



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

FIRST SECTION

CASE OF DOKUYEV AND OTHERS v. RUSSIA

(Application no. 6704/03)

JUDGMENT

STRASBOURG

2 April 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Dokuyev and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 6704/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Russian nationals, listed below (“the applicants”), on 14 February 2003.

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

3. The applicants alleged that their relative had disappeared after being detained by servicemen in Chechnya on 14 February 2001. They complained under Articles 2, 3, 5, 6, 8, 13 and 34.

4. By a decision of 29 November 2007, the Court declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- 1) Mr Vakhit Abdurashidovich Dokuyev, born in 1947;
- 2) Mrs Zina Abdulayevna Dokuyeva, born in 1952;
- 3) Mrs Imani Ramzanovna Makayeva, born in 1983;
- 4) Mrs Rukiyat Vakhitovna Dokuyeva, born in 1972;
- 5) Mrs Makka Vakhitovna Dokuyeva, born in 1983;
- 6) Mr Khavazh Abdurashidovich Dokuyev, born in 1951;
- 7) Mrs Kheda Khavazhovna Dokuyeva, born in 1978.

They live in the village of Novye Atagi, the Chechen Republic

7. The first and second applicants are the parents of Mr Magomed Dokuyev, born in 1977. The third applicant is the wife of Mr Magomed Dokuyev, with whom she had a son born in 2000. The fourth and the fifth applicants are sisters of Mr Magomed Dokuyev, and the sixth and the seventh applicants are his uncle and cousin.

8. The Dokuyev family live in the village of Novye Atagi at 4 Podgornaya Street in a household composed of two houses and a common courtyard. The first five applicants and Mr Magomed Dokuyev lived in one house. The other house belongs to the sixth applicant and his family.

9. Mr Magomed Dokuyev finished school in 1994 and studied to become a translator from English and Arabic. His higher education was interrupted by the first and the second periods of hostilities in Chechnya. He never had a full-time job.

A. Arrest and detention of Mr Magomed Dokuyev and Mr Vakhit Dokuyev

1. The applicants' account

10. On 14 February 2001 at about 6 a.m. two armoured personnel carriers (APCs) and a Ural truck with obscured number plates drove up to the Dokuyevs' family home. Mr Magomed Dokuyev, his father, wife and two sisters (the first, third, fourth and fifth applicants) were at home at the time. The second applicant, Mr Magomed Dokuyev's mother, was away that day. A large group of more than twenty uniformed armed soldiers, most of whom were wearing masks, broke into the house. They asked the first applicant for his passport. They also asked Mr Magomed Dokuyev to confirm his identity. However, they did not ask for his documents. The soldiers then allowed the first applicant to dress, whereas his son had to

remain barefoot. Both men were taken into the courtyard of the house, while the women and children were ordered to stay inside the house. In the courtyard the soldiers started to kick and beat Mr Magomed Dokuyev with their rifle butts. When the first applicant tried to intervene, the soldiers beat him too and ordered him to stand against the wall.

11. The sixth and the seventh applicants were in their house at that time and witnessed the detention of Mr Magomed Dokuyev and Mr Vakhit Dokuyev. The sixth applicant, woken by the noise, went out into the courtyard and was forced by the soldiers to lie face down while his brother and nephew were taken away.

12. The first applicant and his son were subsequently taken to an APC parked at the back of the house. The first applicant heard the sound of a second APC driving behind them and guessed that they were being taken in the direction of the Grozny-Shali road. While in the APC the detainees were not allowed to talk or look around. About one hour later the vehicles stopped and the men were taken outside. They were handcuffed and blindfolded, but the first applicant managed to catch a glimpse of military tents around. Later he heard helicopters landing and taking off and the sounds of morning exercise, which convinced him that he was in a large military base, probably in Khankala.

13. The first applicant was thrown on the ground inside a tent, and he could hear his son and another man screaming in a tent near by. He understood that they were being beaten and tortured. While he was lying on the floor, the soldiers who came into the tent kicked him several times, calling him a “Wahhabi” and a “bandit”. The first applicant said that he was just a construction worker. A while later the soldiers permitted the first applicant to move into a less uncomfortable position and handcuffed his hands in front of him. They told him that he would be permitted to exchange last words with his son, who was a “bandit” and would be shot. The two men were allowed to speak briefly in Russian, in the presence of the soldiers, who threatened to shoot them both if they spoke in Chechen. The first applicant remained blindfolded during the meeting and could only hear his son’s voice; he said he had done nothing wrong and said farewell. Then Mr Magomed Dokuyev was taken away. At about 1 a.m. a soldier told the first applicant that he was innocent and would be released. Later his hands were untied, but his feet remained bound.

14. On 15 February 2001 at about 9 a.m. the first applicant, blindfolded, was taken inside an APC and driven somewhere shortly. Then he was transferred into another vehicle, probably a UAZ, in which were two other persons. The applicant was forced under the seat. After approximately one hour’s driving, during which they stopped twice at checkpoints and his captors said that there were “only Russians inside”, the vehicle stopped and the men took the first applicant outside and helped him to climb into a

building through a broken window. They then told him not to move for ten minutes and the car left.

15. When the first applicant removed his blindfold he realised he was in an old brewery building between Shali and Novye Atagi. He climbed out of the building, hitched a lift and returned home the same day. There he found out that he and his son were the only two men detained in the village on that day and that his son had not returned home. The family has had no news from Mr Magomed Dokuyev since that date.

