



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

FIRST SECTION

CASE OF GAZIYEVA AND OTHERS v. RUSSIA

(Application no. 15439/05)

JUDGMENT

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

STRASBOURG

9 April 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Gaziyeva and Others v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 15439/05) 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, listed below (“the applicants”), on 29 March 2005.

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

3. On 1 September 2005 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application

4. On 7 March 2008 the Court decided 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.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- 1) Ms Zareta Khamidovna Gaziyeva¹, born in 1973,
- 2) Ms Radima Abdul-Malikovna Shakhmurzayeva, born in 2001 and
- 3) Mr Rakhim Abdul-Malikovich Shakhmurzayev, born in 1999.

7. The applicants live in the village of Chechen-Aul, in the Grozny district of Chechnya. The first applicant is the wife of Abdul-Malik Shakhmurzayev, born in 1968. The second applicant is his daughter and the third applicant is his son.

A. Disappearance of Abdul-Malik Shakhmurzayev and subsequent events

1. The applicants' account

8. At the material time the village of Chechen-Aul and its premises were under full control of the Russian military; checkpoints manned by military servicemen were located on roads leading to and from the settlement.

9. In the afternoon of 8 February 2001 three APCs (armoured personnel carriers) blocked the road between the village of Chechen-Aul and the Grozny-Shatoy motorway. The APCs' registration numbers were covered with mud. The men who had arrived in the APCs were stopping every car driving by on the road. They were wearing black masks and uniforms and were carrying portable radios. They behaved like an organised group with a chain of command. It appears that the group belonged to division Don-100 of the North-Caucasian Military Circuit of the Internal Troops of the Ministry of the Interior (*Дивизия Северокавказского округа внутренних войск "Дон-100"*).

10. That afternoon Abdul-Malik Shakhmurzayev was driving a ZIL-130 lorry in the direction of Chechen-Aul. Earlier that day he had picked up two fellow villagers, Mr Malik Z. and Mr Gilani M., to give them a lift to Chechen-Aul.

11. At about 3 p.m. Abdul-Malik Shakhmurzayev's lorry was stopped by the group of servicemen in APCs. He and the two passengers were told to step out of the vehicle and lie face down on the ground to answer the servicemen's questions.

12. Abdul-Malik Shakhmurzayev refused to lie down on the ground and said that he would answer the questions standing. One of the servicemen

¹ Rectified on 4 May 2009: the text was "1) Ms Zareta Khamidovna Gazieyeva,..."

told him: “You will not only lie down, you will crawl and bark like a dog if we say so” and three of the servicemen started swearing and beating him with rifle butts. The beating was witnessed by three other persons who had also been stopped by the same group of servicemen: Mr S., Mr G. and Mr Yu.

13. After the beating Abdul-Malik Shakhmurzayev was put in one of the APCs and taken away. The two passengers Abdul-Malik Shakhmurzayev had picked up earlier that morning were also detained. The servicemen also detained the drivers of two other ZIL lorries, who were also beaten up but let go in the evening of 8 February 2001. These drivers, Mr Yu. and Mr G., came to the applicants and told them about the arrest of Abdul-Malik Shakhmurzayev.

14. On 9 February 2001 the first applicant went to the military commander’s office in the nearby village of Gikalo. There she spoke to an officer who refused to reveal his name. He confirmed that Abdul-Malik Shakhmurzayev had been arrested on 8 February 2001 by military servicemen, but stated that no charges had been brought against him. The two men to whom Abdul-Malik Shakhmurzayev had given a lift on 8 February had also been arrested.

15. On 9 February 2001 the applicant went to the Urus-Martan district military commander’s office. There she met an officer who told her that Abdul-Malik Shakhmurzayev and his two passengers were being held in the “Tangi-Chu pits” in the village of Tangi-Chu (also spelled Tenghi-Chu).

