



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

1959 · 50 · 2009

FIRST SECTION

CASE OF KHUMAYDOV AND KHUMAYDOV v. RUSSIA

(Application no. 13862/05)

JUDGMENT

STRASBOURG

28 May 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Khumaydov and Khumaydov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinvernì,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 13862/05) 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, Mr Alaudi Odginovich Khumaydov and Mr Dzhokhar Alaudiyevich Khumaydov (“the applicants”), on 1 April 2005.

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

3. On 1 September 2005 the Court decided to apply 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.

6. On 26 May 2008 the Court acceded to the Government’s request and decided to apply Rule 33 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1961 and 1995 respectively and live in the village of Chervlennaya, Shelkovskoy District, in the Chechen Republic.

8. The first applicant was married to Ms Khava Aduyevna Magomadova, born in 1956. They are the parents of the second applicant. At the material time Khava Magomadova worked as a manager at Chervlennaya railway station.

A. Disappearance of Khava Magomadova

1. The applicants' account

9. The applicants' family lived at 10 Karl Marx Street in Chervlennaya village. On the morning of 16 December 2002 the applicants' neighbours noticed a white Gazel vehicle parked not far from the applicants' house.

10. At 7.25 a.m. Ms B., Khava Magomadova's colleague, saw two UAZ-469 vehicles parked near the special task force checkpoint located in the railway station and three armed men in camouflage uniforms climbing into them. Then the vehicles drove away towards Karl Marx Street.

11. At about 7.30 a.m. Khava Magomadova went to work. According to her neighbours, as soon as she left the house the white Gazel that had been parked near her house drove off. When Khava Magomadova turned from Karl Marx Street into Zavodskaya Street it followed her.

12. Mr D., a railway station employee, was behind Khava Magomadova on his way to work and saw her and the Gazel turning into Zavodskaya Street. A few moments later, when he reached Zavodskaya Street, he saw the Gazel swaying slightly and no trace of Khava Magomadova.

13. The applicants' neighbour, Ms S.B., saw a blue and a khaki UAZ-469 vehicle with aerials on their roofs moving along Zavodskaya Street towards Lenin Street.

14. Khava Magomadova has not been seen since then.

2. Information submitted by the Government

15. At about 7.40 a.m. on 16 December 2002 Khava Magomadova left her house. She has not been seen since then.

B. The search for Khava Magomadova and the investigation

1. The applicants' account

16. Khava Magomadova had not arrived at her office by 8 a.m. Her colleagues began to worry and went to her house. The first applicant told them that his wife had left for work. The colleagues and the first applicant followed Khava Magomadova's footprints, visible on the fresh layer of snow. The footprints stopped at the crossroads of Frunze and Zavodskaya Streets, where Mr D. had seen the Gazel.

17. The first applicant went to the police station to report his wife's disappearance. Police officers told him that they could not deal promptly with his complaint as they were having a weekly meeting. However, they assigned an investigator to deal with the matter.

18. Later the same day investigators visited the scene of the incident and photographed tyre prints.

19. The first applicant complained about his wife's disappearance to various official bodies, including the Russian President, the Russian State Duma, the Chechen administration and the Chechen State Council. The majority of his complaints were forwarded to prosecutors' offices at different levels.

20. On an unspecified date the State authorities refused to institute criminal proceedings related to Khava Magomadova's disappearance.

21. On 12 February 2003 the prosecutor's office of the Shelkovskoy District ("the district prosecutor's office") informed the first applicant that they had quashed the decision refusing to investigate his wife's disappearance and instituted criminal proceedings under Article 126 § 1 of the Russian Criminal Code ("kidnapping"). The case file was assigned the number 52007.

22. On 12 April 2003 the district prosecutor's office suspended the investigation in case no. 52007 for failure to identify those responsible.

23. On 18 April 2003 the first applicant complained about his wife's kidnapping to the military prosecutor's office of military unit no. 20111 ("the unit prosecutor's office").

