



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

FIRST SECTION

CASE OF DOKAYEV AND OTHERS v. RUSSIA

(Application no. 16629/05)

JUDGMENT

STRASBOURG

9 April 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In case of Dokayev 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. 16629/05) 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 eleven Russian nationals listed below (“the applicants”), on 29 April 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) Mr Balaudy Dokayev, born in 1945,
- 2) Ms Koku Khamidovna Dokayeva, born in 1953,
- 3) Ms Rosa Talkhigova, born in 1974,
- 4) Ms Razet Dokayeva, born in 1996,
- 5) Ms Dinara Dokayeva, born in 2003,
- 6) Mr Timur Dokayev, born in 2000,
- 7) Ms Maymont (also spelled as Maymut) Askhabova, born in 1933,
- 8) Ms Maryam Bakarayeva, born in 1963,
- 9) Mr Khalid Askhabov, born in 1956,
- 10) Mr Leytche Dubayev, born in 1953,
- 11) Ms Aysara Dubayeva, born in 1957.

The applicants are three families who live in Grozny, Chechnya. The first applicant family consists of six persons (applicants 1-6). The first applicant is married to the second applicant. They are the father and the stepmother of Isa Dokayev (also spelled Dakayev), who was born in 1969. The third applicant is his wife; the fourth and fifth applicants are his daughters and the sixth applicant is his son. The second applicant family consists of three persons (applicants 7-9). The seventh applicant is the mother of Ruslan Askhabov, who was born in 1962. The eighth applicant is his wife and the ninth applicant is his brother. The third applicant family consists of two persons (applicants 10-11). They are married and are the parents of Isa Dubayev, who was born in 1981. The applicants' relatives have been detained and subsequently disappeared.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Abduction of Ruslan Askhabov, Isa Dubayev and Isa Dokayev and subsequent events

1. The applicants' account

8. Isa Dokayev, the third applicant and their two minor children lived at 37 Zabolotnogo Street, in the Oktyabrskiy district of Grozny, Chechnya. At the material time the third applicant, Ms Rosa Talkhigova, was pregnant with their third child, the fifth applicant. On the night of 10 December 2002 they were all at home, along with Ruslan Askhabov and Isa Dubayev, who were Isa Dokayev's guests that night. The house was located not far from

the Oktyabrskiy district department of the interior (the ROVD), the military commander's office and the local administration. Military checkpoints manned by Russian federal servicemen were located on the roads leading to and from Grozny; the area was under curfew.

9. At about 2.30 a.m. on 10 December 2002 five or six masked men in white camouflage uniforms, armed with machine guns and pistols, rushed into Isa Dokayev's house. At the entrance they shot the applicants' dog. They opened fire in one of the rooms and shot up a TV set. The men neither identified themselves nor produced any documents. They were equipped with portable radios. They spoke Russian without accent, were drunk and swore. The applicants believed that the intruders were Russian military servicemen.

10. The servicemen ordered the third applicant to stay in her room. Through the half-open door she saw her husband lying down on the kitchen floor with a soldier standing over him and pointing his machine gun at him. The soldier was kicking Isa Dokayev in the back, swearing at him and saying that he should be quiet, otherwise "it would get worse". Ruslan Askhabov and Isa Dubayev were also lying on the floor. All three men had their hands tied and black sacks placed over their heads.

11. The children woke up with the sound of shooting and started crying. From the kitchen floor Isa Dokayev asked his wife to calm them down. When the third applicant tried to leave her room one of the servicemen threatened to shoot her if she tried to open the door again. The servicemen kept swearing at her. When the third applicant asked where the servicemen were taking her husband and his guests, one of the officers replied: "We will run a computer check on them and tomorrow at 9 a.m. they will be back home".

12. The servicemen ransacked the house. After they had left the third applicant discovered that some of her family's personal documents had disappeared, including Isa Dokayev's passport, employment records and documents for his car. She also noticed that the fourth and sixth applicants' birth certificates were gone, as well as some of her jewellery.

13. In the morning of 10 December 2002 the third applicant and Isa Dokayev's brother Ramzan Dokayev discovered empty alcohol bottles in the yard and boot prints on the snow. They followed the footprints until they turned into tyre tracks leading to the Oktyabrskiy ROVD.

14. In the morning of 10 December 2002 the second and third applicant families found out about the abduction of their relatives from the first applicant family.

15. In support of their statements the applicants submitted the following documents: two witness accounts provided by the third applicant, dated 23 November 2004 and 17 June 2005; a witness account by the eighth applicant dated 16 June 2005 and a hand-drawn plan of Isa Dokayev's house and its premises dated 15 June 2005.

2. Information submitted by the Government

16. The Government did not challenge most of the facts as presented by the applicants. According to their submission, “at about 2 a.m. on 10 December 2002 unidentified armed persons entered the house at 37 Zabolotnogo Street in Grozny, where, threatening murder, they kidnapped Isa Dokayev and the employees of the Oktyabrskiy ROVD Isa Dubayev and Ruslan Askhabov and [also] took away their service guns”.

