



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

1959 · 50 · 2009

FIRST SECTION

CASE OF KARIMOV AND OTHERS v. RUSSIA

(Application no. 29851/05)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

10/12/2009

This judgment may be subject to editorial revision.

In the case of Karimov and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 29851/05) 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 four Russian nationals listed below (“the applicants”), on 12 August 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 Mr A. Savenkov, First Deputy Minister of Justice, and Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 26 March 2008 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.

4. 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

5. The applicants are:

- 1) Mr Usman Karimov, born in 1949,
- 2) Ms Rikhant Karimova, born in 1957,
- 3) Ms Luiza Karimova, born in 1978 and
- 4) Ms Seda Amayeva, born in 1985.

6. The applicants are Russian nationals. The first applicant lives in Grozny, Chechnya, and the other three applicants live in the village of Proletarskoye (also known as Proletarskiy), in Grozny district, Chechnya. The applicants are represented before the Court by lawyers of the Stichting Russian Justice Initiative (“the SRJI”), an NGO based in the Netherlands with a representative office in Russia.

7. The first and the second applicants are the parents of Arbi Karimov, who was born in 1981. The third applicant is his sister and the fourth applicant is his wife.

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

A. Disappearance of Arbi Karimov and the subsequent events

1. The applicants’ account

9. At the material time the applicants lived in Proletarskoye, in Grozny district, Chechnya. The settlement was under the full control of Russian federal forces and the area was under a curfew. Russian military checkpoints were located on the roads leading to and from the settlement.

10. On the night of 11 January 2003 (in the submitted documents the date is also referred to as 12 January 2003) the applicants and Arbi Karimov were sleeping in their house at 32 Belostotskaya Street. At about 2 a.m. a group of military vehicles arrived at the street. A Ural military lorry and two APCs (armoured personnel carriers) parked next to the house of the applicants’ neighbours I. Two other APCs and another Ural military vehicle with Russian military servicemen in it drove up to the applicants’ yard. One APC drove through the gates and a group of about twenty armed masked men in helmets broke down the entrance door and rushed into the applicants’ house.

11. The noise woke the first applicant and he approached the servicemen. They hit him and took him into the kitchen. There they forced the first applicant down on to the floor and two of the servicemen put their

feet on him to keep him on the floor. The intruders dispersed the family members into different rooms, pointed their guns at them, and ordered them to lie face down. When the second applicant asked the servicemen what was going on she was ordered to be quiet.

12. The intruders neither introduced themselves nor produced any documents. They spoke Russian without an accent. The applicants heard them using the code name “Vityaz” among themselves. The applicants thought that they were Russian military servicemen.

13. The servicemen put handcuffs on the first applicant and on his son Arbi Karimov. The fourth applicant and her husband Arbi Karimov were placed together in the living room. Every time Arbi Karimov tried to move the serviceman on guard kicked him in the torso. After that the servicemen took Arbi Karimov outside; they did not allow him to put on warm clothing.

14. A few minutes later the servicemen took the first applicant outside where he saw his son in the Ural military vehicle. The first applicant heard Arbi Karimov saying to the servicemen: “Why are you taking my father? He is an elderly man”. After that the officers talked among themselves and released the first applicant. Having spent about twenty minutes outside, the first applicant was taken back into the house. On his way into the house the first applicant saw that his son had been taken out of the Ural vehicle and put into one of the APCs. In the house the servicemen took off the first applicant’s handcuffs. They ordered the applicants to stay inside, threatening to shoot them and blow up the house if the applicants attempted to go outside.

15. Having taken away Arbi Karimov the servicemen started searching the applicants’ house. There was no electricity and the servicemen used torches. The servicemen took a number of items of the applicants’ property, including a couch, pillows, bed linen and fabrics. They also took a number of personal documents, including the first applicant’s passport and his pensioner’s identity card, and the passports of the fourth applicant, Arbi Karimov and the first applicant’s other son Umar Karimov (brother of Arbi Karimov). The applicants’ belongings were loaded into the military vehicles, which was witnessed by a number of the applicants’ neighbours.

16. After the vehicles left the house, the applicants immediately followed them. On the outskirts of the village the vehicles stopped and the servicemen opened fire in the applicants’ direction. The vehicles spent about twenty minutes there and drove away in the direction of the route to the Staropromyslovskiy district of Chechnya.

17. The description of the events of the night of 11 January 2003 is based on two hand-drawn maps of the premises, on accounts provided by the applicants and their neighbours to the applicants’ representatives: on an account by the fourth applicant on 26 September 2005 ; on an account (undated) by witness Ms Um.; on an account (undated) by witness Ms Im.; on an account (undated) by witness Mr B.; and on an article published in the

August-September 2003 issue of the magazine *Zashchita prav i svobod cheloveka* (Защита прав и свобод человека).

18. In the morning of 11 January 2003 the applicants started their search for Arbi Karimov. They spoke to a number of local residents who lived close to the route to the Staropromyslovskiy district. The residents confirmed that on the night of 11 January 2003 they had seen that some of the military vehicles had driven in the direction of Grozny while others had left in the direction of the area called Solyenaya Balka, in the Staropromyslovskiy district of Chechnya.