2. The Government's account

16. The Government submitted that the Prosecutor General's Office had established that on 14 February 2001 at approximately 6 a.m. unidentified armed persons wearing camouflage and masks and accompanied by armoured vehicles had taken the first applicant and his son, Mr Magomed Dokuyev, from their house at 4 Podgornaya Street to an unknown destination. On the next day the first applicant had been released. Mr Magomed Dokuyev's whereabouts had not been established.

B. Search for Mr Magomed Dokuyev and the investigation

1. Applications to State authorities

17. According to the applicants, on 16 February 2001 the first applicant and other family members started looking for Mr Magomed Dokuyev. They applied to various official bodies both in person and in writing, trying to find out the whereabouts and the fate of Mr Magomed Dokuyev. The applicants kept copies of some of these complaints and submitted them to the Court. In particular, they applied in writing to the Prosecutor's Office of the Chechen Republic on 5 and 7 July and 24 December 2001, to the military prosecutor of military unit no. 20116 on 7 July 2001, to the Special Envoy of the Russian President in the Chechen Republic for Rights and Freedoms on 7 July and 5 September 2001 and to the Shali District Prosecutor's Office on 13 April 2002.

18. On 16 February 2001 the first applicant travelled to Gudermes and handed over a complaint about his son's detention, addressed to the head of the Chechen Administration, Mr Akhmad Kadyrov. Among other authorities the applicants applied to immediately following Mr Magomed Dokuyev's detention were the departments of the Interior, military commanders, the Federal Security Service (FSB), civil and military prosecutors of various levels and administrative authorities.

19. The applicants received hardly any substantive information about the fate of their close relative and about the investigation. On several occasions they were sent copies of letters by means of which their requests had been

forwarded to the different prosecutors' services. In particular, on 28 May 2001 the Prosecutor's Office of the Chechen Republic forwarded the first applicant's complaint to the Shali District Prosecutor's Office. On 5 August 2001 the first applicant's letter of complaint was forwarded to the military prosecutor of military unit no. 20116. On 23 August 2001 the Prosecutor General's Office forwarded the first applicant's letter concerning his son's detention to the Prosecutor's Office of the Chechen Republic. On 31 August 2001 the Prosecutor's Office of the Chechen Republic forwarded it to the Shali District Prosecutor's Office. On 4 February and 20 May 2002 the Directorate of the Prosecutor General's Office for the Southern Federal Circuit forwarded the first applicant's complaint to the Shali District Prosecutor's Office.

20. In early April 2001 the applicants were contacted by a person who said that a young man had been detained together with Mr Magomed Dokuyev. The first and the second applicants met this young man. He presented himself as Kh., but they did not know his last name. He was able to give them Mr Magomed Dokuyev's handkerchief and a cord from his leather jacket and said that they had been detained together for several weeks, first at the military base in Khankala and then in the vicinity of Novogrozny in the mountains. The man told him that they had been detained in awful conditions in a deep and narrow pit in the ground, regularly beaten and tortured with electric shocks and had been given hardly any food. When they were brought to the district of Novogrozny, they were told that they would be exchanged for a Russian officer captured by the fighters. Then the soldiers told them that they were in too bad a shape for exchange and gave them some medicine, allegedly to restore their strength. After taking the pills or liquid both became very sick, started vomiting and lost consciousness. When the young man regained consciousness, he found Mr Magomed Dokuyev without signs of life. He called the soldiers, and after a while they took his body away. The young man heard an APC going away and returning and heard the soldiers talking about burying Mr Dokuyev. He also heard them talking about finishing the mission and going back to Stavropol. The applicants were convinced of the truth of his statements because he was aware of their names and address, while they did not know him and supposed that these had been given to him by their son.

21. The first applicant identified a military base in Novogrozny which had at some point been manned by servicemen from Stavropol. However, he did not manage to find out anything else about his son's fate or his alleged place of burial.

22. On 22 October 2001 an investigator of the Shali District Prosecutor's Office informed the first and the second applicants that following their complaints criminal investigation file no. 23177 had been opened by that office on 12 August 2001 under Article 126 part 2 of the Criminal Code

(kidnapping). He also stated that they would be informed of the results of the investigation.

23. On 10 December 2001 the first applicant sent the Duma Deputy for the Chechen Republic a detailed letter containing information about his son's arrest, disappearance and alleged death in custody. The letter stated that the area where Mr Magomed Dokuyev had allegedly been buried remained under military control and access there was limited, and requested help to find his remains and take them away for a proper burial. On 15 February 2002 this letter was forwarded to the Prosecutor General's Office and on 14 June 2002 to the Prosecutor's Office of the Chechen Republic.

24. On 31 December 2001 the military prosecutor of military unit no. 20116 forwarded the first applicant's letter to the Shali District Prosecutor's Office and stated that the military prosecutor's office had no competence in the matter, since the involvement of servicemen was only alleged by the applicants, but not supported by any material evidence.

25. On 26 March 2002 the Directorate of the Prosecutor General's Office for the Southern Federal Circuit replied to the first applicant that on 12 August 2001 the Shali District Prosecutor's Office had opened a criminal investigation file under Article 126 part 2 of the Criminal Code. On 12 October 2001 the investigation was suspended due to failure to identify the culprits. The letter concluded by stating that actions aimed at establishing the whereabouts of the missing person and finding the culprits were continuing.

26. On 26 February 2003 the Shali Town Court declared Mr Magomed Dokuyev a missing person.

27. Mr Magomed Dokuyev's arrest and ensuing disappearance were reported by Human Rights Watch in their report 'Last Seen: Continuing Disappearances in Chechnya' in April 2002 and by the Memorial Human Rights Centre in their report 'Counter-Terrorist Operation' in October 2002.

