investigation was confidential and that the SRJI's lawyers were not participants in the proceedings.

67. On 4 June 2003 the applicants reiterated their request of 18 April 2003. No response was given to this request.

68. On 26 July 2003 the district prosecutor's office transferred the investigation in criminal case no. 75089 to the unit military prosecutor's office as it had been established that the applicants' relatives had been apprehended by units equipped with armoured vehicles belonging to the Ministry of Defence or the Internal Troops of the Ministry of the Interior.

69. On 12 August 2003 the investigation in the criminal case was referred back to the district prosecutor's office, as it had been established that after being apprehended, three of the applicants' relatives, namely A. Boltiyev, D. Debishev and R. Mandiyev, had been detained in an "AvtoZak" vehicle with the registration number B 112 MB 61, which had belonged to the Ministry of Justice.

70. On 8 October 2003 the SRJI wrote to the Chechnya prosecutor's office, complaining in detail of the ineffectiveness of the investigation in criminal case no. 75089 and requesting that it be conducted under the control of the Chechnya prosecutor's office.

71. On 25 October 2003 the district prosecutor's office again transferred the investigation in criminal case no. 75089 to the unit military prosecutor's office and suspended the investigation in case no. 75089 owing to the failure to identify the perpetrators.

72. On 30 October 2003 the Chechnya prosecutor's office informed the SRJI about the suspension of the investigation and stated that the search for the applicants' relatives and those responsible for their abduction was under way.

73. On 3 and 19 December 2003 the SRJI wrote to the district and Chechnya prosecutors' offices, requesting to be provided with information on measures taken by the investigators in the criminal case. In particular, it requested to be informed whether the identities of the servicemen who had participated in the security operation in Tsotsi-Yurt had been established; whether General Studenikin had been questioned by the investigators; and whether the residents of Tsotsi-Yurt had been questioned about the events.

74. On 8 January and 2 February 2004 the Chechnya prosecutor's office informed the SRJI that the investigation in the criminal case was under way and that investigative measures were being taken to solve the crime.

75. On 22 January 2004 the unit military prosecutor's office again referred the investigation in the criminal case back to the district prosecutor's office without having taken any investigative measures since receiving the case file on 25 October 2003.

76. On 12 March 2004 the investigation in case no. 75089 was suspended owing to the failure to identify the perpetrators.

77. On 22 December 2005 the applicants complained to the district prosecutor of the ineffectiveness of the investigation in the criminal case. In their detailed submission they once again described the circumstances of their relatives' apprehension and requested that the investigators take the following measures in particular: questioning of General Studenikin and other officers who had been in charge of the security operation in Tsotsi-Yurt; identification and questioning of the servicemen who had participated in the operation; identification of the military units which had used APCs and other military vehicles during the operation; and questioning of the residents of Tsotsi-Yurt who had witnessed the events.

2. Information submitted by the Government

78. On 11 September 2002 the district prosecutor's office instituted an investigation into the abduction of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 75089. It was decided that the investigation of the criminal case would be conducted by a group of investigators from the district prosecutor's office. The applicants were informed about the opening of the criminal proceedings on the same date.

79. On 11 September 2002 the investigators requested information concerning the special operation conducted in Tsotsi-Yurt from 2 to 7 September 2002 from the local law-enforcement agencies (see paragraph 43 above).

80. In September 2002 the investigators received responses to their information requests, confirming that a security operation had been conducted in Tsotsi-Yurt from 1 to 8 September 2002 (see paragraphs 44-47 above).

81. On 11 September 2002 the investigators conducted an examination of the crime scene in the houses of the applicants and their relatives. In addition, within the two following weeks the investigators had questioned a number of eyewitnesses to the abductions of the applicants' relatives.

82. On 12 September 2002 the investigators questioned the sixth applicant, who stated that at about 10.30 a.m. on 3 September 2002, when he and his relatives had been attending a funeral ceremony, an APC without registration numbers had arrived at his house. A group of armed men, who had arrived in the APC, had called for a Ural lorry without registration

numbers, which had arrived along with two UAZ cars. All those attending the funeral, including the applicant's two sons, had been placed into the vehicles and taken to the place known as "the operation's headquarters", where the applicant's identity documents had been checked and he had been released an hour later. On 5 September 2002 his son Ruslan had been released; his other son Ramzan had not returned home. On the same date the applicant was granted victim status in the criminal proceedings.

83. On 12 September 2002 the investigators questioned the first applicant, who stated that at about 3.15 p.m. on 3 September 2002 a group of armed men in camouflage uniforms and masks had arrived at his house in APCs and a UAZ car; the vehicles' registration numbers had been concealed with mud. The men, who had been armed with Stechkin automatic pistols with silencers, had taken away his son, Salakh Elsiyev. On the same date the applicant's fellow villagers, from the family of Mr V., had also been apprehended by the armed men.

