



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

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FIRST SECTION

CASE OF TURLUYEVA AND KHAMIDOVA v. RUSSIA

(Application no. 12417/05)

JUDGMENT

STRASBOURG

14 May 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Turluyeva and Khamidova 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 Malinvernì,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 14 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 12417/05) 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 two Russian nationals, Ms Malika Usmanovna Turluyeva and Ms Yakhita Khamidova (“the applicants”), on 25 March 2005.

2. The applicants, who had been granted legal aid, were represented by Ms L. Khamzayeva, a lawyer practising in Moscow. 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 28 September 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 were born in 1969 and 1940 respectively. They live in the village of Alleroy, the Kurchaloyevskiy District, in the Chechen Republic. The first applicant is the wife of Mr Aslanbek Ilyasovich Khamidov, born in 1965. The second applicant is his mother.

A. Disappearance of Aslanbek Khamidov

1. The applicants' account

7. At about 10 a.m. on 25 October 2000 a group of armed men arrived at the applicants' house at 11 Tolstoy Street, the village of Alleroy, arrested Aslanbek Khamidov and took him away.

8. According to the applicants, Aslanbek Khamidov was arrested in the course of a special "sweeping" operation (*зачистка*) carried out by the Russian armed forces in the village of Alleroy on 25 October 2000. The servicemen arrested ten other men residing in Alleroy and brought them, together with Aslanbek Khamidov, to a locally based military unit, presumably on the pretence of checking their identities. Later, the ten detainees were released. Aslanbek Khamidov was never seen again.

9. On 15 January 2001 the local administration of the village of Alleroy issued a certificate confirming that on 25 October 2000 Aslanbek Khamidov had been arrested in the course of the "special sweeping operation".

2. Information submitted by the Government

10. On 25 October 2000 an identity and registration regime check was carried out in the village of Alleroy.

11. At about 10 a.m. on 25 October 2000 at least ten unidentified armed men wearing camouflage uniforms took Aslanbek Khamidov away from the house at 11 Tolstoy Street in the village of Alleroy.

B. The search for Aslanbek Khamidov and the investigation

1. The applicants' account

12. On 1 March 2001 the prosecutor's office of the Chechen Republic forwarded the application lodged by the NGO Memorial concerning Aslanbek Khamidov's disappearance to the Argun interdistrict prosecutor's office ("the interdistrict prosecutor's office") and ordered that an inquiry be

carried out and a criminal case be opened if necessary. They commented that Aslanbek Khamidov had been “arrested by unidentified armed men in camouflage uniforms in the course of a registration regime check [in the village of Alleroy]”.

13. On 18 April 2001 the interdistrict prosecutor’s office instituted an investigation into Aslanbek Khamidov’s kidnapping under Article 126 § 2 of the Russian Criminal Code (“aggravated kidnapping”). The case was assigned the number 39024.

14. On 18 June 2001 the interdistrict prosecutor’s office suspended the investigation in case no. 39024 for failure to identify those responsible.

15. On 23 June 2001 the department of the interior of the Kurchaloyevskiy District (“ROVD”) opened search case no. 30/15 in relation to Aslanbek Khamidov’s kidnapping.

16. On 24 December 2001 the interdistrict prosecutor’s office notified the first applicant of the suspension of the investigation. They observed, *inter alia*, the following:

“The investigation has established that at 10 a.m. on 25 October 2000 ... unidentified servicemen of the military arrested A. Khamidov and took him away in an unknown direction. A. Khamidov’s whereabouts have not been established to date.”

17. On 14 February 2002 the prosecutor’s office of the Chechen Republic informed the Shali Town Court of the Chechen Republic (“the town court”) of the following:

“At about 10 a.m. on 25 October 2000, in the course of a special operation, unidentified servicemen of the federal armed forces arrested Aslanbek Khamidov at 11 Tolstoy Street, the village of Alleroy, the Kurchaloyevskiy District of the Chechen Republic, and drove him away in an unknown direction.”

The prosecutor’s office of the Chechen Republic further mentioned that the investigation into Aslanbek Khamidov’s kidnapping had been opened on 18 April 2001 and suspended on 18 June 2001.

18. On 28 February 2002 the interdistrict prosecutor’s office granted the first applicant victim status. The decision read as follows:

“On [the date is illegible] 2000 military servicemen took Aslanbek Khamidov away from his home and drove him away in an unknown direction. A. Khamidov’s whereabouts are unknown to date.”