19. On the same day the applicants found out that Russian military forces had also detained two other residents of their village, who had not been seen since. In addition, on the same morning, at the place where the vehicles had halted for twenty minutes on the night of 11 January 2003, residents of Proletarskoye found the mutilated corpse of Mr R. S., who had been abducted on 6 January 2003 in Grozny. It appears that the local authorities conducted a crime scene investigation there.

20. On an unspecified date in January 2003 the applicants complained about Arbi Karimov's abduction to the headquarters of the International Committee of the Red Cross (the Red Cross) in Grozny. On 26 May 2003 representatives of the organisation visited the applicants and showed them a letter from the military prosecutor's office of military unit no. 20102. The letter stated that on an unspecified date an illegal bandit group had been discovered in Proletarskoye and in connection with this the Russian law enforcement agencies had conducted a special operation in the village on 12 January 2003. As a result of the operation Mr I. and Mr Umar Karimov had been killed while resisting arrest. Out of fear for their personal safety, the Red Cross representatives refused to provide the applicants with a photocopy of the letter, but they allowed them to make a handwritten copy of it.

21. Upon receiving the information provided in the letter, the applicants complained about their relative's abduction to a number of local authorities. About two weeks later, on an unspecified date, around 4 a.m., a group of armed military men arrived at the applicants' house in military UAZ vehicles. They told the applicants that they were conducting an identity check. This time the servicemen did not detain anybody and did not take anything.

22. Some time later the applicants received a letter from the military prosecutor's office of military unit no. 20102 stating that the authorities' letter to the Red Cross had incorrectly stated the names of those killed during the operation of 12 January 2003.

23. About three months after receiving the letter from the military prosecutor's office of military unit no. 20102 the second applicant wrote to a number of local law enforcement agencies. In her letters she complained about the abduction of her son Arbi Karimov and pointed out that the

passport of her other son, Umar Karimov, had been taken away by Russian military servicemen during the abduction.

24. After that, on 30 December 2003, at about 6 a.m. a group of military men in four military UAZ vehicles again arrived at the applicants' house for an identity check. They did not detain anyone and did not take anything from the house.

25. The applicants also contacted, both in person and in writing, various official bodies, such as the President of the Russian Federation, the Envoy of the President of the Russian Federation for Ensuring Human Rights and Freedoms in the Chechen Republic (the Envoy), the Chechen administration, military commanders' offices and prosecutors' offices at different levels, describing in detail the circumstances of their relative's abduction and asking for help in establishing his whereabouts. The applicants retained copies of a number of those letters and submitted them to the Court.

2. Information submitted by the Government

26. The Government did not challenge most of the facts as presented by the applicants. According to their observations of 22 July 2008, "In connection with the abduction by unidentified persons of A.U. Karimov on 11 January 2003 in the settlement of Proletarskoye in Grozny district, the Grozny district prosecutor's office initiated criminal case no. 42009 under Article 126 § 2 of the Criminal Code (aggravated kidnapping)."

B. The search for Arbi Karimov and the official investigation

1. Information submitted by the applicants

27. On 11 January 2003 the applicants complained about the abduction of Arbi Karimov to the Grozny district department of the interior (the Grozny ROVD), to the Grozny district prosecutor's office (the district prosecutor's office), and to the Grozny district military commander's office (the district military commander's office).

28. Between 11 and 14 January 2003 the applicants complained about Arbi Karimov's abduction to the Envoy, stating that their relative had been taken away by military servicemen who had arrived in APCs and Ural vehicles and that the abductors also had taken away valuables and family members' passports. On 15 January 2003 the Envoy forwarded the applicants' complaint to the Chechnya prosecutor.

29. On 14 January 2003 the district prosecutor's office instituted an investigation into the abduction of Arbi Karimov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given number 42009 (in the submitted documents the number is also referred to as 42099).

30. On 17 and 21 January 2003 the Chechnya prosecutor's office forwarded the second applicant's complaints about her son's abduction by armed men in APCs to the district prosecutor's office for examination.

31. On 17 January 2003 the head of the administration of the village of Proletarskoye complained to the Grozny ROVD about the abduction of Arbi Karimov by masked federal servicemen.

32. On 24 January 2003 the district prosecutor's office informed the second applicant that on an unspecified date they had instituted an investigation into the abduction of Arbi Karimov and that the case file had been given the number 42009. The letter also stated that the investigators were aware of the fact that Arbi Karimov's abductors had also taken away the passports of the first and the fourth applicants and of their relative Umar Karimov.

33. On 31 January 2003 the second applicant was granted victim status in the criminal case.

34. On 2 February 2003 the second applicant complained to the Chechnya department of the interior (the Chechnya MVD). In her letter she stated that her son had been abducted by Russian military servicemen who had arrived in APCs. She pointed out that the servicemen had taken valuables from their house along with identity documents of her family members. She complained that her son had been taken away in his underwear and that the servicemen had ill-treated family members. The applicant requested the authorities to inform her about the following: who had control over the Russian military forces in Chechnya; what was the difference between the "sweeping" operations conducted by representatives of the federal forces and nightly pinpoint raids; if those who had abducted her son had been bandits or Chechen rebel fighters, why were these men equipped with APCs and why after the completion of their operation did they leave openly in the direction of the checkpoints of the Russian military forces and finally why did the abductors fail to inform the relatives of the abducted persons about their relatives' subsequent whereabouts.