B. The search for Ruslan Askhabov, Isa Dubayev and Isa Dokayev and the investigation

1. The applicants’ account

17. Since 10 December 2002 the applicants have repeatedly applied in person and in writing to various public bodies. They have been supported in their efforts by their representatives. In their letters to the authorities the applicants referred to their relatives’ detention and asked for assistance and details of the investigation. The applicants submitted some of the letters to the authorities and their replies to the Court. These documents are summarised below.

18. At about 8 a.m. on 10 December 2002, at the applicants’ request, representatives of the ROVD visited Isa Dokayev’s house. They collected cartridge cases left from the shooting.

19. On 16 December 2002 the Grozny town prosecutor’s office (“the town prosecutor’s office”) instituted an investigation into the disappearance of Ruslan Askhabov, Isa Dubayev and Isa Dokayev under Article 126 § 2 of the Criminal Code of the Russian Federation (aggravated kidnapping). The case file was assigned number 52161. In the documents submitted to the Court by the applicants the criminal case file is also referred to under the numbers 52158, 40084 and 19045.

20. On 8 January 2003 the town prosecutor’s office granted Isa Dokayev’s brother, Mr M. D., victim status in criminal case no. 52161.

21. On 18 January 2003 the ROVD informed Mrs B. A., a relative of Ruslan Askhabov, that the town prosecutor’s office had initiated an investigation into the abduction of Ruslan Askhabov and that the search for him was under way.

22. On 6 April 2003 the seventh and eleventh applicants wrote to the military commander’s office of the Oktyabrskiy district of Grozny (“the district military commander’s office”) requesting assistance in the search for their abducted relatives. The applicants stated that their relatives had been abducted by five military servicemen in white camouflage uniforms who spoke Russian without an accent.

23. On 17 June 2003 the military prosecutor's office of the United Group Alignment (the military prosecutor's office of the UGA) forwarded the seventh applicant's request for assistance to the military prosecutor's office of military unit no. 20102.

24. On 7 July 2003 the military prosecutor's office of military unit no. 20102 informed the military prosecutor's office of the UGA that the investigation in criminal case no. 52158 had not established the involvement of Russian military servicemen in the abduction of Ruslan Askhabov, Isa Dubayev and Isa Dokayev.

25. On 16 July 2003 the seventh applicant again wrote to the military prosecutor's office of the UGA with a request for assistance in the search for Ruslan Askhabov and Isa Dubayev. In her letter she stated that the abduction had been carried out by five men in camouflage uniforms.

26. On 22 July 2003 the military prosecutor's office of the UGA informed the tenth applicant that his request concerning the search for Isa Dubayev had been forwarded for examination to the military prosecutor's office of military unit no. 20102. The letter also stated that the military prosecutor would investigate the possible involvement of Russian military servicemen in the abduction of Isa Dubayev.

27. On 5 September 2003 the military prosecutor's office of military unit no. 20102 informed the tenth applicant that the investigation in case no. 52161 had not established the involvement of Russian military servicemen in the abduction of Isa Dubayev.

28. On 21 October 2003 the Chechnya department of the Federal Security Service (the Chechnya FSB) informed the seventh applicant that they were taking measures to identify the perpetrators of Ruslan Askhabov's abduction. The letter further stated that Ruslan Askhabov was not suspected of committing a crime and that there were "no lawful grounds for his detention".

29. On 21 November 2003 the ROVD informed the applicants' relative that in connection with the abduction of Ruslan Askhabov, the Oktyabrskiy district prosecutor's office (the district prosecutor's office) had opened criminal case no. 40084.

30. On 25 February 2004 the seventh applicant once again wrote to the military prosecutor of the UGA with a request for assistance in the search for Ruslan Askhabov. In her letter she stated that her son's abduction had been carried out by five military servicemen in white camouflage uniforms who spoke unaccented Russian.

31. On 11 March 2004 the military prosecutor's office of the UGA informed the seventh applicant that the enquiry conducted by the military prosecutor's office of military unit no. 20102 had not established the involvement of Russian federal forces in the abduction of Ruslan Askhabov. The letter further stated that on 9 April 2001, in connection with the abduction of Ruslan Askhabov, the Urus-Martan district prosecutor's office

had opened criminal case no. 19045 under Article 127 § 2 of the Criminal Code (unlawful deprivation of liberty).

32. On 12 March 2004 the interim Chechnya military commander forwarded the seventh applicant's request for assistance to the district military commander's office and the Chechnya Ministry of the Interior.

33. On 28 April 2004 the district prosecutor's office informed the eighth applicant that on 28 November 2003 the investigation in criminal case no. 52158 had been suspended owing to the failure to identify the perpetrators.

34. On 5 August 2004 the military prosecutor's office of the UGA forwarded the seventh applicant's request for assistance in the search for Ruslan Askhabov to the military prosecutor's office of military unit no. 20102.