16. The applicants’ description of the circumstances surrounding the abduction of Abdul-Malik Shakhmurzayev was based on the witness statements provided by the applicants to the Court: a statement by the applicants’ relative Mr R. S., an account of the events by Mr S. (undated); an account of the events by witness Mr G. dated 30 September 2003; an account of the events by witness Mr E. dated 30 September 2003; an account of the events by witness Mr Yu. dated 30 September 2003 and on a hand-drawn map of Chechen-Aul.

2. Information submitted by the Government

17. The Government did not dispute the facts as presented by the applicants. In their memorandum they stated “.... in connection with the abduction on 8 February 2001 by unidentified persons of the residents of Chechen-Aul, Mr Malik Z., Mr Abdul-Malik Shakhmurzayev and Mr Gilani M., who had been taken away [by the abductors] to an unknown destination, the Grozny district prosecutor’s office of Chechnya opened criminal case no. 19074 under Article 126 § 2 [of the Criminal Code] (aggravated kidnapping)”.

18. Referring to the information received from the investigation into the abduction of Abdul-Malik Shakhmurzayev, the Government submitted the following information concerning the circumstances of his abduction.

19. On 18 June 2001 the investigators questioned Mr Kh.Z. and Mr A.M., relatives of the disappeared men, who stated that their fellow villagers had told them that on 8 February 2001 at about 4 p.m. military servicemen stationed in a former canning factory in Gikalo had arrested Abdul-Malik Shakhmurzayev, who had been driving a ZIL-131 lorry, together with two passengers he had picked up earlier that day. In the evening of the same day the three men had been taken to the headquarters of the Russian military unit located at the canning factory. On 9 February 2001 the arrested men had been taken to the premises of the DON-100 military unit in the village of Tangi-Chu. Three days later the military servicemen had returned the ZIL lorry to the Shakhmurzayevs and had explained that on 11 February 2001 the arrested men had been handed over to the Urus-Martan military commander's office.

20. On 27 July 2001 the investigators questioned the applicants' relative Mr U.G., who stated that on the morning of 8 February 2001 his relative Abdul-Malik Shakhmurzayev had borrowed his ZIL-131 lorry to go to the village of Oldy for oil waste products and that after that he had disappeared. Some time later the witness had found out that Abdul-Malik Shakhmurzayev and his two passengers had been detained at a road-block in Chechen-Aul and taken to Gikalo. On 9 February 2001 the witness had been informed by his acquaintances that A.-M. Shakhmurzayev and the two other men had been transferred to Urus-Martan, where the head of the local administration informed them that the three detained men had been transferred from Urus-Martan to the village of Tangi-Chu.

At a later date the investigators questioned the witness again, and he stated that he had learnt that on 8 February 2001 Abdul-Malik Shakhmurzayev had picked up two residents of Chechen-Aul, Mr M. Zubkhadzhiyev and Mr G. Magomadov, to give them a lift to the village. They had been driving from Gikalo to Chechen-Aul when their lorry had been stopped by unidentified persons in camouflage uniforms, who had detained the three men. Their relatives had started searching for them; they had found out that initially the three men had been taken to the military commander's office in Gikalo, which was located in a former canning factory, and that afterwards they had been taken to the village of Tangi-Chu in the Urus-Martan district of Chechnya.

21. On 28 July 2001 the investigators questioned the applicants' relative Mrs M.G., who provided a statement similar to that of Mr U.G.

22. On 24 December 2001 the investigators questioned Mr A.Kh., who stated that on 8 February 2001 at about 4 p.m. he had been driving to Chechen-Aul in his VAZ-2104 car. Abdul-Malik Shakhmurzayev's ZIL lorry had been driving in front of him in the same direction. At the entrance to the village a group of unidentified armed masked men in two APCs had been checking the identity documents of those who had been passing by on the road. The witness had seen that the three men from Abdul-Malik

Shakhmurzayev's lorry had been taken out and put in one of the APCs, which had driven away. On the following day, he had found out that these three men were A.-M. Shakhmurzayev, M. Z. and G. M.

