



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

FIRST SECTION

CASE OF SAYDALIYEVA AND OTHERS v. RUSSIA

(Application no. 41498/04)

JUDGMENT

This version was rectified on 4 May 2009
under Rule 81 of the Rules of the Court

STRASBOURG

2 April 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Saydaliyeva 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. 41498/04) 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 three Russian nationals, namely Ms Erist Adamovna Saydaliyeva, Ms Nakhapu Yakubovna Dautkhadzhiyeva and Ms Khavra Khasaynovna¹ Saydaliyeva, (“the applicants”), on 2 November 2004.

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

3. On 13 June 2007 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application, as well as to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

¹ Rectified on 4 May 2009: the text was “Ms Khavra Khasanovna Saydaliyeva, ...”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1954, 1974 and 1979 respectively. They live in the village of Serzhen-Yurt, the Shali District, in the Chechen Republic.

6. The first applicant is the mother of the third applicant, Ms Luisa Saydaliyeva and of Mr Vakha Khasanovich Saydaliyev, born in 1976. At the material time Vakha Saydaliyev lived with the second applicant and had three children with her. Vakha Saydaliyev was disabled: he had had a leg amputated as a result of a trauma.

A. Disappearance of Vakha Saydaliyev

1. The applicants' account

(a) Abduction of Vakha Saydaliyev

7. On 16 April 2002 the Saydaliyevs gathered their relatives and acquaintances in their house at 50 Sheripov Street, the village of Serzhen-Yurt, for the funeral of a family member. At some point Vakha Saydaliyev absented himself from home for a while and went to visit his neighbours.

8. At about 1 p.m. two armoured personnel carriers ("APCs") and three Ural vehicles arrived at the Sandaliyevs' house; around fifty or sixty armed men who wore camouflage uniforms and spoke Russian without an accent got out of them. The applicants believed the men to be Russian military servicemen.

9. The servicemen proceeded to the courtyard and blocked the gates to it. Some of them entered the house and searched it without producing any warrant. They examined the dead body prepared for the funeral and explained that they had been instructed to check everything.

10. The servicemen shouted at the applicants and asked them where "their one-legged man" was. Then they lined all the men present against a wall and checked their identity papers.

11. In the meantime Vakha Saydaliyev returned home and entered the courtyard. The servicemen told him that they would take him to the military commander's office for questioning but did not produce any documents. Vakha Saydaliyev did not offer any resistance and got into the Ural vehicle.

12. The applicants and Luisa Saydaliyeva begged the servicemen not to take Vakha Saydaliyev away. In reply, the servicemen shouted at the

women; one of them hit Luisa Saydaliyeva with a machine gun butt. Then the vehicles drove away.

(b) Information obtained by the applicants from third persons

13. On 16 April 2002 armed men, allegedly Russian servicemen, detained the Saydaliyevs' neighbour, Mr Kh. On 17 or 18 April 2002 he was released and returned home. Mr Kh. told the applicants that he had seen Vakha Saydaliyev in the premises of the military commander's office in the village of Avtury, the Shali District, in the Chechen Republic. However, he refused to provide more information on his arrest and detention or to make an official statement. Later he left the village of Serzhen-Yurt.

14. In spring 2004 two unknown men visited Vakha Saydaliyev's relatives and told them that for a year they had been kept in a detention facility in Stavropol and had shared a cell with Vakha Saydaliyev. They had no further information on his fate.

2. Information submitted by the Government

15. At about 2 p.m. on 16 April 2002 unidentified persons in camouflage uniforms armed with machine guns kidnapped Vakha Saydaliyev from the house at 50 Sharipov Street, the village of Serzhen-Yurt.

B. The search for Vakha Saydaliyev and the investigation

1. The applicants' account

16. Immediately after Vakha Saydaliyev's abduction the first and second applicants asked the head of the local administration to help find their relative, but in vain.

