



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

FIRST SECTION

CASE OF ISRAILOVA AND OTHERS v. RUSSIA

(Application no. 4571/04)

JUDGMENT

This version was rectified
on 17 February 2010 and 19 October 2010
under Rule 81 of the Rules of the Court

STRASBOURG

23 April 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Israilova and Others v. Russia,
The European Court of Human Rights (First Section), sitting as a
Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 4571/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by sixteen Russian nationals listed in paragraph 6 below (“the applicants”) on 4 December 2003.

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

3. On 1 September 2005 the Court decided to give the case priority (Rule 41 of the Rules of Court).

4. On 13 June 2007 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 Tabarka Tagirovna Israilova¹, born in 1953;
- 2) Mr Shirvan Mikhaylovich Israilov, born in 1940;
- 3) Mr Tagir Atiyevich Gikhayev, born in 1924;
- 4) Ms Avlaz Gikhayeva², born in 1929;
- 5) Mr Alikhan Shirvanovich Israilov³, born in 1976;
- 6) Ms Petimat Shirvanovna Israilova, born in 1975;
- 7) Mr Magomed Shirvaniyevich Israilov⁴, born in 1993;
- 8) Ms Roza Abdulkhamidovna Dovtayeveva, born in 1951;
- 9) Ms Fatima Saidselimovna Ismailova, born in 1970;
- 10) Ms Aminat Adlanovna Dovtayeveva, born in 2000;
- 11) Ms Iman Adlanovna Dovtayeveva, born in 1995;
- 12) Mr Magomed-Khasan Adlanovich Dovtayevev, born in 1993;
- 13) Mr Aslan Dzhunaidovich Dovtayevev⁵;
- 14) Ms Roza Dzhunaidovna Aydamirova⁶, born in 1963;
- 15) Ms Raisa Dzhunaidovna Dovtayeveva, born in 1965; and
- 16) Ms Madina Dzhunaidovna Talkhigova⁷, born in 1979.

The applicants live in the villages of Gekhi and Kulary, in the Urus-Martan District of the Chechen Republic.

7. The first and second applicants are the parents of the fifth, sixth and seventh applicants, as well as of Mr Sharpuddin (also spelled “Sharpudi”) Shirvaniyevich Israilov, born in 1973. The third and fourth applicants are the parents of the first applicant.

8. The eighth applicant is the mother of the thirteenth, fourteenth, fifteenth and sixteenth applicants, as well as of Mr Adlan Dzhunaidovich Dovtayevev, born in 1971. Adlan Dovtayevev was married to the ninth applicant; they are the parents of the tenth, eleventh and twelfth applicants.

¹ Rectified on 17 February 2010: the text was “Ms Tabarik Tagirovna Israilova...”

² Rectified on 17 February 2010: the text was “Ms Avlaz Akhmayevna Gikhayeva...”

³ Rectified on 19 October 2010: the text was “Mr Alikhan Shirvanyevich Israilov...”

⁴ Rectified on 17 February 2010: the text was “Mr Magomed Shirvanyevich Israilov...” and on 19 October 2010: the text was “Mr Magomed Shirvanovich Israilov...”

⁵ Rectified on 19 October 2010: the text was “Mr Aslan Dzhunaidovich Dovtayevev...”

⁶ Rectified on 19 October 2010: the text was “Ms Roza Dzhunaidovna Aydamirova...”

⁷ Rectified on 19 October 2010: the text was “Ms Madina Dzhunaidovna Talkhigova...”

A. Events between 30 December 2002 and 1 January 2003*1. The applicants' account*

9. The applicants did not witness the events described below and gained knowledge of them from third persons.

(a) Abduction of Adlan Dovyayev and Sharpuddin Israilov

10. On 30 December 2002 Adlan Dovyayev drove a VAZ-21043 car from Grozny to Urus-Martan. He was accompanied by his acquaintances, Mr S.B., Mr K.B., Mr I.B. and Mr L.I.

11. At about 5 p.m., when the VAZ-21043 car was within 500 metres of federal military check-point no. 18, two armoured personnel carriers ("APCs") without registration numbers crossed its path. Passengers of the APCs - unidentified armed men wearing camouflage uniforms and masks - fired at the VAZ-21043 car and forced it to stop. Then they blocked the road with the APCs and forced Adlan Dovyayev, S.B., K.B., I.B. and L.I. to get into one of them.

12. Meanwhile, Sharpuddin Israilov was driving his VAZ-2103 car from Grozny to Urus-Martan. He was accompanied by police officers, Mr M.A., Mr R. Ya. and Mr A.S.

13. At about 5.30 p.m., when the VAZ-2103 car was within about 1000 metres of check-point no. 18, a group of armed men forced it to stop. The armed men hit the car with a burst of machine gun fire and wounded Sharpuddin Israilov, R.Ya. and A.S. Then the armed men took Sharpuddin Israilov, M.A., R.Ya. and A.S. out of the car, forced them to the ground and searched them. They then put the four men into the back-seat of the VAZ-2103 and two armed men drove it to the woods where the APCs were parked.

14. By the time the VAZ-2103 reached the APCs, R. Ya. had died. The armed men threw his dead body on the APC's roof. Then they took Sharpuddin Israilov, M.A. and A.S. out of the VAZ-2103 car and put them into the APC in which Adlan Dovyayev, S.B., K.B., I.B. and L.I. had been kept.

15. Some of the armed men got in the two VAZ cars; then all the vehicles drove off in the direction of the village of Khankala. At some point the vehicles stopped, the armed men took R. Ya.'s dead body from the APC's roof and blew it apart with explosives. The vehicles then drove away.

16. Eventually the vehicles stopped. The abducted men heard the noise of flying helicopters and concluded that they had been brought to the federal military base in the village of Khankala ("the Khankala base") and that the armed men belonged to the Russian military.

(b) Detention at the Khankala base

17. Upon arrival at the Khankala base the servicemen placed Adlan Dovtayevev, Sharpuddin Israilov, S.B., K.B., I.B., L.I., M.A. and A.S. inside an iron cabin; through its windows the detainees could see two satellite aeriels and a helipad.