35. On 20 September 2004 the military prosecutor's office of military unit no. 20102 informed the seventh applicant that neither the investigation nor additional enquiry had confirmed the involvement of Russian federal forces in the abduction of Ruslan Askhabov.

36. On 23 December 2004 the seventh applicant wrote to the district prosecutor's office requesting to be provided with information concerning the status of the investigation in criminal case no. 52158.

37. On 28 December 2004 the district prosecutor's office informed the seventh applicant that the investigation in criminal case no. 52158 had been resumed.

38. On 21 February 2005 the third applicant wrote to the town prosecutor's office and requested to be informed which prosecutor's office had been investigating her husband's abduction. She requested to be granted victim status in the proceedings and that the investigation be conducted in a thorough and effective manner.

39. On 22 February 2005 the seventh applicant wrote to the district prosecutor's office. She stated that the abduction of her husband had been carried out by a group of armed masked military servicemen in white camouflage uniforms. The applicant requested to be provided with information concerning the results of the investigation. In particular, she requested that the representatives of the Russian federal forces who had participated in special operations in Grozny on the night of 10 December 2002 be questioned by the investigators. She also requested that those who had been in charge of the security operations be identified and questioned.

40. On 24 March 2005 the Chechnya prosecutor's office informed the third applicant that on an unspecified date the district prosecutor's office had resumed the investigation into her husband's abduction.

41. On 25 April 2005 the district prosecutor's office granted the third applicant victim status in criminal case no. 52158.

42. On 19 May 2005 the seventh applicant wrote to a number of law enforcement agencies, including the Chechnya MVD, the Chechnya prosecutor's office and the military prosecutor of the UGA, and requested

assistance in the search for her missing relative. In her letters she stated that he had been abducted by five armed military servicemen in white camouflage uniforms.

43. Early in 2003 the third applicant lodged a claim with the Oktyabrskiy district court of Grozny seeking to have her husband Isa Dokayev declared a missing person. On 30 March 2004 the district court granted her claim and declared Isa Dokayev missing person as of 10 December 2002. On 16 August 2004, upon the third applicant's request, the district court acknowledged the paternity of Isa Dokayev in respect of the fifth and sixth applicants.

2. Information submitted by the Government

44. On 10 December 2002 Isa Dubayev's relative, Mr Sch. B., complained to the Bureau of the Special Envoy of the Russian President in Chechnya for rights and freedoms (the Envoy), stating that Isa Dubayev had been abducted on 10 December 2002 by Russian military servicemen who had arrived in two APCs and a UAZ car. The Envoy forwarded this complaint to the district prosecutor's office for examination.

45. On 10 December 2003 (it appears that the date should be stated as 10 December 2002) an officer of the ROVD conducted a crime scene inspection at 37 Zabolotnogo Street, Grozny. As a result, two 5.45 mm calibre bullets, one 7.62 mm cartridge case and one bullet which was stuck in the TV set were collected from the scene. About a year and a half later, on 15 April 2005, the investigators conducted a second examination of the crime scene at 37 Zabolotnogo Street. As a result, it was established that the house had been abandoned; nothing was collected from the scene.

46. On 16 December 2002 in connection with the abduction of the applicants' relatives, the district prosecutor's office instituted an investigation under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was assigned number 52158. According to the Government, the criminal case was opened upon the report of an operational officer of the ROVD dated 30 December 2002 stating that "on 10 December 2002 unidentified men in white camouflage clothing, armed with automatic weapons, broke into the house at 37 Zabolotnogo Street, where, using weapons and threats of murder, they forcibly took away the employees of the Oktyabrskiy ROVD Ruslan Askhabov and Isa Dubayev and their service weapons. The perpetrators also forcibly took away the owner of the house, Isa Dokayev, and some items of his property". At the same time, according to the Government's memorandum, in connection with the abduction of the applicants' relatives, on an unspecified date the district prosecutor's office also opened criminal case no. 52161.

47. On 2 January 2003 the investigators ordered a ballistic expert evaluation of the bullets and cartridge cases collected from the crime scene. According to the expert's report of 15 January 2003, the cases and bullets

were prefabricated and could have been fired from a 5.45 mm weapon or a Kalashnikov machine gun.

48. On 8 January 2003 the district prosecutor's office received the applicants' complaint about the abduction of Ruslan Askhabov, Isa Dubayev and Isa Dokayev. On the same date, 8 January 2003, the tenth applicant and Isa Dokayev's relative were granted victim status in the criminal proceedings.

49. On 20 January 2003 criminal cases no. 52161 and no. 52158, opened in connection with the abduction of Isa, Dokayev Ruslan Askhabov and Isa Dubayev, were joined in one criminal case. The case file was assigned the number 52158. The Government further stated "criminal case no. 40084 has nothing to do with criminal case no. 52158" and "no criminal case under no. 19045 is being investigated by the prosecutors' offices in Chechnya".