2. Progress of the investigation

28. The Government submitted the following information on the progress of the investigation.

29. On 12 August 2001 the Shali District Prosecutor's Office instituted criminal investigation no. 23177 into the kidnapping of Mr Magomed Dokuyev on 14 February 2001.

30. On 20 August 2001 the first applicant was questioned and granted victim status in the proceedings.

31. On 6 September 2001 the sixth applicant was questioned.

32. On 12 October 2001 the investigation was suspended on the ground of failure to identify persons to be charged with the offence.

33. On 24 April 2002 the Prosecutor's Office of the Chechen Republic quashed the decision to suspend the investigation. The first applicant was notified accordingly.

34. On 24 May 2002 the investigation was again suspended on the ground of the failure to identify persons to be charged with the offence. The first applicant was notified accordingly.

35. On 5 November 2002 the Prosecutor's Office of the Chechen Republic quashed the decision to suspend the investigation.

36. On 17 November 2002 the first applicant was notified of the resumption of the investigation.

37. On 16 December 2002 the investigation was once more suspended on the ground of failure to identify persons to be charged with the offence. The first applicant was notified accordingly.

38. On 20 January 2004 the Prosecutor's Office of the Chechen Republic quashed the decision to suspend the investigation.

39. On 3 February 2004 the first applicant was notified of the resumption of the investigation.

40. On 18 February 2004 the first applicant was again questioned.

41. On 19 February 2004 the sixth applicant was again questioned.

42. On 20 February 2004 the fourth applicant was questioned

43. On 3 March 2004 the investigation was suspended again on the ground of failure to identify persons to be charged with the offence. The first applicant was notified accordingly.

44. On 21 October 2005 the Prosecutor's Office of the Chechen Republic quashed the decision to suspend the investigation. On the same date the first applicant was notified of the resumption of the investigation and questioned. The second applicant was granted victim status in the proceedings and questioned. Also questioned were I. D., Z. Kh. and K. Kh., apparently the applicants' neighbours.

45. On 25 October 2005 the first applicant was again questioned. According to the transcript of the interview, he stated, *inter alia*, that he had not applied to the Court (see paragraph 51 below).

46. On 26 October 2005 the fifth applicant was questioned. According to the transcript of the interview, she confirmed the account given earlier of the events of 14 February 2001 and also stated that she had not applied to the Court (see paragraph 53 below). The first applicant was also questioned on this date.

47. On 21 November 2005 the investigation was again suspended on account of the failure to identify persons to be charged with the offence. The first applicant was notified accordingly on the same date.

48. On 16 January 2006 the Shali District Prosecutor's Office quashed the decision to suspend the investigation.

49. On 22 January 2008 the first applicant was again questioned. He confirmed his earlier statements.

50. The investigation failed to establish the whereabouts of Mr Magomed Dokuyev. The investigating authorities sent requests for information to competent State agencies on 30 August 2001, 17 November 2002, 18 February 2004 and 25 October 2005. However, it was not established that servicemen had been involved in the offence. In particular, following the resumption of the investigation on 16 January 2006 the United Group Alignment (UGA) and the Temporary United Alignment of Agencies and Units of the Ministry of the Interior [*БОГО и П МВД – временная объединенная группировка органов и подразделений МВД*] informed the investigation that they had not conducted any special operations in Novye Atagi on 14 February 2001. Mr Magomed Dokuyev had not been held in either criminal detention or administrative detention facilities. According to information from the Ministry of the Interior and the FSB, they had not detained the first applicant or Mr Magomed Dokuyev. Heads of three remand prisons in Dagestan, Kabardino-Balkaria and the Stavropol Region also submitted that the latter had not been held in those facilities. The investigation was under way.

C. Alleged interference with the right of individual petition

51. The transcript of the first applicant's questioning on 25 October 2005 read, in so far as relevant:

“...Neither [I] personally nor members of my family have applied to the European Court of Human Rights. In 2001 and 2002 I applied to human rights organisations of our Republic, in particular, to the Memorial and the organisation on human rights in the Chechen Republic. ...I would like to clarify that [the third and fifth applicant] did not apply to the European Court either.”

52. The transcript was signed by the first applicant and contained a record made by him to the effect that he had read the transcript and confirmed that it was accurate. According to the first applicant, the transcript was neither read by him nor read out to him by the investigator. However, he signed it because he trusted the investigator who was “a relative of his neighbours”.

53. The transcript of the fifth applicant's questioning on 26 October 2005 read, in so far as relevant:

“I personally did not apply to [any authorities] in respect of my brother's detention... including the European Court of Human Rights. The search for my brother was conducted by my father. I do not know whether he applied to any organisations in this connection.”

54. The transcript was signed by the fifth applicant and contained a record made by her to the effect that she had read the transcript and confirmed that it was accurate.

55. The transcripts of the questioning were submitted by the Government together with their observations following the communication

of the application by the Court. In their observations the Government requested to strike the application out of its list of cases on the ground that it was a “counterfeit”. In their observations in reply the applicants confirmed their counsel’s power of authority to represent them in the proceedings before the Court as well as their wish to pursue the proceedings. In the decision as to admissibility of 29 November 2007 the Court dismissed the Government’s request.

56. On 7 February 2006 the first applicant complained to the Prosecutor General’s Office concerning investigator K., who questioned him in October 2005. He claimed that he had never stated that he had not applied to the Court and that the investigator had forged the transcript of the questioning. He stated, in particular, that he had not even been questioned as to whether he had applied to the Court and therefore could not have replied in the negative. The first applicant maintained that as he had been questioned in the presence of his wife, the second applicant, she could confirm his statement.