At a later date the investigators questioned the witness again, and he stated early in 2001 he, together with his cousin Mr I.K. and another young man, had been travelling in a VAZ car from Grozny to Chechen-Aul. At the entrance to the village they had been stopped by a group of unidentified men in two APCs. The men were armed and were wearing camouflage uniform. They had taken the witness and his passengers out from the car, checked their identity documents and made them put their hands on the boot. Three or four lorries with tanks for oil waste products were parked between the APCs. Several men were lying face down on the ground. One of them jumped up and tried to run away. One of the men in camouflage uniform had shouted at him "Stop!" and had fired twice. The man who had attempted to run away fell to the ground and started screaming: "Kill me!" It appeared that this man had been wounded. After that several men in camouflage uniform put the wounded man in the APC, saying "You were told not to run away." Several other detained men were also put in the same APC. After that the men in camouflage uniform said: "Let's get ready, we are leaving". After that the witness and his passengers managed to get back in their car and drove away. After that the witness arrived at the market in Chechen-Aul where he told his fellow villagers what had happened.

23. On 24 December 2001 the investigators also questioned Mr B.Sh., Abdul-Malik Shakhmurzayev's brother. The witness stated that on 8 February 2001 Abdul-Malik Shakhmurzayev, Malik Z. and Gilani M. had been driving from Gikalo to Chechen-Aul. At the entrance to the village they were stopped, taken out of the vehicle and taken to the military commander's office in Gikalo. In the morning of 9 February 2001 the witness had gone to the military commander's office, where he was told that the men had been transferred to the Urus-Martan department of the Federal Security Service (the Urus-Martan FSB). The witness had not been able to obtain any information about his brother in Urus-Martan.

24. On an unspecified date the investigators questioned Mr A.M., Gilani M.'s brother. The witness stated that residents of Chechen-Aul had told him that on 8 February 2001 his brother had gone to Gikalo with Malik Z. to have their pictures taken for the driver's licence. At the entrance to Chechen-Aul they had been taken out of the vehicle and taken to the military commander's office in Gikalo. In the morning of 9 February 2001 the witness had visited the office, where he had been told that the men had been handed over to officers of the Urus-Martan FSB. The witness had not been able to obtain any information about his relative in Urus-Martan.

25. On 22 May 2002 the investigators questioned Mr R.R., Abdul-Malik Shakhmurzayev's neighbour, who stated that his fellow villagers had told him that when Abdul-Malik Shakhmurzayev had been driving in a ZIL-131

lorry from Gikalo to Chechen-Aul he had picked up two passengers, Malik Z. and Gilani M. Two other residents of Chechen-Aul had been driving in another ZIL-131 lorry behind Abdul-Malik Shakhmurzayev's vehicle. These two residents of Chechen-Aul had also been apprehended by the same servicemen and taken together with Abdul-Malik Shakhmurzayev and his passengers to the military commander's office in Gikalo. These two men had been released two hours later and they had informed the applicants about the arrest of Abdul-Malik Shakhmurzayev and his passengers.

At a later date the investigators questioned the witness again, and he stated that on 8 February 2001 he had been driving from Grozny to Chechen-Aul. At the entrance to the village he had met his fellow villagers Mr L.D. and another man, who had told him that about ten minutes previously a group of unidentified persons in APCs had taken away Abdul-Malik Shakhmurzayev, Malik Z. and Gilani M. From what he had heard the witness also had understood that one of the men taken away had been wounded. According to the witness, he had learnt that the men had been taken to the former canning factory in Gikalo, where the local military commander's office and a unit of the Russian military was stationed at the time. Some time later the three men had been taken somewhere in the Urus-Martan district.