19. On 15 March 2002 the town court declared Aslanbek Khamidov missing as from 25 October 2000, on the first applicant’s request.

20. On 6 September 2002 an investigator of the ROVD questioned Mr T. who stated that on 25 October 2000 he had been arrested in the course of a special sweeping operation. When at the operation control centre, he had seen a number of people with their heads covered with shirts. He had heard and recognised Aslanbek Khamidov’s voice but had not seen the latter’s face as it had been hidden under the shirt.

21. On 20 November 2002 the prosecutor's office of the Kurchaloyevskiy District ("the district prosecutor's office") informed Mr Kh., a lawyer acting on the applicants' behalf, that case no. 39024 had been opened on 18 April 2001 and that the first applicant – due to her victim status – was entitled to receive copies of the case materials from the district prosecutor's office.

22. On 12 December 2002 the first applicant complained to the prosecutor's office of the Chechen Republic of the ineffectiveness of the investigation into her husband's kidnapping.

23. On 23 February 2003 the investigation in case no. 39024 was suspended for failure to identify the perpetrators.

24. On 9 December 2004 the district prosecutor's office notified the first applicant of the decision of 23 February 2003.

2. Information submitted by the Government

25. The applicants did not promptly inform the authorities of Aslanbek Khamidov's kidnapping. They contacted the NGO Memorial only on 22 January 2001.

26. On 24 March 2001 the prosecutor's office of the Chechen Republic received a complaint concerning Aslanbek Khamidov's kidnapping.

27. On an unspecified date the interdistrict prosecutor's office instituted an investigation into Aslanbek Khamidov's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned the number 39024.

28. On an unspecified date the first applicant was admitted to the proceedings as a victim and questioned. She stated that at about 9 a.m. on 25 October 2000 a group of armed servicemen wearing camouflage uniforms had arrived at her house in an Ural vehicle and an armoured personnel carrier ("APC") and had entered it. One of them - a heavily built man of medium height with dark complexion - had worn no beard or moustache and spoken Russian with a slight accent. The servicemen had not checked her husband's identity papers but had ordered him to take his shirt off. Aslanbek Khamidov had obeyed. The servicemen had noticed a scar left by a missile wound on his right shoulder and said that they would be taking him away for two hours to establish the origin of the wound. The first applicant had not seen her husband since then but had learned from fellow villagers that he had been brought to a filtration point in the village of Tsentoroy, kept there in a pit for 24 hours and then taken away in an unknown direction. On the same day two of her fellow villagers, Mr T. and Mr M., had been arrested and released seven days later from the territory of the Khankala military base. They had seen the first applicant's husband at the Tsentoroy filtration point but not in Khankala. Two other villagers, Mr A. and Mr I., who had been arrested on 25 October 2000 and then released on the same day, had seen Aslanbek Khamidov at the Tsentoroy

filtration point. Aslanbek Khamidov had received the missile wound after an explosion of a mine at the farm neighbouring their house and had then been admitted to Kurchaloy Hospital and treated there from 22 September to 2 October 2000.

29. On unspecified dates Mr I., Mr U. and Mr M. were questioned. They stated that at about 11 a.m. on 25 October 2000 five unmasked men in camouflage uniforms had put them in an Ural vehicle and taken them to the village of Novogrozny. The witnesses had been kept there until the evening and then released in the presence of Mr D., the head of the local administration of Alleroy.

30. On an unspecified date Mr and Ms A., Aslanbek Khamidov's brother and his sister-in-law, were questioned. They stated that during the identity check carried out in Alleroy by the federal military ten men armed with machine guns speaking Russian without an accent had seen Aslanbek Khamidov's missile wound and taken him away to the temporary federal military base near Tsentoroy and Alleroy.

31. On an unspecified date Mr Kh., a surgeon of Kurchaloy Hospital, was questioned and stated that he did not remember a patient named Aslanbek Khamidov and could not give any information on the latter's wound because the hospital archive materials dated prior to 2003 had been lost.

32. An extract from Aslanbek Khamidov's medical record was included in the investigation file, according to which between 22 September and 2 October 2000 Aslanbek Khamidov had been treated in Kurchaloy Hospital for numerous missile wounds.