17. Starting from 16 April 2002 the first and second applicants tried to establish Vakha Saydaliyev's whereabouts. They applied to various official bodies, such as prosecutors' offices at different levels, the Russian President, the Speaker of the Russian State Duma, the Administration of the Chechen Republic, the head of the Federal Security Service ("the FSB") and the military commander's office of the Shali District of the Chechen Republic requesting to help them to find their relative. The applicants were assisted in their efforts by the SRJI.

18. On 18 May 2002 the military prosecutor's office of military unit no. 20116 ("the unit prosecutor's office") forwarded the first applicant's complaint about her son's abduction to the prosecutor's office of the Chechen Republic and noted that there was no "objective proof of guilt of the United Group Alignment military servicemen" in the crime.

19. On 14 June 2002 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint about her son's arrest by

“unidentified persons” to the prosecutor’s office of the Shali District (“the district prosecutor’s office”).

20. On 6 August 2002 the district prosecutor’s office instituted an investigation into the disappearance of Vakha Saydaliyev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was given the number 59186.

21. On 23 September 2002 the district prosecutor’s office granted the first applicant victim status and notified her accordingly.

22. On 8 October 2002 the district prosecutor’s office suspended the investigation in case no. 59186 for failure to identify the perpetrators and informed the first applicant accordingly.

23. On 26 December 2002 the district prosecutor’s office informed the Administration of the Chechen Republic and the first applicant that the investigation into Vakha Saydaliyev’s kidnapping was pending and investigative measures were being taken to solve the crime.

24. On 13 February 2003 the South Federal Circuit Department of the Prosecutor General’s Office forwarded the first applicant’s complaint to the prosecutor’s office of the Chechen Republic.

25. On 11 April 2003 the district prosecutor’s office issued a certificate confirming that the investigation in case no. 59186 instituted in relation to Vakha Saydaliyev’s kidnapping was pending before them and that investigative measures were being taken to establish his whereabouts.

26. On 16 April 2003 the prosecutor’s office of the Chechen Republic forwarded the first applicant’s complaint that her son had been apprehended by “people in military uniforms who had introduced themselves as servicemen of the FSB” to the district prosecutor’s office and to the Department of the FSB for the Chechen Republic (“the FSB Department”). They requested that they be informed whether Vakha Saydaliyev had been apprehended by any law-enforcement agency and, if so, whether criminal proceedings against him had been initiated.

27. On 24 April 2003 the Department of the Interior of Shali District (“the ROVD”) issued the first applicant with a certificate confirming that her son had “actually been taken away to an unknown destination on 16 April 2002 by military servicemen during the special operation [carried out] in the village of Serzhen-Yurt”.

28. On 6 June 2003 the district prosecutor’s office informed the prosecutor’s office of the Chechen Republic and the first applicant that, despite the suspension of the investigation in case no. 59186, investigative measures were being taken to find Vakha Saydaliyev and the perpetrators.

29. On 19 June 2003 the Shali District Court of the Chechen Republic declared Vakha Saydaliyev missing at the second applicant’s request.

30. On 28 October 2003 the first applicant requested the district prosecutor’s office to inform her of progress in the investigation and to grant her victim status.

31. On 5 December 2003 the district prosecutor's office informed the first applicant that the investigation in case no. 59186 had been suspended, that she had been admitted to the proceedings as a victim and that investigative measures were being taken to establish Vakha Saydaliyev's whereabouts and to find the perpetrators.

32. On 29 January 2004 the ROVD informed the first applicant that the investigation into her son's kidnapping had been initiated on 6 August 2002 and that the search for him was under way.

33. On 6 April 2004 the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office") informed the first applicant that the unit prosecutor's office had carried out an inquiry into her son's kidnapping, which had established no evidence of the implication of military personnel in the crime, and advised her to send further queries to the district prosecutor's office.

34. On 6 May 2004 the first applicant complained about her son's disappearance to the UGA prosecutor's office. On 8 June 2004 the UGA prosecutor's office replied that the investigation in case no. 59186 was pending before the district prosecutor's office.