57. On 10 March 2006 the first applicant was notified that his complaint had been transmitted to the Prosecutor’s Office of the Chechen Republic.

58. On 12 April 2006 the Prosecutor’s Office of the Chechen Republic replied to the first applicant. The reply read, in so far as relevant:

“On 21 and 26 October 2005 you were questioned as a witness by an investigator of the Shali District Prosecutor’s Office concerning [the abduction of Mr Magomed Dokuyev]. As it follows from the transcripts of the questioning, no questions concerning your application to the European Court of Human Rights were put to you and, likewise, no clarifications were made by you in this respect. It is indicated in [both] transcripts that your statements [as set out in the transcripts] were read out to you by the investigator, after which they were signed by you. The transcripts met the requirements of the Code on Criminal Procedure.”

D. Request for information

59. Despite a specific request by the Court the Government did not submit a copy of the file in criminal case no. 23177, having provided only copies of decisions to suspend and resume the investigation and to grant victim status, and of the transcripts of the interviews with the first and fifth applicants. Relying on the information obtained from the Prosecutor General’s Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

61. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies, since the investigation into the abduction of Mr Magomed Dokuyev had not yet been completed. They also argued that it had been open to the applicants to challenge in court any actions or omissions by the investigating or other law-enforcement authorities during the investigation as well as to apply to the courts to have Mr Magomed Dokuyev declared a missing person; however, they had not availed themselves of any such remedy.

62. The applicants disputed that objection. In their view, the fact that the investigation had been pending for seven years with no tangible results proved that it was an ineffective remedy in this case. They further argued that in the Chechen Republic a court appeal against a decision of an investigator would be futile and the remedy referred to was illusory and ineffective.

B. The Court's assessment

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

64. The Court reiterates that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see

Selmouni v. France [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

65. As regards the Government's argument that the applicants failed to apply to the courts to have Mr Magomed Dokuyev declared a missing person, the Court notes that they provided no information as to how such proceedings could have provided the applicants with the adequate redress. Accordingly, the Court finds that the Government did not substantiate that the remedy the applicants had allegedly failed to make use of was an effective one (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004, and *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003). It therefore dismisses the Government's preliminary objection in this part.

66. The Court further observes that an investigation into the disappearance of Mr Magomed Dokuyev had been pending since 12 August 2001. The applicants and the Government dispute the effectiveness of this investigation.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

68. 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 into the matter. Article 2 reads:

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

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

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

A. Alleged violation of Magomed Dokuyev's right to life

1. Arguments of the parties

69. The applicants maintained their complaint and argued that their relative had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years.

70. The Government referred to the fact that the investigation had obtained no evidence to the effect that this person was dead, or that representatives of the federal forces had been involved in his abduction or alleged killing. In particular, no special operations had been conducted in Novye Atagi on the relevant date.

2. The Court's assessment

(a) General principles

71. 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).

(b) Establishment of the facts

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

73. The applicants maintained that it was beyond reasonable doubt that the men who had intruded into their home and taken away Mr Magomed

Dokuyev had been State agents. The applicants who, except for the second applicant, had been eyewitnesses to the apprehension submitted their account of the events. Furthermore, the first applicant himself had been detained by the same persons but later released and described the circumstances of his detention and release. The applicants 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.

74. The Government submitted that on 14 February 2001 unidentified armed men in camouflage and masks accompanied by APCs had taken Mr Magomed Dokuyev and the first applicant from their home to an unknown destination. The first applicant had been released the next day but the whereabouts of Mr Magomed Dokuyev had not been established. They further pointed out that the investigation into the incident had been pending and that there was no evidence that the armed men had been State agents. Accordingly, there were no grounds for holding the State responsible for the events in question. The Government particularly emphasised that information allegedly provided by Kh. could not be relied upon, since he had not been identified and it was not certain whether he even existed. They further argued that there was no convincing evidence that Mr Magomed Dokuyev was dead, given that his whereabouts had not been established and his body had not been found.

75. The Court notes that despite its repeated requests for a copy of the investigation file concerning the abduction of Mr Magomed Dokuyev, the Government have failed to produce it. They referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-...).

76. In view of the foregoing 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 relative's detention on 14 February 2001. Six applicants were eyewitnesses to the events and the first applicant was himself abducted by those persons but released the next day. The applicants stated that the perpetrators had acted in a manner similar to that of a security operation – they had checked identity documents and used APCs, which could not have been available to paramilitary groups. Furthermore, according to the first applicant, although his captors kept him blindfolded, after he had been taken out the APC he once managed to catch a glimpse of military tents around. He then heard helicopters landing and taking off and his son's voice coming from a nearby tent. In their applications to the authorities the applicants consistently maintained that their relative had been detained by unknown servicemen and requested the investigation to look into that possibility.

77. The Court finds that the fact that a large group of armed men in uniform, equipped with military vehicles and able to move freely through military roadblocks, proceeded to apprehend two persons at their home in a town area strongly supports the applicants' allegation that these were State servicemen. The Court further notes that after seven years the domestic investigation had produced no tangible results.

78. The Court observes 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 Government, it is for the latter 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).

79. Taking into account the above elements, the Court is satisfied that the applicants have made 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 another plausible explanation for the events in question, the Court considers that Mr Magomed Dokuyev was apprehended on 14 February 2001 at his house in Novye Atagi by State servicemen during an unacknowledged security operation.

80. The Court has to decide further whether Mr Magomed Dokuyev may be presumed dead. It considers in this regard that no weight may be attached to Kh.'s alleged testimony, since, as pointed out by the Government, his identity had not been established and the information concerning his statement is confined to hearsay evidence. Nevertheless, other evidence available allows the Court to conclude that Mr Magomed Dokuyev must be presumed dead. In particular, it notes that there has been no reliable news of the applicants' relative since 14 February 2001. His name has not been found in any official records of detention facilities. Lastly, the Government did not submit any explanation as to what had happened to him after his apprehension.

81. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-...), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this

can be regarded as life-threatening. The absence of Mr Magomed Dokuyev or any news of him for over seven years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of Mr Magomed Dokuyev's disappearance and the official investigation into his abduction, dragging on for seven years, has produced no tangible results.

82. Accordingly, the Court finds it established that on 14 February 2001 Mr Magomed Dokuyev was apprehended by State servicemen and that he must be presumed dead following his unacknowledged detention.

(c) The State's compliance with Article 2

83. Article 2, which safeguards the right to life and sets out the circumstances in which 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, §§ 146-147, Series A no. 324, and *Avşar*, cited above, § 391).

84. The Court has already found it established that the applicants' relative 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, or otherwise accounting for his death, it follows that liability for his presumed death is attributable to the respondent Government.

85. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Mr Magomed Dokuyev.

B. The alleged inadequacy of the investigation into the abduction

1. Arguments of the parties

86. The applicants argued that the investigation had not been effective and adequate, as required by the Court's case-law on Article 2. In particular, it had been opened six months after Mr Magomed Dokuyev's disappearance and had been pending for over seven years without any tangible results so far, having been repeatedly suspended and reopened.

87. The Government claimed that the investigation into the disappearance of the applicants' relative met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

2. *The Court's assessment*

88. 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, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such 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).

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

90. Turning to the facts of the case, the Court notes that, according to the applicants, they applied to the authorities asking for assistance in establishing the whereabouts of Mr Magomed Dokuyev two days after his detention, that is on 16 February 2001. The Government did not contest this information. However, the investigation was not opened until 12 August 2001, that is almost six months later. This delay, for which no explanation was provided, was in itself liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action must be taken in first days after the event.

91. The Court observes that on 20 August 2001 the first applicant was granted victim status and questioned. However, it appears that after that a number of crucial steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all. In particular, the Court notes that the fourth applicant was questioned for the first time on 20 February 2004, that is three years after the events. The fifth applicant and the applicants' neighbours were questioned for the first time in October 2005, that is over four years after Mr Magomed Dokuyev's disappearance. Furthermore, it appears that information from the

UGA and the Temporary United Alignment of Agencies and Units of the Ministry of the Interior concerning special operations in Novye Atagi as well as replies from remand prisons in Dagestan, Kabardino-Balkaria and the Stavropol Region were only obtained in 2006. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced.

92. Furthermore, from the materials available to the Court it appears that a number of essential steps were never taken. Most notably, there is no information that the crime scene had ever been inspected. Nor was there an inspection of the place where the first applicant had been dumped by his captors on 15 February 2001. Apparently no meaningful efforts had been made to trace the APCs after they had left Novye Atagi. Finally, it appears that the third and seventh applicant were never questioned.

93. The Court observes that in the present case the investigating authorities 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 measures.

94. The Court also notes that even though the first applicant was granted victim status shortly after the institution of the investigation, he was not informed of any significant developments in the investigation apart from several decisions on its suspension and resumption. Furthermore, the second applicant was granted victim status more than four years later. Accordingly, the Court finds that the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

95. Finally, the Court notes that the investigation was adjourned and resumed several times. Such handling of the investigation could not but have had a negative impact on the prospects of identifying the perpetrators and establishing the fate of Mr Magomed Dokuyev.

96. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for many years having produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection in this part.

97. The Government also mentioned the possibility for the applicants to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed

of the progress of the investigation, could not have effectively challenged actions or omissions of investigating authorities before a court. Furthermore, the investigation has been resumed by the prosecuting authorities themselves a number of times due to the need to take additional investigative measures. However, they still failed to investigate the applicants' allegations properly. Moreover, owing to the time that had elapsed since the events complained of, certain investigative steps that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Therefore, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection in this part also.

98. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Mr Magomed Dokuyev, in breach of Article 2 under its procedural head. Accordingly, there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

99. The applicants further relied on Article 3 of the Convention, submitting that their relative had been ill-treated during his apprehension and most likely tortured during his detention. The first, second and third applicants also claimed that as a result of their family member's disappearance and the State's failure to investigate those events properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

100. The applicants maintained the complaint.

101. The Government disagreed with these allegations and argued that the investigation had not established that Mr Magomed Dokuyev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. The Government accepted that the applicants must have suffered as a result of their relative's disappearance. However, since the involvement of State agents into his abduction had not been established, the State could not be held responsible for their sufferings.

A. The alleged ill-treatment of the applicants' relative

1. General principles

102. In so far as the applicants complained of alleged ill-treatment of Mr Magomed Dokuyev upon and after his apprehension, 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 un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, § 161 *in fine*, Series A no. 25).

103. The Court reiterates that “where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to ‘secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention’, requires by implication that there should be an effective official investigation” (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

2. The alleged ill-treatment

104. In so far as the complaint concerns the ill-treatment Mr Magomed Dokuyev was allegedly subjected to in detention, the Court notes that it has found it established that he was detained on 14 February 2001 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 84 above). However, the exact way in which Mr Magomed Dokuyev died has not been established. The Court notes that the applicants’ allegation of their relative’s having been ill-treated in detention is supported only by the first applicant’s statement that he had heard his son screaming in a nearby tent. However, this statement alone does not allow the Court to establish beyond all reasonable doubt that the applicant’s relative was subjected to treatment contrary to Article 3 of the Convention.

