



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

FIRST SECTION

CASE OF KHADAYEVA AND OTHERS v. RUSSIA

(Application no. 5351/04)

JUDGMENT

STRASBOURG

12 March 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Khadayeva 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 Malinverni,

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. 5351/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by eight Russian nationals, listed below (“the applicants”), on 19 December 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 Moscow, Russia. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2005 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

4. On 16 March 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. On 17 February 2009 the Court dismissed the Government’s objection concerning the application of Article 29 § 3 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

1. Ms Satsita Tashkirovna Khadayeva, born in 1949,
2. Mr Zaindi Bitayevich Khadayev, born in 1940,
3. Ms Razet Zaindievna Khadayeva, born in 1980,
4. Mr Umar Zaindievich Khadayev, born in 1975,
5. Mr Said-Selim Zaindievich Khadayev, born in 1984,
6. Mr Salavat Zaindievich Khadayev, born in 1985,
7. Mr Abdula Zaindievich Khadayev, born in 1971,
8. Ms Aset Zaindievich Khadayev, born in 1972.

They live in Urus-Martan, the Chechen Republic.

7. The first two applicants are the parents of Mr Ali Zaindievich Khadayev, born in 1977, and the other applicants are his sisters and brothers.

A. First apprehension of Mr Ali Khadayev and ensuing investigation

1. The applicants' account

8. At the material time Mr Ali Khadayev lived with his family in a private house at 22 Sheripova Street, Urus-Martan, the Chechen Republic.

9. According to the applicants, in the night of 18 to 19 April 2002 between twelve and fourteen men, of whom four were wearing masks, came to the house of the Khadayev family and apprehended Mr Ali Khadayev. Subsequently his family applied to various authorities, in particular, the District Office of the Interior, the Military Commander's Office and the Prosecutor's Office, seeking his release.

10. Seven days later the applicants were approached by Z., an officer of the Military Commander's Office. He told them that Mr Ali Khadayev could be released against the payment of 2,000 United States dollars (USD). By 1 May 2002 they gathered the money and handed it over, following which Mr Ali Khadayev was dropped off outside their house. He was very weak since during his 11 days' detention at the Federal Security Service (FSB) of the Urus-Martan District he had been given no food and had been ill-treated by federal servicemen. However, the applicants neither sought medical assistance nor applied to law-enforcement agencies in connection with the detention and the alleged ill-treatment. After the release a representative of the FSB told the second applicant that Mr Ali Khadayev was not guilty of anything and had been detained by mistake.

2. The Government's account

11. According to the Government, at around 5 a.m. on 19 April 2002 unidentified armed persons abducted Mr Ali Khadayev from his house and took him to an unknown destination.

3. Investigation into the abduction

12. On 19 April 2002, upon a complaint by the second applicant concerning his son's abduction, the district prosecutor's office instituted criminal proceedings under Article 126 (2) of the Russian Criminal Code (aggravated kidnapping). The case file was assigned the number 61075.

13. On 22 April 2002 the second applicant was granted victim status in the criminal proceedings.

14. On 19 June 2002 the investigation was suspended on account of the failure to identify those responsible.

15. According to the applicants, the investigation file contained a letter from the head of the Urus-Martan District Department of the Interior (ROVD) to the Urus-Martan District Prosecutor's Office, received by the latter on 24 May 2002 and assigned the number 887. The letter contained the following passage: "We remind [you] that at present A.Z. Khadayev is at his home". However, Mr Ali Khadayev was not questioned after his release and no investigative measures were conducted with regard to his relatives or other witnesses to establish the circumstances of the abduction.

B. Second apprehension and subsequent disappearance of Mr Ali Khadayev

1. The applicants' account

16. In the night of 4 to 5 January 2003, during curfew hours, the first, second, fifth and sixth applicants and N., a friend of the family, were sleeping in the Khadayevs' house. At around 3 a.m. approximately twenty servicemen of the Russian federal forces approached the house. Around twelve servicemen entered the house while the family was asleep. They were armed with machine-guns, were wearing camouflage uniforms, were tall, had Slavic appearances and spoke only Russian. Only one serviceman was masked.

17. Three unmasked servicemen entered the second applicant's room. When he spoke Chechen to them, one of them ordered him to be quiet. When he asked in Russian what they were doing there, they said they were checking passports. However, when he handed them his passport they did not take it.

18. When the second applicant turned on the light in the room, he immediately recognised one of the servicemen. His name was Anatoliy, he

served in the FSB and was nicknamed “Tank”. He, along with fellow servicemen, had come to the Khadayev’s house for a passport check on 6 December 2002. On that occasion he had demanded that the second applicant sign a letter addressed to the Urus-Martan ROVD saying that he had no complaints against the police in connection with the detention of his son Mr Ali Khadayev for 11 days in the Military Commander’s Office from 19 to 30 April 2002.

19. The servicemen dispersed throughout the rooms of the house. The fifth applicant, the sixth applicant and N. were sleeping in the room next to the second applicant’s room. The servicemen only checked their passports and did not point their guns at them. They removed several photos from under the pillow of the sixth applicant and took those of Mr Ali Khadayev and his driving licence away with them.

20. Then the servicemen went to the next building, where the first applicant and Mr Ali Khadayev were sleeping. They tried to open the door to Mr Ali Khadayev’s room, but it was locked. The first applicant asked them to let her son get dressed, which they did. When Mr Ali Khadayev opened the door, they did not search his room but asked his mother for his passport. When she went inside the room to get it, they took Mr Ali Khadayev outside and led him away on foot in the direction of school no. 7. When the first applicant asked where they were taking him, they said to the Temporary Office of the Interior (VOVD).

21. The second applicant tried to follow the servicemen, but they did not let him open the gate. He attempted to push the gate open, but one of the servicemen threatened him: “I will shoot you unless you go back”. The commander then intervened and ordered the servicemen to leave the gate. The first applicant then tried to follow the servicemen. At a distance of about 300 metres from the house the servicemen had parked three vehicles: two Ural trucks and one grey UAZ car. None of the vehicles had licence plates or other identification signs. When the first applicant approached the vehicles, she was stopped by the servicemen and one of them kicked her in the shin so that she fell. The servicemen placed Mr Ali Khadayev in the UAZ car and drove away in the direction of the centre of Urus-Martan. The first applicant ran after the vehicles. She could hear the sound of their engines all the time and, when she reached the centre of town, she saw them parked at the gates of the Military Commander’s Office. She did not hear the vehicles stop on the way there. Since it was cold and the first applicant was wearing thin clothing, she returned home.