On the same date the applicant was granted victim status in the criminal proceedings.

84. On 12 September 2002 the investigators questioned the fourth applicant's husband, who stated that on 2 September 2002 he had seen a convoy of nine APCs and a Ural lorry driving down his street in Tsotsi-Yurt. On the following day, 3 September 2002, at about 9 a.m. an APC with armed military servicemen had arrived at his house. Some of the servicemen had been wearing masks. They had taken away his son and his wife and had driven away. Having driven for about 400 metres, the APC had stopped and the witness's wife (the fourth applicant) had got out of the vehicle. The fourth applicant had told the witness that she had seen their fellow villager Mr A.P. in the APC. According to the witness, on 5 or 6 September 2002 Mr A.P. had been found by his relatives in the forest and had immediately been sent to hospital for medical treatment.

85. On 12 September 2002 the investigators questioned Mrs Ya.D., a relative of the second and seventh applicants, who was also granted victim status in the criminal proceedings. According to Mrs Ya.D., at about 10 a.m. on 3 September 2002 a group of unidentified armed men in camouflage uniforms had arrived in APCs and a UAZ car at the house of her relatives in Tsotsi-Yurt. The vehicles had not had registration numbers. The armed men had apprehended her son Iskhadzhi Demelkhanov and his cousin Akhmed Demilkhanov. At about 3 p.m. on the same date a group of armed men in masks had arrived at her house, had conducted an identity check and had looked around the house.

86. On 12 September 2002 the investigators questioned Mrs Z.D., a relative of the second and seventh applicants, who was also granted victim status in the criminal proceedings. According to Mrs Z.D., at about 10 a.m. on 3 September 2002 an APC and a UAZ car had arrived at her house; the vehicles' registration numbers had been covered with mud. A group of

armed men had got out of the vehicles and had taken away her son Akhmed Demilkhanov and his cousin Iskhadzhi Demelkhanov. The witness and other residents of Tsotsi-Yurt had gone to the outskirts of the village, where the military had been based; but they had not been allowed to go inside the facilities. The witness further stated that on 5 September 2002 the head of the Chechen administration, Mr Kadyrov, and a Russian general had arrived at the village. The general had promised that all those apprehended during the operation would be released in the evening of the same day. However, her son had not returned home.

87. On 12 September 2002 the investigators questioned the third applicant, who on the same date was granted victim status in the criminal proceedings. The applicant stated that at about 8 a.m. on 3 September 2002 an APC without registration numbers had arrived at his house in Tsotsi-Yurt. A group of armed men in camouflage uniforms had descended from it and entered the house. One of them had ordered all members of the applicant's family to gather in the yard. After that the men had taken the applicant and his son to the outskirts of the village, by the flour mill. In the evening of the same day, at about 6 p.m., the applicant had received his passport back from the servicemen and had been allowed to return home. On his way home the applicant had met a group of fellow villagers who had told him that the military had taken away 15 or 16 men from Tsotsi-Yurt. The applicant's son had not returned home.

88. On 12 September 2002 the investigators questioned the fifth applicant, who was also granted victim status in the criminal proceedings, and his wife, Mrs L.A. Both witnesses provided analogous testimonies to the effect that at about 11 a.m. on 3 September 2002 a group of armed men in camouflage uniforms had taken away their relative Lom-Ali Abubakarov from their home. On the following day, 4 September 2002, the same group of armed men had also apprehended another resident of Tsotsi-Yurt, Mr I.A., who had been released on 4 September 2002.

89. On 12 September 2002 the investigators questioned and granted victim status in the criminal case to the eighth applicant's husband, Mr V.A. He stated that at about 10 a.m. on 3 September 2002 a group of armed men in camouflage uniforms had arrived at his house on an APC. The men looked around the house and asked his son, Aslambek Agmerzayev, to follow them. Together with his son they had gone to another house; after that his son had left with these men in the APC and had not returned home.

90. On 23 September 2002 the investigators questioned and granted victim status in the criminal case to Mr N.O. He stated that in the morning of 4 September 2002 he had been in his vegetable garden when a group of armed men in camouflage uniforms had blindfolded him and had put him in a vehicle. When the blindfold had been removed, the witness had seen that he was in a forest, surrounded by men in green camouflage uniform. According to the witness, he had spent two days in the forest. The men had

tortured him with electricity and had beaten his feet with a stick, asking whether he knew any members of illegal armed groups. After that he had been taken to another place, located in a field, where he had spent three days during which military servicemen had fed him and had given him warm clothes for the night. For three nights the witness had slept in an APC with the servicemen. Afterwards he had been taken to another place, where he had been blindfolded and tied up to a tree. He had managed to set himself free. Having walked for about 3 km, he had entered the village of Martan-Chu in the Urus-Martan district of Chechnya, where the local police officers had taken him to the department of the interior of the Urus-Martan district (the Urus-Martan ROVD). After that the witness had returned home.