24. On 25 April 2003 the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office") forwarded the first applicant's complaint to the unit prosecutor's office.

25. On 30 April 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office.

26. On 16 May 2003 the unit prosecutor's office informed the first applicant that they had no information either on Khava Magomadova's whereabouts or on the implication of any military personnel in her kidnapping.

27. On 28 May 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office.

28. On 2 June 2003 the district prosecutor's office resumed the investigation in case no. 52007. On 5 June 2003 they notified the first applicant accordingly and commented that investigative measures were being taken to solve the crime. They also noted that the law enforcement agencies of the Chechen Republic had not carried out any special operations for Khava Magomadova's arrest and that her dead body had not been discovered.

29. On 11 June 2003 the Main Military Prosecutor's Office forwarded to the UGA prosecutor's office the first applicant's complaint about the disappearance of Khava Magomadova who "had been abducted by federal military servicemen in December 2002".

30. On 19 June 2003 the district prosecutor's office informed the first applicant that the investigation in case no. 52007 had been suspended and then resumed.

31. On 20 June 2003 the Department of the Federal Security Service of the Chechen Republic ("the Chechen FSB") informed the first applicant that they had not arrested Khava Magomadova as there had been no legal grounds for it.

32. On 3 July 2003 the prosecutor's office of the Chechen Republic informed the first applicant of the progress in the investigation in case no. 52007. They listed investigative measures taken, such as witnesses' interviews and requests for information sent to law-enforcement agencies and to penitentiary institutions, and commented that those measures had been futile but that investigators continued to take requisite steps to solve the crime.

33. On 9 July 2003 the investigation in case no. 52007 was suspended.

34. On 14 July 2003 the Temporary Operational Group of the Russian Ministry of the Interior informed the first applicant that they had not carried out any special operations in relation to Khava Magomadova in the village of Chervlennaya between 16 and 22 December 2002.

35. On 14 and 24 July 2003 the unit prosecutor's office informed the first applicant that they had no information on implication of the United Group Alignment servicemen in his wife's kidnapping.

36. On 24 July 2003 the Ministry of the Interior of the Chechen Republic forwarded the first applicant's complaint to the department of the interior of the Shelkovskoy District ("ROVD").

37. On 5 August 2003 the UGA prosecutor's office informed the first applicant that the inquiry carried out by the unit prosecutor's office had been fruitless and advised that he request further information related to the search for his wife from the district prosecutor's office.

38. On 11 August 2003 the ROVD informed the first applicant that they were taking measures to solve Khava Magomadova's kidnapping.

39. On 15 August 2003 the Ministry of the Interior of the Chechen Republic informed the first applicant of measures taken to solve his wife's kidnapping and noted that the investigation was under way. On 18 September 2003 the prosecutor's office of the Chechen Republic sent a similar letter to the first applicant.

40. On 6 October 2003 the unit prosecutor's office informed the first applicant that an inquiry into his wife's disappearance had not established any involvement by military personnel.

41. On 10 October 2003 the prosecutor's office of the Chechen Republic informed the first applicant that Khava Magomadova's whereabouts had not been established and that the district prosecutor's office had been instructed to search for her more vigorously. On the same date the ROVD informed the first applicant that they were taking requisite measures to establish his wife's whereabouts.

42. On 13 November 2003 the district prosecutor's office informed the Chair of the State Council of the Chechen Republic that they had quashed the decision of 9 July 2003 and resumed the investigation in case no. 52007.

43. On 26 November 2003 the Russian Ministry of the Interior informed the first applicant that various law enforcement agencies were actively searching for his wife.

44. In reply to one of the first applicant's recurrent complaints the UGA prosecutor's office informed him on 2 December 2003 that they had no new information concerning Khava Magomadova's kidnapping.

45. On 15 December 2003 the district prosecutor's office informed the first applicant that they had quashed the decision of 9 June 2003 and resumed the investigation on 12 November 2003.

46. On 16 December 2003 and 23 January and 21 April 2004 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaints to the district prosecutor's office.