22. When the first applicant came back to the Military Commander’s Office at 5 a.m., the vehicles were still parked at the gates. At around 7 a.m. the applicants went to see Z., the officer who had asked for a bribe to have Mr Ali Khadayev released in April 2002. Z. went to the Military Commander’s Office to ask why Mr Ali Khadayev had been detained.

When he came back he said to the applicants: “Maybe they will release him tonight.”

23. The applicants’ neighbours Mr I., Ms A. and Ms B. witnessed the apprehension of Mr Ali Khadayev and they, as well as N., submitted written statements to confirm their account of the events.

2. The Government’s account

24. According to the Government, on 22 January 2003 the Urus-Martan District Prosecutor’s Office received the second applicant’s application stating that in the night of 4 to 5 January 2003 his son, Mr Ali Khadayev, had been abducted by unidentified persons from his house at 22 Sheripova Street in Urus-Martan.

C. The applicants’ subsequent encounters with the alleged perpetrator

25. According to the applicants, six months after Mr Ali Khadayev’s apprehension the second applicant went to the FSB quarters where he met “Tank”. He asked “Tank” to help him establish the whereabouts of his son. “Tank” replied: “Z. has left and I cannot help you with anything”. Then “Tank” also left Urus-Martan for about a month and returned together with Z. The second applicant went to the FSB quarters several times asking to speak to Z., but Z. never came out. Then the second applicant asked A., a serviceman of the Military Commander’s Office, to talk to Z. After several failed attempts A. met Z. in the street sitting in a UAZ car. A. said: “Why don’t you let Khadayev out. His father is very anxious.” Z. replied: “I did not take his son away and did not see him.” Then A. told him that “Tank” had been at the Khadayevs’ home twice and had been in charge of Mr Ali Khadayev’s apprehension and reminded Z that they were partners with “Tank”. Z. replied: “These are his [“Tank’s”] problems, let him solve them.” About a month later the second applicant learnt that Z. had left Urus-Martan.

26. In March 2003 the second applicant was standing outside the Urus-Martan District Prosecutor’s Office. On the other side of the road, in front of the ROVD, he saw a UAZ car and recognised a man sitting inside the car as “Tank”, one of the servicemen who had apprehended his son on 5 January 2003. The car had licence plates “CA 0619 AA 18”. The second applicant tried to approach “Tank”, but the latter refused to talk to him. The second applicant then informed the District Prosecutor that “Tank” was sitting in a car outside. He asked the Prosecutor to help him talk to “Tank”, but the Prosecutor replied: “I cannot do that”. The applicant then called investigator M., showed him the car and told him that one of the servicemen who had apprehended his son was in it. When the second applicant asked

him to do something, M. looked at the car and said: “Even if I say something to him, he still won’t do anything”.

27. On 28 February 2004 at around 11.30 a.m. the second applicant saw the same grey UAZ car but this time with different licence plates: “A 0632 95 RUS”. It was parked near the Urus-Martan District Military Commander’s Office next to another UAZ car with licence plates “A 0365 95 RUS”. The applicant concluded that the servicemen who had apprehended his son were still in town; however, the investigative authorities took no steps to establish his whereabouts.

D. Investigation into Mr Ali Khadayev’s disappearance and subsequent events

1. Progress of the investigation before the proceedings concerning drunken driving

28. According to the applicants, on 5 January 2003, the day following the night when Mr Ali Khadayev was apprehended, the second applicant applied in person to the Head of the Urus-Martan Town Administration and the Urus-Martan ROVD. The Head of the Town Administration advised him to apply to the Urus-Martan Prosecutor’s Office, which he promptly did. However, he received no information concerning the whereabouts of his son.

29. On 22 January 2003 the second applicant wrote similar applications to the Military Commander of Urus-Martan, the Head of the Urus-Martan Town Administration and the Urus-Martan District Prosecutor’s Office. In the applications he provided details of the unlawful apprehension of Mr Ali Khadayev, such as the date, time, address, outline of the events and description of the vehicles used. Later the first and second applicants filed applications with the Office of the Prosecutor General, the Department for Supervision over Investigation of Crimes by the Prosecuting Authorities of the Chechen Republic, the Head of the State Council of the Chechen Republic and Mr Kadyrov, the Acting President of the Chechen Republic. Their applications were forwarded to the Prosecutor’s Office of the Chechen Republic and the Urus-Martan District Prosecutor’s Office. The application filed with the Military Prosecutor of the United Group Alignment (UGA) was forwarded to the Military Prosecutor of military unit no. 20102.

30. According to the Government, on 22 January 2003 the district prosecutor’s office received the second applicant’s complaint concerning his son’s abduction on 5 January 2003.

31. On 12 February 2003 the Urus-Martan District Prosecutor’s Office instituted criminal proceedings under Article 126 (2) of the Russian Criminal Code (aggravated kidnapping) in connection with the disappearance of Mr Ali Khadayev. The case file was given number 34016.

According to the Government, on 14 February 2003 the second applicant was notified of that decision and requests for information concerning the whereabouts of Mr Ali Khadayev and his abductors were sent to other prosecuting authorities in the Chechen Republic. According to the responses received, there was no information on his detention by State authorities.

32. On 15 February 2002 the second applicant was questioned. He submitted that in the night of 4 to 5 January 2003 about twenty unidentified armed men had broken down the door of his house and had taken away his son, Mr Ali Khadayev, whom they had detained earlier between 19 April and 1 May 2002, although no documents pertaining to his previous detention existed. The men had used a UAZ car and two armoured Ural vehicles. L., a teacher of school no 7, had witnessed the events.

33. On 4 April 2003 the first applicant applied in writing to the Urus-Martan District Prosecutor's Office asking for information about the progress in the investigation. She also sought to be granted victim status in the criminal proceedings.

34. On 7 April 2003 the first applicant was granted victim status in the criminal proceedings. On the same date the Urus-Martan District Prosecutor's Office informed her of the decision and summoned her for questioning.

35. On 9 April 2003 the second applicant was questioned again. He submitted that the same men had apprehended his son, Mr Ali Khadayev, in April 2002 and in January 2003. During his apprehension on 5 January 2003 only one man had been wearing a mask. He had recognised one of the men by the Stechkin pistol in a holster made of cloth fastened on his side. Later he had seen this man in Urus-Martan in a grey UAZ car without registration plates. He had identified him by his features, height and build. He had also learned that the man had had a nickname, "Tank".

36. On 10 April 2003 the Urus-Martan District Prosecutor's Office joined investigations nos. 61075 and 34016. The joined investigation file was assigned the number 61075. On the same date it quashed the decision of 19 June 2002 to suspend the investigation no. 61075.