18. On the following day the servicemen took M.A. out of the iron cabin. They questioned him about his involvement in a terrorist attack on the House of the Government of the Chechen Republic and beat him in the course of the interview. During the same day the servicemen took the other detainees outside for questioning in turn. M.A. did not witness how Adlan Dovtayevev and Sharpuddin Israilov were questioned.

19. At about 10 a.m. on 31 December 2002 the servicemen tied Adlan Dovtayevev and Sharpuddin Israilov's arms with adhesive tape, blindfolded the two men, put them in an UAZ vehicle and drove away. Adlan Dovtayevev and Sharpuddin Israilov have not been seen since.

20. Three hours later the servicemen took two other detainees in a white Niva car, drove away from the Khankala base and threw them out of the car in the forest. After a certain lapse of time they did the same with the four remaining detainees. On 1 January 2003 S.B., K.B., I.B., L.I., M.A. and A.S. returned home.

2. Information submitted by the Government

21. At about 5 p.m. on 30 December 2002 unidentified armed men in military-style camouflage uniforms stopped the VAZ-21043 car with registration number C301XB95RUS on the road from Grozny to Urus-Martan near the village of Chernorechye. The armed men violently forced S.B., K.B., I.B., L.I. and Adlan Dovtayevev to get out of the car and put them in an APC.

22. A few minutes later the same unidentified men using firearms stopped at the same place the VAZ-2103 car with registration number C077XO95RUS, in which M.A., R.Ya., A.S. and Sharpuddin Israilov were travelling. M.A. was wounded and R.Ya. died on the spot. Sharpuddin Israilov, M.A. and A.S. were put in the APC in which S.B., K.B., I.B., L.I. and Adlan Dovtayevev had been kept. The armed men seized a duty pistol from A.S., a police officer.

23. Later that day the detained persons were brought to an unidentified place and placed in isolated premises. The unidentified armed men put questions to the detainees concerning the terrorist attack on the House of Government of the Chechen Republic committed on 27 December 2002.

24. On 31 December 2002 S.B., K.B., I.B., L.I., M.A. and A.S. were placed in a Niva vehicle, taken to different districts of the Chechen Republic and released. Eventually they returned home.

25. The whereabouts of Adlan Dovtayeov and Sharpuddin Israilov have not been established. Their cars and the duty pistol of A.S. have not been found.

26. On 4 January 2003 R.Ya.'s dead body was found near the road from Argun to Grozny.

3. Reports by NGOs

27. The disappearance of Adlan Dovtayeov and Sharpuddin Israilov was reported by a number of international NGOs. In particular, on 7 April 2003 Human Rights Watch issued a briefing paper to the 59th Session of the UN Commission on Human Rights entitled "Human Rights Situation in Chechnya". The paper cited the case of Adlan Dovtayeov and Sharpuddin Israilov as an example of forced disappearances of the Chechens. It read as follows:

"On December 30, 2002, Sharpudi Israilov drove from the village of Tolstoi-Yurt, where he had received his new passport, to his home village of Kulary together with three local police officers. As they passed a checkpoint near Chernoreche, an APC drove out of a nearby forest and opened fire on their vehicle, killing one of the policemen and wounding Israilov and one other man. The soldiers put Israilov and the two policemen in the APC, and threw the third policeman's dead body on top. Five other detainees, including Adlan Dovtaev, were already inside the APC. According to a relative, Dovtaev had been detained minutes earlier as he passed through the checkpoint. The men were taken to Khankala military base where Russian soldiers interrogated, beat, and tortured them with electric shocks. On January 1, 2003, soldiers took Israilov and Dovtaev away and the other detainees did not see them again. In the next few days, the six other detainees were released and informed Israilov's and Dovtaev's relatives that they had been in custody together at Khankala military base. Both families filed a complaint with the procuracy, which opened a criminal investigation. At the time of the interview, the relatives had no information on the fate and whereabouts of Sharpudi Israilov and Adlan Dovtaev."

28. On 23 June 2004 Amnesty International issued a media briefing entitled "Russian Federation: Chechen Republic – 'Normalization' in whose eyes?". The paper referred to Adlan Dovtayeov and Sharpuddin Israilov's disappearance as follows:

"On 30 December 2002, an armoured personnel carrier (APC) in the Urus Martan region tried to stop and reportedly opened fire on two cars, killing one passenger and dragging the remaining eight into the APC. The eight were taken to the headquarters of the Russian Armed Forces in the North Caucasus in Khankala. During the following two days, six of the men were released, after having been reportedly subjected to torture and ill-treatment while being questioned about their alleged contacts with Chechen fighters. Adlan Dovtaev and Shaprudi Israilov were not released and have since 'disappeared'."

B. Official investigation into the disappearance of Adlan Dovtayevo and Sharpuddin Israilov

1. The applicants' account

29. Immediately after the abduction of Adlan Dovtayevo and Sharpuddin Israilov their relatives verbally reported the incident to the authorities.

30. On 2 January 2003 Adlan Dovtayevo's uncle, Mr M. D., wrote to the head of Operational and Search Bureau no. 2 of the Main Department of the Russian Ministry of the Interior for the Southern Federal Circuit (*ОПС № 2 ГУ МВД России по ЮФО*, hereinafter "the ORB-2") and to the head of the Department of the Federal Security Service for the Chechen Republic ("the Chechen FSB") asking for assistance in the search for his nephew. On 12 January 2003 the Chechen FSB forwarded his letter to the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office").

31. The relatives of Adlan Dovtayevo and Sharpuddin Israilov continued to search for the two missing men and requested assistance in establishing their whereabouts from numerous official bodies, such as the Administration of the Chechen Republic, the Russian Ombudsman, the Russian State Duma, the Russian President and the prosecutors' offices at different levels. The applicants submitted a number of copies of such applications signed by the first, second and eighth applicants, as well as by M.D. Names of other applicants do not appear in any requests to official bodies. In their efforts the first and eighth applicants were assisted by the SRJI. The first, second and eighth applicants also contacted various penitentiary institutions enquiring about their relatives, but to no avail.

