



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

1959 · 50 · 2009

FIRST SECTION

CASE OF ASADULAYEVA AND OTHERS v. RUSSIA

(Application no. 15569/06)

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 Asadulayeva and Others v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio 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. 15569/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Russian nationals listed in paragraph 5 below (“the applicants”), on 7 April 2006.

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 Moscow, Russia. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 28 May 2005 the President of the First Section 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. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Government objected to the joint examination of the admissibility and merits of the application and the application of Rule 41 of the Rules of Court. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- 1) Ms Lyaylya Adiyevna Asadulayeva (also spelled as Leyla/Layla Adiyevna Asadulayevna), born in 1967;
- 2) Ms Aset Eslyudyevna Saitova, born in 1981, and
- 3) Ms Zinaida Adiyevna (also spelled as Adyevna) Asadulayeva, born in 1976.

6. The applicants live in Alkhan-Kala, in the Groznenskiy District of the Chechen Republic.

7. The first and third applicants are sisters of Mr Bekman Adiyevich Asadulayev, born in 1979. The second applicant is his wife. The couple have two children, born in 2003 and 2004.

A. Abduction of Bekman Asadulayev

1. The applicants' account

8. At the material time Bekman Asadulayev lived in the village of Kerla-Yurt together with the second applicant and their child. He was employed as a police officer of the Pobedinskoye police station of the Groznenskiy district office of the Interior (ROVD).

9. On 14 January 2004 Mr S., head of the ROVD, summoned Bekman Asadulayev to the ROVD and instructed him to go to the Ministry of the Interior of the Chechen Republic (MVD) to give an explanation to Mr G., an official of the MVD human resources department, in connection with his unauthorised absence from work.

10. Bekman Asadulayev, Mr Sh., the then acting head of the Pobedinskoye police station, and a Mr A. drove to the MVD.

11. At about noon on 14 January 2004 they arrived at the MVD. The MVD grounds, including the MVD building, were surrounded by a high fence and could be entered only through a checkpoint. At that checkpoint visitors had either to apply for a special temporary pass or show their identity cards. Every visitor's identity information was registered at the checkpoint in special visitors' logbooks. Armed security guards were stationed at the secure gate leading to the MVD grounds. The external access road to the MVD grounds had two further checkpoints. Each of them was guarded by security personnel and kept its own visitors' logbook.

12. Upon arrival at the MVD secure gate Bekman Asadulayev and Mr Sh. got out of the car and went into the MVD building. Mr A. stayed in the vehicle. Bekman Asadulayev and Mr Sh. were received by Mr G. Bekman Asadulayev made a written statement and handed it over to Mr G. At that moment three or four armed men in military uniforms walked into the room. Their uniforms were unusual in that they were grey and had many pockets. While leaving the building Bekman Asadulayev and Mr Sh. were stopped by the armed men who had apparently followed them. The men asked for Bekman Asadulayev's and Mr Sh.'s identity cards. After checking

the documents, they returned Mr Sh.'s identity card to him but did not give Bekman Asadulayev his identity card back. They told Bekman Asadulayev that they would take him with them “for a check”, handcuffed him and put him in a dark blue VAZ-21099 car which was parked at the entrance of the MVD building. The car, which did not have licence plates, was driven to the checkpoint at the gate. The officers at the checkpoint did not stop the car; the driver merely honked and the car was allowed to pass through without being checked. Having left the MVD grounds, the car was driven to an unknown destination.

13. When Mr Sh. left the MVD grounds and met Mr A., he told the latter about the incident and they decided to go to Mr S., head of the ROVD, to alert him to the abduction of Bekman Asadulayev. Meanwhile, Mr S. had arrived at the MVD entrance gate in his car. Having heard their account, Mr S. reassured them that there were no reasons to worry and that on the following day they would “have information about everything”. Mr S. took Bekman Asadulayev's service submachine gun from the car in which the three men had arrived at the MVD and left.

14. In the days that followed Mr S. tried to find out who had apprehended Bekman Asadulayev, how the abductors had managed to enter the premises of the MVD and where they could have taken Bekman Asadulayev. However, his attempts failed to produce any results.

15. On an unspecified date in 2004 Mr Sh. was killed.

16. The description of the above events is based on complaints by the first applicant to various State bodies dated 19 February 2004, a written statement by the first applicant to her representative made on 8 December 2004, an undated written statement by Mr A. and three hand-drawn maps of the grounds of the MVD.

2. The Government's account

17. The Government submitted, with reference to the information obtained in the course of the investigation in criminal case no. 30012 (see below), that on 14 January 2004 unidentified armed men in camouflage uniforms had abducted Bekman Asadulayev from the secure grounds of the MVD.

B. Official investigation into the abduction of Bekman Asadulayev

1. The applicants' account

18. On 17 January 2004 the third applicant complained about the abduction of Bekman Asadulayev to the prosecutor's office of the Leninskiy district of Grozny (the district prosecutor's office). She described the

circumstances of her brother's abduction from the MVD grounds and requested assistance in establishing his whereabouts.

19. On 4 February 2004 the district prosecutor's office instituted an investigation into the abduction of Bekman Asadulayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given number 30012. It does not appear that the applicants were notified of that decision.

20. On 18 February 2004 the district prosecutor's office summoned the third applicant to their office on an unspecified date in connection with her complaint of 17 January 2004. It is unclear whether the meeting took place and if so, whether any investigative measures were carried out with the third applicant's participation.