91. On 11 November 2002 the district prosecutor's office suspended the investigation in the criminal case owing to the failure to establish the perpetrators. On the same date the applicants or their relatives were informed about this decision.

92. On 30 April 2003 the investigation in criminal case no. 75089 was resumed. The applicants or their relatives were informed about this decision.

93. On 1 June 2003 the investigation in the criminal case was suspended owing to the failure to establish the perpetrators. The applicants or their relatives were informed about this decision.

94. On 24 July 2003 the investigation in criminal case no. 75089 was resumed. The applicants or their relatives were informed about this decision.

95. On 25 July 2003 the investigators questioned Mr P.A., who stated that on 2 September 2002 a group of unidentified armed men had taken him away from his house; together with A. Agmerzayev, he had been taken to the outskirts of Tsotsi-Yurt. In the evening of the same day the armed men had returned passports to fifteen of the detained men and released them.

96. On 25 July 2003 the investigators had questioned seven witnesses, including Mrs M.T., Mrs E.Kh., Mrs B.V., Mr Sh.G., Mr S.M., Mrs T.I. and Mrs Z.S., who provided analogous statements to the effect that on 2 September 2002 unidentified armed men in APCs and Ural and UAZ vehicles had apprehended a number of their fellow villagers in Tsotsi-Yurt.

97. On 26 July 2003 the district prosecutor's office transferred the investigation into the abduction of the applicants' relatives to the military prosecutor's office of the UGA as the investigators had established that the applicants' relatives had been apprehended by military units from the Ministry of Defence or the Internal Troops of the Ministry of the Interior, who had been equipped during the operation with armoured vehicles (see paragraph 136 below).

98. On 12 August 2003 the military prosecutor's office referred the criminal case back to the district prosecutor's office for investigation as it had been established that the applicants' relatives had been detained in an "AvtoZak" vehicle with the registration number B 112 MB 61 RUS, which had belonged to the Ministry of Justice (see paragraph 136 below).

99. Between 22 August and 23 October 2003 the investigators forwarded several requests to a number of State officials, including the military commander of the UGA, the head of archives of the Headquarters of the Internal Troops of the Ministry of the Interior in the Northern Caucasus, the head of the Department of the Ministry of the Interior in the Southern Federal Circuit and the head of archives of the Headquarters of the Ministry of Defence in the Northern Caucasus, asking to be provided with information concerning the units and the vehicles involved in the security operation in Tsotsi-Yurt.

100. On 25 October 2003 the district prosecutor's office suspended the criminal investigation owing to the failure to identify the perpetrators and transferred the investigation into the abduction of the applicants' relatives to the military prosecutor's office for the second time. The applicants or their relatives were informed about the decision to suspend the investigation.

101. On 22 January 2004 the military prosecutor's office once again returned the criminal case file to the district prosecutor's office for investigation. On the same date the deputy Chechnya prosecutor overruled the decision to suspend the investigation and it was resumed. The applicants or their relatives were informed about the resumption of the criminal proceedings.

102. On 22 January 2004 the investigators forwarded a number of information requests to various law-enforcement agencies. According to the responses received from the Main Information Centres of the Ministry of the Interior of Chechnya and the Ministry of the Interior of the Russian Federation, these agencies did not have any information concerning the detention of the applicants' relatives.

103. On 22 January 2004 the investigators requested the district department of the FSB and the district military commander's office to provide information as to the owner of the vehicle with the registration number B 112 MB 61, in which the abducted men had been detained and whether the agencies had any other information about the disappeared men.

104. On 27 February 2004 the investigators forwarded a similar information request to the ROVD. In addition they asked the ROVD to conduct a crime-scene examination, to question the fourth applicant and to identify and question other witnesses to the abduction of the applicants' relatives.

105. On 7 March 2004 the district department of the FSB replied that it did not have any information about the vehicle. The response from the military commander's office was of the same nature.

106. On 1 April 2004 the ROVD replied that it did not have any information about the vehicle and submitted the fourth applicant's witness statement. According to the statement, on 3 September 2002 an APC with obscured registration numbers had arrived at her house. A group of armed men who had arrived in the APC had taken away her son Dzhabrail

Debishev and her neighbour Mr A.P. The latter had returned home on 5 or 6 September 2002. According to the witness, on 6 September 2002 she had spoken with General Studenikin, who had promised to her that at 6 p.m. on the same date the military would release all those detained during the security operation. However, her son had not returned home.

107. On 12 March 2004 the investigation in the criminal case was suspended owing to the failure to identify the perpetrators. The applicants or their relatives were informed about this decision on the same date.

108. On 20 January 2006 the investigation in criminal case no. 75089 was resumed. The applicants or their relatives were informed about this decision.

