



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

1959 · 50 · 2009

FIRST SECTION

CASE OF MAGOMADOVA AND OTHERS v. RUSSIA

(Application no. 33933/05)

JUDGMENT

STRASBOURG

17 September 2009

FINAL

01/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Magomadova 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,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 August 2009,

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

PROCEDURE

1. The case originated in an application (no. 33933/05) 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 five Russian nationals, listed below (“the applicants”), on 20 September 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 subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 17 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. The President of the Chamber acceded to the Government's request not to make publicly accessible the documents from the criminal investigation file deposited with the Registry in connection with the application (Rule 33 of the Rules of Court).

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) Ms Koku (also spelled as Koka) Magomadova, born in 1942,
- 2) Ms Ayshat Magomadova (also known as Taymuskhanova), born in 1976,
- 3) Ms Eset (also spelled as Aset) Magomadova, born in 1995,
- 4) Mr Baudin Magomadov, born in 1997,
- 5) Ms Ayzan Muradova, born in 1965.

The applicants live in Grozny, Chechnya. The first applicant is the mother of Ruslan Magomadov, who was born in 1966. The second applicant is his wife; the third and the fourth applicants are his daughter and son; the fifth applicant is his sister.

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

A. Disappearance of Ruslan Magomadov and the subsequent events

1. The applicants' account

7. At the material time Ruslan Magomadov was working as a senior officer at the investigations department in the Shatoy district department of the interior in Chechnya (the Shatoy ROVD). He had been doing this since 2000.

8. On the night of 9 February 2003 the applicants, with Ruslan Magomadov and other relatives, were at home at 179 Kluchevaya Street, in Grozny, Chechnya. The household consisted of three dwellings; one of them was occupied by the first applicant, another by Ruslan Magomadov and his family and the third by his brother and his family. The applicants' house was near a Russian military checkpoint.

9. At about 4.30 a.m. a group of about thirty armed men in camouflage uniform rushed into the applicants' yard. They broke into two groups. One group went into the first applicant's part of the house and the other one went into the part occupied by Ruslan Magomadov and his family.

10. Those intruders who were not wearing masks had a Slavic appearance. The men neither introduced themselves nor produced any documents. They spoke Russian without an accent. The applicants thought that they were Russian military servicemen.

11. The servicemen pointed their guns at the applicants and ordered them not to move. About ten of the intruders went into Ruslan

Magomadov's part of the house. They shouted and swore at the applicants and ordered everyone not to move. When the second applicant asked them what was going on, she and her children were forced to go into another room, where some of the servicemen put their guns to the applicants' heads and ordered them to lie on the floor.

12. The rest of the servicemen threw Ruslan Magomadov on to the floor, bound his hands, placed a pillowcase over his head, bound it with adhesive tape and took him outside. Ruslan Magomadov was barefoot and in his underwear.

13. The servicemen did not ask for Ruslan Magomadov's identity documents. They searched the house and took his service gun, a hunting rifle and a folder with official papers which he had brought home from work.

14. After that the servicemen placed Ruslan Magomadov in one of the two APCs (armoured personnel carriers) which were parked next to the applicants' house and took him away.

15. According to the applicants, some time later the local military commander told them that representatives of the Main Intelligence Department of the Ministry of Defence, the Ministry of the Interior (the MVD) and the Federal Security Service (the FSB) had requested to be provided with unopposed passage through the checkpoint near the applicants' house on the night of 9 February 2003.

16. The applicants have had no news of Ruslan Magomadov since 9 February 2003.

17. In support of their statements the applicants submitted the following: an account by the second applicant given on 13 April 2005, an account by the applicants' neighbour Ms I. given on 15 April 2005, an account by the first applicant given on 16 April 2005, an account given by the applicants' neighbour Mr N. on 13 September 2005 and a character reference for Ruslan Magomadov by the Chechnya MVD, dated 19 February 2004.