33. On an unspecified date Mr A., the head of the local administration of Alleroy between January 2000 and August 2001, was questioned and stated that on 25 October 2000 six villagers, including a distant relation of his – Aslanbek Khamidov – had been arrested. All of them, except for Aslanbek Khamidov, had been released later. Mr A. had issued a certificate concerning Aslanbek Khamidov's arrest in the course of the special sweeping operation upon the first applicant's request as she had needed to present the certificate to the law-enforcement agencies. Mr A. was not sure whether Aslanbek Khamidov had been kept in Tsentoroy upon his arrest.

34. On 6 February 2003 the first applicant was questioned again. She stated that on 25 October 2000 twenty drunken servicemen in camouflage uniforms had entered her courtyard and ordered all men present to strip down to their trousers. They had taken Aslanbek Khamidov away, allegedly to verify the origin of his missile wound.

35. On 12 February 2003 Mr T. was questioned. He stated that on 25 October 2000 he and Mr I. had been pasturing cattle on the outskirts of Alleroy. At about 9 or 10 a.m. Mr I.'s nephew had told them that there had been a military check in the village. Five or ten minutes later unmasked armed men in camouflage uniforms had arrived; one of them had had a

metal detector. They had put Mr T. and Mr I. in an Ural vehicle and driven in the direction of the village of Novogrozny where the federal military had been located. At some point Mr T. and Mr I. had been taken out of the Ural vehicle and seen Mr U. and some other persons sitting on the ground with their heads hidden under shirts. Then Mr T. had been put in the Ural vehicle again and taken to other premises controlled by the federal forces. There he had been placed in a pit together with Mr M. and a young man named Sergey. Having spent a night in the pit Mr T. had been brought to a tent. Several unmasked men sitting at a table inside the tent had questioned him about their relations with Aslan Maskhadov, one of the insurgents' leaders. In the afternoon the detainees had been put in a helicopter and flown for some ten or twenty minutes. Upon landing they had been driven to a house in which Mr T. had been kept for a week and questioned about his connections with the insurgents by an elderly blonde bespectacled man. Then Mr T. had been released. Mr T. did not mention that he had seen Aslanbek Khamidov on 25 October 2000 after the arrest.

36. The investigators were informed that Aslanbek Khamidov had not been kept in temporary detention facilities of the Kurchaloy, Itum-Kalinskiy and Naurskiy districts or in remand prisons of the North Caucasus Region.

37. On an unspecified date the military commander of the Chechen Republic informed the investigators that units under his command had not carried out any special operations in Alleroy on 25 October 2000 and had not arrested Aslanbek Khamidov.

38. The prosecutor's offices of the Groznenskiy, Shalinskiy and Nadterechny districts and the Achkhoy-Martan interdistrict prosecutor's office informed the investigators that they had no information on Aslanbek Khamidov's arrest.

39. The investigation was suspended a number of times for failure to identify the perpetrators. The decisions on suspension were repeatedly quashed by higher prosecutor's offices.

40. On an unspecified date the first applicant was questioned again and confirmed her previous statements. She also said that no pressure was being exercised upon her by law-enforcement agencies in relation to her application lodged with the Court.

41. The investigators sent requests to correctional facility no. IZ-20/1 and military unit no. 20102 and received replies stating that they had no information on Aslanbek Khamidov's disappearance.

42. The investigation failed to find those responsible for Aslanbek Khamidov's kidnapping and remained pending.

43. Despite specific requests by the Court, the Government did not disclose the documents from the investigation file in case no. 39024, except for a barely legible copy of the transcript of Mr T.'s interview of 12 February 2003. Relying on 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 witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

44. 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 THE VALIDITY OF THE APPLICATION

45. In their observations of 14 January 2008 on admissibility and merits the Government submitted that the second applicant had not duly authorised Ms L. Khamzayeva to represent her interests before the Court and concluded that the application should therefore be declared inadmissible pursuant to Article 35 § 3 of the Convention.

46. The Court points out in this respect that the first applicant's power of attorney issued in the name of Ms L. Khamzayeva was enclosed with the application form of 25 March 2005. The second applicant's power of attorney was outstanding. On 6 December 2007 the second applicant duly authorised Ms L. Khamzayeva to represent her interests before the Court. On 7 February 2008 a copy of the second applicant's power of attorney was sent to the Government for information.

47. In these circumstances the Court considers that there are no grounds on which to doubt the fact that the second applicant was willing to participate in the proceedings before it through counsel or to question the validity of the present application. It thus dismisses the Government's objection.