32. On 4 January 2003 the prosecutor's office of the city of Grozny ("the city prosecutor's office") instituted an investigation into Adlan Dovtayevo and Sharpuddin Israilov's disappearance and the theft of their cars under Article 126 § 2 (aggravated kidnapping) and Article 162 § 2 (aggravated violent robbery) of the Russian Criminal Code. The case file was given the number 30002.

33. On 4 January 2003 human remains were discovered near the Grozny-Argun road. On the same date the military prosecutor's office of military unit no. 20102 ("the unit prosecutor's office") instituted an investigation into the murder of an unidentified person under Article 105 § 1 of the Russian Criminal Code. The case file was assigned the number 34/33/0008-03.

34. On 4 January 2003 an officer of the district department of the interior acting on an assignment received from an investigator of the prosecutor's office of the Grozny District ("the district prosecutor's office") questioned M.A. and drew up two reports: an explanation and an interview record. In both documents a detailed description of the circumstances of

abduction was given. M.A. stated that within a distance of some 500 metres from check-point no. 18 armed men in an APC had fired at the VAZ-2103 car. M.A. and R.Ya. had been wounded. Later M.A. and other men had been put into the APC together with five other persons. When the APC stopped, the abducted men had been placed inside “an iron booth”. It had been very cold inside and the detainees had heard helicopters flying; someone had said they were at the Khankala base.

35. The period of the detention was described in the two reports more succinctly and the account given was slightly different. For instance, the explanation referred to the events as follows:

“... After a certain lapse of time the door of our small carriage opened and [they] started to take us outside in turn. I was taken outside as well and led to a column standing right in the street, tied up to it and [they] started beating me. While asking different questions, [they] were beating me with truncheons, legs and hands. Having realised that I had nothing to tell, [they] brought me back inside the small carriage and took another detainee out of it, it went on like this for several hours.”

The interview record stated as follows:

“[They] started taking us outside of the small carriage in turns and, having tied to a column in the street, beat us with truncheons, legs and hands.”

36. On 6 January 2003 the remains discovered were identified as belonging to R.Ya. Later criminal cases nos. 30002 and 34/33/0008-03 were joined under the number 30002.

37. On 13 January 2003 the Special Envoy of the Russian President in Chechnya for Rights and Freedoms (“the Special Envoy”) forwarded the first applicant’s complaint to the prosecutor’s office of the Chechen Republic.

38. On 21 January 2003 the ORB-2 forwarded M.D.’s letter to the city prosecutor’s office.

39. On 27 January 2003 the prosecutor’s office of the Chechen Republic forwarded M.D.’s letter to the city prosecutor’s office and ordered that it be included in the case file relating to the investigation into the kidnapping of Adlan Dovtayev and Sharpuddin Israilov.

40. On 29 January 2003 the prosecutor’s office of the Chechen Republic informed the first applicant that the investigation into her son’s kidnapping had been opened on 4 January 2003 but those missing had not yet been found and invited her to send further queries to the city prosecutor’s office.

41. On 15 February 2003 the unit prosecutor’s office forwarded M.D.’s letter to the district prosecutor’s office.

42. On 18 February 2003 the Russian Ministry of the Interior informed the first applicant that her complaint had been forwarded to the ORB-2.

43. On 25 February 2003 the Russian State Duma forwarded M.D.’s letter to the Prosecutor General’s Office.

44. On 4, 7 and 27 March 2003 the South Federal Circuit Department of the Prosecutor General's Office forwarded M.D.'s letters to the prosecutor's office of the Chechen Republic.

45. On 9 March 2003 the city prosecutor's office granted the second applicant victim status.

46. On 28 March 2003 the Prosecutor General's Office forwarded M.D.'s complaint to the UGA prosecutor's office.

47. On 1 April 2003 the prosecutor's office of the Chechen Republic forwarded M.D.'s complaint about his nephew's disappearance to the city prosecutor's office and ordered that the facts complained of be verified by 18 April 2003.

48. On 2 April 2003 the unit prosecutor's office replied to M.D. that his complaint was similar to those previously lodged.

49. On 5 April 2003 the UGA prosecutor's office forwarded M.D.'s letter to the unit prosecutor's office.

50. On 9 April 2003 the first applicant requested the city prosecutor's office to grant her victim status in case no. 30002 and to inform her of the eventual progress in the investigation.

51. On 14 April 2003 the city prosecutor's office granted the eighth applicant victim status.

52. On 15 May 2003 the Chief Military Prosecutor's Office forwarded the first and eighth applicants' complaint about "actions of federal military servicemen relating to their sons' detention" to the unit prosecutor's office.

53. On 2 June 2003 the city prosecutor's office decided, pursuant to the subject-matter jurisdiction rules, to transfer the investigation file in case no. 30002 to the unit prosecutor's office. The decision described the circumstances of Adlan Dovtayevo and Sharpuddin Israilov's disappearance and noted that A.S. had identified a hatched area on the territory of the Khankala base under the control of the FSB as the place of their detention. The city prosecutor's office concluded that the case materials had "objectively proved" that Adlan Dovtayevo and Sharpuddin Israilov had been kidnapped by servicemen and that those missing had been detained at the Khankala base.

54. On 7 June 2003 the prosecutor's office of the Chechen Republic transferred the case materials to the UGA prosecutor's office. The covering letter stated that those kidnapped had been brought to the Khankala base where they had been unlawfully held and beaten and that the kidnappers had also killed R.Ya.

55. On 21 June 2003 the UGA prosecutor's office accepted case no. 30002 for investigation. It appears that the case was then assigned the number 30/00/0010-03.

56. On 4 July 2003 the prosecutor's office of the Chechen Republic forwarded the first and second applicants' letter to the UGA military

prosecutor's office, which, in its turn, sent it to the unit prosecutor's office on 11 July 2003.