35. On 1 July 2004 the district prosecutor's office informed the first applicant that the investigation into Vakha Saydaliyev's kidnapping had been resumed.

36. On 1 August 2004 the district prosecutor's office informed the first applicant that the investigation had again been suspended but noted that investigative measures were being taken to find Vakha Saydaliyev.

37. On 2 August 2004 the district prosecutor's office issued the first applicant with a certificate confirming that the investigation into Vakha Saydaliyev's kidnapping was pending and that his whereabouts were unknown.

38. On 21 August 2004 the UGA prosecutor's office forwarded the first applicant's letter to the unit prosecutor's office and ordered an inquiry into the matters complained of.

39. On 25 December 2004 the UGA prosecutor's office informed the first applicant that an inquiry into her son's disappearance had established that servicemen of the law-enforcement agencies under their jurisdiction had not been implicated in the crime.

40. On 17 February 2005 the first applicant complained about her son's disappearance to the military commander's office of the Shali District ("the military commander's office"). On the same date the military commander's office replied that they had requested information on Vakha Saydaliyev's whereabouts from various official bodies.

41. On 10 March 2005 the unit prosecutor's office informed the first applicant that on 16 April 2002 the military personnel had not carried any special operations in the village of Serzhen-Yurt and had not apprehended any of its inhabitants.

42. On 12 March 2005 the military commander's office informed the first applicant that an operational and search case under the number 71026 had been initiated in respect of Vakha Saydaliyev's disappearance and was pending before the ROVD.

43. On 19 May 2005 the SRJI requested from the district prosecutor's office information on progress in the investigation in case no. 59186. On 6 June 2005 the district prosecutor's office replied that the case was pending before them and advised the SRJI to send further queries to the prosecutor's office of the Chechen Republic.

44. On 7 June 2005 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office and ordered that the investigation in case no. 59186 be pursued actively.

45. On 23 September 2005 the SRJI complained to the prosecutor's office of the Chechen Republic that they had been denied access to the investigation file in case no. 59186. They also requested to resume the investigation if it had been suspended.

46. On 11 October 2005 the prosecutor's office of the Chechen Republic informed the SRJI that, although Vakha Saydaliyev's kidnappers had not yet been identified, investigative measures were being taken to solve the crime. They also noted that the first applicant could receive copies of decisions on institution and suspension of the proceedings from the district prosecutor's office.

47. On 19 September 2007 the Shali Inter-District Department of the Investigative Committee of the Russian Prosecutor's Office informed the second applicant that the investigation in case no. 59186 had been resumed on 20 August 2007 and that investigative measures were being taken to solve the crime.

48. On 1 October 2007 the Ministry of the Interior of the Chechen Republic informed the first applicant that the investigation into her son's kidnapping was pending before the district prosecutor's office and that the ROVD were taking all requisite measures to find Vakha Saydaliyev and the perpetrators.

2. Information submitted by the Government

49. On 6 August 2002 the district prosecutor's office at the first applicant's request instituted an investigation of Vakha Saydaliyev's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned the number 59186.

50. On an unspecified date the applicants' house was inspected. The inspection of the crime scene gave no results. No items were found or seized.

51. On 23 September 2002 the first applicant was granted victim status and questioned. She stated that at about 12 noon on 16 April 2004 Vakha Saydaliyev had been in the courtyard of his home. An Ural vehicle carrying

around twenty men wearing camouflage uniforms and masks and armed with machine guns had driven inside the courtyard. The armed men had said that Vakha Saydaliyev had been filmed on video at the moment of kidnapping by a military commander of the Vedeno District. Then they had taken her son away. The first applicant alleged that Vakha Saydaliyev could have been kept at the Khankala military base. Her son had not been involved in illegal armed groups.

52. On 6 October 2002 the investigation in case no. 59186 was suspended for failure to identify those responsible and the first applicant was informed accordingly.

53. On 3 April 2003 Mr Ch., a head of the local administration of the village of Serzhen-Yurt, issued the applicants with a certificate confirming that Vakha Saydaliyev “had been detained and taken away by men wearing camouflage uniforms and masks”.