47. On 14 January 2004 the investigation in case no. 52007 was suspended for failure to identify those responsible.

48. On 15 April 2004 the Shelkovskoy District Court of the Chechen Republic declared Khava Magomadova missing as from 16 December 2002.

49. On 26 May 2004 the Chechen FSB informed the first applicant that they had no information on Khava Magomadova's whereabouts.

50. On 9 August 2004 the UGA prosecutor's office forwarded the first applicant's complaint to the unit prosecutor's office.

51. On 24 August 2004 the district prosecutor's office replied to the first applicant's complaint that they had already carried out a thorough inquiry into the matters complained of. They also noted that, although the investigation had been suspended on 14 January 2004, measures were being taken to solve the crime.

52. On 7 October 2004 the first applicant requested the Russian Prosecutor General, the Chair of the National Public Commission and the

Plenipotentiary Representative of the Russian President in the Southern Federal Circuit to help him to find his wife.

53. On 20 December 2004 the prosecutor's office of the Chechen Republic informed the first applicant that investigative measures were being taken to establish Khava Magomadova's whereabouts.

54. On 24 December 2004 the military commander of the Chechen Republic ordered that the military commander's office of the Shelkovskoy District carry out an inquiry into Khava Magomadova's disappearance.

55. On 25 February and 22 March 2005 the SRJI, acting on the first applicant's behalf, requested information from the district prosecutor's office on progress in the investigation in case no. 52007.

56. On 6 April 2005 the prosecutor's office of military unit no. 20102 requested information on special operations carried out on 16 December 2002 from a number of State officials.

57. On 9 April 2005 the military commander of the Shelkovskiy District ordered the ROVD to take measures to establish Khava Magomadova's whereabouts.

58. On 12 April 2005 the prosecutor's office of military unit no. 20102 informed the first applicant that law enforcement agencies had not carried out any special operations in the Shelkovskiy District on 16 December 2002 and had not arrested Khava Magomadova.

59. On 2 June 2005 the ROVD informed the first applicant that measures were being taken to solve his wife's kidnapping.

60. On 21 October 2005 the prosecutor's office of the Chechen Republic replied to the SRJI's letter of 4 October 2005 stating that the investigation of Khava Magomadova's kidnapping was underway and that the first applicant had been granted victim status.

2. Information submitted by the Government

61. On 16 December 2002 the first applicant reported his wife's disappearance to the department of the interior of the Shelkovskiy District ("ROVD").

62. On the same day an investigator of the ROVD inspected the Magomadovs' house and the surrounding area but found no items of interest.

63. On 25 December 2002 the investigator of the ROVD refused to institute criminal proceedings related to Khava Magomadova's disappearance for lack of evidence of a crime.

64. On 12 February 2003 the district prosecutor's office quashed the decision of 25 December 2002 and instituted an investigation into Khava Magomadova's kidnapping under Article 126 § 1 of the Russian Criminal Code. The case file was assigned the number 52007.

65. On 19 February 2003 the first applicant was granted victim status and questioned. He stated that at about 7.40 a.m. on 16 December 2002 his

wife had left for work. She had some work-related documents with her. At 9.30 a.m. Ms B. had come to his house searching for Khava Magomadova who had not arrived at work, although it took her only five minutes to walk there. The first applicant and Ms B. had gone to the railway station but his wife had not been there. The first applicant had reported Khava Magomadova's disappearance to the police station. Later his neighbours had told him that they had seen a white Gazel vehicle with a twisted front number plate at the spot where Khava Magomadova had been last seen. Two men of dark complexion had been sitting inside the Gazel. Villagers had also seen a light-blue UAZ vehicle with a big aerial on its top parked near the railway station that had driven away with the Gazel and two other UAZ vehicles. The first applicant himself had not seen any of those vehicles.