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

A. The parties' submissions

48. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that

the investigation into Aslanbek Khamidov's kidnapping had not yet been completed. It was open to the applicants to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, as well as to pursue civil complaints, but they had failed to do so.

49. The applicants contested that objection. They stated that they had no effective domestic remedies available to them in relation to their grievances.

B. The Court's assessment

50. 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).

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

52. 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.

53. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva*

v. Russia, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

54. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that an investigation into Aslanbek Khamidov's kidnapping has been pending since 18 April 2001. The applicants and the Government dispute the effectiveness of the investigation.

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

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

A. The parties' arguments

56. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Aslanbek Khamidov were State agents. In support of their complaint they referred to the following facts. Federal servicemen had carried out a large-scale identity check on the day of Aslanbek Khamidov's disappearance. The armed men who had abducted Aslanbek Khamidov were not of Chechen origin. The villagers arrested on 25 October 2000 had been taken to the place where the federal military had been located. The abductors had used an APC and an Ural vehicle which could not be owned by private parties. Mr T. had heard Aslanbek Khamidov's voice at the Tsentoroy filtration point. The interdistrict prosecutor's office and the prosecutor's office of the Chechen Republic had officially confirmed that Aslanbek Khamidov had been arrested by unknown federal servicemen.

57. The Government stated that an identity and registration regime check had been carried out in Alleroy on 25 October 2000. They did not specify which agency had organised it or on what legal grounds but submitted that detailed information on that check was being collected by the investigation.

58. The Government further argued that the involvement of Russian servicemen in Aslanbek Khamidov's kidnapping had not been proven and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that Aslanbek Khamidov was dead.

59. The Government emphasised that Mr T. and Mr M., the witnesses who had been arrested in Alleroy on 25 October 2000, had not claimed to have seen Aslanbek Khamidov at the Tsentoroy filtration point. None of the witnesses had mentioned any insignia on the armed men's camouflage uniforms, which proved that those men could not be members of the military.

60. Moreover, the Government claimed that the investigation file in case no. 39024 contained no transcript of Mr T.'s interview of 6 September 2002 referred to by the applicants and concluded that the applicants had submitted false information to the Court. The first applicant had stated that her husband's kidnappers had been drunk only in the course of her additional interview, which proved that she was trying to "discredit the Russian military forces" before the Court.

61. The applicants' references to the letters by the prosecutor's offices and the head of the village administration are inappropriate as those letters merely cited the applicants' allegations without reaching any conclusions as to military involvement in the crime.

62. The Government further pointed out that various groups of Ukrainian mercenaries had committed crimes in the territory of the Chechen Republic and emphasised that the fact that the perpetrators had Slavic features and spoke Russian did not prove their attachment to the Russian military. They also observed that a considerable number of armaments and APCs had been stolen by illegal armed groups from Russian arsenals in the 1990s and that anyone could purchase camouflage uniforms.

63. In sum, the Government insisted that the involvement of State agents in Aslanbek Khamidov's kidnapping had not been proven beyond reasonable doubt.

B. The Court's evaluation of the facts

1. General principles

64. 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).

65. 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).

66. 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.

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

68. 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).

69. Lastly, 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*

70. The Court notes that despite its requests for an entire copy of the investigation file in case no. 39024, the Government produced only one document. They referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

71. 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.

72. The applicants alleged that the persons who had taken Aslanbek Khamidov away on 25 October 2000 and then killed him had been State agents.

73. The Court notes that the applicants' account of events of 25 October 2000 appears to be coherent and comprehensive. It does not agree with the Government's assertion that the fact that the first applicant had not mentioned the armed men's intoxication during her first interview rendered her statements false (see paragraph 60 above). Moreover, the Government suggested that the applicants invented Mr T.'s interview of 6 February 2002 claiming that the case file contained no transcript of such an interview (*ibid*). The Court is unable to share the Government's view on this matter as it does not have a copy of the entire investigation file in case no. 39024 at its disposal.

74. The Government admitted that an identity check had been carried out in the village of Alleroy on 25 October 2000. They did not dispute that it had been organised by State agents but refused to provide any details of the nature of the check or the agency which had conducted it, claiming that such information was being established by the investigators (see paragraph 57 above).