37. According to the Government, on 10 April 2003 the Urus-Martan District Prosecutor's Office ordered the Urus-Martan ROVD to carry out certain investigative measures with the participation of the second applicant. According to the report of the official who conducted the investigative measures, the second applicant was not consistent in his submissions: he had indicated different men in military uniform and different grey UAZ cars. He failed to identify a particular person because he was afraid to make a mistake due to his bad eyesight. In an "explanation" dated 16 April 2003 the second applicant stated that although he had seen the men who had abducted his son, he could have made a mistake trying to identify them since he had bad eyesight and everyone in a military uniform seemed the same to him. The second applicant alleged that he had signed this

“explanation” because the investigator had told him to. However, the investigator did not read it out to him. Neither a copy of the report nor a copy of the “explanation” have been submitted to the Court.

38. On 10 May 2003 the Urus-Martan District Prosecutor’s Office suspended the investigation on account of the failure to identify the perpetrators.

39. On 16 June 2003 the second applicant applied in writing to Mr Patrushev, the Director of the FSB of Russia. In his application he set out the details of his son’s apprehension, including the names of two officers of the Urus-Martan District FSB who, he believed, had been involved in the abduction.

40. On 18 June 2003 the Prosecutor’s Office of the Chechen Republic requested the Urus-Martan District Prosecutor’s Office to inform them and the first applicant of the progress of the investigation.

41. On 3 July 2003, in reply to the second applicant’s letter of 22 January 2003, the Military Commander of Urus-Martan informed him that the Military Commander’s Office had no information concerning either the whereabouts of Mr Ali Khadayev or the reasons for his apprehension on 5 January 2003 or the persons involved.

42. On 10 July 2003 the Prosecutor’s Office of the Chechen Republic again requested the Urus-Martan District Prosecutor’s Office to inform the first applicant of the progress of the investigation.

43. On 1 August 2003 the first applicant applied in writing to the Urus-Martan District Prosecutor’s Office asking it to inform her of the status of the investigation, to question the witnesses of the abduction and to transfer the case to the Military Prosecutor’s Office.

44. On 6 August 2003 the Urus-Martan District Prosecutor’s Office informed the first applicant that the investigation was suspended.

45. On 15 August 2003 the Head of the Chechen Department of the FSB informed the second applicant that Mr Ali Khadayev had not been in the custody of the FSB and that he had not been suspected of any crimes.

46. On 5 September 2003 the assistant to the Military Prosecutor of military unit no. 20102 informed the first applicant that federal forces had not detained Mr Ali Khadayev in the course of special operations in the night of 4 to 5 January 2003, and that the Urus-Martan District Prosecutor’s Office had instituted criminal investigation no. 34016 into the events.

47. On 21 October 2003 the assistant to the Military Prosecutor of military unit no. 20102 sent the second applicant a letter similar to the one of 5 September 2003 addressed to the first applicant.

48. On 11 March 2004 the second applicant applied in writing to the Prosecutor’s Office of the Chechen Republic asking it to transfer the case to the military prosecutor. In his application he also described evidence corroborating his allegation that Mr Ali Khadayev had been abducted by Russian federal forces. The second applicant received no reply.

49. On 23 March 2004 the Prosecutor's Office of the Chechen Republic quashed the decision of 10 May 2003 and resumed the investigation. The second applicant was informed of the decision on 29 March 2004.

50. On 30 March 2004 the investigating authorities sent requests for information to the military commander of the Chechen Republic, the commander of the Ministry of the Interior troops in the North-Caucasus district, the commander of the UGA in the North-Caucasus region, the commander of military unit no. 6779, the military commander of the security zone in the Urus-Martan district, the head of the FSB department in the Chechen Republic, the head of the regional operational-search bureau of the Ministry of the Interior, the head of the Urus-Martan ROVD, the head of the Temporary United Alignment of Agencies and Units of the Ministry of the Interior in the Urus-Martan District and the military commander of Tangi-Chu. The responses contained no relevant information.

51. On 31 March 2004 the second applicant was again questioned. He confirmed his previous statements.

52. On 3 April 2004 the first applicant was questioned. She submitted that at around 3 a.m. on 5 January 2003 armed men had broken into her house and taken away her son, Mr Ali Khadayev. They had said that they had taken him for an identity check and had told her to come to the Urus-Martan ROVD the next morning. The men had come in two Ural trucks and a grey UAZ car. Ali had been put in the UAZ car. She had followed the vehicles and had seen them parked near the military commander's office.

53. On 6 April 2004 the fifth applicant was questioned. He stated that on 5 January 2003, when he had been at home with the first, second and sixth applicants and Mr Ali Khadayev, armed men had broken into the house and ordered them to stand against the wall and show their passports. After he had shown them his passport they had given it back. Then they had left and taken his brother Ali with them. The first applicant had followed them and, when she had returned, she had said that they had been in two Ural vehicles and a UAZ car without registration plates.

54. On 29 April 2004 the Urus-Martan District Prosecutor's Office again suspended the investigation on account of the failure to identify the perpetrators. The second applicant was informed of the decision on the same day.

55. On 17 July 2006 the Urus-Martan District Prosecutor's Office resumed the investigation. The second applicant was informed accordingly.

2. Proceedings concerning drunken driving in Pyatigorsk in 2006

56. On 22 April 2006 at around 6 p.m. M., an officer of the transport police in Pyatigorsk, the Stavropol Region, stopped a car that was being driven by a drunk driver. The driver produced a driving licence issued to Mr Ali Khadayev. Officer M. drew up a report on the administrative offence in the presence of two witnesses, Mr Mar. and Mr B., and conveyed the

driver to a drug clinic for examination. The driver was subsequently released and the case was then sent for trial.

57. On 19 May 2006 the justice of the peace of district no. 8 in Pyatigorsk delivered a default judgment which read as follows:

“[L.], justice of the peace of district no. 8 in Pyatigorsk, the Stavropol Region, having examined the ... case concerning an administrative offence ... in respect of Khadayev Ali Zandiyevich, born on 2 November 1977 in Grozny, a Russian national, unemployed, residing at 92 Sheripova Street, Urus-Martan, the Chechen Republic, has found:

At 6 p.m. on 22 April 2006 ... in Pyatigorsk A.Z. Khadayev was driving a VAZ 2110 car with registration plates H270KK\15 in a state of alcoholic intoxication in breach of ... traffic rules thereby committing an [administrative] offence.

A.Z. Khadayev has not appeared at the hearing although he was duly summoned... [He] has not informed the court of the reasons for his failure to appear; therefore the court decides to examine the case in his absence.