26. On an unspecified date the investigators questioned Mr I.R., who gave a statement similar to that of Mr R.R.

27. On 27 May 2002 the applicants and their relatives wrote to the Grozny district prosecutor's office (the district prosecutor's office) and provided the following details concerning the circumstances of Abdul-Malik Shakhmurzayev's abduction. On 8 February 2001 he was driving from Gikalo to Chechen-Aul in ZIL-131 lorry. At the turning for Chechen-Aul he picked up two residents of Chechen-Aul to give them a lift to the village. At the entrance to Chechen-Aul his vehicle was stopped by a group of military servicemen in two APCs. When the lorry stopped one of Abdul-Malik Shakhmurzayev's passengers tried to run away. However, he was caught by the servicemen, who took all three men to Gikalo. From there the men were taken to another place. The lorry was returned to the Shakhmurzayevs. Three days after the arrest Abdul-Malik Shakhmurzayev and his two passengers were handed over to the Urus-Martan FSB. However, when the applicants and their relatives visited the Urus-Martan FSB, an officer had told them that the three men had never been transferred to their department. In August 2001 a man who had been detained in the Urus-Martan FSB at some point prior to August 2001 had told the applicants that he had seen Abdul-Malik Shakhmurzayev in a cell at the Urus-Martan FSB and had even spoken to him.

28. On an unspecified date the investigators questioned Mrs Z.A., Abdul-Malik Shakhmurzayev's sister, who stated that her brother A.-M. Shakhmurzayev had been working as a driver and transporting oil waste

products in a ZIL-131 lorry. On 8 February 2001 he went to work. On the same day she found out from residents of Chechen-Aul that he and two other men from their village had been detained by unidentified men in camouflage uniform who were driving around in three APCs. Eyewitnesses had told her that they had seen a group of men in camouflage uniform who had stopped her brother's lorry at the entrance to the village. One of the men had tried to escape, but he was wounded in the leg and caught. The men in APCs put Abdul-Malik Shakhmurzayev, Malik Z. and Gilani M. into one of the APCs and drove away in the direction of the military commander's office in Gikalo, which was in a former canning factory.

29. On an unspecified date the investigators questioned Mrs L.Ya, Mrs M.A. and Mr I.I., all of whom stated that at the beginning of 2001 on the outskirts of Chechen-Aul unidentified persons in camouflage uniform had taken away three of their fellow villagers, Abdul-Malik Shakhmurzayev, Malik Z. and Gilani M.

30. Referring to the report of an officer of the Grozny district department of the interior (the ROVD) the Government submitted that "in 2001 on the premises of the former canning factory [in Gikalo] a unit of the Internal Troops of the Ministry of the Interior had been stationed for some time".

31. The Government also pointed out that the applicants had never informed the domestic authorities about the eyewitnesses to the detention and the alleged beating of Abdul-Malik Shakhmurzayev.

B. The search for Abdul-Malik Shakhmurzayev and the official investigation into his abduction

1. The applicants' account

32. The first applicant was assisted in the search for her husband by Abdul-Malik Shakhmurzayev's sister. They contacted, both in person and in writing, various official bodies, such as the Chechen administration, military commanders' offices and prosecutors' offices at different levels, describing in detail the circumstances of their relative's abduction and asking for help in establishing his whereabouts. The applicants retained copies of a number of their complaints and submitted them to the Court. The relevant information is summarised below.

33. On 9 June 2001 the district prosecutor's office instituted an investigation into the disappearance of Abdul-Malik Shakhmurzayev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned no. 19074 (in the submitted documents it is also stated as no. 19127).

34. On 16 and 25 July 2001 the Chechnya prosecutor's office forwarded to the district prosecutor's office letters from the applicants' relative requesting assistance in the search for Abdul-Malik Shakhmurzayev.

35. On 21 March 2003 the military prosecutor's office of a military unit forwarded the request for the search for Abdul-Malik Shakhmurzayev to a number of law enforcement agencies.