75. The Court considers that in order to secure the observance of fundamental human rights any special security operations conducted by State agencies, including large-scale identity checks, should be subject to a number of rules. At the very least, such special operations should be registered in official documents in a certain manner. In the Court's view, it is disquieting that the domestic investigation has been incapable for more than eight years of establishing which State agency was behind the security check of 25 October 2000.

76. The Government suggested that Aslanbek Khamidov's kidnappers could be insurgents or mercenaries. 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 *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005). Moreover, the Government's hypothesis appears to be even less probable in view of their acknowledgment of the identity check carried out on the day of the crime as it is implausible that groups of insurgents would enter a village in the presence of State agents, kidnap a person and leave unnoticed.

77. The applicants' allegation that Aslanbek Khamidov was arrested by State servicemen is supported by the following. The Government confirmed that a special operation had been conducted in Alleroy on the date of Aslanbek Khamidov's kidnapping. The domestic investigating authorities expressly referred to the fact of Aslanbek Khamidov's arrest by unknown federal servicemen in several official documents (see paragraphs 16, 17 and 18 above). The Court is not persuaded by the Government's assertion that the applicants' reference to those documents was inappropriate in any manner (see paragraph 61 above) since their authenticity has never been questioned. Moreover, it is clear from the wording of the interdistrict prosecutor's office's letter of 24 December 2001 that in the course of the investigation the military involvement in the crime had been established, not merely looked into (see paragraph 16 above).

78. Furthermore, the Court considers it very unlikely that an armoured military vehicle stolen by insurgents from the federal troops in the 1990s could have moved freely through Russian military checkpoints without being noticed.

79. Hence, the Court finds that the fact that a large group of armed men in uniform equipped with military vehicles was able to move freely through the village on the day of a State security operation and to arrest Aslanbek Khamidov at his home strongly supports the applicants' version of State servicemen's involvement in their relative's kidnapping.

80. 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).

81. Taking into account the above elements, the Court is satisfied that the applicants have made out a prima facie case that Aslanbek Khamidov was arrested by State servicemen. The Government's statement that the investigation did not find any evidence of military or other State

involvement in the kidnapping is insufficient to relieve them of 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 Aslanbek Khamidov was arrested on 25 October 2000 by State servicemen during the special security operation.

82. There has been no reliable news of Aslanbek Khamidov since the date of his kidnapping. His name has not been found in any official detention facilities' records. Lastly, the Government did not submit any explanation as to what had happened to him after his arrest.

83. 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 Aslanbek Khamidov or of any news of him for more than eight years supports this assumption.

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

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

85. In their application form of 25 March 2005 the applicants complained that their relative had disappeared after having been detained by Russian servicemen and that the domestic authorities had failed to effectively investigate the crime.

86. The Court considers, of its own motion, that it is appropriate to examine this complaint under Article 2 of the Convention, which reads as follows:

“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

87. The Government indicated that no direct reference to Article 2 of the Convention had been made in the application form submitted by the applicants. Further, they contended that the domestic investigation had obtained no evidence to the effect that Aslanbek Khamidov was dead or that any State servicemen had been involved in his kidnapping or alleged killing. The Government pointed out that the applicants’ failure to promptly inform the authorities of the crime had entailed destruction of evidence and rendered the investigation more complicated. In sum they claimed that the investigation into the kidnapping of the applicants’ relative met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

88. The applicants restated their complaint referring directly to Article 2 of the Convention and argued that Aslanbek Khamidov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for more than eight years. The applicants submitted that they had not immediately informed the authorities of the kidnapping because in 2000 a large-scale counter-terrorist campaign had been under way in the Chechen Republic and they had feared to leave their village to visit a prosecutor’s office. At the same time they had not had any confidence in the law-enforcement agencies located in the village of Alleroy since those had been responsible for the identity check of 25 October 2000.

89. The applicants also emphasised that the investigation had been suspended and resumed a number of times and had been pending for eight years without producing any tangible results. They concluded that it had not met the requirement of effectiveness implied in Article 2 of the Convention.

B. The Court’s assessment

1. Admissibility

90. 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 55 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 Aslanbek Khamidov**

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

92. The Court has already found it established that the applicants' relative must be presumed dead following his unacknowledged detention by State servicemen and that the death can be attributed to the State (see paragraph 84 above). In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Aslanbek Khamidov.

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

93. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

94. In the present case the kidnapping of Aslanbek Khamidov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

95. The Court notes at the outset that the documents from the investigation, save for one minor exception, 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 sparse information on its progress provided by the Government.