2. Information submitted by the Government

18. The Government did not challenge most of the account given by the applicants. According to their submission, between 4 a.m. and 5 a.m. on 9 February 2003 a group of about thirty unidentified persons armed with automatic weapons and with the support of two APCs unlawfully broke into the household situated at 179 Kluchevaya Street, Grozny, Chechnya; there, using violent threats, they abducted R. Magomadov and departed to an unknown destination”.

B. The search for Ruslan Magomadov and the investigation

1. The applicants' account

19. On 9 February 2003 the applicants started their search for Ruslan Magomadov. They contacted, both in person and in writing, various official bodies, such as the President of the Russian Federation, 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 assistance in establishing his whereabouts. The applicants retained copies of a number of those letters and submitted them to the Court.

20. On 9 February 2003 the Grozny prosecutor's office instituted an investigation into the disappearance of Ruslan Magomadov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 50010. Some time later the investigation of the criminal case was transferred to the Staropromyslovskiy district prosecutor's office of Grozny (the district prosecutor's office).

21. On 4 February 2004 the district prosecutor's office informed the fifth applicant that they had not established the identity of the perpetrators of her brother's abduction.

22. On 11 February, 27 March 2004 and 19 April 2005 the military prosecutor's office of the United Group Alignment (the prosecutor's office of the UGA) forwarded the first applicant's requests for assistance in the search for her son to the military prosecutor's office of military unit no. 20102.

23. On 19 February 2004 the military prosecutor's office of military unit no. 20102 forwarded the first applicant's request to the military prosecutor's office of military unit no. 20116.

24. On 25 February 2004 the information centre of the Chechnya Ministry of the Interior informed the first applicant that no information was available about her son's detention.

25. On 3 March 2004 the district prosecutor's office informed the first applicant that her request for assistance in establishing the whereabouts of Ruslan Magomadov had been included in the criminal case file.

26. On 4 March and 12 April 2004 the Main Department of the Ministry of the Interior in the Southern Federal Circuit forwarded the first applicant's requests to its operational search division in Grozny and the Chechnya prosecutor's office respectively.

27. On 5 March, 22 April and 1 June 2004 and 9 June 2005 the Chechnya prosecutor's office forwarded the first applicant's requests to the district prosecutor's office.

28. On 31 March 2004 the military prosecutor's office of military unit no. 20116 informed the first applicant that at her request they had examined

the theory of the possible involvement of Russian military servicemen in the abduction of her son and that this theory had not been confirmed.

29. On 23 April 2004 detention centre no. 2 of the Department of Corrections of the Ministry of Justice in the Stavropol region informed the fifth applicant that Ruslan Magomadov was not listed among their detainees.

30. On 26 April 2004 the military prosecutor's office of military unit no. 20116 informed a number of State authorities, including the Chechnya prosecutor's office, that the involvement of Russian military forces in the disappearance of Ruslan Magomadov had not been confirmed.

31. On 26 April 2004 the district prosecutor's office informed the first applicant that the investigation in the criminal case had been resumed on 29 March 2003 and that it had been suspended on 9 April 2003 for failure to establish the identities of the perpetrators.

32. On 7 May 2004 the Chechnya military commander forwarded the first applicant's request for assistance in the search for her son to the Chechnya prosecutor's office. According to the letter, the first applicant complained about the abduction and stated that the abductors had arrived in APCs and that they had taken away Ruslan Magomadov's service weapon and hunting rifle.

33. On 4 June 2004 the Chechnya prosecutor's office informed the first applicant that on 9 February 2003 the district prosecutor's office had instituted an investigation into the abduction of Ruslan Magomadov.

34. On 5 June 2004 the Main Department of the Ministry of the Interior in the Southern Federal Circuit informed the first applicant that its Department of Counterterrorist Operations had not abducted Ruslan Magomadov.

35. On 17 June 2004 the military prosecutor's office of the UGA informed the first applicant that information concerning the investigation into the abduction of Ruslan Magomadov was available at the Chechnya prosecutor's office.