21. On 19 February 2004 the first applicant complained about the disappearance of Bekman Asadulayev to a number of State authorities, including the prosecutor of the Chechen Republic, the Minister of the Interior of the Chechen Republic and the Prosecutor General of the Russian Federation. In her letters she described the circumstances of Bekman Asadulayev's abduction from the grounds of the MVD. She submitted, in particular, that on 14 January 2004 Bekman Asadulayev had been summoned to the MVD to meet Mr D., the deputy Minister of the Interior of the Chechen Republic. Mr G. had obtained Bekman Asadulayev's statement and while the latter had been leaving, unidentified men had apprehended him and had taken him away in a dark blue VAZ vehicle. The first applicant pointed out that the abductors' vehicle had not been stopped at the checkpoint and provided the names of the two persons who had witnessed her brother's apprehension, Mr Sh. and Mr A.

22. On 15 March 2004 the district prosecutor's office granted the third applicant victim status in connection with the proceedings in case no. 30012. She was notified of the decision on the same date.

23. On 12 May 2004 the MVD informed the first applicant that they had conducted an internal inquiry in connection with her complaint about the abduction of Bekman Asadulayev; however, it had failed to establish his whereabouts. The letter further stated that all information concerning the criminal investigation was to be obtained from the district prosecutor's office.

24. In a letter of 12 May 2004 the prosecutor's office of the Chechen Republic (the republican prosecutor's office) notified the third applicant, in reply to her query, that the district prosecutor's office had instituted a criminal investigation into the abduction of Bekman Asadulayev and that operational and search measures aimed at establishing his whereabouts and solving the crime were under way.

25. On 17 May 2005 the third applicant complained to the district prosecutor's office about the lack of information concerning the progress and the results of the investigation in criminal case no. 30012. She

requested the authorities to conduct an effective and thorough investigation into her brother's abduction and to update her on the steps taken by the investigating authorities.

26. On 15 July 2005 the third applicant submitted to the district prosecutor's office a repeated complaint about the lack of information on the investigation in case no. 30012, reiterating the grievances she had raised in the letter of 17 May 2005 and pointing out that the district prosecutor's office had disregarded her previous complaint.

27. On 21 July 2005 the applicants' representatives wrote to the district prosecutor's office. They described in detail the circumstances of Bekman Asadulayev's abduction and complained about the lack of information concerning the criminal investigation in case no. 30012. In particular, they requested that the applicants be updated on the progress of the investigation and that it be resumed if it had been suspended. They further enquired whether the investigating authorities had questioned the servicemen on duty at the checkpoint of the MVD at the material time; whether measures had been taken to establish the circumstances of abductors' vehicle's unhindered passage through the checkpoints; whether the crime scene had been inspected; and whether eyewitnesses to the abduction had been questioned. It does not appear that the applicants or their representatives received a reply to that request.

28. On 29 December 2005 the applicants' representatives wrote a letter along the same lines to the republican prosecutor's office. They forwarded a copy of their letter to the district prosecutor's office. It does not appear that their letters were ever replied to.

2. Information submitted by the Government

(a) Internal inquiry

29. From the Government's submissions it transpires that on 17 January 2004 the authorities launched an internal inquiry into the incident of 14 January 2004. The Government neither specified the authority in charge of the inquiry nor furnished any other information in that connection.

(i) Questioning of Mr Sh.

30. On 17 January 2004 Mr Sh. was questioned as part of the inquiry. He submitted that on 14 January 2004, at about 10 a.m., he had arrived by car at the MVD with Bekman Asadulayev and Mr A. Bekman Asadulayev had been summoned to the MVD by their human resources department. Mr Sh. and Bekman Asadulayev had entered the MVD building while Mr A. had stayed outside in the car. Mr Sh. and Bekman Asadulayev had gone to the office of Mr G., an official of the human resources department, who had instructed Bekman Asadulayev to write a statement with a view to

clarifying certain personal information in connection with his recruitment. At that moment three men in camouflage uniforms armed with automatic weapons had entered the office of Mr G. Two minutes later the armed men had left.

31. When Bekman Asadulayev had finished writing his statement, Mr G. had allowed him and Mr Sh. to leave and they had left the building. There they had seen a dark blue VAZ-21099 car with tinted windows and without licence plates. There had been four men armed with automatic weapons by the car. They had not been wearing masks. One of the armed men had asked Bekman Asadulayev and Mr Sh. who they had been visiting. Mr Sh. had replied that they had just seen Mr G. The armed man had then requested that Mr Sh. and Bekman Asadulayev produce their service certificates. Having checked them, the armed men had returned Mr Sh.'s document to him. They had told him that he was free to leave but had taken Bekman Asadulayev with them. Mr Sh. had requested the armed men to identify themselves but they had refused. They had forced Bekman Asadulayev into the back of the VAZ-21099 car, had honked to the guards who had opened the gate for them and had left the MVD grounds for an unknown destination.

32. Mr Sh. had decided to follow the armed men but by that time he had seen Mr S., head of the ROVD, arrive at the MVD building. Mr Sh. had immediately alerted Mr S. to the abduction of Bekman Asadulayev. Mr S. had taken Bekman Asadulayev's service submachine gun and explained to Mr Sh. that he had talked to the head of the MVD human resources department, Mr Zh., and that the "competent authorities [were] dealing with Bekman Asadulayev" because they had had "information capable of compromising him" (*компрометирующий материал*).

