



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

1959 · 50 · 2009

FIRST SECTION

CASE OF YUSUPOVA AND OTHERS v. RUSSIA

(Application no. 5428/05)

JUDGMENT

STRASBOURG

9 July 2009

FINAL

10/12/2009

This judgment may be subject to editorial revision.

In the case of Yusupova and Others v. Russia,

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

Christos Rozakis, President,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

George Nicolaou, judges,

André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 5428/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Russian nationals listed below (“the applicants”), on 3 February 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 Mrs V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained that their relative had disappeared in November 2002 and that the authorities had failed to investigate it adequately. The complaint was brought under Article 2 (procedural obligation), and Articles 3 and 13 of the Convention.

4. On 5 December 2007 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

1. Lyubov Musayevna Yusupova, born in 1958;
2. Luiza Suleymanovna Yusupova, born in 1982;
3. Lezina Khasanovna Yusupova, born in 2002.

They live in Achkhoy-Martan, the Chechen Republic.

A. Disappearance of Khasan Yusupov on 15 November 2002

1. The applicants' account

7. The applicants are respectively the mother, wife and daughter of Khasan Vakhidovich Yusupov, born in 1979. At the material time they lived together at 25 Budennogo Street, Achkhoy-Martan. Khasan Yusupov served as a private in the military commandant's office of Achkhoy-Martan (the district military commander's office).

8. In the morning of 15 November 2002 Khasan Yusupov went from Achkhoy-Martan to Khankala by car. Two other servicemen from the military commandant's office of Achkhoy-Martan travelled with him: commander of platoon A.A. and private A.M. They had an appointment at the military prosecutor's office of military unit no. 20102. The three servicemen had been summoned to the military prosecutor's office in relation to a criminal investigation opened against A.M. They travelled in the personal Moskvich-412 car of driver Ilyas B.

9. Until about 2.30 p.m. the servicemen and Ilyas B. were in communication by radio with the military commander's office and with Ibragim B., Ilyas B.'s brother, who was also serving in the district military commandant's office. Then the radio connection was cut.

10. Five days later the first applicant went to the district military commander's office and enquired about Khasan Yusupov. She was told that he and his colleagues had left for an appointment at the military prosecutor's office of Khankala in connection with a criminal case pending against A.M.

11. On the following day the applicants went to the military prosecutor's office in Khankala and met investigator L., who told them that Khasan Yusupov and his colleagues had left his office on 15 November 2002 at around 3 p.m.

12. A taxi driver who had been parked next to the military prosecutor's office on the afternoon of 15 November 2002 told the applicants that

Khasan Yusupov and some others had been taken by the authorities late in the afternoon to cars which had left for unknown destinations. However, he refused to make any formal statement in this respect. The applicants are not aware of his identity.

13. It appears that Ilyas B.'s Moskvich-412 car remained in front of checkpoint no. 1 of the Khankala military base until 18 November 2002, when it was collected by his brother, Ibragim B.

14. On 5 or 6 December 2002 a young man told the applicants that he had been detained with Khasan Yusupov in Khankala for three days and that the latter had stayed there. He refused to give any formal testimony or to disclose his identity.

15. The applicants and other relatives of the disappeared men have had no news of them since 15 November 2002.

2. Information submitted by the Government

16. The Government denied that the applicants' relative and three other men had been detained by representatives of the State. They stated that on 15 November 2002 Khasan Yusupov, two other servicemen of the district military commander's office and driver Ilyas B. had gone to Khankala, after which they disappeared. Their whereabouts have not been established so far.

B. The search for Khasan Yusupov and the investigation

1. The applicants' account

17. Since 15 November 2002 the applicants have repeatedly applied in person and in writing to various public bodies. They have been supported in their efforts by the SRJI NGO. In their letters to the authorities the applicants referred to their relative's disappearance and asked for assistance and details of the investigation. The applicants submitted some of the letters to the authorities and the replies to the Court, which are summarised below.

18. In December 2002 (in the Government's submissions this date is indicated as 21 November 2002) the military prosecutor's office of military unit no. 20102 (the unit's military prosecutor's office) opened criminal proceedings (file no. 34/33/0645-02) concerning the disappearance of Khasan Yusupov and his colleagues. It does not appear that the applicants were made aware of this investigation or that any of the relatives of the disappeared men were questioned within this set of proceedings.