36. On 2 July 2004 the district prosecutor's office informed the first applicant that on an unspecified date they had resumed the investigation in the criminal case.

37. On 5 July 2004 the Chechnya prosecutor's office informed the first applicant that information about the criminal investigation was available at the district prosecutor's office.

38. In July 2004 the district prosecutor's office informed the first applicant that on an unspecified date they had suspended the investigation in the criminal case.

39. On 10 August 2004 the military prosecutor's office of military unit no. 20102 informed a number of State authorities, including the Chechnya prosecutor's office, that the theory of the involvement of Russian military forces in the abduction of Ruslan Magomadov had not been confirmed.

40. On 31 August 2004 the Chechnya prosecutor's office forwarded the first applicant's request for assistance in the search for her son to the district prosecutor's office.

41. On 30 September 2004 the district prosecutor's office informed the first applicant that her request had been included in the criminal case file materials and that they were taking operational search measures to establish the identity of the perpetrators.

42. On 1 February 2005 the first applicant wrote to the Chechnya military commander. She complained about her son's abduction and stated that the intruders had taken his service weapon, a hunting rifle and a folder of official papers. She also pointed out that although the criminal investigation into the abduction had been instituted on 9 February 2003, for two years the authorities had failed to establish the whereabouts of Ruslan Magomadov.

43. On 16 February 2005 the fifth applicant requested the district prosecutor's office to inform her about the progress in the investigation of criminal case no. 50010.

44. On 18 February 2005 the fifth applicant requested the district prosecutor's office to resume the investigation in the criminal case.

45. On 24 February 2005 the district prosecutor's office informed the fifth applicant that the investigation in the criminal case had been resumed on 22 February 2005.

46. On 22 April 2005 the military prosecutor's office of military unit no. 20102 informed the first applicant that the theory of the involvement of Russian military forces in the abduction of Ruslan Magomadov had not been confirmed.

47. On 18 May 2005 the Chechnya prosecutor's office informed the first applicant that the district prosecutor's office was conducting an investigation into her son's disappearance.

48. On 20 May 2005 the district prosecutor's office informed the fifth applicant that the investigation in criminal case no. 50010 had been resumed on 22 February 2005.

49. On an unspecified date the second applicant was granted victim status in criminal case no. 50010.

2. Information submitted by the Government

50. The Government submitted that on 9 February 2003, upon a complaint by the second applicant about the abduction of Ruslan Magomadov, the Grozny prosecutor's office had instituted a criminal investigation into the abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file had been given number 50010. On the same day the authorities also opened criminal case no. 42019 in connection with the theft of Ruslan Magomadov's service

weapon. Some time later the investigation of these two cases was joined into one investigation in criminal case no. 50010.

51. On 9 February and 31 March 2003 the investigators questioned the second applicant and granted her victim status on the latter date. She stated that since 2001 her husband had been working in the investigations department of the Shatoy ROVD. At about 4.30 a.m. on 9 February 2003 the family was sleeping in their house at 179 Kluchevaya Street. She was woken by a noise in the yard and saw about ten or twelve armed men in multicoloured military uniform, high boots and black masks. All these men were armed with typical submachine guns. They ordered her to stay in bed. The men acted in silence; only one of them was swearing and speaking unaccented Russian. The intruders threw her husband on to the floor and tied his hands behind his back with adhesive tape. After that they asked the applicant whether there was a balaclava mask in the house. When she replied in the negative, they took a pillowcase, put it over her husband's head and wrapped adhesive tape around it. After that they took Ruslan Magomadov outside; he was barefoot and in his underwear. They ordered the second applicant to stay inside. However, after the intruders had gone outside, she ran out into the street and saw two APCs driving away in different directions. One of the APCs drove into Kluchevaya Street, the other one went off in the direction of the Staropromyslovskiy autoroute. At least fifteen armed men in camouflage uniform and masks were sitting on each of the APCs. As it was dark, the witness could not see whether there were any identifying marks on the vehicles. According to the second applicant, her relatives, who had been made to stay indoors, also saw the abductors driving away. The intruders had also taken away Ruslan Magomadov's service weapon, his double-barrelled hunting rifle, a black leather folder with documents from his work, prayer beads, a skullcap and 1,500 roubles. On 29 March 2004 the second applicant was questioned again. Her statement was similar to the ones given on 9 February and 31 March 2003.