36. On 18 April 2003, 4 December 2003, 2 June 2004, 6 October 2004 and 21 March 2005 the applicants' representatives repeatedly and unsuccessfully requested information from the district prosecutor's office. They asked to be informed when the criminal investigation into the abduction had been opened; what number the case file had been given; who had been in charge of the investigation; and whether there had been any progress. In addition, they requested to be informed whether the applicants or their relatives had been granted victim status in the proceedings, whether the authorities had forwarded information requests concerning the whereabouts of Abdul-Malik Shakhmurzayev to various detention facilities and whether the investigation had questioned the eyewitnesses to Abdul-Malik Shakhmurzayev's abduction.

37. On 6 May 2003 and 8 January 2004 the district prosecutor's office informed the applicants that the investigation in the criminal case had been suspended owing to the failure to establish the identity of the perpetrators.

38. On 23 May 2003 the military prosecutor's office of military unit no. 20102 informed the applicants' relative that military unit no. 3660 had not conducted any operations in Chechen-Aul in February 2001.

39. In August 2004 (the date is illegible) the district prosecutor's office informed the applicants that the investigation in the criminal case had been resumed on 29 July 2004.

40. On 19 April 2005 the Chechnya prosecutor's office informed the applicants that they had been duly informed about the progress of the investigation.

2. Information submitted by the Government

41. In their submission to the Court the Government pointed out that the applicants had complained to the district prosecutor's office about the abduction of Abdul-Malik Shakhmurzayev only on 7 August 2001.

42. The Government further stated that on an unspecified date a relative of another person abducted together with Abdul-Malik Shakhmurzayev, Mr Kh.Z., had complained about the abduction to the Special Envoy of the Russian President on Human Rights and Freedoms in Chechnya (the Envoy). On 9 June 2001 the Envoy forwarded this complaint to the district prosecutor's office. Therefore, on 9 June 2001 the district prosecutor's office opened criminal case no. 19074.

43. On 17 June 2001 the investigators requested the ROVD to establish whether any special operations had been conducted by the military or law-enforcement agencies in the vicinity of Chechen-Aul on 8 February 2001.

44. On 20 or 28 June 2001 the investigators requested the ROVD to question relatives of the abducted men and those residents of Chechen-Aul who might have witnessed the abduction.

45. On an unspecified date the investigators requested the Grozny department of the FSB and the ROVD to establish whether any law enforcement agencies or military units had been involved in the abduction of the applicants' relative. They were also requested to establish which units of federal forces had been stationed on the premises of the former canning factory in Gikalo in 2001 and whether Abdul-Malik Shakhmurzayev, Malik Z. and Gilani M. had been taken there.

46. On an unspecified date the investigators conducted a crime scene examination at the site of the abduction. It does not appear that any evidence was collected from the scene.

47. According to the responses received from the ROVD, Abdul-Malik Shakhmurzayev, Malik Z. and Gilani M. had not been listed by the authorities as members of illegal armed groups. They had never been prosecuted or detained on criminal or administrative charges; they had not applied for medical assistance and no unidentified corpses with features similar to theirs had been found. The responses also confirmed that a unit of the Internal Troops of the Ministry of the Interior had been stationed on the premises of the former canning factory (see paragraph 30 above).

48. According to the response received from the Operational-Search Bureau no. 2 of the Main Department of the Ministry of the Interior in the Southern Federal Circuit (*Оперативно-Розыскное Бюро-2 Главного Управления по ЮФО МВД РФ*), their units had not conducted any special operations in Chechen-Aul and they did not have any information about the whereabouts of the abducted men.

49. According to the Government, although the investigation had failed to establish the whereabouts of Abdul-Malik Shakhmurzayev and the perpetrators of his abduction, it was still in progress. Additional information requests had been forwarded to various military and law enforcement agencies. The applicants had been duly informed of all decisions taken during the investigation.

50. Despite specific request by the Court the Government did not disclose any documents from criminal case no. 19074 stating 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.