96. The Court takes note of the Government's submission that the delay in institution of the investigation into Aslanbek Khamidov's kidnapping was attributable to the applicants, who had failed to promptly report the crime to the authorities. It observes in this respect that it is not clear on what date the first complaint concerning Aslanbek Khamidov's disappearance was lodged with the law-enforcement agencies, but the applicants have admitted that it was done with a certain delay. According to the Government, the first complaint was received by the prosecutor's office of the Chechen Republic on 24 March 2001 (see paragraph 26 above). Nonetheless, it follows from the letter from the prosecutor's office of the Chechen Republic – a copy of which has been submitted to the Court by the applicants – that this authority had been informed of the crime by 1 March 2001 (see paragraph 12 above). The investigation in case no. 39024 was instituted on 18 April 2001 (see paragraph 13 above), that is, six weeks after 1 March 2001. The Government offered no explanation for this delay, which in itself was liable to adversely affect the investigation of the kidnapping in life-threatening circumstances, where crucial action needs to be taken expeditiously. Therefore, although the applicants were responsible for the initial delay in the commencement of the investigation, the Government – in turn – are accountable for the failure to institute criminal proceedings once the crime was reported to them.

97. According to the Government, the investigation, which has been pending for eight years, has still not established which State agency was in charge of the identity check of 25 October 2000 (see paragraph 57 above). The Court is bound to consider this as major evidence of the investigation's ineffectiveness.

98. Owing to the Government's failure to provide information on the time-line of the investigation, the Court is not in a position to establish whether investigative measures referred to by the Government, such as witnesses' interviews, were taken promptly or not. However, drawing inferences from the Government's refusal to submit a copy of the investigation file in case no. 39024, it is ready to presume that at least some of those measures were delayed.

99. Moreover, it is plausible to assume that a number of requisite steps have not been taken at all. For instance, it does not follow from the Government's submissions that the investigators ever tried to find the users of the APC that had arrived at Aslanbek Khamidov's house on 25 October 2000 or to question servicemen on duty at the Tsentoroy filtration point on that day.

100. The Court also notes that even though the first applicant was eventually granted victim status in case no. 39024, she was not promptly informed of progress in the investigation. For instance, the latest official notification concerning the developments in the case addressed to her is dated 9 December 2004 (see paragraph 24 above). Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings (see *Oyur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

101. Lastly, the Court notes that it follows from the Government's submissions that the investigation in case no. 39024 was suspended and resumed several times, apparently in order to rectify certain defects.

102. The Court will now examine the limb of the Government's objection that was joined to the merits of the application (see paragraph 55 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.

103. 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 Aslanbek Khamidov, in breach of Article 2 of the Convention in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

104. Relying on Article 3 of the Convention, the applicants complained that Aslanbek Khamidov had been publicly humiliated by State agents when he had been forced to strip down to his trousers in front of women and that he had probably been ill-treated upon his arrest. They further claimed under this head that as a result of their relative's disappearance and the State's failure to investigate it properly, they had endured severe mental suffering. Article 3 of the Convention reads as follows:

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

A. The parties’ submissions

105. The Government asserted that neither the applicants nor Aslanbek Khamidov had been subjected to inhuman or degrading treatment contrary to Article 3 of the Convention.

106. The applicants maintained their complaints.

B. The Court’s assessment

1. Admissibility

(a) The complaint concerning Aslanbek Khamidov

107. The Court reiterates at the outset that in order to fall under Article 3 of the Convention ill-treatment must be at least marginally severe (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25). It is not persuaded that forcing Aslanbek Khamidov to strip down to his trousers in public in itself amounted to a treatment exceeding the minimum level of severity.

108. The Court further 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 *Velikova v. Bulgaria*, no. 41488/98, § 70, ECHR 2000-VI).

109. The Court has found it established that Aslanbek Khamidov was detained on 25 October 2000 by State agents and that no reliable news of him has been received since. It has also found that, in view of all the known circumstances, he must be presumed dead and that the responsibility for his death lies with the State authorities (see paragraph 84 above). However, the question as to the exact way he died and whether he was subjected to ill-treatment while in detention has not been elucidated. The Court considers that the materials before it do not permit it to find beyond all reasonable doubt that Aslanbek Khamidov was ill-treated in detention. It thus finds that this part of the complaint has not been substantiated.

110. 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

111. 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

112. 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).