19. On 14 January 2003 the applicants were informed that their request for an investigation into Khasan Yusupov's disappearance had been transmitted to the head of Achkhoy-Martan district administration, the district prosecutor, the military prosecutor and the military commandant of

the Chechen Republic, with a view to organising the necessary investigation.

20. On 28 November 2003 the unit's military prosecutor informed the applicants that it had not been established that federal military personnel were implicated in the kidnapping of Khasan Yusupov. The case was accordingly transmitted to the prosecutor of the Chechen Republic (the Chechnya Prosecutor's Office).

21. On 1 December 2003 the investigator of the Achkhoy-Martan district police department (ROVD) opened criminal proceedings (no. 44690) in accordance with Article 105 part 2 (a) of the Criminal Code on account of murder committed by unknown perpetrators. On 2 December 2003 the first applicant was granted victim status in these proceedings.

22. On 20 December 2003 the Chechnya Prosecutor's Office ordered the Achkhoy-Martan district prosecutor to conduct certain specific investigations in the case.

23. On 24 December 2003 the case was sent to the Grozny district prosecutor's office.

24. On 5 January 2003 the military prosecutor's office of the United Group Alliance (UGA) informed the applicants that case no. 34/33/0645-02 had been remitted to the unit's military prosecutor for further investigation.

25. On 30 March 2004 the unit military prosecutor informed the applicants that the case had been transmitted once more to the Chechnya Prosecutor's Office.

26. On 20 July 2004 the investigation of the criminal case no. 14/33/0645-02D was reopened by the unit's military prosecutor's office. On 20 August 2004 that office informed the applicants that no positive result had been achieved in the investigation, but did not specify if the investigation had been pending or adjourned.

27. On 25 August 2004 the SRJI, acting on the applicants' behalf, asked the district prosecutor's office to provide them with an update on the investigation. In particular, they asked the prosecutor to inform them and the applicants whether criminal case no. 44690 was still with that office, whether the proceedings were pending or adjourned and whether the previous set of instructions of the supervising prosecutor of 20 December 2003 had been carried out.

28. On 10 October 2004 the district prosecutor's office responded to the applicants and the SRJI that the investigation had been transferred to the Grozny district prosecutor's office on 24 December 2003.

29. Following another letter from the SRJI, on 11 December 2004 the Grozny district prosecutor's office submitted that the investigation in the criminal case no. 44690 had been pending with their office since 1 February 2004. It had failed to establish that Khasan Yusupov and three other men had been killed.

30. The first applicant submitted that at the end of 2004 Ibragim B., deputy military commander of the district, had brought them 10,500 roubles (RUB) and explained that this was Khasan Yusupov's salary for three months. In spring 2005 the second applicant received RUB 43,000 at the district military commander's office, for which she had signed a pay cheque. The servicemen of the military commander's office told her that it was Khasan Yusupov's salary for one year.

31. On 17 March 2005 the Grozny district prosecutor's office informed the first applicant, without indicating the date of the decision, that the investigation had been adjourned for failure to identify the persons against whom charges must be brought (Article 208, part 1, paragraph 1 of the Code of Criminal Procedure).

32. On 2 November 2005 the SRJI again requested information about the progress of the investigation from the Grozny district prosecutor's office.

33. On 3 March 2008 an investigator of the Grozny department of the Investigative Committee of the General Prosecutor's Office informed the first applicant that on the same day proceedings in case no. 44690, in which she had been granted victim status, had been reopened and that their office was carrying out the investigation.

34. On 3 April 2008 the same office informed the first applicant that on 2 April 2008 the proceedings had been adjourned for failure to identify the perpetrators of the crime. On 8 April 2008 the proceedings were again reopened, of which the first applicant was informed on the following day.

35. The first applicant submitted that as late as March 2004 the weapons belonging to the three servicemen of the military commander's office which they had been carrying on the day of their disappearance had not been recorded as missing or searched for.