(ii) Questioning of Mr S.

33. On 23 January 2004 Mr S., head of the ROVD, was questioned. He submitted that in the afternoon on 13 January 2004 he had been instructed to send Bekman Asadulayev to see the deputy head of the MVD, in charge of human resources. Mr S. had summoned Bekman Asadulayev and his superior, Mr Sh., to his office on 14 January 2004, at 9 a.m. Both men had arrived at the indicated time and had surmised that the summons to the MVD human resources department could have been prompted by Bekman Asadulayev's missing of classes in a police school. After a conversation with Mr S., Bekman Asadulayev and Mr Sh. had left for the MVD.

34. At about 11 a.m. Mr S. had arrived at the MVD. At the building entrance he had met Mr Sh. who had informed him that unidentified armed men had taken Bekman Asadulayev away in a dark blue VAZ-21099 car without licence plates. Mr S. had not been worried, considering that it would be impossible to abduct a person from the MVD grounds without the knowledge of MVD senior officials. Mr S. had made enquiries to the heads of various MVD departments about the circumstances of the disappearance

of Bekman Asadulayev but none of them had furnished any specific information. All persons questioned by him had supposed that the case had been dealt with by the security services, without however naming any particular service. Subsequently Mr S. had requested information about the incident involving Bekman Asadulayev from various bodies, including the heads of the criminal police of the Ministry of the Interior, the special police forces (OMON), operational and search Bureau no. 2 (ORB-2) and the internal security directorate of the Ministry of the Interior. However, none of those bodies had furnished any relevant information. Mr S. lastly stated that he had no information on the whereabouts of Bekman Asadulayev or his abductors.

(b) Institution of the criminal investigation

35. On 4 February 2004 the district prosecutor's office launched a criminal investigation into the abduction of Bekman Asadulayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping) and assigned the case number 30012.

36. On 18 February 2004 Mr Sh. was questioned. He confirmed his statement of 17 January 2004.

37. On 19 February 2004 Mr S., questioned as a witness, confirmed his statement made on 23 January 2004.

(i) Requests for information

38. On 19 February 2004 the district prosecutor's office requested ORB-2 to inform the investigators whether they had carried out any special operations aimed at arresting Bekman Asadulayev and whether they had at their disposal any information capable of compromising him.

39. On 1 March 2004 the investigators sought from the FSB Department in the Chechen Republic information similar to that requested from ORB-2.

40. According to the Government, the replies of the above authorities indicated that they had not carried out any special operations with a view to arresting Bekman Asadulayev and had not had information capable of compromising him.

(ii) Questioning of Mr Zh.

41. On 9 March 2004 investigators of the district prosecutor's office questioned Mr Zh., who at the time of the incident had held the post of deputy Minister of the Interior of the Chechen Republic and had been head of the MVD human resources department. Mr Zh. submitted that on 11 or 12 January 2004 he had been contacted over the phone by Mr D., the acting Minister of the Interior of the Chechen Republic. Mr D. had informed Mr Zh. that a certain Bekman Asadulayev, a police officer of the Groznenskiy ROVD, had concealed important personal information at the

time of his recruitment by the police. Mr D. had instructed Mr Zh. to summon Bekman Asadulayev to the MVD and to obtain his explanation.

42. Following the conversation, Mr Zh. had ordered his assistant, Mr G., to summon Bekman Asadulayev to the MVD and to obtain from him a written explanation concerning his personal file and, in particular, the lacking data on the relatives of his wife.

43. On 14 January 2004 Mr Zh. had received a phone call from Mr G., notifying him that Bekman Asadulayev had arrived at the MVD. Mr Zh. had instructed Mr G. to receive Bekman Asadulayev and to obtain the information required from him. Forty to forty-five minutes later Mr G. had reported to Mr Zh. that he had obtained Bekman Asadulayev's statement and had allowed him to leave. In the afternoon Mr Zh. had met Mr S. The latter had asked him who might have taken Bekman Asadulayev away. Mr Zh. had replied that he did not know. Four days after the abduction of Bekman Asadulayev, the latter's relatives, worried by his absence, had gathered at the MVD checkpoint. Some eight days after the abduction Mr Zh. had been approached at the MVD checkpoint by two men and a woman who had enquired about Bekman Asadulayev. Mr Zh. had explained to them that he did not have any information about him. Lastly, Mr Zh. submitted that he had not seen Bekman Asadulayev on 14 January 2004.

(iii) Questioning of Mr A.

44. On 15 March 2004 Mr A. was questioned as a witness. He submitted that on 14 January 2004, between 10 and 11 a.m., he had arrived at the MVD building with Bekman Asadulayev and Mr Sh. Mr A. had stayed in the car, keeping an eye on Bekman Asadulayev's service weapon, while the latter and Mr Sh. had entered the MVD building. Thirty to forty minutes later Mr Sh. had returned and had told Mr A. that four men in camouflage uniforms had taken Bekman Asadulayev away to an unknown destination. Five to ten minutes later Mr S., head of the ROVD, had approached Mr A. and Mr Sh. Mr A. had asked Mr S. what had occurred and why Bekman Asadulayev had been taken away. Mr S. had explained that Bekman Asadulayev had been taken away to be questioned. Mr S. had then collected Bekman Asadulayev's submachine gun.