66. On 19 February 2003 the district prosecutor's office questioned two neighbours of the applicants, Ms L. and Ms G. They both stated that at about 7.30 a.m. on 16 December 2002 they had noticed a white Gazel vehicle parked near Ms L.'s house with two men inside it; Ms L. added that at some point she had heard the Gazel leaving.

67. On 5 March 2003 the district prosecutor's office questioned Mr M. as a witness who stated that at 7.40 a.m. on 16 December 2002 he had seen Khava Magomadova turning into Zavodskaya Street. A few moments later he had turned into that street as well but had not seen the woman. A grey UAZ vehicle with a red cross on its back door had been parked near the railway station; its windows had been dirty so Mr M. had not seen who was inside it. The UAZ vehicle had driven off towards the centre of Chervlennaya village.

68. On 5 March 2003 Mr D. was questioned as a witness and submitted that at 7.35 a.m. he had spotted Khava Magomadova walking about 100 metres ahead of him. A new white Gazel vehicle had been parked some 50 metres from the applicants' house; two men had been sitting in it, one of whom was wearing a military-style pea coat. At some point the Gazel had started moving and had turned right in the direction in which Khava Magomadova had gone. Mr D. had turned right as well but saw no-one on the street. The Gazel which had been stationary 2.5 metres from him had started moving.

69. In 2003 the district prosecutor's office questioned Ms B., Ms G., Ms D., Ms M., Mr T. and Mr A., the applicants' fellow villagers. They stated that Khava Magomadova had not been in conflict with anyone and that they had learned of her disappearance on 16 December 2002.

70. On 23 June and 29 November 2003 the first applicant was again questioned. He stated that he had learned from neighbours that the Gazel and UAZ vehicles had arrived from the town of Goryachevodsk. Some of his fellow villagers had told him that Khava Magomadova had been taken away by law-enforcement officers who had produced their badges, but those

persons were unwilling to make official depositions out of fear for their lives and the first applicant could not name them.

71. On several occasions the investigators requested the Chechen FSB, military commanders of different districts of the Chechen Republic and district departments of the interior to carry out investigative measures related to Khava Magomadova's disappearance and to submit information on whether any special operations had taken place in the village of Chervlennaya on 16 December 2002. According to the replies received, no such operations had been conducted and there was no information on Khava Magomadova's arrest.

72. The investigators sent a request to a commander of the special unit of the Ministry of the Interior of Chuvashiya who, while on mission in the Chechen Republic, had been duty at the checkpoint over the Terek River on 16 December 2002.

73. On an unspecified date in March 2003 the commander of the special unit of the Ministry of the Interior of Chuvashiya informed the district prosecutor's office that no Gazel vehicle had appeared in the registration log for vehicles passing checkpoint KPP-162 over the Terek River.

74. Police officers of the special unit of the Ministry of the Interior of Chuvashiya who had been on duty at checkpoint KPP-162 on 16 December 2002 were questioned as witnesses and stated that they had no information on Khava Magomadova's disappearance or Gazel and UAZ vehicles.

75. The investigation into Khava Magomadova's kidnapping remains pending.

76. Despite specific requests by the Court the Government refused to disclose the entire investigation file in case no. 52007. 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. The Government provided copies of the following documents: the decision to open the investigation of 12 February 2003, the decision of 19 February 2003 to grant the first applicant victim status, transcripts of the first applicant's interviews of 19 February, 23 June and 19 November 2003, transcripts of interviews of Ms L., Ms G., Mr M., Mr D., Ms B., Ms M. and Ms S.B., and the report of March 2003 by the commander of the special unit of the Ministry of the Interior of Chuvashiya. They requested the Court to treat the documents submitted as confidential pursuant to Rule 33 of the Rules of Court.

II. RELEVANT DOMESTIC LAW

77. 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 NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

78. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into Khava Magomadova's disappearance had not yet been completed. They further argued that it had been open to the applicants to challenge in court or before higher prosecutors any acts or omissions of the investigating or other law-enforcement authorities, however, the applicants had not availed themselves of that remedy. They also submitted that it had been open to the applicants to file civil claims for damages but they had failed to do so.