2. Information and documents submitted by the Government

36. Further to a request by the Court, the Government produced ninety-two pages of documents from criminal case no. 44690, including witness statements and copies of decisions to suspend and resume the investigation and to grant victim status, as well as notifications to the relatives of the adjournment and reopening of the proceedings.

37. According to these documents and the Government submissions, the criminal investigation into the disappearance of the applicant's relative and three other men was opened on 1 December 2003. It was triggered by the complaints of the relatives of the disappeared persons to the Achkhoy-Martan and Grozny ROVD and the Achkhoy-Martan district prosecutor's office of 20-24 November 2003. The investigation file was opened under Article 105 part 2 of the Criminal Code (aggravated murder) and assigned no. 44690. On 9 December 2003 the Achkhoy-Martan ROVD transferred the investigation to the district prosecutor's office.

38. Prior to and immediately after the formal opening of the investigation, between 20 November and 15 December 2003, officers of the Grozny district and Achkhoy-Martan ROVD questioned and collected explanations from eight relatives of the missing men. Four of them, including the first applicant, were granted victim status in the proceedings.

39. Thus, the first applicant was questioned on 20, 21 and 24 November. She explained that in May 2002 her son Khasan Yusupov had been serving at the military commander's office of Achkhoy-Martan as a private. He lived at home with her and with his wife and minor son. On 15 November 2002 he, together with two other servicemen, went to Khankala on the summons of a military prosecutor's office issued in relation to a criminal investigation against A.M. He had been armed with an automatic rifle and a pistol, as well as a complete set of ammunition. He never returned. She mentioned Ibragim B., the brother of Ilyas B., who had last seen the men in front of the military prosecutor's office. When questioned on 21 November 2003 she and Raisa A., the wife of A.A., mentioned unnamed witnesses who had seen two armoured vehicles in front of the checkpoint no. 1 of the Khankala compound. Servicemen from these vehicles had searched Khasan Yusupov and Ilyas B., who had been waiting for A.A. and A.M. in front of the gates.

40. Other relatives of the missing men gave similar statements about the circumstances of their disappearance. They mentioned that investigator L. from the military prosecutor's office, on whose summons their relatives had come to Khankala, had told them that the three men had left his office after 3 p.m. and that the military commander's office where they had served had had no information about their whereabouts after 15 November 2002. The relatives submitted that after 15 November 2002 they had inquired about their missing relatives with various official bodies but had obtained no relevant information. The mother and wife of Ilyas B. also stated that on 16 November 2002 their house was searched by the officers of the Achkhoy-Martan ROVD and on the following day, on 17 November 2002, by servicemen of the criminal police department of the military prosecutor's office from Khankala. In both cases no documents had been produced or drawn up, and nothing had been taken from the house. The women indicated, in particular, that the servicemen had inspected Ilyas B.'s room and had asked whether there were any weapons in the house.

41. On 6 December 2003 the investigation questioned Ibragim B., brother of driver Ilyas B., deputy military commander of the Achkhoy-Martan district. He stated that on 15 November 2002 his brother had contacted him by radio and said that he and three servicemen of the military commander's office had arrived in Khankala. Ibragim B. knew the radio callsigns for all three servicemen. Shortly after 2 p.m. Ibragim B. arrived at checkpoint no. 1 and saw Khasan Yusupov and his brother, in the latter's car. They had been waiting for the two other servicemen, who had not been