57. On 12 July 2003 the UGA prosecutor's office informed the first and second applicants that the persons implicated in their sons' kidnapping had not been identified and that investigative measures were being taken to solve the crime.

58. On 1 August 2003 the first and eighth applicants requested the UGA prosecutor's office to inform them of progress in the investigation.

59. On 7 August 2003 the SRJI requested the UGA prosecutor's office to take certain investigative measures. On 24 October 2003 the UGA prosecutor's office replied that the investigation into the kidnapping of Adlan Dovtayevev, Sharpuddin Israilov and others in case no. 34/00/0010-03 was pending and requisite steps were being taken to solve the crime.

60. On 16 March 2004 the first applicant wrote to the Russian President and to the Prosecutor General asking for help to establish her son's whereabouts. On 29 March 2004 the Prosecutor General's Office forwarded her complaint to the UGA prosecutor's office.

61. On 12 and 13 April 2004 the second applicant wrote to the UGA prosecutor's office and the Chechen FSB, respectively, asking for help to establish his son's whereabouts and complaining about the investigative authorities' inactivity. On 20 April 2004 the second applicant applied for help to the Ministry of the Interior of the Chechen Republic.

62. On 10 May 2004 the UGA prosecutor's office informed the second applicant that the investigation in case no. 30/00/0010-03 was under way and that requisite measures were being taken to solve the crime.

63. On 25 May 2004 the second applicant wrote to the UGA prosecutor's office complaining about the ineffectiveness of the investigation into his son's kidnapping.

64. On 2 June 2004 the second applicant wrote to the UGA prosecutor's office requesting that his relative representing his interests be allowed access to the investigation file.

65. On 9 June 2004 the UGA prosecutor's office informed the first applicant that the investigation into her son's kidnapping was pending.

66. On 21 July 2004 the UGA prosecutor's office informed the second applicant that the investigative measures were being taken to find Adlan Dovtayevev and Sharpuddin Israilov.

67. On 10 August 2004 the UGA prosecutor's office informed the first applicant that investigative measures were being taken to solve the crime.

2. Information submitted by the Government

68. On 4 January 2003 the district prosecutor's office instituted an investigation into the abduction of A.S., Adlan Dovtayevev, Sharpuddin Israilov and others under Articles 126 § 2 and 162 § 2 of the Russian Criminal Code in case no. 30002.

69. On 4 January 2003 the unit prosecutor's office instituted an investigation into the murder of R.Ya. under Article 105 § 1 of the Russian Criminal Code in case no. 34/33/0008-03. After some urgent investigative measures had been taken, the case was transferred to the district prosecutor's office and joined to case no. 30002.

70. In the course of the investigation M.A. identified and showed to the investigating officers the area inside the post occupied by military units of the Khankala garrison where he had been kept on 30 December 2002 together with the other detainees.

71. In June 2003 case no. 30002 was transferred from the district prosecutor's office to the UGA prosecutor's office for verification of the hypothesis of federal servicemen's involvement in the events.

72. On 21 June 2003 case no. 30002 was accepted for investigation by the UGA prosecutor's office and assigned the number 34/00/0010-03.

73. On an unspecified date the investigators questioned the servicemen who had been on duty in the area indicated by M.A. between 30 and 31 December 2002. Those servicemen stated that no one had been brought to their military unit or kept in its premises. Their military unit had owned no Niva vehicle.

74. The investigators verified whether the detainees could have been kept in other military units but found no unregistered detention facilities.

75. The investigation found cartridges at the crime scene and established the type of firearms from which they had been fired. The cartridges were compared to samples kept in the catalogue of bullets and cartridges; no matches were found.

76. The VAZ-21043 and VAZ-2103 cars were placed on the federal search list.

77. The cause of death of R.Ya. had not been established as his relatives had objected to a post mortem examination.

78. The investigation in case no. 34/00/0010-03, which had so far failed to identify the perpetrators, was ongoing. The implication of any law-enforcement agencies in the crime had not been established.

79. Despite specific requests by the Court the Government did not disclose any documents of the investigation file in case nos. 30002 and 34/00/0010-03. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

3. Reports on criminal case no. 34/00/0010-03 issued on unspecified dates

80. The case file submitted by the applicants contains two undated documents entitled “report on criminal case no. 34/00/0010-03”.

81. The first one, a one-page undated report, is signed by an investigator of the UGA prosecutor’s office and states that Sharpuddin Israilov was kidnapped by unidentified armed men on 30 December 2002 and that the first applicant was granted victim status. The document also contains the UGA prosecutor’s office’s request addressed to all law-enforcement agencies that the first applicant be rendered assistance in the search for her son.

82. It is unclear which authority issued the second document, a seven-page undated report. The report states that on 30 December 2002 “unidentified armed persons” apprehended Adlan Dovtayev, Sharpuddin Israilov and seven other men, put them in two APCs and brought them to the “territory of one of the military units of the Khankala garrison”. It further states:

“The case materials reveal the following:

At about 5 p.m. on 30 December 2003 a group of the Chechen Department of the FSB carrying out operational and search activities in connection with the explosion of the House of the Chechen Government arrived at check-point no. 18. Around eight persons arrived in white Gazel and green UAZ vehicles. A slender, not tall woman of thirty or thirty-five years of age with the rank of major of the FSB was in charge of them. The group also included a third-rank captain named Dzhaguba ... [The members of the group] were accompanied by two APCs, which then drove away to a distance of 1 km. Information concerning suspicious persons was radio-transmitted from the check-point to military servicemen in the APCs.

At first the kidnapped were brought to the building in the city centre... possibly to one of the FSB units, where they were not interrogated. Then they were driven to Khankala, to utility buildings of the military intelligence department of the FSB in the North-Caucasus Region, where they were violently interrogated ... about the explosion of the House of the Government. They were kept in a small metal cabin...”