50. On 9 and 21 January 2003 and other dates, the investigators forwarded forty requests to various law enforcement agencies in Chechnya, including the departments of the interior, the prosecutors' offices, the military commanders' offices of different levels and the detention centre in Vladikavkaz, Northern Ossetia. The investigators requested to be informed whether these agencies had detained the missing men and whether the latter had been suspended of involvement in illegal activities. According to the responses, the missing men had not been detained on criminal or administrative charges; they had never been prosecuted or put on the wanted list; they had not been suspected of participation in illegal armed groups and their corpses had not been found.

51. On 27 January 2003 Ruslan Askhabov's aunt, Mrs B.A., was granted victim status in the criminal case and questioned about the circumstances of his abduction. She stated that on 11 December 2002 she had found out from Isa Dokayev's wife that her nephew had been abducted together with Isa Dubayev and Isa Dokayev. According to Isa Dokayev's wife, at about 2 a.m. on 10 December 2002 she had heard their dog barking. Then she had heard shots and the dog had stopped barking. When she had tried to go outside, she had heard another shot and a bullet had stuck in the TV set. After that a group of about five men in white camouflage cloaks and masks had broken into the house. They had made all those present in the house line up along the wall and had taken Ruslan Askhabov, Isa Dubayev and Isa Dokayev away to an unknown destination.

52. On 4 November 2003 the district prosecutor's office received the complaint about the abduction of Isa Dubayev (see paragraph 44 above). On the same date the investigators requested from the Ministry of Defence to inform them whether any special operations had been carried out in the Oktyabrskiy district of Grozny on the night of 10 December 2002. According to the response, military units of the Ministry of Defence had neither participated in special operations on 9-10 December 2002 nor detained the missing men.

53. On an unspecified date the investigators questioned the third applicant, who had stated that on the night of 10 December 2002 she and her husband Isa Dokayev had been at home. Two employees of the ROVD, Ruslan Askhabov and Isa Dubayev, had stayed in their house that night. The witness had gone to bed at about 11 p.m.; her husband and his guests had stayed up watching TV. At about 2 a.m. she had heard their dog barking, then machine-gun fire and then the dog had stopped barking. Isa Dokayev had run to the door where he had been met by a group of unidentified armed men in white camouflage clothing. When the men had seen Isa Dubayev's service machine gun, they had run outside and started shooting at the house. Isa Dokayev had shouted to the men to stop the shooting as children were sleeping in the house. Then the men ordered him to throw the machine gun out of the window. After the applicant's husband had done so, five armed men had entered the house. They spoke unaccented Russian among themselves. The men had tied the hands of the applicant's husband and of Ruslan Askhabov and Isa Dubayev behind their backs with adhesive tape. Then they had put black plastic bags over the men's heads and had taken the three men into different rooms. After that the intruders had demanded the keys of Isa Dokayev's VAZ-21099 car, which was parked in the yard. They had unsuccessfully tried to start the car. After that the armed men had taken Isa Dokayev, Isa Dubayev and Ruslan Askhabov away.

54. On an unspecified date the investigators questioned Isa Dokayev's neighbour, Mr A. Kh., who stated that on the night of 10 December 2002 he had been sleeping in his house, when at about 2 a.m. he had heard some noise, but had not paid attention to it. The next morning he had found out that a group of unidentified armed men had taken away his neighbour Isa Dokayev and two employees of the ROVD.

55. On unspecified dates the investigators questioned the colleagues of Ruslan Askhabov and Isa Dubayev, Mrs N.B., Mr S.D. and Mr B.K. Mrs N.B. stated that she had worked with Ruslan Askhabov from 2000 to December 2002. At the time of his abduction he was working at the passport and visa service of the ROVD; his colleagues rated him positively. The witness found out about his abduction from the colleagues. Witnesses Mr S.D. and Mr B.K. provided similar statements and stated that they had worked in the ROVD with Ruslan Askhabov and Isa Dubayev, and that the two men had been rated positively by their colleagues.

56. According to the Government, the investigation in criminal case no. 52158 had been suspended on several occasions owing to the failure to identify the perpetrators. The applicants or their relatives had been duly informed about the suspensions and the resumptions of the investigation. Although the authorities had failed to establish the whereabouts of the missing men or the perpetrators of their abduction, the investigation was still in progress.

57. The Government stated that “according to the information in our possession today, no special operations were conducted in Grozny, Chechnya, on 9-10 December 2002; representatives of the State did not detain Isa Dokayev, Ruslan Askhabov and Isa Dubayev”.

58. The Government also submitted that on 30 March 2004 the Oktyabrskiy district court of Grozny had declared Isa Dokayev a missing person and on 16 August 2004 the same court had acknowledged the paternity of Isa Dokayev in respect of the fifth and sixth applicants.