(iv) Questioning of the third applicant

45. On 15 March 2004 the investigators questioned the third applicant as a witness. She submitted that on 14 January 2004 her brother had been summoned to the MVD, together with Mr Sh., in connection with the former's absence from the police school. The third applicant had learnt from Mr Sh. that when Mr Sh. and Bekman Asadulayev had left the MVD building, located within the secure grounds of the MVD, several men armed with automatic weapons had approached them. They had forced her brother into a dark blue VAZ-21099 car without licence plates and had taken him to

an unknown destination. Subsequently, the third applicant had been received by the deputy Minister of the Interior of the Chechen Republic, Mr Zh., who had confirmed that Bekman Asadulayev had been summoned to the MVD to provide some information. Bekman Asadulayev's written statement had been given to Mr G. Mr Zh. himself had not seen her brother, but had promised to investigate the incident.

46. On the same day the third applicant was granted the status of victim in criminal proceedings no. 30012.

(v) On-site verification of the statements by Mr Sh.

47. On 16 March 2004 the investigators conducted an on-site verification of the statements by Mr Sh. During the verification Mr Sh. confirmed his previous statements and "indicated to the investigators the location of the objects of interest to the [them]".

(vi) Statements by M., Z.A. and Z.I.

48. On 23 March 2004 a certain Ms M. gave the investigators a written statement which was appended to case file no. 30012. Ms M. stated, in particular, that she traded food at a market in Altayskaya Street, opposite the MVD. On 14 January 2004 Ms M had been trading at the market. On that day she had not noticed anything suspicious and had not heard about the abduction of Bekman Asadulayev.

49. The Government submitted that on an unspecified date a certain Ms Z. A. and a certain Ms Z. I. made statements similar to that of Ms M.

(vii) Questioning of Mr D.

50. On 30 April 2004 the investigators questioned as a witness Mr D., who at the time of the incident had held the post of acting Minister of the Interior of the Chechen Republic. Mr D. submitted that on 10 January 2004 Mr Zh. had informed him that the personal files of several police officers were incomplete. In that connection Mr D. had summoned to the MVD all police officers whose personal files did not comply with the established requirements. In the beginning of February 2004 relatives of Bekman Asadulayev had on several occasions applied to Mr D. in connection with the alleged abduction of their relative from the secure grounds of the MVD. Mr D. had not met Bekman Asadulayev and had never spoken to him.

51. The Government submitted that the investigators had not questioned Mr G., who had received Bekman Asadulayev on 14 January 2004, because he had left the Chechen Republic on an unspecified date.

52. The Government further submitted that the investigation in case no. 30012 had been suspended several times owing to the failure to identify those responsible for the abduction of Bekman Asadulayev. The investigation had then been resumed with a view to verifying the information obtained as a result of the investigative steps taken by the

authorities. The Government did not indicate the dates of the decisions to suspend and resume the investigation, nor did they furnish any further information in that connection. According to the Government, the investigation into the abduction of Bekman Asadulayev was still ongoing.

53. Despite specific requests by the Court, the Government refused to furnish any copies from the investigation file in case no. 30012. They claimed that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning witnesses and other participants in the criminal proceedings.

C. Subsequent court proceedings

1. Proceedings to have Bekman Asadulayev declared a missing person

54. By a judgment of 21 June 2005 the Groznenskiy District Court of the Chechen Republic (the District Court) allowed an action by the second applicant to have her husband declared a missing person.

2. Proceedings to have Bekman Asadulayev declared dead

55. On an unspecified date in 2006 the second applicant filed with the District Court a civil action to have her husband declared dead. She submitted, in particular, that Bekman Asadulayev had disappeared in life-threatening circumstances, that two years had elapsed since his disappearance and that, given the situation in the Chechen Republic, there were grounds to believe that he had been killed following his abduction.

56. On 25 May 2006 the District Court dismissed the second applicant's claim. The court's reasoning, in its relevant parts, was as follows:

“[The court] obtained copies of materials from criminal case file [no. 30012].

From the decision of 4 February 2004 to institute criminal proceedings it transpires that on 14 January 2004 four unidentified men in camouflage uniforms, armed with automatic weapons, arrived at the entrance to the [MVD] building in a dark blue VAZ-21099 vehicle without licence plates and took Bekman Asadulayev, born in 1979, by force to an unknown destination from the secure grounds of the [MVD]; [Bekman Asadulayev's] whereabouts remain unknown.

From the transcripts of the interview of the deputy Minister of the Interior of the Chechen Republic, Mr Zh., dated 9 March 2004; the head of the Groznenskiy ROVD, Mr S., dated 19 February 2004; the acting head of the Pobedinskoye police office, Mr Sh., dated 18 February 2004, and the then acting Minister of the Interior, Mr D., dated 30 April 2004, it follows that [Bekman Asadulayev] had been taken away with their knowledge [*c ux vedoma*] and, most likely, by officials of the power structures. Hence, the court finds no reasons to believe that [Bekman Asadulayev] could have perished during his abduction and is not alive.

Thus, the latest date when there was information on [Bekman Asadulayev's] whereabouts is 14 January 2004. The five-year term has not expired.

However, under Article 45 of the Civil Code, a citizen may be declared dead if in his place of residence there has been no information on his whereabouts for five years; if he has gone missing in life-threatening circumstances or there are grounds to believe that he has died as a result of an accident [a citizen may be declared dead] within six months.

The court is not in possession of any information that [Bekman Asadulayev] went missing in life-threatening circumstances, as a consequence of which his death could be presumed, because he was taken away from secure grounds to which no person has access without a proper pass.”