83. The report then summarises witness statements made by officers of the FSB, according to which the FSB had not carried out any operations related to the investigation into the attack on the House of the Government of the Chechen Republic and had not detained Adlan Dovtayev, Sharpuddin Israilov and others. Those interrogated also stated that a woman with the rank of major and a man named Dzhakuba had not been employed by the Chechen Department of the FSB.

84. The report further mentions statements made by other witnesses and victims and lists requests sent to the military prosecutor’s office of the Rostov-on-Don garrison. Lastly, it contains information on the identities of those kidnapped.

II. RELEVANT DOMESTIC LAW

85. 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 REGARDING *LOCUS STANDI*

86. The Government suggested that the applicants had probably been unaware of the contents of the application form, which had been signed not by the applicants, but by the lawyers working for SRJI. Moreover, one of the lawyers who had signed the application form had not been mentioned in the powers of attorney issued by the applicants. Referring to the Court's decision in *Vasila and Petre Constantin in the name of Mihai Ciobanu v. Romania* (no. 52414/99, 16 December 2003), the Government concluded that the applicants lacked *locus standi* in the present case.

87. The Court observes that the applicants gave the SRJI and its three lawyers powers of attorney, thus duly authorising this NGO to represent their interests in the Strasbourg proceedings, and in particular to sign on their behalf application forms submitted to the Registry. There are no grounds to believe that the applicants issued those powers of attorney against their will. The fact that one of the SRJI lawyers was not named in the powers of attorney does not in itself mean that the applicants lacked *locus standi*. Accordingly, the Government's objection must be dismissed.

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

A. The parties' submissions

88. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Adlan Dovyayev and Sharpuddin Israilov had not yet been completed. The Government further argued that it had been open to the applicants to request the investigators to question particular witnesses, as well as to challenge in court or before a higher prosecutor any actions or omissions of the investigating or other law-enforcement authorities. They also submitted that it had been open to the

applicants to lodge civil claims in respect of damage caused by actions of State agencies but they had failed to do so.

89. 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 the Chechen Republic rendered any potentially effective remedies inadequate and illusory in their case.

B. The Court's assessment

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

91. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports* 1996-IV, and *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

92. 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.

93. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the

conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

94. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants and M.D. complained to the law enforcement authorities shortly after the kidnapping of Adlan Dovtayevo and Sharpuddin Israilov and that an investigation has been pending since 4 January 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

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

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

A. The parties' arguments

96. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Adlan Dovtayevo and Sharpuddin Israilov were State agents. In support of their complaint they referred to the following facts. The armed men had travelled in the APC, while at the material time only members of federal forces could have used this type of vehicle in the Chechen Republic. The abduction had taken place in the vicinity of federal check-point no. 18. The detained men had been held inside the Khankala military base.

97. The Government rejected the applicants' allegations. They argued that it had not been proved that any State servicemen had been involved in the kidnapping of Adlan Dovtayevo and Sharpuddin Israilov. The fact that the detained persons had been held at the Khankala base had not been proved because M.A. had been the only witness who had recognised the place of the detention, while S.B. and A.S. had not been sure that they could have identified the base. None of the detainees questioned by the investigation had been able to identify the perpetrators.

98. Considering that M.A., R.Ya. and A.S. had been acting police officers and Sharpuddin Israilov had applied for a police officer's post, the Government suggested that the kidnappers could have been members of illegal armed groups wishing to take revenge on these men for their loyalty

towards the federal forces. The insurgents had asked questions relating to the terrorist attack on the House of the Government in order to mislead the detainees and to create a negative image of the governing bodies of the Chechen Republic.

99. The letter of the city prosecutor's office of 2 June 2003 did not prove that any servicemen had been implicated in the crime but only showed that such a hypothesis had been considered by the investigation. The copies of M.A.'s statements to the police officer and the report on the case submitted by the applicants had not been signed by an investigator of the prosecutor's office and thus should be regarded as inadmissible evidence. The investigation file in case no. 34/00/0010-03 did not contain such documents.

B. The Court's evaluation of the facts

1. General principles

100. In cases in which there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information capable of corroborating or refuting the applicants' allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

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

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

103. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Tomasi v. France*, 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11; *Ribitsch*, cited above, § 34; and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

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

105. Finally, when there have been criminal proceedings in the domestic courts concerning those same allegations, it must be borne in mind that criminal law liability is distinct from international law responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions, which are to be interpreted and applied on the basis of the objectives of the Convention and in the light of the relevant principles of international law. The responsibility of a State under the Convention, for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Avşar*, cited above, § 284).

2. Establishment of the facts

106. The Court notes that despite its requests for a copy of the investigation file into the kidnapping of Adlan Dovtayevo and Sharpuddin Israilov, the Government refused to 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)).

107. 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.

108. The applicants alleged that the persons who had abducted Adlan Dovtayevev and Sharpuddin Israilov on 30 December 2002 were State agents.

109. The Government suggested in their submission that the persons who had detained Adlan Dovtayevev, Sharpuddin Israilov and the other six men could be members of paramilitary groups. However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005). Moreover, the Court emphasises that M.A. – one of the kidnapped police officers – was questioned while in detention about the terrorist attack on the House of the Government of the Chechen Republic (see paragraph 18 above) and considers that the nature of the information sought from M.A. suggests that the interview was not carried out by insurgents.

110. The Court notes that little evidence has been submitted by the applicants, which is easily understandable in the light of the investigators' reluctance to provide the relatives of the missing men with copies of important investigation documents. Nonetheless, it observes that the applicants' allegation of military involvement in the crime was supported by the eye-witness's official statements. Owing to the Government's refusal to provide any copies of the investigation file, the Court is not persuaded by their argument that M.A.'s explanation and interview record submitted by the applicants were not included in the investigation file and thus should not be considered valid evidence. It therefore accepts that on 4 January 2003 M.A. described the circumstances of the abduction and subsequent detention to the police officer in the course of an interview (see paragraphs 34 and 35 above).