54. On 25 June 2004 the investigation was resumed.

55. On 16 July 2004 three persons, apparently villagers of Serzhen-Yurt, were questioned as witnesses. They made statements identical to the first applicant’s deposition of 23 September 2002.

56. On 1 August 2004 the investigation was again suspended.

57. On 1 August 2007 the investigation was resumed owing to the need to take additional investigative steps.

58. The investigators requested information concerning special operations carried out on the date of the kidnapping from the military commander’s office of the Shali District, the ROVD and the FSB Department. According to the replies received, no special operations had been carried out in the village of Serzhen-Yurt on that day and Vakha Saydaliyev had not been arrested or placed in a temporary detention facility.

59. The investigators also sent requests to all prosecutors’ offices and departments of the interior in the Chechen Republic, which brought no results. Vakha Saydaliyev’s body was not found among unidentified corpses.

60. On unspecified dates after the resumption of the investigation on 1 August 2007 Mr Kh., the applicants’ neighbour, Mr S., the ROVD officer, and Mr Ch., the former head of the local administration, were questioned.

61. Mr Kh. stated that on 17 April 2002 he had been abducted by unknown persons and taken to a building on the outskirts of the village of Avtury. There he had been asked whether there had been any insurgents in the village of Serzhen-Yurt. A day later he had been released. He had not seen Vakha Saydaliyev in that building.

62. Mr Ch. and Mr S. stated that they had issued the certificates dated 3 and 24 April 2003 respectively at the first applicant’s request and the contents of those certificates had been based on the applicants’ account of the events given to the investigators.

63. It follows from the Government's additional observations of 21 January 2008 that at some point Leyla [Luisa] Saydaliyeva was questioned. She stated that on 16 April 2002 one of the armed men had hit her hands twice with a machine gun butt while she had been trying to prevent him from moving. She had not sought medical assistance because no significant injuries had been inflicted on her.

64. The investigation, which so far failed to identify the perpetrators, was ongoing. The implication of any law-enforcement agencies in the crime had not been established. The two men who had allegedly been detained with Vakha Saydaliyev in Stavropol were not identified. The applicants had been duly informed of all decisions taken during the investigation.

65. Despite specific requests by the Court the Government did not disclose most of the contents of criminal case no. 59186, providing only copies of the record of the first applicant's interview of 23 September 2002 and of several notifications to the first applicant. 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 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

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

THE LAW

I. THE GOVERNMENT'S OBJECTION AS TO ABUSE OF THE RIGHT OF PETITION

67. The Government submitted that the application had not been lodged in order to restore the allegedly violated rights of the applicants. The actual object and purpose of the application was clearly political as the applicants wanted to "get an opportunity to bring an action against the Russian Federation, whose policy on the territory of the Chechen Republic allegedly contravenes the Convention". They concluded that there had been an abuse of the right of petition on the part of the applicants and that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

68. The Court observes that the complaints the applicants brought to its attention concerned their genuine grievances. Nothing in the case file

reveals any appearance of abuse of their right of individual petition. Accordingly, the Government's objection must be dismissed.

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

A. The parties' submissions

69. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Vakha Saydaliyev had not yet been completed. They further argued that it had been open to the applicants to challenge either in court or before higher prosecutors any actions or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of those remedies. They also argued that it had been open to the applicants to lodge civil claims for damages caused by the investigators' actions but they had failed to do so.

70. The applicants contested that objection. They stated that the criminal investigation pending for more than five years had proved to be ineffective. With reference to the Court's practice, they argued that they had not been obliged to bring civil claims before courts in order to exhaust domestic remedies.