79. The applicants contested that objection and stated that the criminal investigation had proved to be ineffective.

B. The Court's assessment

80. 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).

81. 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).

82. 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.

83. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies and rejects this part of the Government's objection.

84. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement authorities immediately after the disappearance of Khava Magomadova and that an investigation has been pending since 12 February 2003. The applicants and the Government disagreed about the effectiveness of the investigation into the disappearance.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

86. The applicants complained that Khava Magomadova had been arrested by Russian servicemen and then disappeared 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. Arguments of the parties

87. The Government argued that the complaint was unfounded. They insisted that no-one had witnessed Khava Magomadova’s kidnapping and thus it could not be established that she had been arrested by State agents. They also suggested that Khava Magomadova, the railway station official, could have been kidnapped by insurgents wishing to take revenge on her or to replace her in office with their followers. The Government further referred to the fact that the investigation had obtained no evidence to the effect that this person was dead, or that representatives of the federal forces had been involved in her abduction or alleged killing.

88. The Government also claimed that the investigation of Khava Magomadova’s kidnapping met the Convention requirement of effectiveness, as evidenced by the questioning of witnesses and requests sent by the investigating authorities to other State agencies.

89. The applicants maintained their complaint. They claimed that the abductors were Russian servicemen and supported their allegations with the following: the Gazel had been parked in the vicinity of a special task force checkpoint located in the premises of the railway station. One of the witnesses had noted that the passenger of the Gazel had been wearing a military jacket. The Gazel’s registration plates had been illegible, while every car with such plates would have normally been stopped at the checkpoint. Two witnesses had seen two UAZ vehicles in the village on the day of the abduction. Furthermore, the applicants argued that the investigation had not met the requirements of effectiveness and adequacy required by the Court’s case-law on Article 2.

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. 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 85 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 Khava Magomadova

i. Establishment of the facts

91. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002). Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in detention, 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 *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

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

93. The Court points out that a number of principles have been developed in its case-law as regards cases where 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 requiring 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).

94. 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.

95. The Court reiterates that it has noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such 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).

96. The Court notes that despite its requests for a copy of the entire investigation file into the kidnapping of Khava Magomadova, the Government produced only a few documents from the file, on the grounds that they were precluded from providing them all by Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has 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)).

97. The Court has found the Russian State authorities responsible for extrajudicial executions or disappearances of civilians in the Chechen Republic in a number of cases, even in the absence of final conclusions from the domestic investigation (see *Khashiyev and Akayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Estamirov and Others*, cited above; and *Baysayeva v. Russia*, no. 74237/01,

5 April 2007). It has done so primarily on the basis of witness statements and other documents attesting to the presence of military or security personnel in the area concerned at the relevant time. It has relied on references to military vehicles and equipment, on witness accounts, on other information on security operations and on the undisputed effective control of the areas in question by the Russian military. On that basis, it has concluded that the areas in question were “within the exclusive control of the authorities of the State” in view of military or security operations being conducted there and the presence of servicemen (see, *mutatis mutandis*, *Akkum v. Turkey*, cited above, § 211, and *Zubayrayev v. Russia*, no. 67797/01, § 82, 10 January 2008).

98. However, in the present case the Court has little evidence on which to draw such conclusions, as the account of the events given by the applicants on the basis of the witnesses’ submissions is rather disjointed.

99. First, the Court emphasises that neither the applicants nor any other witnesses have ever stated that they saw Khava Magomadova being placed inside the white Gazel spotted in Chervlennaya village on the morning of 16 December 2002. Neither was she seen inside the Gazel at any later stage.

100. Secondly, the Court points out that the Gazel as a civilian vehicle could be owned by private individuals. Accordingly, even assuming that Khava Magomadova was indeed taken away in the white Gazel, it does not necessarily prove any State agents’ involvement in her kidnapping.