A.Z. Khadayev's guilt is corroborated by the report on an administrative offence of 22 April 2006, by the report of a medical examination according to which A.Z. Khadayev was in a state of alcoholic intoxication, and by his explanations.

The court considers that A.Z. Khadayev's actions should be qualified as [the offence of] driving in the state of alcoholic intoxication and ... suspends his driving licence for one year and six months...”

3. Progress of the investigation after the proceedings concerning drunken driving

(a) The Government's submissions

58. On 17 July 2006 the second applicant was questioned. He stated that in June 2006 he had received two letters addressed to Mr Ali Hadayev which contained a summons to a hearing before the justice of peace in Pyatigorsk and the judgment of 19 May 2006 (see paragraph 57 above). The investigator seized the summons and the judgment and enclosed them in the investigation file. The second applicant also confirmed his previous statements.

59. On 19 July 2006 the investigator sent requests for information to law-enforcement agencies of the Urus-Martan District, pre-trial detention facilities of the neighbouring regions and medical institutions of the Chechen Republic aimed at establishing the whereabouts of Mr Ali Hadayev. No relevant information was received.

60. On 16 August 2006 the Urus-Martan District Prosecutor's Office instructed the Urus-Martan ROVD to instruct its officers to go to Pyatigorsk in order to verify information concerning Mr Ali Hadayev's arrest for drunken driving.

61. On 29 August 2006 an officer of the Urus-Martan ROVD questioned M., the officer of the transport police in Pyatigorsk. M. submitted that on 22 April 2006 he had been on duty in Tolyatti Street. At around 6 p.m. he had stopped a VAZ 2110 car with registration plates H 270 KK 15 driven by a man in a state of alcoholic intoxication. When he had checked the driver's documents he had had no doubts as to their authenticity. From the documents produced it followed that the driver was Khadayev Ali Zandiyevich, born on 2 November 1977 in Grozny, residing at 92 Sheripova Street, Urus-Martan, the Chechen Republic. In the presence of witnesses M. had drawn up a report on an administrative offence and conveyed the driver to a drug clinic for examination.

62. According to the report of the Urus-Martan ROVD officers dispatched to Pyatigorsk, it appeared impossible to question witnesses Mr Mar. and Mr B. since they lived outside Pyatigorsk. They enclosed copies of the report on an administrative offence, the report on transfer for medical examination, the report on suspension from driving and the report of the medical examination in the investigation file.

63. In the course of the subsequent investigation it was established that the car belonged to a resident of Grozny, Mr A., who did not live at the address indicated in the report on the administrative offence. According to the Government, he was being searched for.

64. On 17 August 2006 the Urus-Martan District Prosecutor's Office suspended the investigation on account of the failure to identify the perpetrators.

65. On 12 October 2006 the same prosecutor's office quashed the decision of 17 August 2006 and resumed the investigation. The second applicant was informed of the resumption on the same date.

66. On 24 October 2006 the investigator sent a request to the Urus-Martan District department of the FSB to inform him whether a special operation had been conducted in Urus-Martan in the night of 4 to 5 January 2003, whether an officer with the name Anatoliy and nickname "Tank" served in the department and whether a UAZ car with registration plates "CA 0619 AA 18 PYC" was used by the department. According to the reply of 25 November 2006, due to the absence of documents related to the staff of the department it was not possible to confirm that the officer Anatoliy ("Tank") had served in the department. Registration plates "CA 0619 AA 18 PYC" were not assigned to the department.

67. On 4 November 2006 the investigator questioned the seventh applicant, who, after having received the summons and the judgment addressed to Mr Ali Khadayev, had immediately gone to Pyatigorsk to search for him. There he had talked to judge L., whom he had shown his brother's passport. Judge L. had identified that person as the one whose photograph he had seen on the driving licence issued to Mr Ali Khadayev. Then the seventh applicant had gone to the Pyatigorsk transport police

where he had been shown his brother's driving licence. His search for Mr Ali Khadayev in Pyatigorsk had been futile.

68. On 7 November 2006, in the course of the second posting to Pyatigorsk, an officer of the Urus-Martan ROVD questioned Mr B. The latter stated that he had been driving his car in Pyatigorsk in April 2006. One evening at approximately 5 p.m. he had been stopped by transport police officers who had asked him to be present as a witness while they drew up a report. The transport police officers had stopped a VAZ 2110 car with a man of Caucasus ethnic origin behind the wheel, who had said that he had drunk some cognac or vodka. The police officers had drawn up a report, which he had signed, and left. When Mr B. was shown Mr Ali Khadayev's photograph, he stated that the latter resembled the man in respect of whom the report had been drawn up in April 2006.

69. Mr Mar., questioned on the same date, made a similar statement. When shown a photograph of Mr Ali Khadayev, Mr Mar. also stated that he resembled the man in respect of whom the report had been drawn up in April 2006.

70. On 7 November 2006 the officer of the Urus-Martan ROVD seized Mr Ali Khadayev's driving licence from the Pyatigorsk transport police.

71. On the same date the head of the Essentuki Department of the Interior of the Stavropol Region sent a request for information to the Essentuki drug clinic. According to the response, on 22 April 2006 Mr Ali Khadayev, born in 1977, who drove a vehicle, had been brought to the clinic by officer M. for examination. The doctor who conducted the examination stated that Mr Ali Khadayev had been in a state of alcoholic intoxication.

72. On an unspecified date the head of the Pyatigorsk transport police informed the investigating authorities that its databases contained no information concerning the administrative responsibility of a driver of the VAZ 2110 car with registration plates H 270 KK 15.

73. On 12 November 2006 the officer of the Urus-Martan ROVD questioned K., the psychiatrist-narcologist of the drug clinic. He stated that many people were brought to the clinic each day and he could not remember everybody. He could not remember the person brought to the clinic on 22 April 2006 by officer M. He could not recognise anybody from the photographs shown to him.

74. On 12 November 2006 the Urus-Martan District Prosecutor's Office suspended the investigation on account of the failure to identify the perpetrators. The second applicant was informed of the suspension on the same date.

75. On 30 January 2007 the Urus-Martan District Prosecutor's Office resumed the investigation. The second applicant was informed accordingly.

76. On the same date the investigator examined Mr Ali Khadayev's driving licence and enclosed it in the investigation file.

77. On 1 February 2007 the second applicant was again questioned. He confirmed his previous statements. He also stated that after Mr Ali Khadayev's first detention in April 2002 he had paid Z., an officer of the Military Commander's Office, USD 2,500 for his release. His son had been released on the same date, that is, 27 April 2002. He had not related the circumstances of his son's release before because he had feared for his life and the lives of his relatives. In November 2002 three officers, including the FSB officer "Tank", had arrived at his house and had requested him to make a written statement addressed to S.M., the head of the Urus-Martan ROVD, to the effect that he had had no complaints concerning his son's detention.