59. Despite specific requests by the Court the Government did not disclose any documents from criminal case no. 52158. They 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 personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT’S OBJECTION AS TO NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties’ submissions

61. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Ruslan Askhabov, Isa Dubayev and Isa Dokayev had not yet been completed. They further argued that it had been open to the applicants to challenge in court any actions or omissions of the investigating or other law enforcement authorities, but that the applicants had not availed themselves of that remedy.

62. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. Referring to 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.

B. The Court's assessment

63. As regards criminal law remedies raised by the Government in the present case, the Court observes that the applicants complained to the law enforcement agencies immediately after the abduction of Ruslan Askhabov, Isa Dubayev and Isa Dokayev and that an investigation has been pending since 16 December 2002. The applicants and the Government dispute the effectiveness of this investigation.

64. 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 decides to join this objection to the merits and considers that these matters fall 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

65. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Ruslan Askhabov, Isa Dubayev and Isa Dokayev were State agents. In support of their complaint they referred to the following matters. At the material time Grozny was totally under the control of the Russian federal forces; checkpoints manned by military servicemen were located on the roads leading to and from the settlement. The area was under curfew. The armed men who had abducted Ruslan Askhabov, Isa Dubayev and Isa Dokayev spoke Russian without accent, used obscene language and were drunk. They were wearing specific camouflage uniform, were armed and had portable radios. The men fired a number of shots without fear of being heard by law enforcement agencies located in close proximity to the house. They were able to move freely around in Grozny during the curfew and they left tracks which led to the ROVD.

66. The Government submitted that unidentified armed men had kidnapped Ruslan Askhabov, Isa Dubayev and Isa Dokayev. 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. In support of their position they referred to the following facts. The investigation established that none of the three missing men had been involved in the activities of illegal armed groups. Moreover, two of them were police officers. No special operations had been conducted in the

Oktyabrskiy district of Grozny on the night of 10 December 2002. There was no convincing evidence that the applicants' relatives were dead. The fact that the perpetrators of the abduction spoke unaccented Russian and were wearing camouflage uniforms did not mean that these men could not have been members of illegal armed groups or criminals pursuing a blood feud. The Government further alleged that the applicants' description of the circumstances surrounding the abduction was inconsistent. In particular, the applicants' allegations that the abductors were drunk was based on just one witness statement; their allegations that the abductors had opened fire were unsubstantiated and the applicants were inconsistent in their descriptions of the number of the shots fired by the perpetrators. The Government referred to the witness statements made to the domestic investigation; but they did not submit them to the Court.

B. The Court's evaluation of the facts

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

68. The Court notes that despite its requests for a copy of the investigation file on the abduction of Ruslan Askhabov, Isa Dubayev and Isa Dokayev, the Government did not produce any of the documents from the file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

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

70. The applicants alleged that the persons who had taken Ruslan Askhabov, Isa Dubayev and Isa Dokayev away on 10 December 2002 and then killed them were State agents.

71. The Government suggested in their submission that the persons who had detained Ruslan Askhabov, Isa Dubayev and Isa Dokayev could be

members of paramilitary groups or criminals pursuing a blood feud. 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).

72. The Court notes that the applicants' allegation is supported by the witness statements produced by them and collected by the investigation. It finds that the fact that a group of armed men in uniform, possibly equipped with military vehicles, was able to move freely through military roadblocks during curfew hours and that they proceeded to check identity documents and take away three persons strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their application to the authorities the applicants consistently maintained that Ruslan Askhabov, Isa Dubayev and Isa Dokayev had been detained by unknown servicemen and requested the investigation to look into that possibility (see paragraphs 22, 30, 39, 42 above). The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law enforcement agencies were involved in the kidnapping, but it does not appear that any serious steps were taken in that direction.

73. The Government seemed to question the credibility of the applicants' statements concerning the factual circumstances of the abduction of Ruslan Askhabov, Isa Dubayev and Isa Dokayev (see paragraph 66 above). The Court notes in this respect that no other elements underlying the applicants' submissions of facts have been disputed by the Government. The Government did not provide to the Court the witness statements to which they referred in their submissions. It should also be noted that the Government's allegations regarding the inconsistency of the applicants' accounts about the shooting on the night of the abduction are themselves contradictory (see, for example, paragraphs 45 and 66). The Court also finds that the alleged inconsistencies pointed out by the Government are so insignificant that they cannot cast doubt on the overall credibility of the applicants' submissions.

74. 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).

75. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their relatives were abducted by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. 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 Ruslan Askhabov, Isa Dubayev and Isa Dokayev were abducted on 10 December 2002 by State servicemen during an unacknowledged security operation.

76. There has been no reliable news of Ruslan Askhabov, Isa Dubayev and Isa Dokayev since the date of their abduction. Their names have not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to them after their arrest.

77. Having regard to the previous cases concerning disappearances 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*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), in the context of the conflict in the 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 Ruslan Askhabov, Isa Dubayev and Isa Dokayev or of any news of them for several years supports this assumption.