released from the prosecutor's office. They tried to reach A.M. and A.A. by radio but there was no response. The witness asked his brother to inform him by radio once the servicemen had come out, and then went to Grozny. At about 3 p.m. Ibragim B. himself called Khasan Yusupov, who said that they were still waiting. There was no radio contact after that. The witness thought his brother and three servicemen had returned to Achkhoy-Martan. On the following day Ibragim B. learnt that the four men had disappeared. On 17 November 2002 his house in Achkhoy-Martan had been searched by investigators from the military prosecutor's office in Khankala, without any documents. The investigators looked for weapons but did not find anything. The witness ordered three servicemen from his office to follow the two UAZ cars with the investigators and thus learnt that they had returned to Khankala. The witness stated that he had informed the military commander of the district and of Chechnya about the disappearances. One military prosecutor from Khankala confirmed to him orally that he had authorised the search at his house in Achkhoy-Martan; however this search was unrelated to the disappearance. The witness also alleged that some time later he had met Saykhudi B. from Borzoy, who had told him that between 21 and 23 November 2002 he had been detained in the cellar of the criminal police department of the UGA in Khankala together with Khasan Yusupov. The latter told him that the four men who had come to Khankala on the summons of a military prosecutor had been detained and then separated. He stated that Khasan Yusupov had been questioned about his contacts and that he had asked Saykhudi to transfer the information about his detention to the district military commander's office. Ibragim B. stated that he had asked Saykhudi B. to testify in person at the military prosecutor's office; however the latter refused. Finally, Ibragim B. stated that at some point, under pressure from the military commander's office, the premises of the criminal police in Khankala had been inspected, but no traces of his brother or of the three other men had been found. They had made complaints to the military prosecutor's office, which had produced no results.

42. On 12 December 2003 a detective of the Achkhoy-Martan ROVD reported to his superior that Saykhudi B. from Borzoy had left Chechnya for Germany early in 2003.

43. On 27 December 2003 the district military commander's office informed the district prosecutor's office that three of their servicemen, senior non-commissioned officer A.A. and privates Khasan Yusupov and A.M., had disappeared on 15 November 2002 in unknown circumstances. The letter contained a description and the serial numbers of the guns and ammunitions carried by the three men at the time. The letter further referred to information from investigator L., who had confirmed that the three men had left his office by 3 p.m. on 15 November 2002, and to the testimony of Ibragim B. who had seen the servicemen in front of checkpoint no. 1 in Khankala at about the same time.

44. On 2 February 2004 the unit military prosecutor's office informed the district prosecutor's office that on 11 September 2002 they had opened a criminal investigation into a crime of using or threatening violence against an official, allegedly committed by private A.M. On 21 December 2002 A.M., A.A. and Khasan Yusupov were charged with desertion from military service, committed by an armed group. The said persons have been put on the wanted list. The documents submitted by the Government contain no further information about the progress in any of these cases.

45. The first applicant was questioned again in February 2004. In March 2005 the investigation questioned and granted victim status to Khasan Yusupov's father. At that time the prosecutor's office compiled a comprehensive description of the missing man, including his clothes and physical details. In March 2005 the investigators also questioned once again Ilyas B.'s wife and Ibragim B., who was asked to provide a detailed description and a photo of his missing brother.

46. On 17 March 2005 the district prosecutor's office informed the victims that the investigation had been adjourned for failure to find the perpetrators.

47. According to the Government, the investigation failed to establish the whereabouts of Khasan Yusupov and three other men. The law enforcement authorities of Chechnya had never arrested or detained Khasan Yusupov on criminal or administrative charges and had not carried out a criminal investigation in his respect. There is no evidence linking them with illegal armed groups.

48. According to the documents and information submitted by the Government, between December 2003 and March 2008 the investigation was suspended and resumed on several occasions, and has so far failed to identify those guilty.

49. Despite specific requests by the Court the Government did not disclose the complete set of documents of criminal case no. 44690 and did not provide a list of documents contained within. Relying on information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the unspecified remaining documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained personal data concerning other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. SCOPE OF THE CASE

51. In reply to the Government's observations the applicants, referring to the same matters, relied on a substantive violation of Article 2 of the Convention and a violation of Article 5. The Court notes that these complaints were not included in the initial application, on which the Government have already commented. Nor did the applicants provide an explanation as to why they had failed to raise these complaints at an earlier stage. Finally, the Court notes that in their submissions to the domestic investigative authorities the applicants did not claim that Khasan Yusupov had been detained by the State authorities. Accordingly, the Court considers that it is not appropriate to deal with this matter in the present case (see *Novitskiy v. Ukraine* (dec.), no. 20324/03, 16 October 2007).

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

A. The parties' submissions

52. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Khasan Yusupov had not yet been completed. Referring to Article 125 of the Criminal Procedural Code, they argued that it had been open to the applicants to challenge in court any acts or omissions of the investigating or other law enforcement authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil complaints but that they had failed to do so. They referred to examples where domestic courts had granted similar requests and awarded non-pecuniary damages for the prosecutor's office failure to act.

53. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect had been futile. Seeking judicial review of the decisions of the investigating authorities would be pointless in their case since that remedy could not bring about an effective investigation. With reference to the Court's practice, they argued that they were not obliged to apply to civil courts in order to exhaust domestic remedies.

B. The Court's assessment

54. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73-74, 12 October 2006).

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

56. As regards a civil action to obtain redress for damage sustained through alleged illegal acts or unlawful conduct on the part 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 (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

57. As regards criminal law remedies, the Court observes that an investigation into Khasan Yusupov's disappearance is pending. The applicants and the Government dispute the effectiveness of the investigation.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

59. The applicants complained under Article 2 of the Convention that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

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

A. The parties' submissions

60. The Government contended that the domestic investigation had obtained no evidence to the effect that Khasan Yusupov was dead or that any servicemen had been involved in his kidnapping or alleged killing. In their view, the investigation met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible. They noted that the criminal investigation by the district prosecutor's office had commenced immediately after the applicants' first written submission to the authorities, which was only in November 2003. This delay, attributable to the applicants, had considerably complicated the finding of evidence and the questioning of witnesses. The Government pointed out that the applicants had not informed the investigators about some of the important details which had become apparent from their statements to the Court and from the testimony of Ibragim B. They referred, in particular, to the information about the man who had allegedly been detained together with Khasan Yusupov and about the number plates and the fate of Ilyas B.'s car. They further questioned the applicants' determination to pursue the investigation in view of their failure to challenge any of its acts or omissions. The Government also noted that the decisions to suspend and resume the proceedings did not demonstrate their ineffectiveness, but showed that the authorities in charge had continued to take steps to solve the crime.

61. The applicants argued that the investigation had not met the requirements laid down by the Court's case-law. The investigation into the alleged murder had been opened more than one year after the events and then had been suspended and resumed a number of times, thus delaying the taking of the most basic steps. The fact that the investigation had been pending for such a long period of time without producing any known results was further proof of its ineffectiveness. They also noted that the relatives had not been properly informed of the most important investigative measures. They also invited the Court to draw conclusions from the Government's unjustified failure to submit the entire set of documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

62. 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. The complaint under Article 2 of the Convention must therefore be declared admissible.

2. *Merits*

63. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina v. Russia*, no. 69481/01, §§ 117-19, 27 July 2006).

64. In the present case, the kidnapping of Khasan Yusupov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

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

66. The Court first notes that the parties dispute whether the authorities were immediately made aware of the crime by the applicants' submissions. It notes in this respect the letter from the unit's military prosecutor and the letter from the Chechnya Government of 14 January 2003 to the first applicant's husband referring to forwarding the information about Khasan Yusupov's disappearance to a number of law enforcement authorities including the district prosecutor's office (see paragraphs 19 and 44 above). It thus transpires that at latest by December 2002 the law enforcement authorities and the district military commander's office were aware of the incident. The military prosecutor's office opened an investigation into possible desertion in December (or even November) 2002. However, judging from the documents reviewed by the Court, no significant steps were taken within that round of investigation. It does not appear that the applicants or any other relatives of the missing men had been questioned. It also does not appear that the military prosecutors had taken any steps to verify whether the three men had indeed left the guarded area of the military compound or to establish what had happened to them after they had allegedly done so.

67. The investigation into the alleged murder was instituted by the district prosecutor's office on 3 December 2003, which is over one year after the disappearance. Such a postponement *per se* was liable to affect the investigation of the disappearance in life-threatening circumstances, where crucial action has to be taken in the first days after the event. Within days following the submissions of the relatives' complaints to the law

enforcement authorities in November 2003, the first applicant and other relative of the missing men were questioned and granted victim status. As to the timing of their submissions, it does not appear that the relatives had been called to give witness statements prior to November and December 2003, even though the authorities must have been aware of the disappearance of the four men at the latest in December 2002. Since they were not questioned or summoned to give information prior to these dates, the Court rejects the Government's argument that they were responsible for the delay in conveying important information and for the ensuing difficulties encountered by the district prosecutor's office. The Court is also struck by the fact that the relatives were asked for descriptions and photographs of the missing men only in March 2005 (see paragraph 45).