101. Thirdly, the Court is not persuaded by the applicants’ assertion that there was a connection between the persons travelling in the Gazel and those travelling in the UAZ vehicles seen by the witnesses on the day of the crime and considers it plausible that those two types of vehicles moved around the village simultaneously by pure coincidence.

102. The Court also takes note of the Government’s hypothesis that Khava Magomadova, being an official at the railway station, could have been kidnapped by members of illegal armed groups, given the importance of the railway system in general and the specific interest it might represent for insurgents as a potential target for a terrorist attack.

103. Lastly, the Court observes that Khava Magomadova was not seen in the company of any armed men who resembled State agents. The witness’s allegation to have seen a person wearing a military-style pea coat inside the Gazel is in itself insufficient to reach the conclusion that that person belonged to the federal troops or other law enforcement bodies. Furthermore, the Court cannot firmly rely on the first applicant’s allegations made before the domestic investigation that some unnamed witnesses saw the official badges of those who had taken his wife away, as no relevant statements have ever been submitted to its attention.

104. Accordingly, the Court considers that the applicants have not made a *prima facie* case that Khava Magomadova was kidnapped by State agents in the course of a security operation. In such circumstances, the Court

cannot attribute responsibility for the unlawful acts in the present case to the respondent State without additional evidence to that effect.

105. To sum up, it has not been established to the required standard of proof “beyond reasonable doubt” that the security forces were implicated in the disappearance of Khava Magomadova; nor does the Court consider that the burden of proof can be entirely shifted to the Government.

ii. The State’s compliance with Article 2

106. 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 (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324).

107. In the present case the domestic investigation failed to produce any tangible results as to the identities of the persons responsible for the alleged kidnapping of Khava Magomadova. The applicants have not submitted persuasive evidence to support their allegations that State agents were the perpetrators of such a crime. The Court has already found above that, in the absence of relevant information, it is unable to find that security forces were implicated in the disappearance of the applicants’ relative (see paragraph 105 above). Neither has it established “beyond reasonable doubt” that Khava Magomadova was deprived of her life by State agents.

108. In such circumstances the Court finds no State responsibility, and thus no violation of the substantive limb of Article 2 of the Convention.

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

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

2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

110. The Court notes that there is no proof that Khava Magomadova has been killed. However, it reiterates that the above-mentioned obligations also apply to cases where a person has disappeared in circumstances which may be regarded as life-threatening (see *Toğcu*, cited above, § 112). The applicants informed the investigating authorities that Khava Magomadova had been kidnapped in unclear circumstances. Given a considerable number of reported enforced disappearances of persons in the Chechen Republic and enduring confrontation between illegal armed groups and federal troops in the region in the early 2000s, the Court considers that the disappearance of Khava Magomadova could be regarded as life-threatening. Furthermore, after a certain lapse of time during which no information on the fate of the missing person had been received, both the applicants and investigators could have presumed that she had been deprived of her life at the hands of the kidnappers. Accordingly, the Court concludes that the State authorities were under a positive obligation to investigate the crime in question.

111. Given that there was an investigation into the kidnapping of Khava Magomadova, the Court must now assess whether it met the requirements of Article 2 of the Convention.

112. The applicants argued that the domestic authorities had failed to commence the investigation promptly and that they had not taken all requisite investigative measures.

113. The Government, in their turn, insisted that the investigation had been flawless.

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

115. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. However, the police officially refused to institute formal proceedings due to lack of a crime on 25 December 2002, that is nine days after Khava Magomadova's disappearance (see paragraph 63 above). The Court considers that the ROVD servicemen should have looked more carefully into the possibility of kidnapping in a case where a married woman with stable employment disappeared without a trace and remained missing for nine days in a row.