111. The Court further notes that the domestic investigation considered the possibility of participation by State servicemen in the abduction of Adlan Dovtayevev and Sharpuddin Israilov. For instance, the Government admitted that at some point the investigators took steps to verify M.A.'s account of the events by examining the site identified by the witness as the place of detention (see paragraph 70 above).

112. Moreover, the Court notes that, according to the report submitted by the applicants, the investigation questioned some FSB servicemen in an attempt to establish whether they had carried out any special operations in respect of the missing persons (see paragraph 82 above). At the same time it has had regard to the fact that this report was neither signed properly nor dated and takes note of the Government's allegation that it was not included in the investigation file. However, the nature of the report's contents suggests in itself that the document was drafted by a State agency involved in the investigation. The Government have not asserted that the applicants

forged this document and the Court has no reasons to doubt its authenticity. Accordingly, it regards the report as valid evidence.

113. The Court also observes that, having undertaken an inquiry into the incident of 30 and 31 December 2002, the city prosecutor's office established that federal servicemen had been involved in the crime and transferred the case to a military prosecutor's office for further investigation (see paragraph 53 above). The Court takes note of the Government's assertion that such transfer in itself did not prove any servicemen's guilt. Nonetheless, it considers that the findings by the city prosecutor's office are capable – at the very least – of rendering the applicants' hypothesis more persuasive.

114. The Court emphasises that the Government have offered no explanation whatsoever of the fact that an APC, a specific military vehicle that normally could not be owned by civilians, was freely circulating in daytime in the immediate vicinity of a federal military check-point.

115. In view of the above the Court finds that the fact that a large group of armed men in uniform was able to travel in the APC in broad daylight on the road between two important towns, to open fire on two civilian cars and then to keep eight men in detention strongly supports the applicants' allegation that these were State servicemen conducting a security operation.

116. 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).

117. 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 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 Adlan Dovtayevev and Sharpuddin Israilov were abducted on 30 December 2002 by State servicemen during an unacknowledged security operation.

118. There has been no reliable news of Adlan Dovtayevev and Sharpuddin Israilov since 31 December 2002. 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 the abduction.

119. Having regard to the previous cases concerning disappearances of persons in the Chechen Republic which have come before the Court (see, among others, *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court considers that in the context of the conflict in the Chechen Republic when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Adlan Dovtayev and Sharpuddin Israilov or of any news of them for six years supports this assumption.

120. Accordingly, the Court finds that the evidence available permits it to establish that Adlan Dovtayev and Sharpuddin Israilov must be presumed dead following their unacknowledged detention by State servicemen.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

121. The applicants complained that their relatives had disappeared after being detained by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. They relied on Article 2 of the Convention, which 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

122. The Government contended that the domestic investigation had obtained no evidence to the effect that Adlan Dovtayev and Sharpuddin Israilov were dead or that any servicemen of the federal law-enforcement agencies had been involved in their alleged kidnapping or killing. The Government claimed that the investigation into the kidnapping of the

applicants' relatives met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

123. The applicants argued that Adlan Dovtayevo and Sharpuddin Israilov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for six 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 fact that the investigation had been pending for six years without producing any known results was further proof of its ineffectiveness.

B. The Court's assessment

1. Admissibility

124. 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 criminal domestic remedies should be joined to the merits of the complaint (see paragraph 95 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 Adlan Dovtayevo and Sharpuddin Israilov

125. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar*, cited above, § 391).

126. The Court has already found that the applicants' relatives must be presumed dead following their unacknowledged detention by State servicemen and that the deaths can be attributed to the State. In the absence of any justification in respect of any use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Adlan Dovtayevo and Sharpuddin Israilov.

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

127. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family and carried out with reasonable promptness and expedition. It should also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was lawful and justified in the circumstances, and should afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

128. In the present case, the kidnapping of Adlan Dovtayev and Sharpuddin Israilov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

129. 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 sparse information about its progress presented by the Government.

130. The Court notes that the authorities were made aware of the crime in writing on 2 January 2003 by M.D. The investigation in case no. 30002 was instituted on 4 January 2003. However, it appears that after that a number of essential steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all. For example, the Government did not inform the Court on what dates the investigators had questioned S.B. and A.S., the key witnesses who had been detained together with the two missing men. Neither did they provide any information on the substance of their statements. They only referred to those interviews in their observations on the admissibility and merits of the application (see paragraph 97 above). The Court is accordingly inclined to assume that such interviews were not carried out promptly although they should have been organised immediately after the crime was reported to the authorities and as soon as the investigation commenced in order to produce any meaningful results.

131. A number of essential steps were never taken. Most notably, it appears that the investigators took no steps to find the users of the APCs that had been seen near check-point no. 18 on 30 December 2002. Nor did the investigation try to identify and question the servicemen who had manned that check-point. Moreover, it does not appear from the information submitted by the Government that any FSB servicemen assigned to the Khankala base have ever been questioned.

132. The Court also notes that even though the first, second and eighth applicants were eventually granted victim status, they were not informed of any significant developments in the investigation. The standard replies to their queries merely stated that the proceedings were ongoing. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

133. Lastly, the Court notes that no information on progress in the investigation in case nos. 30002 and 34/00/0010-03 after August 2004 has been submitted to its attention. It thus assumes that no significant investigative steps have been taken in this case for more than four years, which is a particularly lengthy period of inactivity, especially in criminal proceedings relating to such a serious crime.

134. The Court will now examine the limb of the Government's objection that was joined to the merits of the application (see paragraph 95 above). Inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the authorities' failure to take necessary and urgent investigative measures undermined the effectiveness of the investigation in its early stages. Furthermore, the Government mentioned that the applicants had the opportunity to apply for judicial or administrative review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes in this respect that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged the actions or omissions of the investigating authorities before a court or a higher prosecutor. Besides, after a lapse of time some investigative measures that ought to have been carried out promptly could no longer usefully be conducted. Therefore, it is highly doubtful that the remedies relied on would have had any prospects of success. Accordingly, the Court finds that the criminal law remedies relied on by the Government were ineffective in the circumstances of the case and rejects their objection as regards the applicants' failure to exhaust these domestic remedies.