105. In so far as the complaint concerns the ill-treatment Mr Magomed Dokuyev was allegedly subjected to during his apprehension, the Court observes that the applicants, except for the second applicant, witnessed their relative’s apprehension and saw the servicemen kicking him and beating him with rifle butts. It further notes the Government’s submission that the domestic investigation had not established that Mr Magomed Dokuyev had been subjected to inhuman or degrading treatment. The Court observes, however, that despite its repeated requests the Government refused to provide a copy of the investigation file, having failed to adduce sufficient

reasons for the refusal (see paragraph -- above), and finds that it can draw inferences from the Government's conduct in this respect.

106. The Court has found it established that Mr Magomed Dokuyev was apprehended on 14 February 2001 by State agents. It further considers that the applicants have made a *prima facie* showing that he was ill-treated by the servicemen during his apprehension. The burden of proof is thus shifted to the Government to refute this allegation (see paragraph 78 above). The Government's statement that the investigation did not find any evidence to support the involvement of special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof.

107. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, amongst other authorities, the *Tekin v. Turkey* judgment of 9 June 1998, § 52, *Reports* 1998-IV).

108. The evidence submitted shows that early in the morning of 14 February 2001 the servicemen who intruded into the applicants' home forcibly took Mr Magomed Dokuyev into the courtyard where they kicked him and beat with rifle butts. The Court considers that this treatment reached the threshold of "inhuman and degrading" since not only it must have caused Mr Magomed Dokuyev physical pain, but must have made him feel humiliated and caused fear and anguish as to what might happen to him.

109. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession and to plausibly refute the applicants' allegations, the Court finds that there has therefore been a violation of Article 3 of the Convention in respect of Mr Magomed Dokuyev.

3. Effective investigation

110. The Court notes that the applicants have submitted their account of the ill-treatment Mr Magomed Dokuyev had been subjected to during his apprehension to the investigating authorities. However, the domestic investigation produced no tangible results.

111. For the reasons stated above in paragraphs 89-98 in relation to the procedural obligation under Article 2 of the Convention, the Court concludes that the Government has failed to conduct an effective investigation into the ill-treatment of Mr Magomed Dokuyev.

112. Accordingly, there has been a violation of Article 3 also in this respect.

B. The violation of Article 3 in respect of the first, second and third applicants

113. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

114. In the present case the Court notes that the applicants are the parents and wife of the individual who have disappeared. The first and the third applicants were eyewitnesses to his apprehension, during which he was ill-treated. For more than seven years the applicants have not had any news of him. During this period they have applied to various official bodies with enquiries about their family member, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of their family member following his detention. The responses received by the applicants mostly denied that the State was responsible for his arrest or simply informed them that an investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

115. In view of the above, the Court finds that the applicants suffered, and continue to suffer, distress and anguish as a result of the disappearance of 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.

116. The Court therefore concludes that there has been a violation of Article 3 of the Convention also in respect of the first, second and third applicants.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

117. The applicants further stated that Mr Magomed Dokuyev had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

118. The applicants contended that their relative’s detention did not fall into any of the exceptions provided for by Article 5 § 1 of the Convention.

119. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Mr Magomed Dokuyev was detained by State agents.

120. 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).

121. The Court has found it established that Mr Magomed Dokuyev was detained by State servicemen on 14 February 2001 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. 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).

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

123. Consequently, the Court finds that Mr Magomed Dokuyev 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.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

124. The applicants stated that they had been deprived of access to a court, contrary to the provisions of Article 6 of the Convention, the relevant parts of which provide:

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

125. The applicants made no further submissions.

126. The Government disputed this allegation.

127. The Court finds that the applicants' complaint under Article 6 concerns essentially the same issues as those discussed under the procedural aspect of Article 2 and under Article 13. It should also be noted that the applicants submitted no information to prove their alleged intention to apply to a domestic court to claim compensation. In these circumstances, the Court finds that no separate issues arise under Article 6 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

128. The applicants alleged that the disappearance of their relative after his detention by the State authorities caused them distress and anguish which had amounted to a violation of their right to family life. It thus disclosed a violation of Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

129. The applicants made no further submissions.

130. The Government objected that those complaints were unfounded.

131. The Court observes that these complaints concern the same facts as those examined under Articles 2 and 3 and, having regard to its conclusion under these provisions, considers it unnecessary to examine them separately.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

132. The applicants complained that they had been deprived of effective remedies in respect of the alleged violations of Articles 2, 3 and 5, 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.”

133. The applicants contended that they had had recourse to the only potentially effective remedy, the criminal investigation. However, in their case it had proved to be ineffective, and the flaws of the investigation undermined the effectiveness of other remedies that might have existed.

134. The Government contended that the applicants had had effective domestic remedies, as required by Article 13 of the Convention, and that the Russian authorities had not prevented them from using those remedies. The investigation into their relative’s disappearance was still pending. At the same time the applicants had not applied to the domestic courts with either civil claims or complaints concerning actions of the agents of the law-enforcement bodies. The Government referred to the domestic courts’ decisions over claims for pecuniary and non-pecuniary damage caused by offences committed by Russian servicemen in the North Caucasus Region.

135. 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. 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 *Süheyly Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

136. It follows that in circumstances where, as here, the criminal investigation into the violent death and ill-treatment was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

137. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention and with Article 3 of the Convention in respect of Mr Magomed Dokuyev.

138. As regards the violation of Article 3 of the Convention found on account of the first, second and third applicant's mental suffering as a result of the disappearance of their family member, 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.