35. On 4 April 2003 the second applicant again complained to the Chechnya MVD. In her letter she stated that her son had been abducted by Russian military servicemen who had arrived in APCs and a military Ural vehicle. The applicant also complained that the authorities had failed to establish her son's whereabouts.

36. On 5 April and 12 May 2003 the military prosecutor's office of the United Alignment Group (the military prosecutor's office of the UGA) forwarded the second applicant's complaints about the abduction of Arbi Karimov to the military prosecutor's office of military unit no. 20102.

37. On 9 April 2003 the Chechnya MVD forwarded the applicants' complaint to the Grozny ROVD.

38. On 25 April 2003 the Chechnya prosecutor's office forwarded the second applicant's complaint about her son's abduction to the district prosecutor's office for examination.

39. On 28 April 2003 the Chechnya department of the Federal Security Service (the Chechnya FSB) informed the second applicant that they had no information concerning the whereabouts of Arbi Karimov; that his name was not on the authorities' wanted list and he was not under suspicion of having committed a crime.

40. On 22 May 2003 the military prosecutor's office of military unit no. 20102 forwarded the second applicant's complaint about the abduction of Arbi Karimov to the district prosecutor's office for examination. The letter stated that her complaint did not provide any grounds to suspect the involvement of the Russian military forces in the abduction.

41. On 29 May 2003 the district prosecutor's office informed the second applicant that on 14 January 2003 they had instituted an investigation into the abduction of Arbi Karimov and that later the investigation had been suspended for failure to establish the identity of the perpetrators. The letter stated that the examination of the criminal case file had established that the authorities had failed to take all possible investigative measures and in connection with this the investigation in the case had been resumed on an unspecified date.

42. On 3 June 2003 the Chechnya prosecutor's office informed the second applicant that the investigation in criminal case no. 42009 had been suspended on 14 March 2003 for failure to establish the identity of the perpetrators. On 29 May 2003 the investigation had been resumed owing to the necessity to take additional investigative measures.

43. On 17 June 2003 the military prosecutor's office of military unit no. 20102 informed the second applicant that her complaint had failed to provide any information indicating the involvement of Russian military servicemen in the abduction of Arbi Karimov.

44. On 19 June 2003 the Chechnya prosecutor's office informed the second applicant that they had already provided responses to her requests concerning the search for Arbi Karimov.

45. On 30 June 2003 the military prosecutor's office of the UGA forwarded the second applicant's complaint about her son's abduction to the Chechnya prosecutor's office. The letter stated that the examination of the applicant's complaint had not established any involvement of the Russian military forces in the crime.

46. On 5 July 2003 the military prosecutor's office of the UGA forwarded the second applicant's request concerning the search for her son to the military prosecutor's office of military unit no. 20102.

47. On 15, on 30 July and 21 October 2003 the Chechnya prosecutor's office forwarded the second applicant's complaints about her son's abduction to the investigators. The first letter stated that the applicant had

received the information concerning her son's murder from the local headquarters of the Red Cross.

48. On 24 July, 5 and 20 August and 19 September 2003 the military prosecutor's office of the UGA informed the second applicant that the military prosecutor's office of military unit no. 20102 had examined her complaints and that this examination had not established any involvement of the Russian military forces in the abduction of Arbi Karimov.

49. On 2 August 2003 the district prosecutor's office informed the second applicant that her complaint to the Prosecutor General had been included in the criminal case file.

50. On 20 August 2003 the military prosecutor's office of military unit no. 20102 informed the applicant that the examination of her complaint had not established any involvement of the Russian military forces in the abduction of Arbi Karimov.

51. On 25 August and 2 September 2003 the Departments of Correction of the Ministry of Justice in the Volgograd and Rostov regions informed the second applicant that they had no information concerning the whereabouts of Arbi Karimov.

52. On 23 September 2003 the district prosecutor's office informed the second applicant that her complaint about the abduction of Arbi Karimov had been included in the criminal case file.

53. On 13 October 2003 the military prosecutor's office of the UGA forwarded the second applicant's complaint to the military prosecutor's office of military unit no. 20102 for examination.

54. On 14 October 2003 the Chechnya prosecutor's office forwarded the second applicant's complaint about the abduction of Arbi Karimov by armed men in APCs and a Ural military vehicle to the district prosecutor's office for examination.

55. On 22 October 2003 the Chechnya prosecutor's office informed the second applicant that the operational search measures aimed at establishing the whereabouts of Arbi Karimov and the perpetrators of the crime were under way.

56. On 21 November 2003 the Ministry of Defence informed the second applicant that her complaint had been forwarded to the military prosecutor's office of the North-Caucasus Military Circuit for examination.

57. On 1 December 2003 the Chechnya prosecutor's office informed the second applicant that on an unspecified date they had instructed the district prosecutor's office to resume the investigation in the criminal case and take all necessary measures aimed at establishing the perpetrators.

58. On 5 December 2003 the military prosecutor's office of the North-Caucasus Military Circuit forwarded the second applicant's letter concerning the search for her son to the military prosecutor's office of the UGA.

59. On 8 January 2004 the military prosecutor's office of military unit no. 20102 informed the second applicant that the examination of her complaint had not established any involvement of the Russian military forces in the abduction of Arbi Karimov. The letter also stated that the office did not have any information concerning his death.