78. On 6 February 2007 the investigator questioned S.M., who submitted that from 10 July 2000 to 18 March 2004 he had served as the head of the Urus-Martan ROVD. He did not know either Mr Ali Khadayev or the second applicant. He had never received any written statements on the matter, nor had he made an order to obtain one. He had no information about Mr Ali Khadayev's fate.

79. On 20 February 2007 the investigator sent a request to the Pyatigorsk passport bureau. According to the response received, Mr Ali Khadayev was not registered in Pyatigorsk.

80. On 28 February 2007 Urus-Martan District Prosecutor's Office again suspended the investigation on account of the failure to identify the perpetrators. The second applicant was informed of the suspension on the same date.

81. On 27 April 2007 the Urus-Martan District Prosecutor's Office resumed the investigation. The second applicant was informed accordingly.

82. On the same date the investigator sent requests for information to the Urus-Martan district FSB department, the military commander of the Urus-Martan district, the Urus-Martan VOVD, the Urus-Martan ROVD as to whether any special operations had been conducted in Urus-Martan on 10 April 2002 by any units subordinate to these authorities. According to the responses received, none of the authorities had detained Mr Ali Khadayev in April 2002.

83. On 28 April 2007 the second applicant was again questioned. He confirmed his previous statements.

84. According to the Government, the involvement of State agents in the disappearance of Mr Ali Khadayev had not been confirmed by the findings of the investigation. Mr Ali Khadayev had not been held in detention facilities in the Chechen Republic, no criminal charges had been brought against him and no special operations had been conducted in respect of him.

85. Despite the Court's request to provide a copy of the entire investigation file, the Government only provided thirty-six pages of case-file materials containing decisions to institute, suspend and resume the investigation. The Government stated that these were copies of documents that could be provided to the Court.

(b) The applicants' submissions

86. The following submissions were made by the applicants after the second applicant had studied the investigation file with his counsel on 29 June 2007 (see paragraph 101 below).

87. According to the applicants, the report on the administrative offence, the report on transfer for medical examination and the report on suspension from driving contained a wrong date of birth: 2 November 1977, whereas Mr Ali Khadayev was born on 13 July 1977. They also contained a wrong address: 92 Sheripova Street, whereas Mr Ali Khadayev's address was 22 Sheripova Street. In the report on the administrative offence it was stated that the driver admitted to having drunk three glasses of cognac.

88. The reports were signed by the driver and all the signatures were identical. However, those signatures were not identical to Mr Ali Khadayev's signature on his driving licence. Nevertheless, no graphological examination was conducted.

89. The car in question was registered in the Republic of North Ossetia – Alania, whereas its owner was registered in the Chechen Republic. However, following the investigator's requests, the republican departments of the interior informed him that such a person was neither registered in the Chechen Republic, nor was there any information that he resided there. However, according to the applicants, no measures were taken to locate either the car or its owner.

90. Witnesses Mr B. and Mr Mar., present when the report on the administrative offence had been drawn up, later stated that the driver "resembled" the photograph of Mr Ali Khadayev. However, they did not indicate any particular similar features, apart from the fact that both men were of Caucasus ethnic origin.

91. The applicants also submitted that, as appeared from the investigation file, the following investigative measures were not taken: (i) no witnesses were questioned, apart from the first, second, fifth and seventh applicants, not even the witnesses indicated by the applicants; (ii) no inspection of the crime scene was conducted; (iii) no identification of officers of the Urus-Martan department of the FSB was conducted; (iv) neither the Urus-Martan military commander nor officers of the military commander's office were questioned.

E. Proceedings concerning the refusal to provide access to the investigation file

92. On 11 January 2007 the second applicant requested the Urus-Martan District Prosecutor's Office to provide him with a possibility to make copies of the documents enclosed in the investigation file.

93. On 17 January 2007 the Urus-Martan District Prosecutor's Office granted the request in part. The second applicant was granted access to

materials pertaining to the investigative actions conducted with his participation. It was also clarified that he would have access to the entire case file upon the completion of the investigation.

94. On 5 February 2007 the second applicant lodged a complaint before the Urus-Martan Town Court concerning the refusal to provide him with access to the case file and allow him to make copies thereof.

95. On 7 March 2007 the Urus-Martan Town Court granted the complaint in the part related to access to the case file, but refused it in the part related to the right to make copies.

96. On 15 March 2007 the second applicant appealed.

97. On 18 April 2007 the Supreme Court of the Chechen Republic dismissed the appeal and upheld the judgment.

98. On 5 June 2007 the second applicant and his counsel came to the Urus-Martan District Prosecutor's Office to study the case file. However, the investigator refused to provide them with the entire case file.

99. On 6 June 2007 the second applicant complained to the Acting Prosecutor of the Urus-Martan District about the refusal, arguing that it was in breach of the Urus-Martan Town Court's decision of 7 March 2007.

100. On 8 June 2007 the Deputy Prosecutor of the Urus-Martan District allowed the complaint in part and ordered the second applicant to be provided with access to the case file.

101. On 29 June 2007 the second applicant and his counsel studied the case file.

II. RELEVANT DOMESTIC LAW

102. 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. LOCUS STANDI

103. After notice of the application was given to the respondent Government, the parties informed the Court that the first applicant had died on 26 November 2006.

104. Taking into account that no one expressed a wish to pursue the application in her stead, the Court 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 first applicant.

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

105. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies since the investigation into the disappearance of the applicants' relative had not yet been completed.

106. The applicants contested that objection. They argued that the criminal investigation had proved to be ineffective, having produced no meaningful results after six years.

107. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a summary thereof, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73-74, 12 October 2006).

108. The Court observes that the applicants complained to the law-enforcement authorities shortly after the disappearance of their relative and that the criminal proceedings have been pending since 12 February 2003. The applicants and the Government disagreed as to the effectiveness of the investigation into the complaint.

109. The Court considers that the Government's objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicants' complaints. Thus, it considers that this matter should be joined to the merits and falls to be examined below under the substantive provisions of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

110. The applicants complained under Article 2 of the Convention that their family member 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. Arguments of the parties

111. The Government argued that the complaint was unfounded. They referred to the fact that the investigation had obtained no evidence to the effect that representatives of the federal forces had been involved in the applicants' relative's abduction, or that this person was dead. On the contrary, from the events in Pyatigorsk it followed that he was alive. The Government also claimed that the investigation of the disappearance of the applicants' family member met the Convention requirement of effectiveness, since the investigating authorities had taken all measures provided for in domestic law.