52. On 9 February and 31 March 2003 the investigators questioned Ruslan Magomadov's brother, Mr Kh.M., who stated that their family household consisted of two houses in one yard. Ruslan Magomadov and his family lived in one house and the witness and his mother (the first applicant) in the other. At about 4.30 a.m. on 9 February 2003 the witness was woken up by his mother's screaming. When he walked out of the room, several men in camouflage uniform and masks pointed their guns at him. They told him that it was a regular identity check. After that they checked his passport and went outside. He followed them and saw two APCs driving away from the house in different directions. One of them drove away along Kluchevaya Street and the other departed in the direction of a local store. According to the witness, after he had returned home his sister-in-law (the second applicant) informed him that his brother Ruslan Magomadov had

been taken away and that the abductors had also taken away his brother's service weapon, a hunting rifle and a folder with documents.

53. On 9 February 2003 the investigators also questioned the applicants' neighbour, Mr A.N., who stated that at about 4.30 a.m. on 9 February 2003 he had woken up and heard the noise of engines. Across the street from his house he saw an APC and men standing next to it. The men were speaking rudely in Russian. The next morning he found out from his neighbours about Ruslan Magomadov's abduction.

54. On 20 February 2003 the Chechnya Ministry of the Interior conducted an inquiry into the abduction of Ruslan Magomadov. As a result it was established that he had indeed been abducted by unidentified persons.

55. On 29 March 2004 the investigators questioned the fifth applicant, who stated that on 9 February 2003 she had been at home when her daughter, who had stayed that night at the house of the first applicant, informed her about the abduction of Ruslan Magomadov. After that the witness had gone to her mother's house in Kluchevaya Street. There the first applicant and Mr Kh.M. told her that at about 4.30 a.m. armed men in two APCs had arrived at the house. The men were wearing masks and camouflage uniform without any insignia or attributes. The intruders had proceeded into Ruslan Magomadov's bedroom, and without introducing themselves dragged him out of bed. Then they asked the second applicant whether there was a balaclava mask in the house. When the second applicant told them that there was none, they took a pillowcase, put it over Ruslan Magomadov's head and tied his hands with adhesive tape. According to the witness, her brother had no unpaid debts.

56. On 20 April 2005 (in the submitted documents the date was also referred to as 31 March 2003) the first applicant was granted victim status in the criminal case and questioned. According to the witness, on 9 February 2003 she, her son Ruslan Magomadov and other relatives had been sleeping at home. At about 4.30 a.m. she had heard a noise in the yard. When the applicant had tried to open the entrance door, a man had pointed his gun at her and ordered her to stay in the house. From the window she saw armed men entering her son's house, which was situated across from her house in the same yard. According to the applicant, the intruders, a group of ten to fifteen military servicemen in masks, spoke Russian among themselves. They had spent about ten to fifteen minutes in Ruslan Magomadov's house. After they had left, the first applicant found out from the second applicant that the men had taken away Ruslan Magomadov. The next morning the applicant had learnt that these men had arrived in two APCs and entered their yard by getting over the fence between the applicants' and one of their neighbours' yards.

57. On 29 May and in July 2004 the investigation in the criminal case was suspended for failure to establish the identity of the perpetrators. The applicants were informed about these decisions.

58. On 2 July 2004 the investigation in the criminal case was resumed. The applicants were informed about it on the same date.