60. On 13 February 2004 the Chechnya prosecutor's office informed the second applicant that the district prosecutor's office had been investigating her son's disappearance.

61. On 14 February 2004 the military prosecutor's office of the UGA informed the second applicant that her complaint had been forwarded to the military prosecutor's office of military unit no. 20102. The letter also stated the following:

“... earlier an assistant of the military prosecutor of military unit no. 20102 Major I.S. provided the response to the information request of the representative of the International Committee of the Red Cross stating that A. Karimov had been killed during a special operation while resisting police officers. However, this information statement of Mr I.S. was not confirmed.

You are requested to conduct an inquiry and inform us and the applicant about the grounds for the response given to the representative of the International Committee of the Red Cross concerning the death of A. Karimov.”

62. On 24 February 2004 the military prosecutor's office of military unit no. 20102 informed the second applicant that the information provided by them to the Red Cross about the killing of Arbi Karimov was incorrect. This information had been provided along with information concerning other missing persons, in a table format, and this table must have contained a mistake. The letter also stated that the examination of the applicant's previous complaints had demonstrated that the Russian military forces had not been involved in the abduction of her son.

63. On 27 March and 9 April 2004 the military prosecutor's office of the UGA forwarded the second applicant's complaints about her son's abduction to the military prosecutor's office of military unit no. 20102.

64. On 8 April 2004 the military prosecutor's office of military unit no. 20102 forwarded the second applicant's complaint about the search for her son to the Chechnya prosecutor's office. The letter stated that it had been established that the Russian military servicemen had not been involved in the abduction of Arbi Karimov.

65. On 16 April 2004 the Chief Military Prosecutor's office forwarded the second applicant's complaint to the military prosecutor's office of the UGA.

66. On 15 May 2004 the military prosecutor's office of the UGA informed the second applicant that her complaint did not contain any indication of involvement of the Russian military forces in the abduction of Arbi Karimov. The letter also stated that, upon examination of the

information provided to the Red Cross about the killing of her son, it had been established that this information was incorrect.

67. On 20 September 2004 the military prosecutor's office of military unit no. 20102 informed the second applicant that the examination of her previous complaints had established that the Russian military forces had not participated in the abduction of Arbi Karimov and that her complaints had been forwarded to the Chechnya prosecutor's office. According to the letter, the district prosecutor's office had been taking measures to establish identity of the perpetrators.

68. On 4 February 2005 the district prosecutor's office informed the second applicant that

“... as a result of the examination of the criminal case file it has been established that the case was initiated on 14 January 2003 under Article 126 § 2 of the Criminal Code in connection with the abduction at about 3 a.m. on 11 January 2003 in Proletarskoye in Grozny district of A.U. Karimov, Sh. Isayev and I.S. Magayev by unidentified military servicemen....

as a result of the investigation of this criminal case,on 17 January 2005 the investigator decided to suspend the investigation...for failure to establish the identity of the perpetrators. ..”

69. On 7 June 2005 the second applicant complained to a number of State authorities, including the Minister of the Interior and the Prosecutor General. She complained that the investigators had failed to conduct an effective and thorough investigation into the abduction of her son. In her letters she described in detail the circumstances of Arbi Karimov's abduction. In particular, she stated that he had been abducted by Russian military servicemen; that the servicemen had seized a number of items of family property and identity documents; that they had threatened to blow up the applicants' house; that two other residents of the village had been abducted by the same group of servicemen; that the morning after the abduction local residents had found a corpse which had been left behind by the servicemen; that the authorities had failed to take any meaningful investigative steps; that on 15 January 2003 one of the abducted men had been released and he had told her that he had been detained on the premises of the 21st division of the Russian federal troops, “Sofrino”, in the area known as Solyenaya Balka, Chechnya; that she had informed the investigators about it, but that the latter had failed to take any measures to verify the information; that in May 2003 she had been told at the local headquarters of the Red Cross that the military prosecutor's office had informed the organisation that Arbi Karimov had been killed while resisting arrest on 12 January 2003; and that the investigators had failed to question employees of the military prosecutor's office and the Red Cross about this information. The applicant expressed her opinion that the investigators' failure to take basic investigative measures was unlawful. She requested the authorities to resume the investigation in the criminal case and to conduct it

in a thorough and effective manner. It does not appear that the applicant received any response from the authorities.

2. Information submitted by the Government

70. According to the Government, on 12 January 2003 the investigation conducted a crime scene examination at the applicants' house. As a result a photograph of A. Karimov was collected; no damage to the house gates or to other property was referred to in the record of the examination.

71. On 31 January 2003 the second applicant was granted victim status in the criminal case and questioned. According to her statement, at about 2 a.m. on 11 January 2003 several APCs and a Ural vehicle had arrived at her house, breaking one of the gates. Her husband had woken up from the noise and opened the entrance door. Then a group of unidentified armed men in blue camouflage uniform, bullet-proof vests and masks had rushed into the house. They had forced all the family members on to the floor and searched the house. After that they had handcuffed her son Arbi Karimov and without letting him get dressed had taken him and his father into the yard and forced them into the Ural vehicle. Then the intruders had released her husband, but had taken away her son Arbi. During the search the men had taken family belongings (kitchen utensils, male underwear), passports and documents for the family car. The abductors had used four APCs and four Ural vehicles, as well as several UAZ and GAZ ("Gazel") vehicles. All the registration numbers were covered with mud. According to the applicant, on 16-17 January 2003 she had complained about her son's abduction to the International Committee of the Red Cross. From the organisation's response, in which they had referred to a letter from the military prosecutor's office of military unit no. 20102, she had found out that Arbi Karimov had been eliminated during a special operation.