109. On 25 January 2006 the investigators requested the ROVD to conduct a crime-scene examination on the outskirts of Tsotsi-Yurt where the filtration point had been located in 2002.

110. On an unspecified date in January 2006 the ROVD conducted the crime-scene examination, in which the first applicant took part. It does not appear that any evidence was collected from the scene.

111. On 26 January 2006 the investigators again questioned the first, sixth and seventh applicants. The witnesses gave similar statements to those provided by them in September 2002. The investigators also questioned the second applicant, who provided a similar statement to that of the seventh applicant.

112. On 30 January 2006 the investigators conducted a crime-scene examination in the house of witness Mr N.O., whose relative had also been apprehended by armed men during the security operation in Tsotsi-Yurt. It does not appear that any evidence was collected from the scene.

113. On 30 January 2006 the investigators questioned Mr I.A., who stated that in September 2002 a group of Russian servicemen had been conducting a “sweeping-up” operation (“*зачистка*”) in Tsotsi-Yurt. The servicemen had been wearing camouflage uniform with the emblem of a bear on the sleeves. On 3 September 2002 the village had been fully blockaded by the servicemen. On the same day a group of servicemen had arrived at the witness’s house in an APC whose registration numbers had been obscured with mud. The servicemen had put him in a Ural vehicle and had taken him to the filtration point. Lom-Ali Abubakarov had been transported together with the witness in the same lorry. According to the witness, at night he had been kept in a cell located in a GAZ vehicle. Nine other men had been kept inside the same vehicle together with the witness. Some time later the witness had been released, whereas the other detainees had gone missing.

114. On 31 January 2006 the investigators questioned the eighth applicant and the relative of the fifth applicant, who had confirmed the statements they had provided in September 2002.

115. On 1 February 2006 the investigators questioned a witness, Mr A. Kh., who stated that at about 10 a.m. on 3 September 2002 a group of armed men in camouflage uniforms had arrived at his house in an APC and a Ural lorry. The men had entered his house and had taken him to the outskirts of Tsotsi-Yurt. There he had been put in a cell located inside a GAZ vehicle. In the same vehicle, but in another cell, his cousin Aslambek Agmerzayev had also been detained. On the following day, 4 September 2002, he had been released from detention, but A. Agmerzayev had not returned home.

116. On 1 February 2006 the investigators questioned Mr A.P., who stated that between 2 and 7 September 2002 a security operation aimed at identifying and apprehending members of illegal armed groups had been conducted in Tsotsi-Yurt. On 2 September 2002 he had been apprehended at home by a group of unidentified armed men, who had taken him in an APC to the headquarters of the security operation on the outskirts of the village. His fellow villager Dzhabrail Debishev had been taken there in the same APC. Upon arrival at the headquarters the witness had been placed in a GAZ vehicle which had been modified to serve as a detention facility. In this vehicle he had seen his other fellow villagers, including Iskhadzhi Demelkhanov, Akhmed Demilkhanov, Ibragim Demilkhanov, Ramzan Mandiyev, Salakh Elsiyev, Lom-Ali Abubakarov and Aslambek Agmerzayev. The following morning he had been taken by a helicopter and then by an ARV to an unknown place, where he had been interrogated about the criminal activities of a relative of his who had been killed in 2000. After that his passport had been returned to him and he had been taken by a car to a place located next to the settlement of Khankala, Chechnya.

117. On 25 February 2006 the investigation in the criminal case was suspended owing to the failure to identify the perpetrators.

118. On 28 March 2006 the interim district prosecutor overruled the decision to suspend the criminal proceedings and resumed the investigation. The applicants or their relatives were informed about this decision.

119. According to the Government, on 4 April 2006 the investigators again requested information about the disappeared men from various State authorities in various regions of the Russian Federation.

120. According to the responses received from various offices of the Ministry of the Execution of Punishment, the applicants' relatives had not been detained on administrative or criminal charges.

121. According to the responses received from hospitals in various regions of the Russian Federation, the applicants' relatives had not applied for medical assistance.

122. On 28 April 2006 the investigation in the criminal case was suspended owing to the failure to identify the perpetrators.

123. On 8 December 2006 the deputy Chechnya prosecutor overruled the decision to suspend the criminal proceedings and resumed the

investigation. The applicants or their relatives were informed about this decision.

124. On 8 December 2006 the investigators requested information from the Department of the State Traffic Safety Inspectorate of the Ministry of the Interior in the Rostov region (the Traffic Safety Inspectorate) as to the owner of the vehicles with the registration numbers B 112 BM 61 or B 112 MB 61.