57. There is no indication that the second applicant challenged the District Court judgment on appeal.

II. RELEVANT DOMESTIC LAW

58. Article 125 of the Russian Code of Criminal Procedure 2001 (“CCP”) provides that an investigator's or prosecutor's decision to refuse to institute criminal proceedings or to terminate a case, and other orders and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede a citizen's access to justice may be appealed against to a local district court, which is empowered to examine the lawfulness and grounds of the impugned decisions.

59. Article 161 of the CCP prohibits the disclosure of information from the preliminary investigation file. Under part 3 of the Article, information from the investigation file may be divulged only with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the parties to the criminal proceedings or prejudice the investigation. Divulging information about the private lives of parties to criminal proceedings without their permission is prohibited.

60. Article 1069 of the Russian Civil Code provides that damage sustained by an individual because of unlawful actions or inaction of State and municipal agencies or their officials is to be compensated for by a State or municipal treasury.

THE LAW

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

A. The parties' submissions

61. The Government argued that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the abduction of Bekman Asadulayev had not yet been completed. They further claimed that the applicants had not brought any civil claims for compensation for damage under Article 1069 of the Civil Code or challenged the investigators' decisions in court under Article 125 of the CCP.

62. The applicants contested that objection. They argued that the criminal investigation had proved to be ineffective, having produced no meaningful results after more than four years.

B. The Court's assessment

63. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI; *Akdivar and Others v. Turkey*, 16 September 1996, §§65-67, *Reports* 1996-IV, and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

64. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the

relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above, § 68, or *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

65. Having regard to the Government's arguments, 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.

66. As regards a civil action for compensation for damage caused by unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court considers that the applicants were not obliged to pursue civil remedies.

67. As regards law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement authorities shortly after the abduction of Bekman Asadulayev and that an investigation has been pending since 4 February 2004. The applicants and the Government dispute the effectiveness of the investigation into the kidnapping.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

69. The applicants complained under Article 2 of the Convention that their relative had disappeared after being detained by State agents and that the authorities had failed to carry out an effective investigation into his disappearance. 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

1. Submissions by the Government

70. The Government submitted that unidentified armed men had abducted Bekman Asadulayev from the secure grounds of the MVD. They noted that the investigation into the incident was pending and that there was no evidence that the abductors had been State agents. In particular, while mentioning the abductors' camouflage uniforms, the applicants had never referred to insignia on them or other details which could have enabled the authorities to establish the affiliation of the perpetrators to a particular military service. Moreover, the first applicant had described the uniforms as “unusual” and, in any event, she had not been an eyewitness to the abduction, her only source of information being Mr Sh. From his description of the abductors' camouflage uniforms as “unusual” it transpired that he had doubted that the perpetrators had belonged to the Russian military. The applicants also failed to indicate whether the abductors had used specific military terms or expressions. The fact that they had carried weapons and had spoken Russian did not prove that they had belonged to the Russian military. The Government further stressed that members of illegal armed groups had often passed themselves off for servicemen or members of law-enforcement bodies and had freely entered the premises where the latter had been stationed. In this connection they referred to the events in Beslan where the perpetrators had passed several checkpoints unhindered and had subsequently taken over one thousand people hostage. In the Government's opinion, Bekman Asadulayev might have been abducted either by members of illegal armed groups in connection with his professional activity as a police officer or by third persons because of a personal feud. Moreover, had the authorities suspected him of membership of illegal armed groups, they would not have needed to mount a plot and would have prosecuted him in the proper way. The Government stressed in that connection that none of the heads of the “power structures” had formally confirmed the fact of Bekman Asadulayev's arrest.

71. The Government further pointed to several inconsistencies in the applicants' account of events. In particular, while the applicants alleged that Bekman Asadulayev had been summoned to the MVD because he had missed his classes, the real purpose had been to obtain information concerning his recruitment. Furthermore, Bekman Asadulayev had been the only person summoned to the MVD. Mr Sh. had simply accompanied him there and had not submitted any written statements to Mr G. Furthermore, whilst the applicants claimed that armed men had entered Mr G.'s office when Bekman Asadulayev had been handing his statement to Mr G., according to Mr Sh.'s statement the armed men had come into the office before Bekman Asadulayev had started to compile his statement. The Government particularly stressed that it had not followed from Mr Sh.'s testimony that Mr G. had been surprised by the arrival of the armed men in his office. The Government concluded that either Mr G. had known those men or he had been aware of the reason for their arrival.

72. The Government also pointed out that while according to the applicants the armed men had followed Bekman Asadulayev and Mr Sh. in the MVD building, it followed from Mr Sh.'s statements that he had seen four armed men outside the building near the VAZ-21099 car. More importantly, Mr Sh. had never specified that the men by the VAZ vehicle and those who had entered Mr G.'s office had been the same persons. According to the Government, Mr Sh. had submitted that he would have been able to identify the abductors because they had not worn masks. However, when he had subsequently visited various departments of the Ministry of the Interior, he had never met those persons, although the overall number of police officers in the Chechen Republic is not particularly high. Lastly, the applicants' submission that the abductors had handcuffed Bekman Asadulayev had not been confirmed by Mr Sh. who had never mentioned that fact while being questioned by the investigators.

73. The Government further contended that the investigation into the abduction of the applicants' relative met the Convention requirements of effectiveness. It was being conducted by the district prosecutor's office, an independent body, which had checked various theories of the incident, including the possible involvement of servicemen in the abduction. Numerous requests for information had been sent to various State authorities; the third applicant, who had been granted victim status, had been questioned, as well as all other persons who might have had information on the events of 14 January 2004.