72. On 11 September 2003 the military prosecutor's office of military unit no. 20102 informed the investigators that they had not provided the Red Cross with information concerning the detention of Arbi Karimov.

73. On an unspecified date the military prosecutor's office of the UGA informed the investigators that a representative of the Red Cross had been provided with incorrect information concerning the death of Arbi Karimov. Upon examination of the relevant documentation no information pertaining to this was found.

74. On an unspecified date the investigators requested the Red Cross to provide a copy of the letter from the military prosecutor's office of military unit no. 20102 concerning the death of Arbi Karimov. According to the Government, the organisation refused to provide the document.

75. According to the Government, the investigation questioned a number of witnesses. On unspecified dates members of the Karimov family, Mr U. Karimov, Ms Kh. Imadayeva, Ms L. Karimova and Ms S. Amayeva

had provided the investigators with statements similar to the one given by the second applicant.

76. On an unspecified date the investigators additionally questioned the third applicant, who stated that during the events her brother Arbi Karimov had tried to hide under the bed, but three armed masked men in helmets and blue camouflage uniform had dragged him out and taken him into the yard. These men were speaking Russian. The abductors had taken a number of items of property from the house: three video cassettes, audio cassettes, a car radio/cassette player, female underwear, passports, an axe, soap, shoe polish, footwear, perfume, a grindstone and some items of clothing. A few minutes after the abductors' departure she had heard shooting coming from the outskirts of the settlement.

77. On an unspecified date the investigators questioned the applicant's neighbour, Mr I.B., who stated that at about 2.30 a.m. on 11 January 2003 he had been woken by the noise of vehicles. From the window he had seen an APC and a khaki Ural vehicle and heard people talking among themselves in Russian. Twenty minutes later the vehicles had left and he had gone outside. His neighbours had told him that these men had taken away Arbi Karimov and a number of items of property from the house.

78. On an unspecified date the investigators questioned an employee of the International Committee of the Red Cross in Grozny, Mr R.I., who stated that relatives of Arbi Karimov had applied to the organisation with requests for assistance in the search for their relatives. According to the witness, he had informed the main office of the Red Cross in Nalchik about it, and their employees had forwarded information requests to a number of law enforcement agencies. Responses had been provided to those requests, but the witness did not remember their contents.

79. According to the Government, on unspecified dates the investigators also requested information about the disappearance from various State authorities, including a number of district departments of the interior in Chechnya and other units of the Ministry of the Interior, the Grozny department of the Federal Security Service (the FSB), various military commanders' offices in Chechnya, the military prosecutor's office of military unit no. 20102, the military prosecutor's office of the UGA, a number of penitentiary institutions in Chechnya and the neighbouring regions, the prosecutors' officers of various levels, various detention centres in the Northern Caucasus and the archives of the Northern Caucasus Military Circuit. According to the responses received from these agencies, they did not have any information about Arbi Karimov's arrest and detention.

80. According to the response received by the investigators on an unspecified date from the Grozny ROVD, they did not detain Arbi Karimov, he had not been placed in a detention centre, his corpse had not been found,

he had not applied for medical assistance and no criminal proceedings had been initiated against him.

81. On unspecified dates the investigators forwarded requests for assistance in searching for Arbi Karimov to the Chechnya FSB and the Grozny ROVD, asking them to take operational search measures. According to the information received from these agencies, Arbi Karimov's brother, U.U. Karimov, was a member of illegal armed groups.

82. The Government further submitted that on 10 and 11 January 2003 no special operations had been conducted in the settlement of Proletarskoye in the Grozny district, Chechnya and that representatives of the State had not detained Arbi Karimov.

83. According to the Government, the investigation was suspended and resumed on several occasions, and has so far failed to identify the perpetrators of Arbi Karimov's abduction. However, operational search measures were being taken to establish the whereabouts of Arbi Karimov and identify the perpetrators. The progress of the investigation was being supervised by the Investigations Department of the Prosecutor General's Office.

84. Despite specific requests by the Court the Government did not disclose any documents of criminal case no. 42009. 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 personal data concerning witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

A. The parties' submissions

86. 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 Arbi Karimov had not yet been

completed. They further argued that it had been open to the applicants to challenge in court any acts or omissions of the investigating 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.

87. The applicants contested that objection. They stated that the only effective remedy in their case was the criminal investigation, which had proved to be ineffective. Referring to the other cases concerning such crimes reviewed by the Court, they also alleged that the existence of the administrative practice of non-investigation of crimes committed by State servicemen in Chechnya rendered any potentially effective remedies inadequate and illusory in their case.

B. The Court's assessment

88. 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).

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

90. As regards a civil action to obtain redress for damage sustained through 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 (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.

91. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities immediately after the kidnapping of Arbi Karimov and that an investigation has been pending since 14 January 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

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

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

A. The parties' arguments

93. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Arbi Karimov were State agents. In support of their complaint they referred to the following matters: At the material time the settlement of Proletarskoye was under the total control of federal troops and the area was under curfew. There were Russian military checkpoints on the roads leading to and from the settlement. The armed men who had abducted Arbi Karimov spoke Russian without an accent, which proved that they were not of Chechen origin. The men had arrived in military vehicles late at night, which indicated that they were able to circulate freely after curfew. The men had arrived at the applicants' house as a large and well-organised group and they had acted in a manner similar to that of special forces carrying out identity checks. They were wearing specific camouflage uniform, were armed and were using APCs, which would not have been available for paramilitary groups. The applicants further pointed out that the investigators had accepted the factual assumptions as presented by the applicants concerning the involvement of Russian military servicemen in the abduction (see paragraph 68 above) and that the investigators had failed to credibly refute the information provided to the Red Cross about the killing of Arbi Karimov while resisting arrest. They further argued that since their relative had been missing for more than five and a half years he could be presumed dead. That presumption was further supported by the circumstances in which he had been arrested, which should be recognised as life-threatening.

94. The Government submitted that unidentified armed men had kidnapped Arbi Karimov. They further argued that there was no convincing evidence that the applicants' relative was dead. The Government further alleged that the applicants' description of the circumstances surrounding the abduction was inconsistent. In particular, the applicants' accounts concerning the number of APCs involved in the events and the abductors' behaviour were questionable, as the events had taken place at night, with no light, and while the applicants had been forced on the floor; the applicants had provided to the Court and to the investigators of the criminal case different lists of the property taken away by the abductors; finally, the applicants had failed to inform the investigators about the village residents who had witnessed the abduction. The Government contended that the fact that the perpetrators of the abduction spoke unaccented Russian and were wearing camouflage uniforms did not mean that these men could not have been members of illegal armed groups trying to prevent leakage of

information which could have been available to Arbi Karimov from his brother Umar Karimov, who had been a member of illegal armed groups. They pointed out that groups of Ukrainian, Belorussian and ethnic Russian mercenaries had committed crimes in the territory of the Chechen Republic and emphasised that the fact that the perpetrators had Slavic features and spoke Russian did not prove that they were attached to the Russian military. They also observed that a considerable number of armaments and APCs had been stolen from Russian arsenals by insurgents in the 1990s and that members of illegal armed groups could have possessed camouflage uniforms. The abductors also could have been criminals pursuing a blood feud. The Government further contended that the investigation of the incident was pending, that there was no evidence that the men were State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights.

B. The Court's evaluation of the facts

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

96. The Court notes that despite its requests for a copy of the investigation file into the abduction of Arbi Karimov, the Government produced none of the documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006- ... (extracts)).

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

98. The applicants alleged that the persons who had taken Arbi Karimov away on 11 January 2003 and then killed him were State agents.

99. The Government suggested in their submissions that the abductors of Arbi Karimov may have been members of paramilitary groups or criminals pursuing either a blood feud or other goals. However, these allegations were not specific and the Government did not submit any material to support

them. The Court takes note of the Government's allegation that the military vehicles, firearms and camouflage uniforms had probably been stolen by insurgents from Russian arsenals in the 1990s. Nevertheless, it considers it very unlikely that several military vehicles, such as APCs and Ural vehicles, unlawfully possessed by members of illegal armed groups, could have moved freely through Russian military checkpoints without being noticed. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

100. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. It finds that the fact that a large group of armed men in uniform, equipped with military vehicles, was able to move freely through military roadblocks during curfew hours and which had proceeded to check identity documents and take several persons from their homes strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their application to the authorities the applicants consistently maintained that Arbi Karimov had been detained by unknown servicemen and requested the investigation to look into that possibility (see paragraphs 28, 34, 35 and 69 above). The domestic investigation also accepted factual assumptions as presented by the applicants (see paragraph 68 above) and took steps to examine whether federal forces were involved in the kidnapping (see paragraphs 45, 48, 50 and 59 above), but it does not appear that any serious steps had been taken in that direction.

101. The Government questioned the credibility of the applicants' statements in view of certain discrepancies relating to the exact circumstances of the abduction and the description of the items taken away by the perpetrators. The Court notes in this respect that no other elements underlying the applicants' submissions of facts have been disputed by the Government. The Government did not provide the Court with the witness statements to which they referred in their submissions. In the Court's view, the fact that over a period of several years the applicants' recollection of an extremely traumatic and stressful event differed in rather insignificant details does not in itself suffice to cast doubt on the overall veracity of their statements.

102. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of relevant 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).

103. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their relative was abducted by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of special forces in the kidnapping or their general reference to the possibility of illegal insurgents' involvement in the crime is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the applicants, and drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Arbi Karimov was detained on 11 January 2003 by State servicemen during an unacknowledged security operation.

104. There has been no reliable news of Arbi Karimov since the date of the kidnapping. His name has not been found in any official detention facility records. Finally, the Government have not submitted any explanation as to what happened to him after his arrest.

105. Having regard to previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Arbi Karimov or of any news of him for several years supports this assumption.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

107. The applicants complained under Article 2 of the Convention that their relative had been deprived of his life by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

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

A. The parties’ submissions

108. The Government contended that the domestic investigation had obtained no evidence that Arbi Karimov was dead or that any servicemen of the federal law enforcement agencies had been involved in his kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants’ relative met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible.