113. In the present case the Court notes that the applicants are the wife and the mother of the missing man. For more than eight years they have not had any news of Aslanbek Khamidov. During this period the first applicant applied to various official bodies with enquiries about her husband. It is noteworthy that the second applicant was not actively communicating with the authorities, probably due to her advanced age. The applicants have never received any plausible explanation or information as to what became of Aslanbek Khamidov. The Court’s findings under the procedural aspect of Article 2 of the Convention are also of direct relevance here.

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

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

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

116. The applicants complained that Aslanbek Khamidov 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

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

118. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

119. 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*

120. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev*, cited above, § 122).

121. The Court has found it established that Aslanbek Khamidov was arrested by State servicemen on 25 October 2000 and has not been seen since. His detention was not acknowledged or logged in any custody records and there is no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

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

VII. ALLEGED VIOLATIONS OF ARTICLES 6 AND 8 OF THE CONVENTION

124. The applicants vaguely suggested that criminal proceedings might have been instituted against their relative and alleged possible violations of Aslanbek Khamidov's right to a fair trial guaranteed by Article 6 of the Convention. They also relied on Article 8 of the Convention complaining about the unlawful intrusion into their home on 25 October 2000.

Article 6, in so far as relevant, reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 8, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for ... his home ...

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.”

125. Having regard to all the material in its possession, and as far as it is within its competence, the Court finds that the applicants’ submissions disclose no appearance of violations of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

126. The applicants complained, invoking Articles 2, 3 and 5 of the Convention, that they had been deprived of effective remedies in respect of the violation of Alsanbek Khamidov’s right to life, 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

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

128. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

129. 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

130. The Court considers that the applicants' complaint concerns in substance the alleged violation of Article 13 taken in conjunction with Article 2 of the Convention. It 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 *Halford v. the United Kingdom*, 25 June 1997, § 64, *Reports* 1997-III).

131. 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 leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

132. 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.

133. It follows that in circumstances where, as here, the criminal investigation into the disappearance has been ineffective and the effectiveness of any other remedy that may have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

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

IX. 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. Pecuniary damage

136. The applicants claimed pecuniary damages in respect of Aslanbek Khamidov’s lost wages. They submitted that, even though he was unemployed at the time of his arrest, it was reasonable to assume that he would have found a job and earned at least the statutory minimum wage until 2045. In total the first applicant claimed 28,000 euros (EUR) and the second applicant claimed EUR 1,990.

137. The Government regarded these claims as unfounded.

138. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violations 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’ husband and son and the loss by the applicants of the financial support which he could have provided. The Court further finds it reasonable to assume that Aslanbek Khamidov would eventually have had some earnings from which the applicants would have benefited. Having regard to the applicants’ submissions and the fact that Aslanbek Khamidov was not employed at the time of his arrest, the Court awards EUR 3,000 to the applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

139. The applicants claimed EUR 100,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their husband and son and the indifference shown by the authorities towards them.

140. The Government found the amounts claimed exaggerated.

141. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants’ relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It therefore finds it

appropriate to award the first applicant EUR 25,000 and the second applicant EUR 10,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

142. The applicants claimed EUR 4,800 for the costs and expenses for legal representation incurred in relation to the proceedings before both the domestic authorities and the Court. However, they did not submit any documents in support of these claims. They also claimed 17,147 Russian roubles (EUR 467) in translation fees as confirmed by an invoice.

143. The Government indicated that the applicants had not shown that the expenses claimed for legal representation had actually been incurred.

144. The Court may make an award in respect of costs and expenses in so far as they were actually and necessarily incurred (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V). Given that the applicants failed to submit any evidence to justify their costs and expenses related to the legal representation, it makes no award under this head. It finds it appropriate to award the costs claimed in translation fees in the amount of EUR 467.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objection as to the validity of the application;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
3. *Declares* the complaints under Article 2, Article 3 in respect of the applicants' mental suffering, Article 5 and Article 13 of the Convention admissible and the remainder of the application inadmissible;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Aslanbek Khamidov;

5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Aslanbek Khamidov disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Aslanbek Khamidov;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
9. *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 3,000 (three thousand euros) in respect of pecuniary damage to the 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 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage to the first applicant and EUR 10,000 (ten thousand euros) to the second applicant, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;
 - (iii) EUR 457 (four hundred and fifty-seven euros) in respect of costs and expenses, to be paid to the applicant's representative, 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;
10. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 14 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President