B. The Court's assessment

71. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and further that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

72. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the

remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

73. The Court notes that the Russian legal system provides in principle two avenues of recourse for victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

74. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

75. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law-enforcement agencies shortly after the kidnapping of Vakha Saydaliyev and that an investigation has been pending since 6 August 2002. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

76. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

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

A. The parties' arguments

77. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Vakha Saydaliyev were State agents. In support of their complaint they referred to the following facts. The armed men who had abducted Vakha Saydaliyev had Slavic features and spoke Russian without an accent, which proved that they were not of Chechen

origin. They had travelled in military vehicles and arrived at the house, in which a considerable number of persons were gathered for a funeral. Several witnesses had stated that Vakha Saydaliyev had been taken away by masked men in military uniforms travelling in two APCs and a Ural vehicle and had been put into the Ural vehicle. The certificate issued by the ROVD on 24 April 2003 had confirmed that the armed men who had abducted Vakha Saydaliyev had been military servicemen carrying out a special operation.

78. The Government submitted that unidentified armed men had kidnapped Vakha Saydaliyev. They further contended that the investigation of the incident was pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relative was dead.

79. The Government emphasised that the ROVD officer who had issued a certificate of 24 April 2003 had been dismissed from office. Neither the ROVD officer nor the head of the local administration had had the right to issue certificates concerning the ongoing investigation.

80. The first applicant's depositions to the Court had been more detailed than those made before the domestic investigation, which had precluded the investigators from establishing all the circumstances of the case. Furthermore, other witnesses' depositions had been incoherent as the numbers of armed men and military vehicles allegedly seen on the night of the crime had varied.

81. The Government asserted that the crime could have been attributable to illegal armed groups. They pointed out that groups of Ukrainian, Belorussian and ethnic Russian mercenaries had committed crimes in the territory of the Chechen Republic and emphasised that the fact that the perpetrators had Slavic features and spoke Russian did not prove that they were attached to the Russian military. They also observed that a considerable number of armaments and APCs had been stolen from Russian arsenals by insurgents in the 1990s and that members of illegal armed groups could have possessed camouflage uniforms.

B. The Court's evaluation of the facts

1. General principles

82. In cases in which there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information able to corroborate or refute the applicants' allegations, any lack of cooperation

by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-...).

83. The Court points out that a number of principles have been developed in its case-law when it is faced with the task of establishing facts on which the parties disagree. As to the facts that are in dispute, the Court reiterates its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others*, cited above, § 160).

84. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

85. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, 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 *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A; *Ribitsch*, cited above, § 34, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

86. These principles also apply to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation of what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Taniş*, cited above, § 160).

87. Finally, when there have been criminal proceedings in the domestic courts concerning those same allegations, it must be borne in mind that criminal law liability is distinct from international law responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions, which

are to be interpreted and applied on the basis of the objectives of the Convention and in the light of the relevant principles of international law. The responsibility of a State under the Convention for the acts of its organs, agents and servants is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Avşar*, cited above, § 284).

2. *Establishment of the facts*

88. The Court notes that despite its requests for a copy of the investigation file into the abduction of Vakha Saydaliyev, the Government produced only a few documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

89. In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relative can be presumed dead and whether his death can be attributed to the authorities.

90. The applicants alleged that the persons who had taken Vakha Saydaliyev away on 16 April 2002 were State agents.

91. The Government suggested in their submission that the persons who had detained Vakha Saydaliyev could be members of paramilitary groups. However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

92. The Court takes note of the Government's allegation that the military vehicles, firearms and camouflage uniforms had probably been stolen by insurgents from Russian arsenals in the 1990s. Nevertheless, it considers it very unlikely that several military vehicles, such as APCs and Ural vehicles, unlawfully possessed by members of illegal armed groups could have moved freely through Russian military checkpoints without being noticed.

93. The Court observes that the first applicant informed the investigators that she had seen Vakha Saydaliyev being placed by armed men inside an Ural vehicle (see paragraph 51 above). Several witnesses confirmed her account of events (see paragraph 55 above).