125. On 12 December 2006 the investigators received a response from the Traffic Safety Inspectorate. The letter stated that the registration number B 112 BM 61 had been issued on 13 November 2001 to a GAZ motor vehicle which had belonged to the Main Department for the Execution of Sentences of the Ministry of Justice in the Rostov region. However, according to the Government, the theory of the possible involvement of this vehicle in the abduction of the applicants' relatives was not confirmed by the investigation.

126. On 15 January 2007 the investigation in the criminal case was suspended owing to the failure to identify the perpetrators. The applicants or their relatives were informed about this decision.

127. On 6 September 2007 the interim district prosecutor overruled the decision to suspend the criminal proceedings and resumed the investigation. The criminal case file was forwarded to the Chechnya prosecutor's office for further investigation.

128. According to the Government, the investigation failed to establish the whereabouts of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev.

129. It follows from the Government's submissions that between 11 September 2002 and 6 September 2007 the investigation into the abduction of the applicants' relatives was suspended and resumed on six occasions, and that it has so far failed to identify the perpetrators.

130. According to the Government, the applicants have been duly informed of all decisions taken during the investigation.

131. Despite specific requests by the Court the Government did not disclose any documents from the file in criminal case no. 75089, except for a copy of decision of the Shali Town Court of 13 March 2006, a copy of the procedural decision confirming that the first applicant had familiarised himself with the file in criminal case no. 75089, dated 16 April 2006, and a copy of a signed statement by the first applicant dated 16 April 2006 that he would not disclose any information about the investigation in the criminal case without the prior authorisation of the investigators. The Government stated that the investigation was in progress and that the disclosure of other documents from the case file would be in violation of Article 161 of the Code of Criminal Procedure, since the file "contained information concerning the disposition of military and special troops, the nature of their

activity, and personal data and addresses of the witnesses and other participants in the criminal proceedings”.

C. Proceedings against law-enforcement officials

132. On 8 October 2003 the first applicant on behalf of all the applicants complained to the Shali District Court of Chechnya (the District Court) about the ineffectiveness of the investigation into the disappearance of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev. It appears that this complaint was not examined by the court.

133. On 19 December 2003 the SRJI sent a registered letter to the District Court, enquiring about the outcome of the first applicant's complaint of 8 October 2003. No response was given to the SRJI.

134. On 23 June 2005 the SRJI reiterated its request. No response was given to this letter.

135. On an unspecified date at the beginning of 2006 the applicants complained of the ineffectiveness of the investigation in criminal case no. 75089 to the district prosecutor's office. They requested that the investigation be conducted effectively and that they be provided with access to the investigation file.

136. On 13 March 2006 the District Court allowed their complaint in part and stated that the applicants should be provided with access to the investigation file “within limits guaranteeing that no investigative secrets will be divulged”. The decision also stated, among other things, the following:

“... the assistant of the district prosecutor Mr I.T. has submitted [to the court] that ...

- it has been established [by the investigation in the criminal case] that those persons [the applicants' relatives] were apprehended in Tsotsi-Yurt by units which were armed with armoured vehicles – that is, by units belonging to the Ministry of Defence or the Internal Troops of the Ministry of the Interior. In connection with this, in accordance with the decision of the interim prosecutor of the Kurchaloy district of 26 July 2003, criminal case no. 75089 was transferred to the Chechnya prosecutor's office for subsequent transfer under the rules of jurisdiction to the military prosecutor's office of military unit no. 20102. However, this criminal case was referred back for additional investigation [to the district prosecutor's office], as according to the witness statements of V. Boltiyev, A. Debishev and Kh. Mandiyev, the apprehended persons A. Boltiyev, D. Debishev and the Mandiyev brothers had been detained in an ‘AvtoZak’ vehicle with the registration number B 112 MB 61 RUS, belonging to the Ministry of Justice.

- according to the decision of the interim prosecutor of the Kurchaloy district of 25 October 2003, criminal case no. 75089 was again forwarded to the military prosecutor's office of military unit no. 20102; but on 22 January 2004, without having

taken any investigative measures, that office returned the case file to the district prosecutor's office ...”

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

138. 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 Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev had not yet been completed.

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

B. The Court's assessment

140. As regards the criminal-law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law-enforcement authorities immediately after the kidnapping of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev and that an investigation into their abduction has been pending since 11 September 2002. The applicants and the Government disagreed as to the effectiveness of the investigation.

141. Furthermore, 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' complaint under Article 2. Thus, it considers that the objection should be joined to the merits and falls to be examined below under the relevant substantive provisions of the Convention.

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

A. The parties' arguments

142. The applicants maintained that the men who had taken away Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev had been State agents. In support of their complaint they stated that the Government had acknowledged that from 1 to 8 September 2002 a special security operation had been conducted in Tsotsi-Yurt; that during the special operation the applicants' relatives had been apprehended by military servicemen; and that after being apprehended, the applicants' relatives had never returned home. They further stated that the Government failed to substantiate their claims that the applicants' relatives had been released by the servicemen. Further, the applicants submitted that the Government's allegations concerning so-called inconsistencies in the witness statements provided by the applicants and other residents of Tsotsi-Yurt were unsubstantiated.