59. On 19 and 21 November 2005 the investigators questioned the applicants' neighbours, Mrs M.B. and Mr Kh.E., who provided similar statements. According to the witnesses, they had not witnessed the events, but on the morning of 9 February 2003 they had found out from their neighbours that at about 4 a.m. on 9 February 2003 unidentified armed men, arriving in a Ural vehicle, had abducted their neighbour Ruslan Magomadov.

60. On 7 December 2005, 6 April and 2 July 2007 the investigators informed the applicants that the investigation in the criminal case had been suspended.

61. On 6 September 2007 the investigation of criminal case no. 50010 was transferred to the Leninskiy inter-district investigations department of Grozny.

62. On 27 September 2007 the investigators questioned the applicants' neighbour, Mr S.I., who stated that he had learnt from his acquaintances that at about 4 a.m. on 9 February 2003 his neighbour Ruslan had been abducted from his house by unidentified armed men in camouflage uniform who had arrived in APCs.

63. On 29 September 2007 the investigators questioned the applicants' neighbour, Mrs Kh.M., who stated that at about 5 a.m. on 9 February 2003 she had been woken by screaming and crying outside. She had gone out into the street and next to the Magomadovs' house she had been told that a group of unidentified armed men in camouflage uniform had broken into the house and taken away Ruslan Magomadov.

64. On 4 October and 24 November 2007 the investigators informed the applicants that the investigation in the criminal case had been suspended for failure to establish the identity of the perpetrators.

65. On 4 February 2008 the investigators informed the applicants that the investigation in the criminal case had been resumed.

66. On 7 February 2008 the investigators questioned Ruslan Magomadov's former colleague, Mr U.A., who stated that between 1996 and 1999 Ruslan Magomadov had worked as the head of the operational division in the Staropromyslovskiy ROVD and after that he had worked as a senior investigator at the Shatoy ROVD. At the beginning of February 2003 the Staropromyslovskiy ROVD had received a complaint from Ruslan Magomadov's relatives that he had been abducted from his own house.

67. On 4 March 2008 the investigators informed the applicants that the investigation in the criminal case had been suspended for failure to establish the identity of the perpetrators.

68. On 9 April 2008 the investigators informed the applicants that the investigation in the criminal case had been resumed.

69. On an unspecified date the investigators conducted a crime scene examination at the applicants' house. No evidence was found or collected.

70. On an unspecified date the investigators requested no. 2 Operational Search Bureau of the Chechnya Ministry of the Interior to conduct operational search measures aimed, *inter alia*, at establishing the identity of eyewitnesses to the abduction who had seen the abductors' armoured vehicles.

71. According to the Government, the investigators also requested information from various State authorities about the disappearance. On various dates these authorities, including the district offices of the FSB and the military prosecutors' office, stated that they had not detained Ruslan Magomadov or carried out a criminal investigation into his activities. Also on unspecified dates a number of the district departments of the interior in Chechnya informed the investigation that they had never detained or delivered Ruslan Magomadov to a temporary detention facility. On unspecified dates the remand centres in Chechnya and the neighbouring regions informed the investigation that the missing man had never been detained on their premises. According to the responses from the Chechnya military commanders' office and a number of the district military commanders' offices located in the Republic, the previously acting military commanders' offices had been disbanded in July 2003 and no information was available about special operations conducted by these offices prior to July 2003.

72. The Government submitted that the investigation was checking several theories concerning the abduction of Ruslan Magomadov: firstly that his abduction had been committed by Russian military servicemen; secondly that it had been perpetrated by persons to whom Ruslan Magomadov owed money; thirdly that his abductors were members of illegal armed groups; and fourthly that his abduction had been carried out for a ransom.

73. The investigation failed to establish the whereabouts of Ruslan Magomadov. The investigating authorities sent requests for information to the competent State agencies and took other steps to have the crime resolved. The investigation found no evidence to support the involvement of federal forces in the crime. The law enforcement authorities of Chechnya had never arrested or detained Ruslan Magomadov on criminal or administrative charges and had not carried out a criminal investigation in his respect.