94. Furthermore, the ROVD officer confirmed in writing that the applicants' relative had been taken away by the Russian military (see paragraph 27 above). The Court is not persuaded that the applicants in any manner forced Mr S. to do so. It takes note of the Government's explanation that Mr S. was not entitled to issue the certificate of 24 April 2003 (see paragraph 79 above). Nonetheless, it considers this document valid evidence in support of the applicants' allegations.

95. The Court also notes that the applicants' neighbour informed the investigators that he had been abducted by armed men on the following day after Vakha Saydaliyev's kidnapping and asked questions about insurgents, which could support the hypothesis that a special security operation had been carried out in the village of Serzhen-Yurt (see paragraph 61 above).

96. The domestic investigation accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies were involved in the kidnapping (see paragraphs 26, 39 - 40 and 58 above).

97. The Court finds therefore that the fact that a large group of armed men in uniform travelling in the APCs and the Ural vehicle in broad daylight was able to circulate throughout the village and to arrive at the house in which a considerable number of villagers were gathered strongly supports the applicants' allegation that these were State servicemen conducting a security operation.

98. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

99. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was abducted by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Vakha Saydaliyev was abducted on 16 April 2002 by State servicemen during an unacknowledged security operation.

100. There has been no reliable news of Vakha Saydaliyev since the date of the kidnapping. His name has not been found in any official detention

facilities' records. Finally, the Government did not submit any explanation as to what had happened to him after his abduction.

101. Having regard to the previous cases concerning disappearances of persons in the Chechen Republic which have come before the Court (see, among others, *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court 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 Vakha Saydaliyev or of any news of him for almost seven years supports this assumption.

102. Accordingly, the Court finds that the evidence available permits it to establish that Vakha Saydaliyev must be presumed dead following his unacknowledged detention by State servicemen.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

A. The parties’ submissions

104. The Government contended that the domestic investigation had obtained no evidence to the effect that Vakha Saydaliyev was dead or that any servicemen of the federal law-enforcement agencies had been involved in his kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants’ relative met the

Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators. The investigation was pending before an independent body, that is, a prosecutor's office. Active measures were being taken to ensure that several witnesses be questioned, such as Mr Kh., the applicant's neighbour allegedly abducted on 16 April 2002 and the two men who had claimed to have seen Vakha Saydaliyev in Stavropol. The Government explained delays in carrying out certain investigative measures by the fact that since 2002 the Shali District had been a scene of action for various criminal, including terrorist, groups.

105. The applicants argued that Vakha Saydaliyev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for almost seven years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court's case-law on Article 2. In particular, they pointed out that the investigation had been commenced belatedly and that a number of eyewitnesses to the abduction, including the third applicant, had not been questioned as witnesses at all. There had been lengthy periods of inactivity on the part of the investigators. The applicants invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

106. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 76 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Vakha Saydaliyev

107. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other

authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar*, cited above, § 391).

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

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

109. 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, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 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, §§ 105-09, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

110. In the present case, the kidnapping of Vakha Saydaliyev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

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

112. The Court notes that the State authorities were immediately made aware of the crime by the applicants' submissions. However, the investigation in case no. 59186 was instituted on 6 August 2002, that is three months and twenty days after Vakha Saydaliyev's abduction. The Court is not persuaded that the Government's reference to illegal armed groups' activities in the Shali District could suffice as an explanation of

such a lengthy delay, which, in its view, was in itself liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

113. The Court observes that a number of essential investigative steps were delayed considerably. For instance, the first applicant, who had witnessed her son's abduction, was questioned for the first time only on 23 September 2002 (see paragraph 51 above), which is almost two months after the commencement of the investigation. Moreover, Mr Ch. and Mr S. were questioned for the first time only after August 2007, following the communication of the present application to the Government (see paragraph 60 above). Although it is not clear from the Government's submissions when the investigators questioned Luisa Saydaliyeva, an eyewitness to the abduction, the fact that this interview was mentioned for the first time only in January 2008 gives grounds to assume that they did not do it promptly (see paragraph 63 above). It is obvious that the witnesses' statements, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

114. The Court further notes that a number of essential steps were never taken. Most notably, it does not appear that the investigators tried to identify and question the villagers who had gathered in the applicants' house for the funeral on 16 April 2002. Neither did they try to verify whether any APCs or Ural vehicles had been used by any military or law-enforcement agencies in the vicinity of Serzhen-Yurt on 16 April 2002.