II. RELEVANT DOMESTIC LAW

51. 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 NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

52. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Abdul-Malik Shakhmurzayev had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints against the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil complaints but they had failed to do so.

53. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. Referring to the other cases concerning such crimes reviewed by the Court, they also alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in Chechnya rendered any potentially effective remedies inadequate and illusory in their case. They also pointed out that the lack of information about the criminal investigation had precluded them from complaining to domestic courts.

B. The Court's assessment

54. The Court will 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).

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

56. 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, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

57. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities after the kidnapping of Abdul-Malik Shakhmurzayev and that an investigation has been pending since 9 June 2001. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

58. Furthermore, the Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints under Article 2. Thus, it considers that the objection should be joined to the merits and falls to be examined below under the relevant substantive provisions of the Convention.

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

A. The parties' arguments

59. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Abdul-Malik Shakhmurzayev were State agents. In support of their complaint they referred to the following facts. In February 2001 Chechen-Aul had been under the total control of federal troops. Russian military checkpoints had been stationed on the roads leading to and from the village. The armed men in camouflage uniform who had abducted Abdul-Malik Shakhmurzayev had been driving in military vehicles, APCs, and this had been confirmed by eyewitness accounts. The armed men had blocked the road and acted in a manner similar to that of special forces carrying out identity checks.

60. The Government submitted that unidentified armed men had kidnapped Abdul-Malik Shakhmurzayev. They further contended that the investigation of the incident was pending, that there was no evidence that the men were 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. The Government also stated that "without denying the necessity to verify the theory of possible involvement of federal forces in the abduction of A.-M. Shakhmurzayev, it should be noted that his abduction could have been committed by persons connected with the criminal world, or that it could have been the result of a blood feud". At the same time the Government pointed out that the applicants' submissions concerning the factual circumstances of Abdul-Malik Shakhmurzayev's abduction had been inconsistent. In particular, they alleged that the applicants had failed to inform the domestic authorities about the eyewitnesses to the abduction; that some of the witnesses had stated that a man had been wounded during the detention of the applicants' relative whereas others had not mentioned that in their testimonies to domestic authorities or to the Court and that the witnesses to A.-M. Shakhmurzayev's apprehension had not been consistent in their description of the number of the APCs involved in the abduction.

B. The Court's evaluation of the facts

61. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161).

62. The Court notes that despite its request for a copy of the investigation file into the abduction of Abdul-Malik Shakhmurzayev, the Government did not produce any 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)).

63. 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.

64. The applicants alleged that the persons who had taken Abdul-Malik Shakhmurzayev away on 8 February 2001 and then killed him were State agents.

65. The Government suggested in their submission that the persons who had detained Abdul-Malik Shakhmurzayev could have been criminals or that he could have been kidnapped as a result of a blood feud. However, these allegations were not specific and the Government 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 that 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).

66. The Court notes that the applicants' allegation is supported by the witness statements and by the investigation. It finds that the fact that a large group of armed men in uniform equipped with military vehicles was able to move freely through military checkpoints in broad daylight and proceeded to check identity documents and detained several persons strongly supports the applicants' allegation that these were State servicemen conducting a security operation. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law enforcement agencies or the military were involved in the abduction. The investigation was unable to establish which precise military or security units had carried out the operation, but it does not appear that any serious steps had been taken in that direction.

67. 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).

68. The Government seemed to raise doubts as to the credibility of the witnesses' statements concerning the circumstances of the abduction of Abdul-Malik Shakhmurzayev (see paragraph 60 above). The Court notes in this connection that the crucial elements underlying the applicants' submissions as to the facts have not been disputed by the Government. The Government did not dispute that the abduction of the applicants' relative had actually been committed by a group of armed men in APCs at the time stated by the applicants. This was confirmed by the official investigation conducted by the district prosecutor's office (see paragraph 17 above). The Court finds that the inconsistencies pointed out by the Government in the applicants' description of the events are so insignificant that they cannot cast doubt on the overall credibility of the applicants' submission.