74. In response to the Court's request, the Government submitted several documents from the investigation file, running to fifty-seven pages. The Government requested the Court to apply Rule 33 § 3 of the Rules of Court concerning confidentiality of the submitted documents and to restrict public access to the submitted documentation. In their request the Government stated that the criminal investigation was still in progress and that public

disclosure of the documents could be detrimental to the interests of participants in the criminal proceedings.

75. The Government further stated that a copy of the entire investigation file could not be submitted to the Court owing to the absence of any guarantees on the part of the Court of non-disclosure of the secret data contained in the investigation file. In this respect the Government referred to Article 161 of the Criminal Procedure Code, since the file contained information concerning participants in criminal proceedings. They also cited, by way of comparison, the Rome Statute of the International Criminal Court of 17 July 1998 (Articles 70 and 72) and the Statute of the International Criminal Tribunal for the former Yugoslavia (Articles 15 and 22) and argued that these instruments provided for personal responsibility for a breach of the rules of confidentiality.

II. RELEVANT DOMESTIC LAW

76. 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

77. 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 Ruslan Magomadov had not yet been completed.

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

B. The Court's assessment

79. 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).

80. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement authorities immediately after the kidnapping of Ruslan Magomadov and that an investigation has been pending since 9 February 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

81. 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

82. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Ruslan Magomadov were State agents. In support of their complaint they referred to the following facts. At the material time Grozny had been under the total control of federal troops. There had been Russian military checkpoints on the roads leading to and from the town. The abduction had been carried out in the vicinity of a Russian federal forces checkpoint. The armed men who had abducted Ruslan Magomadov 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 had been able to circulate freely past curfew. The men acted like a well-organised group, in a manner similar to that of special forces carrying out identity checks. They were wearing a specific camouflage uniform and were armed. Since Ruslan Magomadov had been missing for a very lengthy period, 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.

83. The Government submitted that unidentified armed men had kidnapped Ruslan Magomadov. They further contended that an 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. They further argued that there was no convincing evidence that the applicants' relative was dead and that he had not been officially declared a deceased person. The Government asserted that the crime could have been attributable to illegal armed groups and 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 and service identification documents. The Government also pointed out that Ruslan Magomadov had worked as a police officer, and if the authorities were to arrest him they would have used other means than abduction in an APC. The Government also raised a number of objections to the applicants' presentation of the facts. 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 or criminals pursuing a blood feud. The Government further alleged that the applicants' description of the circumstances surrounding the abduction was inconsistent. In particular, the applicants alleged that the abductors had arrived in APCs, whereas two of their neighbours had mentioned that Ural vehicles had been involved in the events; the applicants' neighbours had not mentioned to the investigators that their yards had been used by the abductors to get into the applicants' household; the applicant had not informed the investigators about the permission to pass through the checkpoints on the night of 9 February 2003 allegedly given by the military commander to representatives of law-enforcement agencies.

B. The Court's evaluation of the facts

84. 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).

85. The Court notes that despite its requests for a copy of the investigation file into the abduction of Ruslan Magomadov, the Government produced only a few 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)).

86. 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.

87. The applicants alleged that the persons who had taken Ruslan Magomadov away on 9 February 2003 and then killed him were State agents.

88. The Government suggested in their submissions that State authorities would not have used an APC to kidnap a police officer and that the abductors of Ruslan Magomadov must have been members of paramilitary groups or criminals pursuing mercenary goals. The Court observes that the Governments' allegation in this respect was not specific and that their submissions did not contain any indications whatsoever that the domestic investigation had found any evidence demonstrating the involvement of insurgents or criminals in the abduction of Ruslan Magomadov. 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, whether APCs or Ural vehicles, unlawfully possessed by members of illegal armed groups, could have moved freely through Russian military checkpoints without being noticed. Nor is it persuaded by the Government's unexplained assertion that a police officer could not have been arrested using an APC. 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 *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

89. 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 during curfew hours, equipped with military vehicles, was able to move freely through military roadblocks during curfew hours and proceeded to check identity documents and abduct a police officer from his home strongly supports the applicants' allegation that these were State servicemen conducting a security operation. As can be seen from the Government's submission, in their witness statements provided to the investigation after the abduction of Ruslan Magomadov the applicants had stated that he had been detained by unknown servicemen (see paragraph 56) or by persons in military uniforms (see paragraph 51 above); the domestic investigation also accepted the assumptions presented by the applicants (see paragraph 18 above).