112. The applicants maintained their complaint and contended that their family member had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. As for the events in Pyatigorsk, the applicants pointed out that the documents related to the administrative offence of drunken driving contained wrong information about Mr Ali Khadayev and, in their view, the driver was not conclusively identified as the latter. Accordingly, although the person in question had had Mr Ali Khadayev's driving licence, it was not proved that he actually was Mr Ali Khadayev.

113. They further argued that the investigation had not met the requirements of effectiveness and adequacy required by the Court's case-law on Article 2. The applicants noted that the investigation had been adjourned and reopened a number of times, thus delaying the taking of the most basic steps, and that they had not been properly informed of the most important investigative measures. They alleged that, as was clear from the contents of the case file, the most elementary investigative steps were never taken (see paragraph 91 above). They argued that the fact that the investigation had been ongoing for such a long period of time without producing any known results was further proof of its ineffectiveness.

B. The Court's assessment

1. Admissibility

114. 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 Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 109 above). It also decides to join to the merits the issue of applicability of Article 2 of the Convention. The complaint under Article 2 of the Convention must therefore be declared admissible.

2. *Merits*

(a) **The alleged violation of the right to life of Mr Ali Khadayev**

i. General principles

115. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

ii. Establishment of the facts

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

α. Whether State agents were involved in the abduction of Mr Ali Khadayev

117. The applicants alleged that in the night of 4 to 5 January 2003 their family member, Mr Ali Khadayev, had been apprehended by Russian servicemen and then disappeared. They invited the Court to draw inferences as to the well-foundedness of their allegations from the Government's failure to provide the documents requested from them. The first, second, fifth and sixth applicants witnessed his apprehension and they supported their account of the events with statements by four other eyewitnesses. The latter provided a coherent account of the events that took place in Urus-Martan in the night of 4 to 5 January 2003 and stated that Mr Ali Khadayev had been apprehended by servicemen and taken away in a military vehicle.

118. The Government conceded that Mr Ali Khadayev had been abducted by unknown armed men in the night of 4 to 5 January 2003. However, they denied that any special operations had been carried out in Urus-Martan on that date. The Government referred to the absence of conclusions from the ongoing investigation and denied that the State was responsible for the disappearance of the applicants' family member.

119. The Court notes that despite its repeated requests for a copy of the investigation file into the abduction of Mr Ali Khadayev, apart from thirty-six pages of copies of procedural decisions the Government have produced no documents from the case file at all and provided no explanation for failing to provide any.

120. In view of this and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect. It considers that the applicants have presented a coherent and convincing picture of their family member's apprehension in the night of 4 to 5 January 2003. Four applicants witnessed the events and collected statements from four other witnesses referring to the involvement of the military or security forces in the abduction.

121. The Court observes that the Government did not deny that Mr Ali Khadayev had been abducted by armed men; however, they denied that those men were State agents. The Court finds that the fact that a large group of armed men in uniform, equipped with military vehicles, was able to move freely during curfew hours strongly supports the applicants' allegation that these were State servicemen. In their application to the authorities the applicants consistently maintained that Mr Ali Khadayev had been detained by unknown servicemen and requested the investigating authorities to look into that possibility. It further notes that after six years the domestic investigation has produced no tangible results.

122. The Court notes that while the applicants alleged that they had seen one of the perpetrators on other occasions and had learned that he had been the FSB officer named Anatoliy and nicknamed "Tank", the Government denied that such a person had ever worked for the FSB. However, in view of the above elements, the Court does not find it necessary to decide on this issue.

123. The Court reiterates that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of documents withheld by the authorities, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, 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).

124. Taking into account the above elements, the Court is satisfied that the applicants have made out a *prima facie* case that their family member was detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide a plausible explanation of the events in question, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Mr Ali Khadayev was apprehended in the night of 4 to 5 January 2003 at his house in Urus-Martan by State servicemen during a security operation.

B. Whether Mr Ali Khadayev may be presumed dead

125. The Court notes that from 5 January 2003 until June 2006 the applicants had no news of Mr Ali Khadayev. In June 2006 they received a summons addressed to the latter and a copy of a decision of the justice of peace of district no. 8 in Pyatigorsk of 19 May 2006, whereby Mr Ali Khadayev was found guilty of the administrative offence of drunk driving in Pyatigorsk on 22 April 2006. As emerged later, on the last-mentioned date a traffic police officer had stopped a car with a driver in a state of alcoholic intoxication. The driver had been apprehended and transferred to a drug clinic for an examination, following which he had been released. The driver had presented Mr Ali Khadayev's driving licence.

126. Following receipt of the decision, officers of the Urus-Martan ROVD and the seventh applicant, independently of each other, went to Pyatigorsk to search for Mr Ali Khadayev. However, they could not establish the whereabouts of the driver found guilty of the administrative offence.

127. The Government pointed out that two witnesses who had been present when the report on the administrative offence had been drawn up by the traffic police officer had later stated that the driver resembled Mr Ali Khadayev, whose photograph was shown to them. Furthermore, the driver's signatures on the administrative reports drawn up after he had been stopped by the traffic police officer were identical to Mr Ali Khadayev's signature on his driving licence and his passport.

128. The applicants argued that the witnesses had merely stated that the driver "resembled" Mr Ali Khadayev and had not conclusively identified him as Mr Ali Khadayev. They also stated that the administrative reports and the decision of the justice of peace contained wrong data in respect of Mr Ali Khadayev, in particular his date of birth and his address. Furthermore, according to the applicants, although signatures of the driver on the administrative reports were similar, they were not identical to Mr Ali Khadayev's signature.

129. The Court considers that the information and materials available do not allow it to establish conclusively that the driver found guilty of drunken driving on 22 April 2006 in Pyatigorsk was Mr Ali Khadayev for the following reasons. First, after the release from the drug clinic the driver was not found. Second, the procedural documents related to the administrative offence contained certain inaccurate information concerning Mr Ali Khadayev. Third, no graphological examination was conducted to establish that the driver's handwriting was identical to Mr Ali Khadayev's. Finally, the identification reports have not been made available to the Court. However, from the parties submissions it appears that the two witnesses stated that the driver "resembled" Mr Ali Khadayev, which, in the circumstances, the Court does not find to be sufficiently certain (see, *mutatis mutandis*, *Taş v. Turkey*, no. 24396/94, Commission's report of 9 September 1999, §§ 186-88).