78. 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 case file (see paragraph 59 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

79. Accordingly, the Court finds that the evidence available permits it to establish that Ruslan Askhabov, Isa Dubayev and Isa Dokayev must be presumed dead following their unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

80. The applicants complained under Article 2 of the Convention that their relatives had disappeared after having been detained by Russian

servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

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

A. The parties’ submissions

81. The Government contended that the domestic investigation had obtained no evidence to the effect that Ruslan Askhabov, Isa Dubayev and Isa Dokayev were dead or that any servicemen of the federal law enforcement agencies had been involved in their kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

82. The applicants argued that Ruslan Askhabov, Isa Dubayev and Isa Dokayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court’s case-law on Article 2. The applicants pointed out that the prosecutor’s office had not taken some crucial investigative steps. For instance, the investigators had failed to collect impressions of footprints and tyre marks from the crime scene or to question employees of the military commander’s office and the ROVD about their possible participation in the abduction. The investigation into the kidnapping had been opened several days 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 five and a half years without producing any known 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

83. 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 64 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 Ruslan Askhabov, Isa Dubayev and Isa Dokayev

84. 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, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

85. The Court has already found that the applicants' relatives must be presumed dead following their unacknowledged detention by State servicemen and that their deaths can be attributed to the State. In the absence of any justification put forward by the Government, the Court finds that there has been a violation of Article 2 in respect of Ruslan Askhabov, Isa Dubayev and Isa Dokayev.

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

86. 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).

87. In the present case, the kidnapping of Ruslan Askhabov, Isa Dubayev and Isa Dokayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

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

89. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation in case no. 52158 was instituted on 16 December 2002, that is six days after the abduction of the applicants' relatives. While this delay in itself was not very long, the Court, having regard to the absence of any explanations by the Government in this respect, cannot accept that it was justified in a situation 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 not taken by the investigators. For instance, the investigators had failed to take such basic steps as identifying and questioning the servicemen who had manned the checkpoints in the Oktyabrskiy district of Grozny on the night of abduction; questioning the servicemen of the military commander's office which was located in the vicinity of Isa Dokayev's house; establishing which military units could have used the military vehicles described by the relatives of the abducted men; identification and questioning of the staff of the military commander's office and of the ROVD who could have been involved in the abduction of Ruslan Askhabov, Isa Dubayev and Isa Dokayev. It is obvious that if these investigative measures were to produce any meaningful results they should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. The failure to undertake these basic investigative measures not only demonstrates the authorities' failure to act of their own motion but also constitutes 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).

90. The Court also notes that even though the applicants or their relatives were granted victim status in case no. 52158, they were only informed of the suspensions and the resumptions 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.

91. Finally, the Court notes that the investigation in case no. 52158 was suspended and resumed several times and that there were lengthy periods of inactivity on the part of the prosecutor's office when no proceedings were pending.

92. Having regard to the limb of the Government's objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years without producing any tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

93. 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 Ruslan Askhabov, Isa Dubayev and Isa Dokayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

94. The applicants relied on Article 3 of the Convention, submitting that it was highly probable that after the abduction Ruslan Askhabov, Isa Dubayev and Isa Dokayev had been subjected to ill-treatment. The applicants also alleged that the third applicant was subjected to ill-treatment during the abduction. Further, the applicants complained that as a result of their relatives' disappearance and the State's failure to investigate it properly they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

95. The Government disagreed with these allegations and argued that the investigation had not established that the applicants and Ruslan Askhabov, Isa Dubayev and Isa Dokayev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

96. The applicants maintained their submission.

B. The Court's assessment

1. Admissibility

(a) The complaint concerning Ruslan Askhabov, Isa Dubayev and Isa Dokayev

97. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court

adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161 *in fine*).

98. The Court has already found that Ruslan Askhabov, Isa Dubayev and Isa Dokayev were detained on 10 December 2002 by federal forces and that no reliable news of them has been received since. It has also found that, in view of all the known circumstances, they can be presumed dead and that the responsibility for their death lies with the State authorities (see paragraph 80 above). However, the questions as to the exact way in which they died and whether they were subjected to ill-treatment while in detention have not been answered. In the absence of any relevant evidence the Court finds that this part of the complaint has not been substantiated.

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

(b) The complaint concerning the ill-treatment of the third applicant

100. 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.

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

(c) The complaint concerning the applicants’ mental and emotional suffering

102. 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

103. 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).

104. In the present case, the Court observes that the disappeared men were the applicants’ close relatives. For almost six years the applicants have not had any news of them. During this period the applicants have applied to various official bodies with enquiries about their family members, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of their family members following their kidnapping. The responses received by the applicants mostly denied that the State was responsible for their arrest or simply informed them that an investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

105. In view of the above, the Court finds that the applicants suffered distress and anguish as a result of the disappearance of their close relatives and their inability to find out what happened to them. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3. At the same time the Court notes that the fifth applicant was born in April 2003, almost four months after her father’s disappearance. Having regard to this, the Court does not find that this applicant has suffered such distress and anguish as a result of her father’s disappearance that it would amount to a violation of Article 3 of the Convention.

106. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the applicants, except for the fifth applicant. Consequently, there has been no violation of Article 3 of the Convention in respect of the fifth applicant.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

107. The applicants further stated that Ruslan Askhabov, Isa Dubayev and Isa Dokayev 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

108. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Ruslan Askhabov, Isa Dubayev and Isa Dokayev had been deprived of their liberty in breach of the guarantees set out in Article 5 of the Convention.

109. The applicants reiterated their complaint.

B. The Court’s assessment

1. Admissibility

110. 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

111. 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).

112. The Court has established that Ruslan Askhabov, Isa Dubayev and Isa Dokayev were abducted by State servicemen on 10 December 2002 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this 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).

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

114. In view of the foregoing, the Court finds that Ruslan Askhabov, Isa Dubayev and Isa Dokayev were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

115. The applicants alleged that the search carried out in the house of the first applicant family on 10 December 2002 was unlawful and constituted a violation of their right to respect of their home. They further complained that the disappearance of their close relatives after their detention by the State authorities caused them distress and anguish which had amounted to a violation of their right to family life. They referred to Article 8 of the Convention, which provides:

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

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

(a) The right to respect for home

116. The Court reiterates that while, in accordance with Article 35 § 1 of the Convention, those seeking to bring their case against the State before the Court are required to use first the remedies provided by the national legal system, there is no obligation under the said provision to have recourse to remedies which are inadequate or ineffective. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/000 et seq., 10 January 2002). There is no evidence that the applicants properly raised before the domestic authorities their complaints alleging a breach of their right to respect for home. But even assuming that in the circumstances of the present case no remedies were available to the applicants, the events complained of took place on 10 December 2002, whereas their application was lodged on 29 April 2005. The Court thus concludes that this part of the application was lodged outside the six-month limit (see *Musayeva and Others v. Russia* (dec.), no. 74239/01, 1 June 2006, and *Ruslan Umarov v. Russia* (dec.), no. 12712/02, 8 February 2007).

117. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) The right to respect for family life

118. The applicants' complaint concerning their inability to enjoy family life with Ruslan Askhabov, Isa Dubayev and Isa Dokayev concerns the same matters as those examined above under Articles 2 and 3 of the Convention. Having regard to its above findings under these provisions, the Court considers that this complaint should be declared admissible. However, it finds that no separate issue arises under Article 8 of the Convention in this respect (see, *mutatis mutandis*, *Ruianu v. Romania*, no. 34647/97, § 66, 17 June 2003; *Laino v. Italy* [GC], no. 33158/96, § 25, ECHR 1999-I; and *Canea Catholic Church v. Greece*, 16 December 1997, § 50, *Reports of Judgments and Decisions* 1997-VIII).

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

119. 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

120. The Government contended that the applicants had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities did not prevent them from using them. The applicants had an opportunity to challenge the actions or omissions of the investigating authorities in court or could have lodged a civil claim for compensation. In sum, the Government submitted that there had been no violation of Article 13.

121. The applicants reiterated the complaint.

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 reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Ayдын 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).

124. 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*, § 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.

125. 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 has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

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

127. As regards the applicants' reference to Article 3 of the Convention, the Court notes that it has found, except in respect of the fifth applicant, a violation of the above provision on account of the applicants' mental suffering as a result of the disappearance of their family members and the inability to find out what had happened to them 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 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.

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

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

129. The applicants complained that they had been discriminated against in the enjoyment of their Convention rights, because the violations of which they complained had taken place because they were resident in Chechnya and because of their ethnic origin as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

“The enjoyment of the right 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.”

130. The Court observes that no evidence has been submitted to it that suggests that the applicants were treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated.

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

IX. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

132. The third applicant complained under Article 1 of Protocol No. 1 that property had been unlawfully seized on the night of her husband's abduction. Article 1 of Protocol No. 1 of the Convention provides:

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

133. The Court refers to the principles under Article 35 § 1 of the Convention (see § 116 above). There is no evidence that the applicant properly raised before the domestic authorities her complaint alleging a breach of the right to respect for her property. But even assuming that in the circumstances of the present case no remedies were available to the applicant, the events complained of took place on 10 December 2002, whereas this application was lodged on 29 April 2005. The Court thus concludes that this part of the application was lodged outside the six-month limit (see *Musayeva and Others*, cited above; and *Ruslan Umarov*, cited above).

134. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

135. Article 41 of the Convention provides:

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

A. The Government's objection

136. The Government submitted that the document containing the applicants' claims for just satisfaction had been signed by Mr O. Solvang and Mr R. Lemaitre while, in the Government's opinion, the applicants had been represented by Ms E. Ezhova, Ms A. Maltseva, Mr A. Sakalov and

Mr A. Nikolayev. They insisted therefore that the applicants' claims for just satisfaction were invalid.