2. The applicants' submissions

74. The applicants maintained that it was beyond reasonable doubt that the men who had taken Bekman Asadulayev away from the secure grounds of the MVD had been State agents. They submitted that State representatives frequently omitted to wear uniforms with recognisable

insignia, so that their actions could not be traced. Since the beginning of the military conflict in 1999 camouflage uniforms had been withdrawn from unrestricted sale and representatives of the federal forces had seized such uniforms and detained individuals who had them. The applicants further stressed that the unhindered passage of the abductors of Bekman Asadulayev through the checkpoints had indicated that the MVD security personnel had either recognised them or had had an order to let them through. In that connection the applicants emphasised that if the abductors had been members of illegal armed groups, their unhindered passage through the secure MVD grounds should have prompted the authorities to investigate such a serious security breach. However, nothing in the Government's submissions indicated that this had been done. They further pointed to the Government's admission that Mr G. had not been surprised by the arrival of the armed men in his office which, in the applicants' opinion, lent further credence to their argument that the abductors of Bekman Asadulayev had been State agents. The applicants also argued that the alleged discrepancies in their account of events had not had particular bearing on the establishment of the fact of their relative's detention by State agents. In any event, it followed from the statement by Mr Sh. cited by the Government that Bekman Asadulayev had simply surmised that his summoning had been prompted by unauthorised leave. Furthermore, the applicants had not alleged that Mr Sh. had also been summoned to the MVD. As for the exact time of arrival of the armed men in Mr G.'s office, it had also been irrelevant since the Government had not disputed the fact of their arrival there. Insofar as the Government argued that the armed men who had entered Mr G.'s office and those outside the building might have been different persons, it could not be verified since the Government had failed to produce a copy of the statement by Mr Sh. to that effect. In so far as the handcuffing was concerned, Mr Sh. had not mentioned it in the statement relied on by the Government. In reply to the Government's submission that Bekman Asadulayev might have been targeted by insurgents because of his professional activities, the applicants pointed out that the domestic investigation had not obtained any evidence of the possible involvement of members of illegal armed groups in his disappearance. With reference to the case of *Kukayev v. Russia* (no. 29361/02, 15 November 2007), they further claimed that the fact of being a police officer in the Chechen Republic did not, as such, minimise the risk of abduction by State agents.

75. The applicants argued that Bekman Asadulayev should be presumed dead following his disappearance in life-threatening circumstances and in the absence of any news of him for several years. They also argued that the prosecuting authorities had failed to carry out crucial investigative steps such as questioning the security personnel at the checkpoints and Mr G. The applicants had not been properly informed of the most important

investigative measures. The investigation had been adjourned and resumed several times. It had been ongoing for four years without producing any known results.

B. The Court's assessment

1. Admissibility

76. 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 68 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 Bekman Asadulayev

77. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

78. The Court observes that 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*, 18 January 1978, § 161, Series A no. 25).

79. These principles also apply to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation of what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005–VIII).

80. The applicants alleged that on 14 January 2004 their relative, Bekman Asadulayev, had been abducted by State agents from the secure grounds of the MVD and had then disappeared. The applicants had not been eyewitnesses to those events. However, they submitted a written statement by Mr A., who had accompanied Bekman Asadulayev on that day; three hand-drawn maps of the grounds of the MVD; the first applicant's statement to the SRJI and the District Court decision of 25 May 2006 issued in the context of the proceedings to have Bekman Asadulayev declared dead.

81. The Government denied that State agents had been involved in the abduction of Bekman Asadulayev. Although they referred to several inconsistencies in the applicants' and witnesses' statements, they did not question the main factual elements underlying the applicants' version of his abduction. The Government also insisted that the investigation was pending and that it had not confirmed the applicants' theory.

82. The Court notes at the outset that despite its requests for a copy of the file of the investigation into the abduction of Bekman Asadulayev, the Government produced no documents from the case file, referring to Article 161 of the CCP. 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)).

83. 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 that respect. The Court will thus proceed to examine the crucial elements in the present case that should be taken into account in order to decide whether the applicants' relative's disappearance should be attributed to the State authorities and whether he should be presumed dead.

84. The Court observes that it is common ground between the parties that on 14 January 2004 Bekman Asadulayev was summoned to the MVD and was subsequently abducted from its secure grounds. In this connection the Court points out that the Government did not challenge the description of the MVD grounds and the secured road leading to them, as presented by the applicants and, in particular, in the hand-drawn maps produced by them. From those documents it follows that the MVD grounds were surrounded by a high fence; that the entrance to the grounds had been secured by armed

guards and that access to the grounds was only possible through a checkpoint where the visitors' identity information was registered in special logbooks. Moreover, two further checkpoints were situated on the access road to the MVD grounds. In the absence of any submissions by the Government to the effect that on 14 January 2004 there had been a security breach on the grounds of the MVD by reason of the insurgents' unhindered passage through several checkpoints, or any indication that the authorities had investigated that security breach, the Court is bound to conclude that the abduction took place on premises over which State authorities exercised full control at the material time. Bearing this in mind and applying the principles enunciated in paragraph 79 above, the Court considers that the onus is thus on the Government to provide a plausible explanation of what happened on the premises and to show that Bekman Asadulayev was not detained by the authorities, but left the premises without subsequently being deprived of his liberty.