143. In their initial submission the Government stated that unidentified armed men had kidnapped Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev. They further contended that the investigation into the incident was pending and that there was no evidence that the men had been State agents.

At the same time the Government further acknowledged that "some residents of Tsotsi-Yurt were indeed apprehended [by the military servicemen] during the special operation ...; however, later on they were released. It cannot be ruled out that those persons absconded during the identity check to avoid responsibility for participation in the activities of illegal armed groups, whereas the theory of their abduction was put forward by their relatives and neighbours with the purpose of preventing the [authorities'] search for them". However, in their further submissions to the Court the Government stated that "... the applicants' relatives were indeed detained but were later released. The reason for their failure to return home is unknown ...", and that "the Government insist on their position that the detention of [the applicants' relatives] was lawful, as a special operation was being conducted" (see paragraph 50 above).

The Government further argued that there was no convincing evidence that the applicants' relatives were dead as their corpses had not been found. Further, they alleged that the applicants' submissions as to the facts had been inconsistent. Referring to the applicants' statements provided to the investigators in the criminal case and their submissions to the Court, the Government pointed out that the second applicant's allegation about the detention of his son and nephew in an "AvtoZak" vehicle for three days had been unsubstantiated, as the applicant had refused to disclose the name of the witness who had been detained together with his relatives (see paragraph 20 above); that the eighth applicant had stated to the investigators that her husband had been apprehended on 2 September 2002, but in her submission to the Court she had stated that it had happened on 3 September 2002; and that Mr A.P. had stated that he had been apprehended on 2 September 2002 and on the same date had been detained overnight with Lom-Ali Abubakarov, whereas according to the applicants' submission, Lom-Ali Abubakarov had been apprehended on 3 September 2002. The Government also pointed out that the applicants had not been consistent in their submissions concerning the number of military vehicles used during the security operation in Tsotsi-Yurt.

B. The Court's evaluation of the facts

144. 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).

145. The Court notes that despite its requests for a copy of the file on the investigation into the abduction of the applicants' relatives, the Government produced only three documents from the 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 it (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII).

146. 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.

147. The applicants alleged that the persons who had taken Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev away on 2 to 3 September 2002 and had then killed them had been State agents. The Government did not dispute any of the main factual elements underlying the application. They acknowledged that the applicants' relatives had been detained by State agents, but suggested that they had been released some time later.

148. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. The Government confirmed that a security operation had been conducted in Tsotsi-Yurt on the dates when Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev had been kidnapped. The Government further acknowledged that the applicants' relatives had been detained during the operation (see paragraph 50 above). The domestic investigation also accepted the factual assumptions put forward by the applicants. The investigators took steps to check whether military servicemen had been involved in the kidnapping; upon establishing that there was evidence demonstrating their involvement in the abduction, the investigators from the district prosecutor's office had attempted to transfer the investigation to the military prosecutor's office on two occasions (see paragraph 136 above), but to no avail. Moreover, the investigators were able to establish which military and security units had carried out the operation (see paragraphs 44-47).

149. 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).

150. The Government seemed to raise doubts as to the credibility of the applicants' statements concerning the factual circumstances of the abduction of their relatives and the subsequent events (see paragraphs 143 above). The Court notes in this connection that the crucial elements underlying the applicants' submissions as to the facts have not been disputed by the Government. The Government did not dispute that the applicants' relatives had actually been apprehended by military servicemen during the security operation at the time stated by the applicants. This fact was confirmed by the official investigation conducted by the district

prosecutor's office (see paragraphs 136 above). The Court finds that the inconsistencies pointed out by the Government in the applicants' description of events are so insignificant that they cannot cast doubt on the overall credibility of the applicants' submissions.

151. The Court further notes that it is common ground between the parties that Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev were apprehended between 2 and 4 September 2002 by servicemen involved in the security operation in Tsotsi-Yurt. As regards the subsequent events, the Government alleged that the applicants' relatives had been released on an unspecified date. The applicants contended that their relatives had remained under the control of the authorities and, since no news had been received from them since their arrest, must be presumed dead.

152. The Court observes that the Government submitted no evidence, such as records of detention and release, to corroborate their contention that the applicants' relatives had been set free. In the absence of such evidence, the Court finds it established that Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev remained under the control of the authorities after being apprehended during the special operation.

153. The Court further notes that no documents relating to the applicants' relatives' apprehension and subsequent detention have been made available to it. Furthermore, for several years following the disappearance of the applicants' relatives the State authorities consistently denied that they had ever detained them. Having regard to previous cases concerning disappearances of people in Chechnya which have come before it (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev or of any news of them for over six years corroborates this assumption. Furthermore, the Government have failed to provide any explanation as to the disappearance of the applicants' relatives, and the official investigation into their abduction, which has lasted for more than six years, has produced no tangible results.