137. The Court points out that the applicants issued powers of attorney in the name of the SRJI, an NGO that collaborates with a number of lawyers. Since the SRJI lists Mr O. Solvang and Mr R. Lemaitre as staff members and members of its governing board, the Court has no doubts that they were duly authorised to sign the claims for just satisfaction on behalf of the applicants. The Government's objection must therefore be dismissed.

B. Pecuniary damage

138. The third, fourth, fifth, sixth, seventh and eighth applicants claimed damages in respect of the lost wages of their relatives Isa Dokayev and Ruslan Askhabov. The applicants submitted that they were financially dependent on their abducted relatives and would have benefited from their financial support. 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").

139. The applicants of Isa Dokayev's family, that is the third, fourth, fifth and sixth applicants claimed a total of 551,595 Russian roubles (RUB) under this heading (15,761 euros (EUR)). The third applicant, as the wife of Isa Dokayev, claimed RUB 249,132 (EUR 7,118); the fourth and fifth applicant, as the daughters of Isa Dokayev, claimed RUB 75,902 (EUR 2,169) and RUB 124,130 (EUR 3,547) accordingly; the sixth applicant as his son, claimed RUB 102,431 (EUR 2,927).

140. The applicants of Ruslan Askhabov's family, that is the seventh and eighth applicants, claimed a total of RUB 856,007 under this heading (EUR 24,457). The seventh applicant, as the mother of Ruslan Askhabov, claimed RUB 281,436 (EUR 8,041) and the eighth applicant, as his wife, claimed RUB 574,571 (EUR 16,416). The applicants have submitted a certificate issued by Ruslan Askhabov's employer, the Oktyabrskiy ROVD, confirming the amount of his earnings.

141. The Government regarded these claims as unsubstantiated.

142. 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' relatives and the loss by the applicants of the financial support which they could have provided. Having regard to the applicants' submissions and the fact that Isa Dokayev was unemployed at the time of his apprehension, the Court awards EUR 14,000 to the applicants of his family, that is, to the third, fourth, fifth, and sixth

applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

143. Further, the Court notes that the seventh and eighth applicants have submitted a certificate confirming the amount of Ruslan Askhabov's earnings and that the Government have not disputed the method of the calculation. Having regard to the applicants' submissions, the Court awards EUR 24,457 as claimed, to the seventh and the eighth applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

C. Non-pecuniary damage

144. The applicants claimed a total of EUR 210,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives. The applicants from Isa Dokayev's family, that is the first, second, third, fourth, fifth and sixth applicants, jointly claimed EUR 70,000; the applicants from Ruslan Askhabov's family, that is the seventh, eighth and ninth applicants, jointly claimed EUR 70,000; the applicants of Isa Dubayev's family, that is the tenth and eleventh applicants, jointly claimed EUR 70,000.

145. The Government found the amounts claimed excessive.

146. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relatives. The applicants, except for the fifth applicant, have been found to have been victims of a violation of Article 3 the Convention. The Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the first, second, third, fourth, fifth and sixth applicants jointly EUR 35,000; the seventh, eighth and ninth applicants jointly EUR 35,000 and the tenth and eleventh applicants jointly EUR 35,000 plus any tax that may be chargeable thereon.

D. Costs and expenses

147. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Chechnya and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff and experts. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,783.

148. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. They also pointed out that the applicants had not enclosed any documents supporting the amounts claimed under postal costs.

149. 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).

150. 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.

151. 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. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives. In addition, the case involved little documentary evidence, in view of the Government's refusal to submit the case file. Therefore, the Court doubts that research was necessary to the extent claimed by the representative.

152. 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 to them, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

E. Default interest

153. 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 join to the merits the Government's objection concerning the non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Article 2, Article 3 in respect of the applicants, Article 5, Article 8 concerning the applicants' right to respect

for family life and Article 13 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Ruslan Askhabov, Isa Dubayev and Isa Dokayev;
4. *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 Ruslan Askhabov, Isa Dubayev and Isa Dokayev had disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants, save for the fifth applicant;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ruslan Askhabov, Isa Dubayev and Isa Dokayev;
7. *Holds* that no separate issues arise under Article 8 of the Convention in respect of the alleged violation of the applicants' right to respect for family life;
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 14,000 (fourteen thousand euros) plus any tax that may be chargeable, in respect of pecuniary damage to the third, fourth, fifth, and sixth applicants jointly;
 - (ii) EUR 24,457 (twenty four thousand four hundred and fifty-seven euros) plus any tax that may be chargeable, in respect of pecuniary damage to the seventh and eighth applicants jointly;
 - (iii) EUR 35,000 (thirty five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the first, second, third, fourth, fifth and sixth applicants jointly;

(iv) EUR 35,000 (thirty five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the seventh, eighth and ninth applicants jointly;

(v) EUR 35,000 (thirty five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the tenth and eleventh applicants jointly;

(vi) 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