85. However, the Court is not persuaded by the Government's submissions that Bekman Asadulayev had been abducted by insurgents or private persons because of a personal feud. In the first place the Court can hardly discern how a group of four men wearing camouflage uniforms, driving a car without licence plates and armed with automatic weapons could have passed three checkpoints leading to the MVD secure grounds, entered those secure premises, forced a person into their vehicle in broad daylight in front of the MVD building and left the secure grounds unhindered, without raising any suspicion. In the Court's view, this fact would rather strongly support the applicants' allegation that these were State agents (compare *Alikhadzhiyeva v. Russia*, no. 68007/01, § 59, 5 July 2007; *Nasukhanova and Others v. Russia*, no. 5285/04, § 95, 18 December 2008; and *Ruslan Umarov v. Russia*, no. 12712/02, § 91, 3 July 2008). Furthermore, had the abductors been insurgents, it would have been reasonable to expect the authorities to investigate such a serious security breach. However, nothing in the Government's submissions indicates that this had been done in the present case. In the same vein, they presented no evidence to confirm that the investigating authorities had ever considered the theory that a personal feud had been behind the incident or taken any genuine steps to examine it.

86. Reiterating the principles enunciated in paragraph 79 above, the Court notes that the foregoing elements alone would be sufficient to conclude that the applicants' relative was abducted by State agents. Nonetheless, it cannot disregard several further circumstances which weigh heavily in support of the applicants' submission that their relative had been abducted by State agents.

87. Thus, whilst the Court was refused access to the case file, it transpires from the decision of 25 May 2006 that the District Court was given such access (see paragraph 56 above). Having directly examined

documents from the investigation case file, including the interview transcripts of Mr Zh., Mr S., Mr Sh. and Mr D., the District Court concluded that the applicants' relative had been taken away "with the knowledge" of the MVD officials and "most likely, by officials of the power structures" (ibid.).

88. The Court also cannot overlook the statements by Mr Sh. and Mr A., referred to by the Government and also by the District Court in its decision of 25 May 2006. Those officers had submitted to the investigators that Mr S. had confirmed to them that Bekman Asadulayev had been taken away by "the competent authorities" "for questioning", in connection with some "information capable of compromising him" (see paragraphs 32 and 44 above).

89. The Government disputed several details of the applicants' account of the events surrounding the abduction of their relative, such as the reason for his summoning to the MVD, the exact time of the arrival of the armed men in the office of Mr G., their "unusual" uniforms and, lastly, Bekman Asadulayev's possible handcuffing. However, as the Government themselves correctly suggested, the applicants had not eyewitnessed the abduction of their relative and it is logical that they based their account of the events on all possible sources of information available to them. Furthermore, the Court does not consider that those alleged inconsistencies are such as to undermine the otherwise coherent and convincing picture of Bekman Asadulayev's abduction presented by applicants. In any event, in view of its findings in paragraphs 84-86 it does not consider it necessary to resolve those alleged discrepancies.

90. Taking into account the elements discussed above, the Court is satisfied that Bekman Asadulayev was abducted on 14 January 2004 from the secure grounds of the MVD by State agents during an unacknowledged security operation.

91. It is further to be decided whether Bekman Asadulayev is to be presumed dead following his apprehension by State agents. In this connection the Court observes that the District Court refused to declare the applicants' relative dead. It firstly noted that the statutory five-year term for declaring dead a person that had gone missing in normal circumstances had not expired at the time of its examination of the case. Secondly, it did not consider that the applicants' relative had disappeared in life-threatening circumstances (see paragraph 56 above). However, this Court is unable to accept that domestic court's findings for the following reasons.

92. Firstly, the Court reiterates that its competence is confined to the international-law responsibility under the Convention which is based on its own provisions, to be interpreted and applied on the basis of the objectives of the Convention and in light of the relevant principles of international law (see *Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII (extracts)).

93. Furthermore, in the *Timurtaş v. Turkey* judgment (no. 23531/94, §§ 82-83, ECHR 2000-VI) the Court stated:

“... where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention In the same vein, Article 5 imposes an obligation on the State to account for the whereabouts of any person taken into detention and who has thus been placed under the control of the authorities.... Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody...”

In this respect the period of time which has elapsed since the person was placed in detention, although not decisive in itself, is a relevant factor to be taken into account. It must be accepted that the more time goes by without any news of the detained person, the greater the likelihood that he or she has died. The passage of time may therefore to some extent affect the weight to be attached to other elements of circumstantial evidence before it can be concluded that the person concerned is to be presumed dead. In this respect the Court considers that this situation gives rise to issues which go beyond a mere irregular detention in violation of Article 5. Such an interpretation is in keeping with the effective protection of the right to life as afforded by Article 2, which ranks as one of the most fundamental provisions in the Convention....”

94. In view of the above, the Court identified a number of crucial elements in the present case that should be taken into account when deciding whether Bekman Asadulayev can be presumed dead. Thus, the Court points out that it has found it established that the applicants' relative was abducted from the secure premises of the MVD by unidentified State agents. There has been no news of him since that date, which is more than five years ago. The Court particularly stresses that in a number of cases concerning disappearance of people in the Chechen Republic it repeatedly held that when a person is detained by unidentified State agents without any subsequent acknowledgment of the detention, this can be regarded as life-threatening (see, among many other authorities, *Bazorkina and Imakayeva*, both 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 v. Russia*, no. 40464/02, 10 May 2007, and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007). The Court has found the same considerations to apply to a situation where a person entered the premises of a police station and went missing for years (see *Yusupova and Zaurbekov v. Russia*, no. 22057/02, § 55, 9 October 2008). The absence of any news of Bekman Asadulayev for over five years corroborates this assumption. Moreover, his name has not been found in the official records of any detention facility. Lastly, the Government failed to provide any

explanation for Bekman Asadulayev's disappearance, and the official investigation into his kidnapping, which has been dragging on for more than five years, has produced no known results.