90. The Government questioned the credibility of the applicants' statements in view of certain discrepancies relating to the exact

circumstances of the abduction as described by the applicants and by their neighbours. The Court notes in this respect that no other elements underlying the applicants' submissions of facts have been disputed by the Government. The Court notes that from the very beginning of the investigation the applicants, as well as their relatives, as eyewitnesses to the events, had been consistent in their witness statements concerning the involvement of the APCs; whereas the statements of the two neighbours, who had not witnessed the events and received the information about the involvement of Ural vehicles from a third party, had been obtained by the investigation almost three years after the abduction. In the Court's view, such discrepancies do not in themselves suffice to cast doubt on the overall veracity of the applicants' statements.

91. 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).

92. 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 the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Ruslan Magomadov was arrested on 9 February 2003 by State servicemen during an unacknowledged security operation.

93. There has been no reliable news of Ruslan Magomadov 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.

94. Having regard to the 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 Ruslan Magomadov or of any news of him for several years supports this assumption.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

96. 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

97. The Government contended that the domestic investigation had obtained no evidence to the effect that Ruslan Magomadov was dead or that any servicemen of the federal law-enforcement agencies had been involved in his kidnapping or alleged killing. They 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. They pointed out that the investigation into the abduction had been commenced on the first day after the applicants' complaint about it and that the applicants had failed to indicate which measures had not been taken by the investigators.

98. The applicants argued that Ruslan Magomadov 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 by April 2005

the investigators had failed to question the first applicant who had witnessed the events; that in spite of credible reports concerning the involvement of APCs and state agents in the disappearance, the investigators had failed to question any representatives of local law-enforcement and military agencies about their possible involvement in the events. They further contended that even though the investigation into Ruslan Magomadov's kidnapping had been opened immediately after the events, it had then 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 more than five and a half years without producing any known 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

99. 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 81 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 Ruslan Magomadov

100. 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 Ruslan Magomadov.

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

101. 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).

102. In the present case, the kidnapping of Ruslan Magomadov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

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

104. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation in case no. 50010 was instituted on 9 February 2003, that is immediately after Ruslan Magomadov's abduction. The Court observes that several witnesses were questioned by the investigation shortly after the opening of the criminal proceedings. However, in spite of the information provided by these witness statements, including information concerning the involvement of APCs in the abduction, the investigators had failed to verify it by taking immediate investigative measures such as questioning representatives of local law-enforcement agencies and military structures about their possible involvement in the abduction or establishing the identity of the owners of the APCs and questioning them about their possible involvement in the events. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the authorities received such 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 *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II)

105. A number of other essential steps were never taken. Most notably, it does not appear that the investigation tried to identify and question the servicemen who had been manning the checkpoint in the vicinity of the applicants' house or that they tried to examine the registration log of the passage of vehicles through the roadblock on 9 February 2003 and the permissions given by the authorities to drive around the area on the night in question.

106. The Court also notes that even though the first and second applicants were granted victim status in the investigation concerning the abduction of their relative, they 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.

107. Finally, the Court notes that the investigation was adjourned and resumed on numerous occasions and that there were lengthy periods of inactivity on the part of the prosecutor's office when no proceedings were pending.

108. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years without producing any tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection.

109. 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 Ruslan Magomadov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

110. 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

111. 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.

112. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

113. 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

114. 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).