154. 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 131 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

155. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev must be presumed dead following their unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

156. 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 of the matter. Article 2 reads:

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

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

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

A. The parties’ submissions

157. The Government contended that the domestic investigation had obtained no evidence to the effect that Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev were dead or that any State agents 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.

158. The applicants argued that Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev 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 failed to take some crucial investigative steps, such as questioning the servicemen involved in the security operation in Tsotsi-Yurt. The investigation into the abduction of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev had been opened seven days after the events and had then been suspended and resumed six times – thus delaying the taking of the most basic steps – and the applicants had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for more than six years without producing any tangible results further demonstrated its ineffectiveness. The applicants invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to the Court.

B. The Court's assessment

1. Admissibility

159. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) Alleged violation of the right to life of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev

160. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII).

161. The Court has already found that the applicants' relatives must be presumed dead following their detention by State servicemen and that their 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 Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev.

(b) Alleged inadequacy of the investigation into the abduction of the applicants' relatives

162. 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).

163. In the present case, the abduction of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

164. 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 provided by the Government.

165. The Court notes that the authorities were immediately made aware of the abduction as a result of the applicants' submissions. The investigation in case no. 75089 was instituted on 11 September 2002, that is, seven days after the abduction of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev. Such a postponement *per se* was liable to affect an investigation into kidnappings in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that a number of essential steps were subsequently delayed or were not taken at all. For instance, the crime-scene examination at the place where the filtration point had been located during the special operation took place only in January 2006 (see paragraphs 109-110), three and half years after the events. Even though within the first few days of the investigation the district prosecutor's office identified the military and law-enforcement units which had been involved in the security operation and the officers in charge of the operation (see paragraphs 41 and 44-47), the investigators failed to question either the commanding officers

or the servicemen who had participated in the operation. Furthermore, the Court notes that, as can be seen from the decision of the Shali District Court, after receiving the information confirming the involvement of military servicemen in the abduction of the applicants' relatives, the investigators tried to transfer the criminal case to the military prosecutor's office on two occasions (see paragraph 136 above), but the latter returned the case to the district prosecutor's office without having taken any investigative measures. Further, even though the investigation established that the "AvtoZak" vehicle in which the applicants' relatives had been detained at the filtration point belonged to the Ministry of Justice (see paragraph 125), the investigators failed to identify and question the servicemen who had used this vehicle during the security operation. 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 and omissions, 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).

166. The Court also notes that even though the applicants or their close relatives were granted victim status in case no. 75089, 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.

167 Finally, the Court notes that the investigation in case no. 75089 has been suspended and resumed six times and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending. For instance, no proceedings whatsoever were pending for almost two years between March 2004 and January 2006.

168. 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 six years without producing any tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their objection.

169. 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 Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan

Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

170. The applicants relied on Article 3 of the Convention, alleging that following their abduction Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev had been 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

171. The Government disagreed with these allegations and argued that the investigation had not established that the applicants and Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

172. In their observations on the admissibility and merits of the application the applicants submitted that they no longer wished to have the complaint regarding the alleged ill-treatment of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev examined. They further reiterated the complaint concerning the mental suffering they themselves had endured.

B. The Court's assessment

1. The complaint concerning the alleged ill-treatment of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev

173. 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; *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).

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

2. The complaint concerning the applicants' mental suffering

(a) Admissibility

175. 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.

(b) Merits

176. 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).

177. In the present case the Court notes that the applicants are close relatives of the disappeared persons. For more than six years they have not had any news of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev. 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.

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

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

180. The applicants further stated that Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev 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

181. In their initial submission the Government denied that Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev had been detained during the special security operation conducted in Tsotsi-Yurt from 1 to 8 September 2002. However, in their further observations to the Court the Government stated that the applicants' relatives had been apprehended during the security operation conducted in Tsotsi-Yurt and that their apprehension had been in accordance with the provisions of Article 5 of the Convention and Russian legislation.

182. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

183. 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

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

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

186. As for the Government's contention that the applicants' relatives were released on an unspecified date, the Court has already noted in paragraph 152 above that no evidence, such as records of detention or

release, has been provided to it to corroborate this assertion. It has therefore found it established that Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev remained under the control of the authorities after being apprehended during the security operation.

187. Accordingly, the Court concludes that after being apprehended between 2 and 4 September 2002 during the security operation in Tsotsi-Yurt, the applicants' relatives were held in unacknowledged detention, which was not logged in any custody records, and that there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

188. 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.