130. Furthermore, in view of its finding in paragraph 124 above that in the night of 4 to 5 January 2003 Mr Ali Khadayev was apprehended by servicemen, the Court notes that the Government did not submit any explanation as to what had happened to him after his apprehension and how he could have appeared in Pyatigorsk three years later. His name has not been found in the official records of any detention facilities and they submitted no evidence that he was subsequently released. At the same time, the evidence from the incident in Pyatigorsk being inconclusive, there has been no reliable news of Mr Ali Khadayev since January 2003.

131. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-... (extracts), and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts)), the Court observes 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 Mr Ali Khadayev or any reliable news of him for over six years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of Mr Ali Khadayev's disappearance and the official investigation into his abduction, which has gone on for over six years, has produced no tangible results.

132. In these circumstances, the Court considers that the events in Pyatigorsk do not constitute sufficient proof that Mr Ali Khadayev is alive and finds that he must be presumed dead following his unacknowledged apprehension by State servicemen in the night of 4 to 5 January 2003.

iii. The State's compliance with Article 2

133. 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, to which no derogation is

permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-47, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

134. The Court has already found it established that the applicants' family member must be presumed dead following unacknowledged detention by State servicemen. Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, it follows that liability for his presumed death is attributable to the respondent Government.

135. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Mr Ali Khadayev.

(b) The alleged inadequacy of the investigation into the abduction

136. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, p. 49, § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

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

138. Turning to the facts of the present case, the Court notes that, according to the applicants, the second applicant had notified the authorities

of Mr Ali Khadayev's abduction in person on 5 January 2003 and in writing on 22 January 2003. According to the Government, the prosecuting authorities first received his application on 22 January 2003. Since the materials of the case contain no evidence that the authorities were notified of the events on 5 January 2003, the Court accepts that they first received the second applicant's application on 22 January 2003. However, the investigation was not instituted until 12 February 2003, that is twenty-one days later. Therefore, the investigation was instituted with a delay, for which there has been no explanation, in a situation where prompt action was vital.

139. The Court further notes that the second applicant was first questioned on 15 February 2003. He was then questioned a number of times in the following years. However, the first and the fifth applicant were only questioned in April 2004, that is more than a year after the institution of the investigation. S.M., head of the Urus-Martan ROVD at the relevant time, was only questioned in February 2007, that is four years after the institution of the investigation. No other witnesses, including other applicants, witnesses indicated by the applicants, servicemen or other State officials were questioned with regard to the events of 4-5 January 2003 at all. Furthermore, it appears that the investigating authorities did not examine the crime scene. The Court notes that in the course of the investigation a number of requests for information were sent to different State authorities to establish whether any special operations had been conducted in Urus-Martan on the dates in question and whether officer Anatoliy ("Tank"), described by the applicants, had served in the FSB. However, it appears that no identification parades were conducted with the participation of the FSB or ROVD officers deployed in Urus-Martan. The Court notes that, according to the Government, certain investigative measures, apparently aimed at identifying the officers, were conducted in April 2003 with the participation of the second applicant. The measures appear to have been described in a report of the official who carried them out and the second applicant's "explanation", the accuracy of which he contested. However, neither the report nor the "explanation" have been made available to the Court and it is not able to determine what kind of investigative measures were actually taken.

140. The Court observes that in the present case the investigating authorities thus not only did not comply with 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), but failed to take the most elementary investigative steps.

141. As regards the investigative measures taken in connection with the events in Pyatigorsk in April 2006, the Court observes that the reaction of the investigating authorities was sufficiently prompt. The Urus-Martan ROVD officers were twice instructed to go to Pyatigorsk, the first time

shortly after the Urus-Martan District prosecutor's Office was informed of the events. The officers questioned M, the transport police officer who had stopped the driver with Mr Ali Khadayev's driving licence, the two witnesses present when the report on administrative offence of drunken driving had been drawn up, and K. of the drug clinic where the driver had been transferred to for an examination. They also seized Mr Ali Khadayev's driving licence and enclosed it in the investigation file. At the same time it appears that graphological examination of signatures on administrative reports and of Mr Ali Khadayev's signature on his driving licence and his passport was not conducted. Furthermore, although – according to the Government – the owner of the car driven by the man with Mr Ali Khadayev's driving licence was being "searched for", it is not clear which particular measures were taken to establish the whereabouts of the owner as well as of the driver. Accordingly, the Court is not satisfied that all necessary investigative measures were taken in this respect either.

142. The Court also notes that even though the first and second applicants were granted victim status, for several years they were only informed of the suspensions and resumptions of the investigation, sometimes with a substantial delay. The second applicant was not able to study the investigation file until June 2007, that is, more than four years after the institution of the investigation, following the order of the Urus-Martan Town Court to grant him access to the case file.

143. Lastly, the Court notes that the investigation was adjourned and resumed five times and that there were lengthy periods of inactivity of the district prosecutor's office when no proceedings were pending. This manner of conducting the investigation could only be detrimental to the prospects of establishing the fate of the applicants' relative and ensuring the accountability of those responsible for his abduction.

144. Having regard to the Government's preliminary objection that was joined to the merits of the complaint, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for many years and has produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection in this part.

145. 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 Mr Ali Khadayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

146. The applicants relied on Article 3 of the Convention, submitting that, as a result of their relative's disappearance and the State's failure to

investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. They also argued that they had serious grounds to believe that Mr Ali Khadayev had been subjected to torture and inhuman treatment when in detention and complained that no effective investigation had been conducted in this respect. Article 3 reads:

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

A. The parties’ submissions

147. The Government submitted that it was not established by the investigation that Mr Ali Khadayev had been subjected to ill-treatment.

148. The applicants maintained the complaint.

B. The Court’s assessment

1. Admissibility

(a) The complaint concerning Mr Ali Khadayev

149. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161 *in fine*).

150. The Court has found it established that Mr Ali Khadayev was apprehended in the night of 4 to 5 January 2003 by State agents. It has also found that, in view of all the known circumstances, he can be presumed dead and that the responsibility for his death lies with the State authorities (see paragraph 134 above). However, the exact way in which he died and whether he was subjected to ill-treatment while in detention have not been established.

151. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) The complaint concerning the applicants’ mental suffering

152. The Court notes that this part of the complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

153. 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*, cited above, § 358, and *Imakayeva*, cited above, § 164).

154. In the present case the Court notes that the second applicant was the father of the disappeared person and thus belonged to his immediate family. To a certain extent this applies also to the third to eighth applicants, who were sisters and brothers of the disappeared person. The second, fifth and sixth applicants witnessed Mr Ali Khadayev’s apprehension. For several years the applicants have not had any news of their close relative. During this period they have applied to various official bodies with enquiries about their family members, both in writing and in person. Although the enquiries were mostly made by the first and second applicants, the seventh applicant went to Pyatigorsk to search for his brother after it became known that a man with his driving licence had been found guilty of an administrative offence. For these reasons, in the present case the Court does not consider it necessary to distinguish any family members who could not have standing as victims for the purposes of Article 3 of the Convention (see *Luluyev and Others*, cited above, §§ 112-13).