139. As regards the applicants' reference to Article 5 of the Convention, the Court notes 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 by unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

VIII. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

140. In their observations submitted after the Court had declared the application admissible on 29 November 2007, the applicants complained under Article 34 of the Convention alleging that the State had interfered with their right of individual petition. They referred in this regard to the transcripts of questioning of the first applicant on 25 October 2005 and of the fifth applicant on 26 October 2005 and to the reply of the Prosecutor's Office of the Chechen Republic of 12 April 2006. They claimed that while neither of them had actually stated that they had not applied to the Court,

the transcripts of the questioning had been forged and then submitted by the Government to the Court together with a request for strike out. Article 34 of the Convention reads, in so far as relevant, as follows:

“The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

A. Arguments of the Parties

141. The Government contested the applicants’ submissions. They stated that in the course of the investigation the first and fifth applicants had been questioned with regard to their application before the Court. During the questioning on 25 October 2005 the first applicant had stated that neither he nor other members of his family had applied directly to the Court, but that he had applied to human rights organisations. The fifth applicant, questioned on 26 October 2005, had stated that she had not applied to any organisations in connection with her brother’s abduction. The search for her brother had been conducted by her father. The Government clarified that in the reply of 12 April 2006 the Prosecutor’s Office of the Chechen Republic referred to two transcripts of the first applicant’s questioning on 21 and 26 October 2005, when no questions concerning the application before the Court had been put to him. They averred that all transcripts had been authentic and accurate and reflected the applicants’ statements made during the questioning. The Government argued that there was no interference with the applicants’ right of individual petition under Article 34 of the Convention.

142. The applicants maintained his complaint. The first and fifth applicants insisted that they had never denied having applied to the Court. According to them, the investigator had put in the transcripts the statements they had never made and then had misled them into signing the transcripts. They also pointed out that while the first applicant’s complaint to the Prosecutor’s Office of the Chechen Republic concerned the transcript of his questioning on 25 October 2005, the Prosecutor’s Office failed to address this issue and instead referred to the transcripts of 21 and 26 October 2005. The applicants contended that, in view of the above, the Government had failed to comply with their obligation under Article 34 of the Convention.

B. The Court’s assessment

143. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to

communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see, among other authorities, *Akdivar and Others v. Turkey*, cited above, § 105, and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2288, § 105). In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see *Kurt v. Turkey*, judgment of 25 May 1998, § 159, *Reports* 1998-III).

144. Turning to the facts of the present case, the Court finds that no evidence has been presented to it to prove that the transcripts of the first applicant’s questioning on 25 October 2005 and of the fifth applicant questioning on 26 October 2005 were forged. Both transcripts were signed by the first and fifth applicants respectively and contained a record to the effect that they had read the transcripts, done in their own hand. It is not alleged that their signatures or handwriting were forged. The Court finds the first applicant’s allegation that he signed the transcript without having read it “because he trusted the investigator” and later discovered that it contained statements he had not made not to be sufficiently plausible to cast doubt on the accuracy of the transcript. Accordingly, the Court is satisfied that the transcripts contain accurate records of the first and fifth applicants’ questioning on 25 and 26 October 2005 respectively.

145. The Court has next to decide whether the fact that questions were put to the first and fifth applicants with regard to their application to the Court is compatible with Article 34 of the Convention.

146. The Court reiterates that in *Akdivar and Others* (cited above, §§ 104-105) the Court has found that direct questioning of persons thought to be applicants about an application to the Court which is filmed and in the course of which they are asked to make statements declaring that no such applications had been made constitutes a hindrance of the effective exercise of the right of individual petition. At the same time, in *Imakayeva* (cited above, § 206) the Court found that questioning of the applicant with regard to the application before the Court did not constitute a breach of the State’s obligation under Article 34 since the applicant herself did not refer to any particular threats or other attempts to dissuade her from applying to the Court.

147. In the present case the applicants did not allege that any pressure was put on them in connection with their application before the Court. Indeed, they denied that any questions were put to them in this regard at all. At the same time, from the transcripts of questioning it appears that a question with regard to the fact of applying to the Court was put to the first and fifth applicants.

148. The Court notes that, in so far as the transcripts of questioning are concerned, there is no evidence that any questions concerning the contents

of their application were put to the applicants. According to the transcripts, in the course of the questioning the first applicant stated that he had not applied to the Court directly, but that he had applied to human rights' organisations. The fifth applicant stated that she had not personally applied to any organisations, including the Court, since the search for her brother was carried out by the first applicant. The Court observes that the interpretation of the applicants' replies may be twofold. They might have meant to deny the fact of their application before the Court, possibly because they did not want the authorities to be aware of it at that stage. Their answers may also be interpreted as clarifying that they did not apply to the Court personally, but through a representative. However, the Court does not find it necessary to decide on particular interpretation of the applicants' replies since, in any event, the materials available disclose no evidence that the first and fifth applicants received any threats or were subjected to any other forms of pressure in connection with their application before the Court.

149. The Court observes that in its reply of 12 April 2006 the Prosecutor's Office of the Chechen Republic referred to transcripts of the first applicant's questioning on 21 and 26 October 2005 which indeed contained no mentioning of his application before the Court. The Prosecutor's Office's failure to address the transcript of the first applicant's questioning on 25 October 2005 created certain confusion as to the exact content of the questioning, especially taking into account the Government's request to strike the application out of the Court's list of cases (paragraph 55 above). However, in view of the foregoing the Court considers that, in the circumstances of the present case, this failure on its own does not give rise to issues under Article 34 of the Convention.

150. Accordingly, the Court finds that there has been no failure to comply with the respondent State's obligations under Article 34 of the Convention.