189. In view of the foregoing, the Court finds that Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

190. The applicants alleged that they had had no access to a court as they were unable to bring a civil action for compensation for their relatives' kidnapping since the investigation had produced no results. They relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

191. The Court observes that the applicants submitted no evidence to prove their alleged intention to claim compensation through the domestic courts. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention (see *Musikhanova and Others v. Russia* (dec.), no. 27243/03, 10 July 2007).

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

192. 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

193. The Government contended that the applicants had 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 or their close relatives had been granted victim status in the criminal case and could have taken full advantage of such status in order to bring a civil claim for compensation for non-pecuniary damage. In sum, the Government submitted that there had been no violation of Article 13.

194. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

195. 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

196. The Court reiterates that in circumstances where, as here, the criminal investigation into a 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 (see

Khashiyev and Akayeva v. Russia, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

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

198. As regards the applicants' reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on account of the applicants' mental suffering as a result of the disappearance of their close relatives, their inability to find out what had happened to them and the way the authorities handled their complaints. 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.

199. As regards the applicants' reference to Article 5 of the Convention, the Court reiterates that according to its established case-law, the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements. In view of its above findings of a violation of Article 5 of the Convention resulting from the unacknowledged detention of the applicants' relatives, 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 VIOLATION OF ARTICLE 14 OF THE CONVENTION

200. In their initial submission the applicants stated that they had been discriminated against on the grounds of their ethnic origin, contrary to the provisions of Article 14 of the Convention. Article 14 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.”

201. The Government disputed this allegation.

202. In their observations on the admissibility and merits of the application the applicants stated that they no longer wished to maintain this complaint.

203. The Court 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, among other authorities, *Stamatios Karagiannis*, cited above).

204. 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

205. 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

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

207. 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 members of its staff and of its governing board, the Court has no doubt 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

208. The first, second and eighth applicants claimed damages in respect of the lost wages of their abducted relatives. The first applicant claimed a total of 143,397 Russian roubles (RUB) under this heading (4,217 euros (EUR)), the second applicant claimed RUB 245,140 (EUR 7,210) and the eighth applicant claimed RUB 576,891 (EUR 16,697).

209. The first applicant submitted that he and the minor daughter of Salakh Elsiyev were financially dependent on him and that they would have benefited from his financial support in the amount of EUR 4,217. The second applicant submitted that he and the minor daughter of Iskhadzhi Demelkhanov were financially dependent on him and that they would have benefited from his financial support in the amount of EUR 7,210. The eighth applicant submitted that she and four minor children of Aslambek Agmerzayev were financially dependent on him and that they would have benefited from his financial support in the amount of EUR 16,697. The applicants’ 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").

210. The Government regarded these claims as unsubstantiated.

211. The Court reiterates that there must be a clear causal connection between the damage claimed by the first, second and eighth 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 abducted relatives of the first, second and eighth applicants and the loss by those applicants of the financial support which they could have provided. Having regard to the applicants' submissions and the absence of any documents substantiating the earnings of Salakh Elsiyev, Iskhadzhi Demelkhanov and Aslambek Agmerzayev at the time of their abduction, the Court awards the first applicant EUR 3,000, the second applicant EUR 3,000 and the eighth applicant EUR 11,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

C. Non-pecuniary damage

212. The applicants claimed EUR 60,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives.

213. The Government found the amounts claimed exaggerated.

214. 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 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 each of the applicants EUR 35,000, plus any tax that may be chargeable thereon.

D. Costs and expenses

215. 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 and experts. The aggregate claim in respect of

costs and expenses related to the applicants' legal representation amounted to EUR 10,342.

216. 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 for postal costs.

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

218. 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.

219. 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, as the admissibility and merits of the application in the present case were examined together (Article 29 § 3), the applicants' representatives submitted their observations on admissibility and the merits in one set of documents. The Court thus doubts that the legal drafting was necessarily time-consuming to the extent claimed by the representatives.

220. 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 8,000, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

E. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 3 about the alleged ill-treatment of their eight missing relatives and the applicants' complaint under Article 14 of the Convention;

2. *Decides* to join to the merits the Government's objection concerning the non-exhaustion of domestic remedies and dismisses it;
3. *Declares* the complaints under Articles 2, 3, 5 and 13 admissible and the remainder of the application inadmissible;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Salakh Elsiyev, Iskhadzhi Demelkhanov, Adam Boltiyev, Dzhabrail Debishev, Lom-Ali Abubakarov, Ramzan Mandiyev, Akhmed Demilkhanov and Aslambek Agmerzayev;
5. *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 surrounding the disappearance of the applicants' relatives;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of the applicants' relatives;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
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, to be converted into Russian roubles at the rate applicable at the date of settlement, except for those awarded 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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the second applicant;
 - (iii) EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the eighth applicant;
 - (iv) EUR 35,000 (thirty-five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to each applicant;

- (v) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen
Registrar

Christos Rozakis
President