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

156. 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

157. The applicants further stated that Mr Ali Khadayev had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant, as follows:

“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

158. The Government submitted that no evidence was obtained by the investigators to confirm that Mr Ali Khadayev had been deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention.

159. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

160. The Court finds 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*

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

162. The Court has found it established that Mr Ali Khadayev was apprehended by State servicemen in the night of 4 to 5 January 2003 and has disappeared since. His detention was not acknowledged, was not logged in any custody records and no official trace of his subsequent whereabouts or fate exists. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

164. In view of the foregoing, the Court finds that Mr Ali Khadayev was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATIONS OF ARTICLES 6 and 14 OF THE CONVENTION

165. In their initial application form the applicants submitted that they had been deprived of access to a court, contrary to the provisions of Article 6 of the Convention, and that they had been discriminated against on the grounds of their ethnic origin. The relevant part of Article 6 of the Convention reads as follows:

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

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.”

166. In the observations on admissibility and merits of the case of 24 August 2007 the applicants stated that they no longer wished their complaints under Articles 6 and 14 of the Convention to be examined.

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

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

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

169. 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

170. 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. In particular, they were granted access to the investigation file.

171. The applicants reiterated their complaint.

B. The Court’s assessment

1. Admissibility

172. The Court reiterates that, according to its case-law, Article 13 applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention right. In view of the Court’s findings above with

regard to Article 2, Article 3 in respect of the applicants and Article 5, the applicants clearly had an arguable claim for the purposes of Article 13 of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The Court therefore notes that the applicants' complaints under Article 13 in conjunction with these provisions of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

173. In so far as the applicants relied on Article 13 in conjunction with Article 3 in respect of Mr Ali Khadayev, the Court has declared the complaint inadmissible as being manifestly ill-founded in paragraph 151 above. Accordingly, they did not have an arguable claim for the purposes of Article 13 of the Convention. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Merits

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

175. As regards the complaint of a lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see

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

176. In view of the Court's above findings with regard to Article 2, this complaint is clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, Series A no. 131, § 52). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

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

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

179. As regards the violation of Article 3 of the Convention found on account of the applicants' mental suffering as a result of the disappearance of their close relative, their inability to find out what had happened to him and the way the authorities had handled their complaints, the Court notes that it 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.

180. As regards the applicants' reference to Article 5 of the Convention, the Court reiterates that, according to its established case-law, the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a violation of Article 5 of the Convention as a result of unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

181. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

182. The second applicant claimed that he and the first applicant had sustained damage in respect of the loss of their son's earnings following his apprehension and subsequent disappearance. He claimed a total of 313,166.89 Russian roubles (RUB) under this head (approximately 8,744 euros (EUR)).

183. The second applicant submitted that Mr Ali Khadayev had been temporarily unemployed. Having regard to the provisions of the Civil Code on calculations of lost earnings, he claimed that the amount of his son's earnings should be equal to the average remuneration of a person with similar qualifications and could not be based on an amount lower than the subsistence level determined by federal laws. The second applicant submitted that he, and the first applicant until her death, would have benefited from Mr Ali Khadayev's financial support in an amount equal to 40% of his earnings. After the first applicant's death he would have benefited from 30% of his son's earnings. His calculations were based on the relevant provisions of the 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 ("the Ogden tables").

184. The Government argued that no compensation for pecuniary damage should be awarded to the second applicant since it was not established that his son was dead. The second applicant had failed to apply to the domestic courts to establish this fact.

185. The Court notes that in paragraph 104 it decided to strike the application out of its list of cases in so far as it concerned the first applicant. Accordingly, the Court makes no award in respect of the claim made on her behalf.

186. The Court finds that there is indeed a direct causal link between the violation of Article 2 in respect of the second applicant's son and the loss by the applicant of the financial support which he could have provided for him. Although it notes that Mr Ali Khadayev was unemployed at the time of his abduction, it finds it reasonable to assume that he would eventually have had some earnings and that the second applicant would have benefited from them. It notes, at the same time, that the second applicant has other children from whose financial support he must be able to benefit. Having regard to the second applicant's submissions, the Court awards him EUR 4,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

187. The applicants claimed EUR 25,000 on behalf of the first applicant, the second applicant claimed EUR 25,000 and the third to eighth applicant

claimed EUR 6,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards him and the failure to provide any information about the fate of their close relative.

188. The Government found the amounts claimed exaggerated.

189. The Court notes that in paragraph 104 it decided to strike the application out of its list of cases in so far as it concerned the first applicant. Accordingly, the Court makes no award in respect of the claim made on her behalf.

190. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicants jointly EUR 35,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

191. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, 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. They also claimed postal expenses in the amount of EUR 93.88 and translation expenses in the amount of EUR 1,151.50, as certified by invoices, and administrative expenses in the amount of EUR 547.75. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 9,618.13.

192. The Government did not dispute the details of the calculations submitted by the applicants, but pointed out that they should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had been actually incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They also objected to the part of the applicants' representatives' claim related to the work of lawyers other than those specified in the authority form.

193. The Court has to establish first whether the costs and expenses indicated by the applicants were actually incurred and, second, whether they were necessary and reasonable (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

194. Having regard to the details available, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives. 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, however, that, due to the application of Article 29 § 3, the applicants' representatives submitted their observations on admissibility and 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.

195. As regards the Government's objection, the Court notes that the applicants were represented by the SRJI. It is satisfied that the lawyers indicated in the applicants' claim were members of the SRJI staff. Accordingly, the objection must be dismissed.

196. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them EUR 7,000, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

197. 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 first applicant;
2. *Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies and reject it;
3. *Declares* the complaints under Article 2, Article 3 in respect of the applicants, Article 5 and Article 13 of the Convention in conjunction with the above provisions admissible, *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' complaints under Articles 6 and 14 of the Convention and *declares* the remainder of the application inadmissible;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Mr Ali Khadayev;

5. *Holds* that there has been a violation of Article 2 of the Convention on account of the failure to conduct an effective investigation into the disappearance of Mr Ali Khadayev;
6. *Holds* that there has been a violation of Article 3 of the Convention on account of the mental suffering endured by the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Mr Ali Khadayev;
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:
 - (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, to the second applicant in respect of pecuniary damage;
 - (ii) EUR 35,000 (thirty five thousand euros) to the applicants jointly, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
 - (iii) EUR 7,000 (seven 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