115. The Court also notes that even though the first applicant was eventually granted victim status in case no. 59186, she was only notified of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings (see *Oyur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

116. Lastly, the Court notes that the investigation in case no. 59186 was suspended and resumed twice. Moreover, the periods of inactivity of the investigators when no proceedings were pending were particularly lengthy: one year, eight months and twenty days between 6 October 2002 and 25 June 2004 and three years between 1 August 2004 and 1 August 2007.

117. The Court will now examine the limb of the Government's objection that was joined to the merits of the complaint (see paragraph 76 above). Inasmuch as it concerns the fact that the domestic investigation is

still pending, the Court notes that the authorities' failure to take necessary and urgent investigative measures undermined the effectiveness of the investigation in its early stages. Furthermore, the Government mentioned that the applicants had the opportunity to apply for judicial or administrative review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes in this respect 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 or a higher prosecutor. Furthermore, the investigation has been resumed by the prosecuting authorities themselves owing to the need to take additional investigative steps. However, they still failed to investigate the applicants' allegations properly. Besides, after a lapse of time some investigative measures that ought to have been carried out promptly could no longer usefully be conducted. Therefore, it is highly doubtful that the remedies relied on would have had any prospects of success. Accordingly, the Court finds that the criminal law remedies relied on by the Government were ineffective in the circumstances of the case and rejects their objection as regards the applicants' failure to exhaust these domestic remedies.

118. 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 Vakha Saydaliyev, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

119. The applicants complained that as a result of their relative's disappearance and the State's failure to investigate it properly they had endured mental and emotional suffering in breach of Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

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

121. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

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

2. Merits

123. 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).

124. In the present case the Court notes that the missing person was a son of the first applicant, the life companion of the second applicant and a brother of the third applicant. It appears that it was only the first and second applicants who made various applications and enquiries to the domestic authorities in connection with Vakha Saydaliyev’s disappearance. No evidence has been submitted to the Court that the third applicant was in any manner involved in the search for Vakha Saydaliyev (see, by contrast, *Luluyev and Others*, cited above, § 112). In such circumstances, the Court, while accepting that the events of 16 April 2002 might have been a source of considerable distress to the third applicant, is nevertheless unable to conclude that her mental and emotional suffering was distinct from the inevitable emotional distress in a situation such as in the present case and that it was so serious that it fell within the ambit of Article 3 of the Convention.

125. As regards the first and second applicants, the Court notes that for almost seven years they have had no news of Vakha Saydaliyev. Throughout this period the two women have persistently applied to various

official bodies with enquiries about their son and life companion, both in writing and in person. Despite their attempts, the first and second applicants have never received any plausible explanation or information as to what became of Vakha Saydaliyev following his kidnapping. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

126. In view of the above, the Court finds that the first and second applicants suffered distress and anguish as a result of the disappearance of their son and life companion 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.

127. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the first and second applicants and no violation of Article 3 of the Convention in respect of the third applicant.

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

128. The applicants further stated that Vakha Saydaliyev was detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

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

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

...

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

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

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

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

A. The parties' submissions

129. In the Government's opinion, no evidence was obtained by the investigators to confirm that Vakha Saydaliyev was had been deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention.

130. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

132. 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).

133. The Court has found it established that Vakha Saydaliyev was detained by State servicemen on 16 April 2002 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. 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).

134. 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 was detained and taken away in life-threatening circumstances.

135. In view of the foregoing, the Court finds that Vakha Saydaliyev 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.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

136. The applicants complained that they had been deprived of effective remedies in respect of the above complaints under Articles 2 and 3, 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

137. The Government contended that the applicants had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had an opportunity to challenge the actions or omissions of the investigating authorities in court or before higher prosecutors and to claim civil damages.

138. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

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

2. Merits

140. 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, § 64, *Reports* 1997-III).

141. As regards the complaint of lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, 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*, cited above, § 183).

142. 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, § 52, Series A no. 131). 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.

143. 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.

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

145. As regards the applicants' reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on account of the first and second applicants' mental and emotional suffering as a result of the disappearance of their son and husband, their inability to find out what had happened to him and the way the authorities had handled their complaints. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the first and second 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.

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

146. In their initial application form the applicants stated that they had been discriminated against on the grounds of their ethnic origin in breach of Article 14 of the Convention, which provides, in so far as relevant:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... national ... origin ...”

147. In the observations on admissibility and merits of 6 December 2007 the applicants stated that they no longer wished their complaints under Article 14 of the Convention to be examined.

148. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character, affecting respect for human rights, as defined in the Convention, which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000, and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

150. 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

151. The first and second applicants claimed damages in respect of the lost wages of their son and life companion. Vakha Saydaliyev had been entitled to a monthly disability pension. The first and second applicants considered that he would have supported his life companion financially until their three daughters reached the age of majority. The first and second applicants pointed out that Vakha Saydaliyev’s children had been living with the first applicant and claimed a total of 150,915 Russian roubles (RUB) (approximately 4,300 euros (EUR)).

152. The Government regarded these claims as unfounded. They pointed out that the second applicant and her daughters received a pension for the loss of a breadwinner from the domestic authorities; the amount of that pension was not specified.

153. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of Vakha Saydaliyev and the loss by the first and second applicants of the financial support which he could have provided. The Court has no detailed information concerning the pension for the loss of a breadwinner allegedly received by the second applicant and her daughters and thus is not in a position to establish to what extent that pension could serve as a compensation of pecuniary damage sustained by the second applicant. Having regard to the applicants' submissions, the Court awards EUR 4,300 to the first and second applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

154. The applicants claimed non-pecuniary damages for the suffering they had endured as a result of the loss of their family member and the indifference shown by the authorities towards them. The first and second applicants claimed EUR 40,000 each and the third applicant claimed EUR 8,000 under this head.

155. The Government found the amounts claimed exaggerated.

156. 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 first and second applicants have been found victims of a violation of Article 3 of the Convention. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award to the first applicant EUR 15,000, to the second applicant EUR 20,000 and to the third applicant EUR 1,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

157. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and legal drafting at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. They also claimed translation fees and courier mail fees confirmed by relevant invoices and administrative expenses unsupported by any evidence. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,126.37.

158. The Government alleged that the applicants should not be entitled to any compensation of costs and expenses as the SRJI lawyers had not signed the powers of attorney.

159. The Court does not share the Government's view that the applicants are precluded from claiming legal and other fees incurred in the course of the Strasbourg proceedings owing to their representatives' failure to sign the powers of attorney.

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

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

162. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that, due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. Moreover, the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that research and legal drafting was necessarily time-consuming to the extent claimed by the representatives.

163. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award under this head EUR 4,500, together with any value-added tax that may be chargeable to the applicants, the award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaints under Article 14 of the Convention;

2. *Dismisses* the Government's objection as to the alleged abuse of the right of petition;
3. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
4. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of Vakha Saydaliyev;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Vakha Saydaliyev had disappeared;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first and second applicants on account of their mental and emotional suffering and no violation of Article 3 of the Convention in respect of the third applicant;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Vakha Saydaliyev;
9. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
10. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Article 3;
11. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 4,300 (four thousand three hundred euros) in respect of pecuniary damage to the first and second applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (ii) EUR 15,000 (fifteen thousand euros) to the first applicant, EUR 20,000 (twenty thousand euros) to the second applicant and EUR 1,000 (one thousand euros) to the third applicant, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

(iii) EUR 4,500 (four thousand five hundred euros) in respect of costs and expenses to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;

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

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

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

Søren Nielsen
Registrar

Christos Rozakis
President