116. The district prosecutor's office launched the investigation in case no. 52007 on 12 February 2003 (see paragraph 64 above), that is, almost two months after Khava Magomadova's abduction. Such a delay *per se* was liable to affect the investigation into the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

117. The Court observes that the ROVD inspected the crime scene immediately after the incident had been reported to them (see paragraphs 18 and 62 above). However, other investigative measures were taken with a considerable delay. In particular, the first witness interviews were carried out on 19 February 2003 (see paragraphs 65 and 66 above). Several other witnesses were questioned on 5 March 2003 (see paragraphs 67 and 68 above). These delays, for which there has been no explanation in the instant case constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

118. Furthermore, certain investigative steps were not taken at all. For instance, the domestic investigation has never tried to establish the identity of the users of the UAZ vehicles that were circulating around Chervlennaya village on 16 December 2002. Neither did they question the servicemen who had been manning the special task force checkpoint located in the railway station.

119. The Court also notes that even though the first applicant was granted victim status, he was only informed of certain decisions to suspend and resume the investigation. It appears that he was not informed of any other significant developments. Accordingly, the investigators failed to ensure that the investigation had 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).

120. Lastly, it follows from the meagre information at the Court's disposal that the investigation was repeatedly suspended and then resumed (see paragraphs 42 and 45 above). Moreover, it appears that the proceedings had not been pending for more than a year after they had been suspended on 14 January 2004 (see paragraph 47 above). The Government failed to provide a detailed account on progress in case no. 52007 made since 2003. The latest update on the course of the investigation submitted by the applicants indicates that by 21 October 2005 the proceedings had once again been resumed (see paragraph 60 above). The Government stated that the investigation was still ongoing but provided no time-line mentioning at least major investigative steps recently taken. In such circumstances the Court is ready to assume that there have been considerable periods of inactivity by the investigators in case no. 52007 between 21 October 2005 and the present moment. This protracted manner of conducting the investigation could only be detrimental to the prospects of establishing the fate of the applicants' wife and mother.

121. Having regard to the part of the Government's objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for many years and has produced

no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection in this part.

122. The Government also mentioned the opportunity for the applicants to apply for judicial review of the decisions of the investigating authorities, in the context of the exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions on the part of investigating authorities before a court. Therefore, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection in this part as well.

123. 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 Khava Magomadova, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. The parties' submissions

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

126. The applicants maintained their submissions.

B. The Court's assessment

127. Referring to its settled case-law, the Court reiterates that, where a person has been abducted by State security forces and has subsequently disappeared, his or her relatives can claim to be victims of treatment contrary to Article 3 of the Convention on account of their mental distress caused by the “disappearance” of their family member and the authorities' reactions and attitudes to the situation when it is brought to their attention

(see *Kurt v. Turkey*, 25 May 1998, §§ 130-34, *Reports* 1998-III, and *Timurtaş v. Turkey*, no. 23531/94, §§ 96-98, ECHR 2000-VI).

128. Turning to the circumstances of the present case, the Court notes that the applicants are close relatives of Khava Magomadova. Accordingly, it has no doubt that they have indeed suffered from serious emotional distress following the disappearance of their wife and mother.

129. The Court notes that it has already found violations of Article 3 of the Convention in respect of relatives of missing persons in a series of cases concerning the phenomenon of “disappearances” in the Chechen Republic (see, for example, *Luluyev and Others*, cited above, §§ 117-18, *Khamila Isayeva v. Russia*, no. 6846/02, §§ 143-45, 15 November 2007, and *Kukayev v. Russia*, no. 29361/02, §§ 107-10, 15 November 2007). It is noteworthy, however, that in those cases the State was found to be responsible for the disappearance of the applicants’ relatives. In the present case, by contrast, it has not been established to the required standard of proof “beyond reasonable doubt” that the Russian authorities were implicated in Khava Magomadova’s disappearance (see paragraph 105 above). In such circumstances the Court considers that this case is clearly distinguishable from those mentioned above and therefore concludes that the State cannot be held responsible for the applicants’ mental distress caused by the commission of the crime itself.

130. Furthermore, in the absence of a finding of State responsibility for Khava Magomadova’s disappearance, the Court is not persuaded that the investigating authorities’ conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicants mental distress in excess of the minimum level of severity which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among other authorities, *Cruz Varas and Others v. Sweden*, 20 March 1991, § 83, Series A no. 201).