109. The applicants argued that Arbi Karimov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. The applicants also argued that the investigation had not met the effectiveness and adequacy requirements laid down by the Court’s case-law. The applicants pointed out that the district prosecutor’s office had not taken some crucial investigative steps, such as questioning representatives of local law enforcement authorities and the military about their possible involvement in the events of 11 January 2003. The investigation into Arbi Karimov’s kidnapping had been opened several days after the events and then had been suspended and resumed a number of times, thus delaying the taking of the most basic steps, and that the relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any tangible results was further proof of its ineffectiveness. They also invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court’s assessment

1. Admissibility

110. The Court considers, in the light of the parties’ submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government’s objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits

of the complaint (see paragraph 92 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 Arbi Karimov

111. The Court has already found that the applicants' relative must be presumed dead following unacknowledged detention by State servicemen. In the absence of any justification put forward by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of Article 2 in respect of Arbi Karimov.

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

112. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

113. In the present case, the kidnapping of Arbi Karimov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

114. The Court notes at the outset that none of the documents from the investigation were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicants and the 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. The investigation in case no. 42009 was instituted on 14 January 2003, that is, three days after Arbi Karimov's abduction. It appears that in spite of the relatively timely opening of the criminal proceedings, a number of essential investigative steps were subsequently either delayed or were not taken at all. For instance, the Court notes that, as it follows from the information submitted by the Government, the investigators had not identified or questioned any servicemen from the local military and law enforcement agencies who could have participated in the events on the night of the abduction; they had not established the identity of the owners of the APCs and Ural operating around Proletarskoye on the night in question and they had not elucidated the alleged inconsistencies in the description of the events in the witness statements provided by the applicants and their neighbours to the investigators. Further, the investigators had failed to take investigative measures, other than one

interview with an employee of the International Committee of the Red Cross (see paragraph 78 above), to clarify the circumstances surrounding the receipt by this organisation of the information about the killing of Arbi Karimov during a special operation or to identify and question the other residents of Proletarskoye who, according to the applicants, had also been abducted on the same night and released a few days later (see paragraph 69 above). It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced or received this information. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

116. The Court also notes that even though the second applicant was granted victim status in the investigation concerning the abduction of her son, she was 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.

117. Finally, the Court notes that the investigation was suspended and resumed on numerous occasions and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending. The supervisory prosecutor's office criticised deficiencies in the proceedings and ordered that the investigation be resumed and steps be taken (see paragraphs 41 and 57 above). It appears that its instructions were not complied with.

118. The Government 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 suspension or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to suspend them were made without the necessary investigative steps being taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative 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. Accordingly,

the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

119. 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 Arbi Karimov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

120. 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

121. 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.

122. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

123. The Court notes that this complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

124. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the

situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

125. In the present case the Court notes that the applicants are close relatives of the disappeared person who witnessed his abduction. For more than five years they have not had any news of the missing man. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing relative. Despite their attempts, the applicants have never received any plausible explanation or information about what became of him following his detention. The responses they received mostly denied State responsibility for their relatives' arrest or simply informed them that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

127. The applicants further stated that Arbi Karimov had been detained in violation of the guarantees contained in 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

128. The Government asserted that no evidence had been obtained by the investigators to confirm that Arbi Karimov had been deprived of his liberty. He was not listed among the persons kept in detention centres and none of the regional law enforcement agencies had information about his detention.

129. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

130. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

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

132. The Court has found that Arbi Karimov was abducted by State servicemen on 11 January 2003 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

133. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relative had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation, leave

no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

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

VI. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

135. The applicants alleged that the disappearance of their relative had amounted to a violation of their right to respect for family life. They also complained that the search carried out at their house on 11 January 2003 had been illegal and constituted a violation of their right to respect for their home. It thus disclosed a violation of Article 8 of the Convention. They also referred to the unlawful seizure of their property during the search and relied on Article 1 of Protocol No. 1 to the Convention. These Articles provide as follows:

Article 8

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

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

Article 1 of Protocol No. 1 (protection of property)

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

136. The Government contended that State agents had not been involved in the alleged search of the applicants' house and that the applicants had failed to exhaust domestic remedies in respect of their complaints under this heading by failing to claim damages through domestic courts.

137. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

138. The Court considers, in the light of the parties' submissions, that the applicants' complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 92 above). The complaints under Article 8 and Article 1 of Protocol No. 1 to the Convention must therefore be declared admissible.

2. Merits

(a) The right to respect for home

139. As to the Government's objection that the applicants failed to exhaust available domestic remedies, the Court points out that on several occasions the applicants reported the events of the night of 11 January 2003 to the domestic authorities and mentioned, in particular, the unlawful search of their house and the seizure of their property and documents by the abductors (see paragraphs 32, 34, 69, 71, 76 and 77 above). The official bodies denied that those who had intruded into the applicants' home and abducted Arbi Karimov were State agents (see, by contrast, *Chitayev and Chitayev v. Russia*, no. 59334/00, §§ 64, 77, 143, 18 January 2007). In the absence of any domestic findings of State responsibility for the allegedly unlawful search and the seizure of the applicants' property, the Court is not persuaded that the court remedy referred to by the Government was accessible to the applicants and would have had any prospects of success (see *Betayev and Betayeva v. Russia*, no. 37315/03, § 112, 29 May 2008). The Government's objection concerning non-exhaustion of domestic remedies must therefore be dismissed.