68. Furthermore, a number of essential steps were never taken. Most notably, it does not appear that the investigation tried to identify and question the servicemen who had manned checkpoint no. 1, in front of which Khasan Yusupov had last been seen, to question investigator L. of the military prosecutor's office about the events of that day or to collect information from the district military commander's office about the situation of their three missing servicemen. Inexplicably, the investigation opened by the district prosecutor's office in December 2003 has never been joined with the investigation into the same event carried out by the military prosecutor's office since December 2002; nor is it apparent that it has even benefitted from any data collected or conclusions reached in the course of this second set of proceedings.

69. The Court finally notes that even though the first applicant was granted victim status in the investigation concerning the murder of her son, she and other relatives were only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

70. The Government, referring to Article 125 of the Code of Criminal Procedure, argued that the applicants could have sought 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 acts or omissions of investigating authorities before a court. Furthermore, the Court emphasises in this respect that while the adjourning or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to adjourn were made without the necessary investigative steps being taken, which led to periods of inactivity and thus unnecessary protraction. Moreover, owing to the delay in the opening of the investigation and the time that had elapsed since the events complained of,

certain measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success.

71. 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 Khasan Yusupov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

72. 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 suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

73. 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.

74. The applicants maintained their submissions.

B. The Court's assessment

75. The Court reiterates 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, the applicants did not claim, until submission of their additional observations in 2008, that the Russian authorities were implicated in the kidnapping (see paragraph 51 above). Nor did they make this claim to the investigating authorities in Russia. 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.

76. Furthermore, the Court is not persuaded that the investigating authorities' conduct in this case, albeit negligent to the extent that it has

breached Article 2 in its procedural aspect, could in itself have 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 *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 239, ECHR 2004-III, and *Tekdağ v. Turkey*, no. 27699/95, § 86, 15 January 2004).

77. 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.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

78. 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

79. 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 actions 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.

80. The applicants reiterated the complaint.

B. The Court’s assessment

81. 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 finding of a violation of Article 2 in its procedural aspect, the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 2 is admissible, there is no need to make a separate examination of this complaint on its merits (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 84-86, ECHR 2004-XI, and *Anik and Others v. Turkey*, no. 63758/00, § 86, 5 June 2007).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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

83. The second and third applicants claimed damages in respect of loss of earnings by their husband and father after his disappearance, less the amounts received from the district military commander’s office after the disappearance. The second applicant claimed a total of RUB 484,341 under this heading (11,250 euros (EUR)), and the third applicant RUB 162,566 (EUR 3,776).

84. 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 decision to limit the scope of its examination to the procedural violation of Article 2, as initially submitted by the applicants, the Court finds that there is no direct causal link between the alleged violation and the loss by the second and third applicants of the financial support which Khasan Yusupov could have provided. Accordingly, it makes no award under this heading.

B. Non-pecuniary damage

85. The first and third applicants claimed EUR 40,000 each and the second applicant EUR 50,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relative.

86. The Government found the amounts claimed exaggerated.

87. The Court has found a violation of the procedural aspect of Article 2 of the Convention on account of failure to carry out an effective and adequate investigation. The Court accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicants jointly EUR 8,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

88. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses. Their aggregate claim in respect of costs and expenses related to legal representation amounted to EUR 4,943.

89. The Government disputed the reasonableness of and justification for the amounts claimed under this heading. They questioned, in particular, whether all the lawyers working for the SRJI had been involved in the present case and whether it had been necessary for the applicants to rely on courier mail.

90. The Court has to establish first whether the costs and expenses indicated by the applicants' relative were actually incurred and second whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

91. Having regard to the details of the information and legal representation contracts submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the costs actually incurred by the applicants' representatives (see *Akhiyadova v. Russia*, no. 32059/02, § 121, 3 July 2008)

92. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives

93. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 3,500, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Khasan Yusupov disappeared;
4. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Article 2;
5. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
 - (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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

André Wampach
Deputy Registrar

Christos Rozakis
President