115. In the present case the Court notes that the applicants are close relatives of the disappeared person who either witnessed his abduction or were involved in searching for him. For more than five and a half 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 Ruslan Magomadov following his detention. The responses they received mostly denied State responsibility for their relative's 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.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

117. The applicants further stated that Ruslan Magomadov 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

118. The Government asserted that no evidence had been obtained by the investigators to confirm that Ruslan Magomadov 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.

119. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

120. 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

121. 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).

122. The Court has found that Ruslan Magomadov was abducted by State servicemen on 9 February 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).

123. 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.

124. In view of the foregoing, the Court finds that Ruslan Magomadov 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 VIOLATION OF ARTICLE 13 OF THE CONVENTION

125. 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

126. 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. The Government also stated that participants in criminal proceedings could also claim damages in civil proceedings and referred to a case where victims in criminal proceedings had been awarded damages from the prosecutor's office. In sum, the Government submitted that there had been no violation of Article 13.

127. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

128. 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

129. 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).

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

131. 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).

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

132. In their initial application form the applicants complained under Article 8 that their household had been searched unlawfully on the night of their relative's abduction and under Article 14 they alleged that they had been discriminated against on the grounds of their ethnic origin.

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

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

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

Article 14 of the Convention 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.”

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

135. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character affecting respect for human rights as defined in the Convention which require further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998; *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).

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

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

137. 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

138. The applicants claimed damages in respect of loss of earnings by their relative after his arrests and subsequent disappearance. The first applicant, as the mother of Ruslan Magomadov, claimed 247,505 Russian roubles (RUB) (7,071 euros (EUR)) under this head; the second applicant, as his wife, claimed RUB 495,010 (EUR 14,143); the third and the fourth applicants, as his daughter and son, claimed RUB 158,555 (EUR 4,530) and RUB 188,847 (EUR 5,395) respectively. The first, second, third and fourth applicants claimed a total of RUB 1,089,917 under this head (EUR 31,140).

139. They claimed that Ruslan Magomadov had been employed as a senior police officer for an annual wage of RUB 111,993 (EUR 3,200). They provided a certificate from the Chechnya Ministry of the Interior confirming the amount of his wages. They submitted that they were financially dependent on their close relative and would have benefited from his financial support in the above amounts. Their calculations were based on the provisions of the Russian Code of Civil Procedure and 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”).

140. The Government regarded these claims as based on supposition and unfounded. In particular, they noted that the applicants had never claimed compensation for the loss of the family breadwinner, although such a possibility was provided for in domestic legislation.

141. 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, where appropriate, entail compensation in respect of loss of earnings. Furthermore, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. Having regard to its above conclusions, the Court finds that there is a direct causal link between the violation of Article 2 in respect of Ruslan Magomadov and the loss by the first, second, third and fourth applicants of the financial support which he could have provided. The Court further notes that the applicants have submitted a certificate confirming the amount of their relative's earnings and that the Government have not disputed the method of calculation.

142. Having regard to the applicants' submissions, the Court awards EUR 7,000 to the first applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount and EUR 24,000 to the second, third and fourth applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

143. 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.

144. The Government found the amounts claimed exaggerated.

145. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicants jointly EUR 35,000 plus any tax that may be chargeable thereon.

C. Costs and expenses

146. 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, and the drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff and experts. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 6,039.

147. The Government submitted that the applicants were only entitled to reimbursement of costs and expenses that had actually been incurred and were reasonable.

148. 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).

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

150. Further, as to whether the costs and expenses incurred 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.

151. Having regard to the details of the claims submitted by the applicants, the Court awards them 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

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaints under Articles 8 and 14 of the Convention;

2. *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 and 13 of the Convention admissible;
4. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Ruslan Magomadov;
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 Ruslan Magomadov disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ruslan Magomadov;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
10. *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 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the first applicant;
 - (ii) EUR 24,000 (twenty-four thousand euros) plus any tax that may be chargeable, in respect of pecuniary damage to the second, third and fourth applicants jointly;
 - (iii) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
 - (iv) 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;

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

Done in English, and notified in writing on 17 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President