69. 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 Abdul-Malik Shakhmurzayev was detained on 8 February 2001 by State servicemen during an unacknowledged security operation.

70. There has been no reliable news of Abdul-Malik Shakhmurzayev since the date of his 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 arrest.

71. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Abdul-Malik Shakhmurzayev or of any news of him for several years supports this assumption.

72. The Court further notes that, regrettably, it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose any of the documents from the file (see paragraph 50 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

73. Accordingly, the Court finds that the evidence available permits it to establish that Abdul-Malik Shakhmurzayev must be presumed dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

74. 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

75. The Government contended that the domestic investigation had obtained no evidence to the effect that Abdul-Malik Shakhmurzayev 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.

76. The applicants argued that Abdul-Malik Shakhmurzayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court’s case-law on Article 2. The applicants pointed out that for several years the district prosecutor’s office had not questioned some important witnesses. The investigation into Abdul-Malik Shakhmurzayev’s kidnapping had been opened four months after the events and then it had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and that the applicants had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for more than seven years without producing any tangible results had been further proof of its ineffectiveness. The applicants invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court’s assessment

1. Admissibility

77. 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 58 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 Abdul-Malik Shakhmurzayev

78. 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*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

79. The Court has already found that the applicants' relative must be presumed dead following unacknowledged detention by State servicemen and that his death can be attributed to the State. In the absence of any justification put forward by the Government, the Court finds that there has been a violation of Article 2 in respect of Abdul-Malik Shakhmurzayev.

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

80 The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

81. In the present case, the kidnapping of Abdul-Malik Shakhmurzayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

82. The Court notes at the outset that none of the documents from the investigation were 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.

83. The Court notes that the authorities were made aware of the crime by the applicants' submissions. However, the investigation in case no. 19074 was instituted on 9 June 2001, that is, four months after Abdul-Malik Shakhmurzayev's abduction. Such a postponement *per se* was 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. It appears that after that a number of essential steps were delayed. For instance, questioning of a number of witnesses was conducted only several months after the events (see paragraphs 22, 23, 25 above). It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, 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).

84. A number of essential steps were never taken. Most notably, it does not appear that upon establishing that a law enforcement unit had indeed been stationed at the former canning factory at the material time (see paragraph 30 above), the investigation had not tried to establish and question the servicemen of this unit to establish whether they had been involved in the apprehension of Abdul-Malik Shakhmurzayev or could have seen him on the factory premises after the apprehension. Furthermore, the investigators had failed to establish the identity of the owner of the APCs that had moved around Chechen-Aul on 8 February 2001.

85. The Court also notes that the applicants were not granted victim status in the criminal proceedings and that they were only informed of the suspension and resumption of the criminal case, 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.

86. Finally, the Court notes that the investigation in case no. 19074 was suspended and resumed several times and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending.

87. The Government referring to Article 125 of the Code of Criminal Procedure 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 steps. However, they still failed to investigate properly the applicants' allegations. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much

earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

88. 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 Abdul-Malik Shakhmurzayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

89. The applicants relied on Article 3 of the Convention, submitting that their relative Abdul-Malik Shakhmurzayev had been subjected to ill-treatment by his abductors and that as a result of his disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

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

91. The applicants maintained their submission.

B. The Court's assessment

(a) The complaint concerning the ill-treatment of Abdul-Malik Shakhmurzayev on 8 February 2001

Admissibility

92. The Court observes that as it follows from the documents before it, it does not appear that this complaint has been properly raised before the competent domestic authorities. Therefore, the Court concludes that the applicants failed to exhaust available domestic remedies with regard to this part of their complaint under Article 3 of the Convention.

93. It follows that this part of the application should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

(b) The complaint concerning the applicants' moral suffering

1. Admissibility

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

2. Merits

95. 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).