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

132. The applicants further stated that Khava Magomadova 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

133. In the Government’s opinion, no evidence had been obtained by the investigators to confirm that Khava Magomadova had been deprived of her liberty by State agents in breach of the guarantees set out in Article 5 of the Convention.

134. The applicants reiterated their complaint.

B. The Court’s assessment

135. 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 and Others*, cited above, § 122).

136. Nevertheless, the Court has not found it established “beyond reasonable doubt” that Khava Magomadova was arrested by Russian servicemen (see paragraph 105 above). Nor is there any basis to presume that the missing person was ever placed in unacknowledged detention under the control of State agents. In such circumstances the respondent State cannot be held liable for the alleged violation of Khava Magomadova’s rights guaranteed by Article 5 of the Convention.

137. The Court therefore considers that this part of the application should be dismissed as being incompatible *ratione personae* and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. The parties’ submissions

139. 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. The applicants had had an opportunity to challenge the acts or omissions of the investigating authorities in court or before higher prosecutors and to bring civil claims for damages. In sum, the Government submitted that there had been no violation of Article 13.

140. The applicants reiterated the complaint.

B. The Court’s assessment

141. The Court observes that the complaint made by the applicants under this Article has already been examined in the context of Article 2 of the Convention. Having regard to the findings of a violation of Article 2 in its procedural aspect (see paragraph 123 above), the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 2 is admissible, there is no need for a separate examination of this complaint on its merits (see *Shaipova and Others v. Russia*, no. 10796/04, § 124, 6 November 2008).

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

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

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. ”

143. In their observations on admissibility and merits dated 21 March 2008 the applicants stated that they no longer wished their complaint under Article 14 of the Convention to be examined.

144. 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 *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

146. 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

147. The second applicant claimed damages in respect of Khava Magomadova’s loss of earnings arguing that prior to her disappearance his mother earned 60,000 Russian roubles (RUB) per annum and that he could have counted on receiving 30% of her wages. The second applicant claimed a total of RUB 183,801.71 (approximately 4,100 euros (EUR)) under this head.

148. The Government regarded these claims as unfounded and noted that the second applicant had been granted a pension for loss of the breadwinner by the domestic courts.

149. 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 that there has been no violation of Article 2 in its substantive aspect, the Court finds that there is no direct causal link between the alleged violation of Khava Magomadova’s right to life and the loss by the second applicant of the financial support which she could have provided. Accordingly, it makes no award under this head.

B. Non-pecuniary damage

150. The applicants claimed EUR 40,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their wife and mother and the indifference shown by the authorities towards them.

151. The Government found the amounts claimed exaggerated.

152. The Court has found a violation of Article 2 in its procedural aspect. It thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It finds it appropriate to award under this heading the applicants EUR 5,000 each, plus any tax that may be chargeable on these amounts.

C. Costs and expenses

153. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research at a rate of EUR 50 per hour and drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. They also claimed courier service expenses and translation fees confirmed by relevant invoices, as well as administrative costs that were not supported by any documents. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,127.07.

154. 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 five lawyers, two 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 by courier service.

155. 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 five 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 five 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 by courier service.

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

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

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

159. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award the applicants' representatives EUR 4,500, plus any 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

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaints under Article 14 of the Convention;
2. *Decides* to join to the merits the Government's objection regarding the non-exhaustion of criminal domestic remedies and rejects it;
3. *Declares* the complaints under Articles 2 and 13 of the Convention admissible and the remainder of the application inadmissible;
4. *Holds* that there has been no violation of Article 2 of the Convention in its substantive limb in respect of Khava Magomadova;

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 Khava Magomadova had disappeared;
6. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Article 2;
7. *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 5,000 (five thousand euros) in respect of non-pecuniary damage to the first and second applicants each, 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;
 - (ii) 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;
8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 28 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President