IX. OBSERVANCE OF ARTICLE 38 § 1 (a) OF THE CONVENTION

151. The applicants argued that the Government's failure to submit the documents requested by the Court at the communication stage disclosed a failure to comply with their obligations under Article 38 § 1 (a) of the Convention, which provides, in so far as relevant:

“1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

...”

152. The applicants invited the Court to conclude that the Government's refusal to submit a copy of the entire investigation file in response to the Court's requests was incompatible with their obligations under Article 38 of the Convention.

153. The Government reiterated that the submission of the case file would be contrary to Article 161 of the Code of Criminal Procedure.

154. The Court reiterates that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications.

155. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their possession without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention. In a case where the application raises issues as to the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

156. The Court notes that despite its repeated requests for a copy of the investigation file opened into the disappearance of the applicants' relative, the Government refused to produce such a copy, relying on Article 161 of the Code of Criminal Procedure, having provided only copies of decisions to suspend and resume the investigation and to grant victim status, and of the transcripts of the interviews with the first and fifth applicants. The Court observes that in previous cases it has already found this reference insufficient to justify refusal (see, among other authorities, *Imakayeva*, cited above, § 123).

157. Referring to the importance of a respondent Government's cooperation in Convention proceedings, and mindful of the difficulties associated with the establishment of facts in cases of such a nature, the Court finds that the Government fell short of their obligations under

Article 38 § 1 of the Convention because of their failure to submit copies of the documents requested in respect of the disappearance of Mr Magomed Dokuyev.

X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

158. 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

159. The third applicant claimed that she had sustained damage in respect of the loss of financial support from her husband following his apprehension and subsequent disappearance. The applicant claimed a total of 621,419.25 roubles (RUB) under this head (approximately 17,160 euros (EUR)) in respect of herself and her son.

160. She referred to provisions of the Civil Code on calculation of lost earnings to the effect that earnings of an unemployed person should be equalled to the usual amount of remuneration of a person with similar qualifications and could not be based on an amount smaller than the subsistence level determined by federal laws. She submitted that she and her son would have benefited from her husband’s financial support in the amount indicated above, that is 50% of his earnings (30% for the applicant herself and 20% for her son). Her calculations were based on 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 (“Ogden tables”).

161. The Government argued that no compensation for pecuniary damage should be awarded to the third applicant since it was not established that her husband was dead. Furthermore, she should have applied to domestic courts with a claim for compensation of damage caused by the death of the breadwinner.

162. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

163. The Court finds that there is a direct causal link between the violation of Article 2 in respect of the third applicant’s husband and the loss

by her of the financial support which he could have provided. The Court further finds that the loss of earnings also applies to the dependent children and that it is reasonable to assume that Mr Magomed Dokuyev would eventually have had some earnings from which the third applicant and her son would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to the third applicant's submissions and the fact that Magomed Dokuyev was not employed at the time of his apprehension, the Court awards EUR 5,000 to the third applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

164. The applicants claimed the following amounts 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. The first and second applicant claimed EUR 30,000 each, the third applicant claimed EUR 40,000, the fourth and fifth applicant claimed EUR 7,500 each and the sixth and seventh applicant claimed EUR 2,500 each.

165. The Government found the amounts claimed exaggerated.

166. The Court has found a violation of Articles 2, 3, 5 and 13 of the Convention on account of the unacknowledged detention, ill-treatment and disappearance of the applicants' relative. The first, second and third applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. Taking into consideration the first, second, third, fourth and fifth applicants' close family ties with Mr Magomed Dokuyev, the Court accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to those applicants jointly EUR 35,000, plus any tax that may be chargeable thereon.

167. In view of the above claims for non-pecuniary damage brought by Mr Magomed Dokuyev's close relatives, the Court dismisses the claims brought by the sixth and seventh applicants, his uncle and cousin, and makes no award under this head.

C. Costs and expenses

168. 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. The aggregate claim in respect of costs and

expenses related to the applicants' legal representation amounted to EUR 9,758.25.

169. 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 objected, however, to the applicants' representatives' claim in the part related to the work of lawyers other than those whose names had been specified in the power of attorney.

170. 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).

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

172. 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 the case involved little documentary evidence, in view of the Government's refusal to submit the case file. The Court thus doubts that research was necessary to the extent claimed by the applicants' representatives.

173. 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 their claim formed part of the SRJI staff. Accordingly, the objection must be dismissed.

174. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them the amount of EUR 8,000, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of Mr Magomed Dokuyev;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Mr Magomed Dokuyev had disappeared;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of Mr Magomed Dokuyev;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the ill-treatment of Mr Magomed Dokuyev;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first, second and third applicants on account of their mental suffering;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Magomed Dokuyev;
8. *Holds* that no separate issues arise under Article 6 of the Convention;
9. *Holds* that it is not necessary to examine the applicants' complaint under Article 8 of the Convention;
10. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention and in conjunction with Article 3 of the Convention in respect of Mr Magomed Dokuyev;
11. *Holds* that no separate issues arise under Article 13 of the Convention as regards the alleged violation of Article 5 and as regards the alleged violation of Article 3 of the Convention in respect of the applicants;
12. *Holds* that there has been no failure to comply with the State's obligation under Article 34 of the Convention in respect of the first and fifth applicants;

13. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
14. *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 5,000 (five thousand euros), 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 pecuniary damage to the third applicant;
 - (ii) EUR 35,000 (thirty-five thousand euros), 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 to the first, second, third, fourth and fifth applicants jointly;
 - (iii) EUR 7,150 (seven thousand one hundred and fifty euros), plus any tax that may be chargeable, 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;
15. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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

Søren Nielsen
Registrar

Christos Rozakis
President