135. 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 Adlan Dovtayevev and Sharpuddin Israilov, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

136. The applicants relied on Article 3 of the Convention, claiming that Adlan Dovtayevo and Sharpuddin Israilov had been ill-treated by Russian servicemen. They further complained under this heading 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, which reads:

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

A. The parties' submissions

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

138. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

(a) The complaint concerning Adlan Dovtayevo and Sharpuddin Israilov

139. 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*, 18 January 1978, § 161 *in fine*, Series A no. 25).

140. The Court has found it established that Adlan Dovtayevo and Sharpuddin Israilov were detained on 30 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, the two missing men can be presumed dead and that the responsibility for their deaths lies with the State authorities (see paragraph 120 above). However, the question of the exact way they died has not been elucidated. Furthermore, the materials at the Court's possession do not contain any detailed information that would allow it to establish with certainty that Adlan Dovtayevo and Sharpuddin Israilov were ill-treated in a particular manner at the hands of servicemen. M.A.'s statements made before the officer of the district department of the interior

only allow the conclusion that he was beaten by the servicemen. However, it does not appear that he ever claimed to have seen the perpetrators beating the other detainees, in particular, Adlan Dovtayevo and Sharpuddin Israilov (see paragraph 35 above).

141. In such circumstances the Court considers that it is unable to find beyond all reasonable doubt that Adlan Dovtayevo and Sharpuddin Israilov were ill-treated in detention. It thus finds that this part of the complaint has not been substantiated.

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

(b) The complaint concerning the applicants' mental suffering

143. 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

144. 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).

145. In the present case the Court notes that Sharpuddin Israilov was a son of the first and second applicants, a grandson of the third and fourth applicants and a brother of the fifth, sixth and seventh applicants. It appears that it was only the first and second applicants who made various applications and enquiries to the domestic authorities in connection with Sharpuddin Israilov's disappearance.

146. Adlan Dovtayevo was a son of the eighth applicant, the husband of the ninth applicant, the father of the tenth, eleventh and twelfth applicants

and a brother of the thirteenth, fourteenth, fifteenth and sixteenth applicants. The materials at the Court's disposal suggest that it was the eighth applicant and M.D. who contacted the various official bodies in search of Adlan Dovtayevev.

147. The Court points out that no evidence has been submitted to it that either the siblings of Adlan Dovtayevev and Sharpuddin Israilov or the latter's grandparents were in any manner involved in the search for the two missing men (see, by contrast, *Luluyev and Others*, cited above, § 112). In such circumstances, the Court, while accepting that the disappearance of close relatives might have been a source of considerable distress to the third, fourth, fifth, sixth, seventh, thirteenth, fourteenth, fifteenth and sixteenth applicants, is nevertheless unable to conclude that their mental and emotional suffering was distinct from the inevitable emotional distress in a situation such as the one in the present case and that it was so serious that it fell within the ambit of Article 3 of the Convention.

148. At the same time the Court considers that Adlan Dovtayevev's wife was to a certain extent involved in the search for her husband, even if there is no evidence that she applied to the authorities in writing. It also considers that the tenth, eleventh and twelfth applicants were adversely affected by the fact of their father's disappearance although they could not have been expected to communicate with the authorities owing to their young age.

149. The Court observes that for six years the first, second, eighth, ninth, tenth, eleventh and twelfth applicants have had no news of Adlan Dovtayevev and Sharpuddin Israilov. Throughout this period the first, second and eighth applicants persistently applied to various official bodies with enquiries about their sons. Despite those attempts, they have never received any plausible explanation or information as to what became of Adlan Dovtayevev and Sharpuddin Israilov following their kidnapping. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

150. In view of the above, the Court finds that the first, second, eighth, ninth, tenth, eleventh and twelfth applicants suffered distress and anguish as a result of the disappearance of their close relatives and their inability to find out what had 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 of the Convention.

151. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the first, second, eighth, ninth, tenth, eleventh and twelfth applicants.

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

152. The applicants further stated that Adlan Dovtayevev and Sharpuddin Israilov 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

153. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Adlan Dovtayevo and Sharpuddin Israilov had been deprived of their liberty in breach of the guarantees set out in Article 5 of the Convention.

154. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

155. 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*

156. 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).

157. The Court has found it established that Adlan Dovtayevev and Sharpuddin Israilov were abducted by State servicemen on 30 December 2002 and have not been seen since. Their detention was not acknowledged, it 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 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).

158. 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 close relatives had been detained and taken away in life-threatening circumstances.

159. In view of the foregoing, the Court finds that Adlan Dovtayevev and Sharpuddin Israilov 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.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

160. The applicants complained that they had been deprived of effective remedies in respect of the alleged violations of Articles 2 and 3, contrary to Article 13 of the Convention, which provides:

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

A. The parties' submissions

161. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them.

162. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

163. 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

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

165. As regards the complaint of lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life, including effective access for the complainant to the investigation procedure (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV, and *Süheyra Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

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

167. 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 to discharge its obligation under Article 13 of the Convention.

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

169. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the complaint under Article 3 that Adlan Dovtayev and Sharpuddin Israilov had been ill-treated by State agents, the Court notes that this part of the complaint under Article 3 was found unsubstantiated in paragraph 140 above. In the absence of an "arguable claim" of a violation of a substantive Convention provision the Court finds that there has been no violation of Article 13 in this respect.

170. As regards the applicants' reference to Article 3 of the Convention on account of their mental suffering caused by the disappearance of their close relatives, their inability to find out what had happened to those missing and the way the authorities had handled their complaints, the Court notes that it has found a violation in this respect as regards the first, second, eighth, ninth, tenth, eleventh and twelfth applicants. 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. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

VIII. ALLEGED VIOLATIONS OF ARTICLES 8 AND 14 OF THE CONVENTION

171. In their initial application form the applicants stated that their right to respect for their family life had been violated as a result of their relatives' disappearance in breach of Article 8 of the Convention. They also stated that they had been discriminated against on the grounds of their ethnic origin in breach of Article 14 of the Convention.