140. The Court further notes that the information concerning the search and the seizure of the property was communicated promptly to the domestic law enforcement authorities; however, the latter failed to take any measures to examine it. Although the Government denied responsibility for the search and seizure of the property, the Court has already found that the persons who entered the applicants' home and detained their relative belonged to the State military or security forces. Therefore, it finds that the search of the applicants' house carried out on the night of 11 January 2003 and the seizure of the applicants' property was imputable to the respondent State.

141. The Court also notes that the servicemen did not show the applicants a search warrant. Neither did they indicate any reasons for their

actions. Furthermore, it appears that no search warrant was drawn up at all, either before or after the events in question. In sum, the Court finds that the search in the present case was carried out without any, or any proper, authorisation or safeguards.

142. Accordingly, there was an interference with the applicants' right to respect for their home and for the protection of their property. In the absence of any reference on the part of the Government to the lawfulness and proportionality of these measures, the Court finds that there has been a violation of the applicants' right to respect for home guaranteed by Article 8 of the Convention and their right to protection of property guaranteed by Article 1 of Protocol No. 1 to the Convention.

(b) The right to respect for family life

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

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

144. 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

145. 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 and they could also claim damages through civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

146. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

147. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

148. The Court reiterates that in circumstances where, as here, a criminal investigation into the disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

150. As to the applicants' complaint under Article 13 in conjunction with Article 8 and Article 1 of Protocol No. 1, the Court considers that in a situation where the authorities denied involvement in the alleged intrusion into the applicants' house and the taking of the family belongings and where the domestic investigation had failed to examine the matter, the applicants did not have any effective domestic remedies in respect of the alleged violations of their rights secured by Article 8 of the Convention and Article 1 of Protocol No. 1. Accordingly, there has been a violation on that account.

151. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction with Articles 3 and 5 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

152. As for the complaint under Article 13 in conjunction with Article 8 concerning the right to family life, the Court notes that in paragraph 143 above it found that no separate issue arises under that provision. Therefore, it considers that no separate issue arises under Article 13 in this respect either.

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

153. In their initial submission the applicants stated that they had been discriminated against on the grounds of their ethnic origin, contrary to the provisions of Article 14 of the Convention. Article 14 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.”

154. In their observations on the admissibility and merits of the application the applicants stated that they no longer wished to maintain this complaint.

155. The Court, having regard to Article 37 of the Convention, notes that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). It finds no reasons of a general character affecting respect for human rights as defined in the Convention which require further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, among other authorities, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unpublished; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

157. 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

158. The fourth applicant claimed damages in respect of loss of earnings by her husband Arbi Karimov after his arrests and subsequent disappearance. The applicant claimed a total of 636,989 Russian roubles (RUB) under this heading (18,200 euros (EUR)).

159. She claimed that her husband had been unemployed at the time of his arrest, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. She calculated his earnings for the period, taking into account an average inflation rate of 13.67 %. Her calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary’s Department in 2007 (“Ogden tables”).

160. The Government regarded these claims as based on suppositions and unfounded. They also pointed to the existence of domestic statutory

machinery for the provision of a pension for the loss of a family breadwinner.

161. 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. It is reasonable to assume that Arbi Karimov would eventually have had some earnings from which the fourth applicant would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the fourth applicant's husband and the loss by her of the financial support which he could have provided. Having regard to the applicants' submissions and the fact that Arbi Karimov was not employed at the time of his abduction, the Court awards EUR 10,000 to the fourth applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

162. The applicants claimed jointly EUR 70,000 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.

163. The Government found the amounts claimed exaggerated.

164. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Articles 3, 8 and Article 1 of Protocol no. 1 to the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicants jointly EUR 35,000 plus any tax that may be chargeable thereon.

C. Costs and expenses

165. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour for the work in the area of exhausting domestic remedies and of EUR 150 per hour for the drafting of submissions to the Court. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 6,724.

166. The Government did not dispute the reasonableness and justification of the amounts claimed under this heading.

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

168. 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 expenses actually incurred by the applicants' representatives.

169. 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 the case involved little documentary evidence, in view of the Government's refusal to submit documents of the investigation file. The Court thus doubts that research was necessary to the extent claimed by the representatives.

170. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 5,500 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

171. 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' complaint under Article 14 of the Convention;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of domestic remedies and rejects it;
3. *Declares* the complaints under Articles 2, 3, 5, 8, 13 and Article 1 of Protocol No. 1 to the Convention admissible;
4. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Arbi Karimov;

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 Arbi Karimov disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Arbi Karimov;
8. *Holds* that there has been a violation of the applicants' right to respect for home guaranteed by Article 8 of the Convention and their right to protection of property guaranteed by Article 1 of Protocol No. 1 to the Convention;
9. *Holds* that no separate issues arise under Article 8 of the Convention regarding the applicants' right to respect for family life;
10. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
11. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with the violation of the applicants' right to respect for home guaranteed by Article 8 of the Convention and the right to protection of property guaranteed by Article 1 of Protocol No. 1 to the Convention;
12. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3, 5 and 8 in respect of the applicants' right to respect for family life;
13. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, 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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the fourth applicant;
 - (ii) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
 - (iii) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and

expenses, to be paid into the representatives' bank account in the Netherlands;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

14. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President