96. In the present case the Court notes that the applicants are close relatives of the disappeared person. For more than seven years they have not had any news of Abdul-Malik Shakhmurzayev. During this period the first applicant, on behalf of the other applicants, has applied to various official bodies with enquiries about their family member, both in writing and in person. Despite her attempts, she has never received any plausible explanation or information as to what became of her husband following his kidnapping. The responses received by her mostly denied that the State was responsible for his arrest or simply informed her that an investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

99. The applicants further stated that Abdul-Malik Shakhmurzayev had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

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

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

...

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

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

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

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

A. The parties' submissions

100. In the Government's opinion, no evidence was obtained by the investigators to confirm that Abdul-Malik Shakhmurzayev was deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention.

101. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

102. 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

103. 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).

104. The Court has found it established that Abdul-Malik Shakhmurzayev was abducted by State servicemen on 8 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).

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

106. In view of the foregoing, the Court finds that Abdul-Malik Shakhmurzayev was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

Admissibility

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

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

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

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

109. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

110. 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 could have brought a civil claim for compensation for non-pecuniary damage or could have lodged court complaints against the investigators. In sum, the Government submitted that there had been no violation of Article 13.

111. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

112. 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

113. The Court reiterates 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 (see *Khashiyev and Akayeva*, cited above, § 183).

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

115. As regards the applicants' reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on account of the applicants' mental suffering as a result of the disappearance of their close relative, their inability to find out what had happened to him and the way the authorities handled their complaints. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

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

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

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

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

118. The Government disputed this allegation.

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

120. The Court finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character, affecting respect for human rights as defined in the Convention, which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

121. 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

122. 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

123. The applicants claimed damages in respect of the lost wages of their relative after his arrest and subsequent disappearance. The first applicant claimed a total of 281,647 Russian roubles (RUB) under this heading (8,284 euros (EUR)), the second applicant claimed a total of RUB 129,299 (EUR 3,803) and the third applicant claimed a total of RUB 110,968 (EUR 3,264).

124. The applicants submitted that they were financially dependent on their abducted relative and would have benefited from his financial support in the overall amount of EUR 15,351. Their calculations were based on the provisions of the Russian Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary’s Department in 2007 (“Ogden tables”).

125. The Government regarded these claims as unfounded.

126. 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 the applicants' relative and the loss by them of the financial support which he could have provided. Having regard to the applicants' submissions and the absence of any documents substantiating the earnings of Abdul-Malik Shakhmurzayev at the time of his abduction, the Court awards the applicants jointly EUR 10,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

127. The applicants claimed EUR 70,000 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 them and the failure to provide any information about the fate of their close relative.

128. The Government found the amounts claimed exaggerated.

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

C. Costs and expenses

130. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Chechnya and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for the SRJI lawyers and EUR 150 per hour for the SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,100.

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

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

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

134. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time that, as the admissibility and merits of the application in the present case were examined together (Article 29 § 3), the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives. The Court also notes that the applicants did not submit any documents in support of their claim for administrative costs.

135. 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 5,500 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

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 14 of the Convention;
2. *Decides* to join to the merits the Government's objection concerning the non-exhaustion of criminal domestic remedies and rejects it;
3. *Declares* the complaints under Article 2, Article 3 in respect of the applicants, Article 5 and Article 13 admissible and the remainder of the application inadmissible;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Abdul-Malik Shakhmurzayev;

5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Abdul-Malik Shakhmurzayev had disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Abdul-Malik Shakhmurzayev;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
10. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save for the payment in respect of costs and expenses:
 - (i) EUR 10,000 (ten thousand euros) plus any tax that may be chargeable, in respect of pecuniary damage to the applicants jointly;
 - (ii) EUR 35,000 (thirty five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
 - (iii) EUR 5,500 (five thousand five hundred euros) plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President