Article 8 of the Convention, in so far as relevant, provides:

"1. Everyone has the right to respect for his ... family life ... home ...

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.”

Article 14, in so far as relevant, provides:

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

172. In the observations on admissibility and merits of 19 February 2008 the applicants stated that they no longer wished their complaints under Articles 8 and 14 of the Convention to be examined.

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

174. 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

175. 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

176. The first and second applicants claimed compensation for their son’s VAZ-2103 car bought in July 2002 in the amount of its purchase price, that is 33,000 Russian roubles (RUB) (approximately 950 euros (EUR)). As evidence they submitted a copy of the purchase agreement for the VAZ-2103 between Sharpuddin Israilov and Mr A.T.

177. The ninth, tenth, eleventh and twelfth applicants claimed compensation in respect of the lost wages of their husband and father. Although Adlan Dovtayev had been unemployed at the time of his disappearance, he could have been expected to earn the minimum wage and would have supported his wife and children financially. They claimed a total of RUB 396,453.59 (approximately EUR 115,000).

178. The Government regarded these claims as unfounded.

179. As regards the claims submitted by the first and second applicants, the Court observes that they provided no evidence that the VAZ-2103 car belonged to them or that they invested any money in it. Neither did they provide any information enabling the Court to conclude that they were the only persons who could have inherited the car from their late son. The Court therefore does not find it appropriate in the circumstances of this case to make any award to the first and second applicants under this head.

180. As to the claims submitted by the ninth, tenth, eleventh and twelfth applicants, 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 Adlan Dovtayevo and the loss by his wife and children of the financial support which he could have provided. Considering the fact that Adlan Dovtayevo was not employed at the time of his abduction, the Court finds it appropriate to award EUR 2,000 to the ninth, tenth, eleventh and twelfth applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

181. The applicants claimed compensation for the suffering they had endured as a result of the loss of their family members and the indifference shown by the authorities towards them. The first, second, eighth, ninth, tenth, eleventh and twelfth applicants claimed EUR 50,000 each, while the third, fourth, fifth, sixth, seventh, thirteenth, fourteenth, fifteenth and sixteenth applicants claimed EUR 20,000 each under this head.

182. The Government found the amounts claimed exaggerated.

183. 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 first, second, eighth, ninth, tenth, eleventh and twelfth applicants have been found victims of a violation of Article 3 of the Convention. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award to the first and second applicants EUR 34,000 jointly, the eighth, ninth, tenth, eleventh and twelfth applicants EUR 34,000 jointly and to the third, fourth, fifth, sixth, seventh, thirteenth, fourteenth, fifteenth and sixteenth applicants EUR 500 each in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

C. Costs and expenses

184. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and legal drafting at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. They also claimed translation fees and courier mail fees confirmed by relevant invoices and administrative expenses unsupported by any evidence. The aggregate claim in respect of costs and expenses relating to the applicants' legal representation amounted to EUR 8,806.20.

185. The Government disputed the reasonableness and the justification of the amounts claimed under this head. They also submitted that the applicants' claims for just satisfaction had been signed by six lawyers, three of whom had not been mentioned in the powers of attorney issued by the applicants. They also doubted that it had been necessary to send the correspondence to the Registry via courier service.

186. The Court notes that the applicants had given authority to act to the SRJI and its three lawyers. The applicants' observations and claims for just satisfaction were signed by six persons in total. The names of three of these persons appeared in the powers of attorney, while three other lawyers worked with the SRJI. In these circumstances, the Court sees no reasons to doubt that the six lawyers mentioned in the applicants' claims for costs and expenses took part in the preparation of the applicants' observations. Moreover, there are no grounds to conclude that the applicants were not entitled to send their submissions to the Court via courier service.

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

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

189. 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 joint procedure was followed in the present case (Article 29 § 3 of the Convention), the applicants' representatives submitted their observations on admissibility and merits in one set of documents. Moreover, the case involved little documentary evidence, in view of the Government's refusal to submit the case file. The Court thus doubts that research and legal drafting were necessarily time-consuming to the extent claimed by the representatives.

190. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award under this head EUR 4,500, together with any value-added tax that may be chargeable to the

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

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaints under Articles 8 and 14 of the Convention;
2. *Dismisses* the Government's objection regarding *locus standi*;
3. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
4. *Declares* the complaints under Articles 2, 5 and 13 of the Convention, as well as the complaint concerning the applicants' mental suffering under Article 3 of the Convention, admissible and the remainder of the application inadmissible;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of Adlan Dovtayevo and Sharpuddin Israilov;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Adlan Dovtayevo and Sharpuddin Israilov had disappeared;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first, second, eighth, ninth, tenth, eleventh and twelfth applicants on account of their mental and emotional suffering;
8. *Holds* that there has been no violation of Article 3 of the Convention in respect of the third, fourth, fifth, sixth, seventh, thirteenth, fourteenth, fifteenth and sixteenth applicants;

9. *Holds* that there has been a violation of Article 5 of the Convention in respect of Adlan Dovtayevo and Sharpuddin Israilov;
10. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
11. *Holds* that there has been no violation of Article 13 of the Convention as regards the alleged violation of Article 3 of the Convention in respect of Adlan Dovtayevo and Sharpuddin Israilov;
12. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Article 3 in respect of the applicants;
13. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 2,000 (two thousand euros) in respect of pecuniary damage to the ninth, tenth, eleventh and twelfth applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (ii) EUR 34,000 (thirty-four thousand euros) to the first and second applicants jointly, EUR 34,000 (thirty-four thousand euros) to the eighth, ninth, tenth, eleventh and twelfth applicants jointly and EUR 500 (five hundred euros) each to the third, fourth, fifth, sixth, seventh, thirteenth, fourteenth, fifteenth and sixteenth applicants, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;
 - (iii) EUR 4,500 (four thousand five hundred euros) in respect of costs and expenses to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
14. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President