95. For the above reasons the Court finds it established that Bekman Asadulayev should be presumed dead following his unacknowledged abduction and detention by State agents on 14 January 2004.

96. In the absence of any plausible explanation on the part of the Government as to the circumstances of Bekman Asadulayev's death, the Court further finds that the Government have not accounted for the death of the applicants' relative and the respondent State's responsibility for this death is therefore engaged.

97. Accordingly, there has been a violation of Article 2 of the Convention in this connection.

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

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

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

100. Turning to the circumstances of the case, the Court observes that, according to the Government's information, Mr S. informed the MVD authorities about the abduction of Bekman Asadulayev on 14 January 2004, that is, on the day when the latter disappeared. However, it does not appear that any steps were taken by the authorities until 17 January 2004, when the

third applicant filed with the district prosecutor's office a formal complaint about the abduction of her brother. It further transpires that although on 17 and 23 January 2004 Mr Sh. and Mr S., respectively, were questioned in the course of an internal inquiry, it was only eighteen days later that the district prosecutor's office decided to institute a criminal investigation into the abduction of Bekman Asadulayev. In the Court's opinion, this important delay, for which no explanation was provided, was in itself liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action must be taken expeditiously.

101. The Court further observes that, according to the Government, upon the institution of the investigation the authorities questioned a number of witnesses, granted the third applicant victim status and sent several requests for information to various authorities. The Court finds however that they failed to take a number of essential steps. Most notably, there is no indication that the investigators tried to identify and question the servicemen and the security guards on duty at any of the checkpoints on 14 January 2004. Neither does it transpire that they checked the visitors' logbooks kept at those checkpoints. Furthermore, the Government conceded that the investigators had not questioned Mr G., who had received Bekman Asadulayev and Mr Sh. on 14 January 2004 and who, according to Mr Sh., had been in his office when armed men in camouflage uniforms had entered it. The Court is further struck by the fact that although, in the Government's submission, Mr Sh. had explicitly stated that the abductors of Bekman Asadulayev had not worn masks and that he would recognise them, no attempts had been made to identify them by, for example, compiling photofit pictures of them. It also does not follow from the Government's submissions that any attempts were made to identify the vehicle in which the abductors had taken Bekman Asadulayev away. In the Court's opinion, all those omissions on the part of the investigating authorities clearly undermined the ability of the investigation to establish the circumstances of the abduction of the applicants' relative and to identify those responsible for it.

102. The Court also notes that even though the third applicant was eventually granted victim status, it transpires that she was not informed of any significant developments in the investigation. In particular, it does not transpire that she was timely notified about the institution of the investigation. Regard being had to the third applicant's and the applicants' representatives' repeated requests for information, it appears that the applicants were not notified even about such basic developments in the investigation as the decisions to suspend or resume it. Furthermore, there is no indication that the first and second applicants were granted victim status. Accordingly, the investigators failed to ensure that the investigation received the required degree of public scrutiny, or to safeguard the interests

of the next of kin in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

103. Lastly, the Court points out that the investigation has been pending for over five years and, according to the Government, was suspended and resumed several times owing to the failure to identify the perpetrators. The Government failed to provide the exact dates of those decisions but it is not clear from their submissions whether any investigative steps were taken after 30 April 2004 and if so, what they were. The Court doubts that the way the investigation was handled increased the prospects of identifying the perpetrators and establishing the fate of Bekman Asadulayev.

104. Having regard to the Government's preliminary objection, which was joined to the merits of the complaint, the Court considers that the applicants, who did not have access to the case file and were not properly informed of the progress of the investigation, including the most basic decisions, could not have effectively challenged the actions or omissions of the investigating authorities before a court under Article 125 of the CCP, contrary to what was suggested by the Government. 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 the domestic remedies within the context of the criminal investigation.

105. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the abduction and subsequent death of Bekman Asadulayev in breach of Article 2 under its procedural head. Accordingly, there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

106. 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

107. The Government submitted that the investigation had not established that the applicants' relative had been kidnapped by State agents. Neither had it established that the applicants had been subjected to treatment contrary to Article 3 of the Convention.

108. The applicants maintained their complaint.

B. The Court's assessment

1. Admissibility

109. The Court finds 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 ground. It must therefore be declared admissible.

2. Merits

110. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan*, cited above, § 358, and *Imakayeva*, cited above, § 164).

111. In the present case the Court notes that the missing person is the brother of the first and third applicants and the husband of the second applicant. For over five years they had no news of him. Although the applicants were not eyewitnesses to Bekman Asadulayev's apprehension, the first and the third applicants applied to various official bodies with enquiries about him. Despite their attempts, they have never received any plausible explanation or information as to what became of him following his abduction. The Court's findings under the procedural aspect are also of direct relevance here. The Court also considers that the second applicant, who constituted immediate family of the disappeared person, was also to a certain extent involved in the search for her husband. In the Court's view, the second applicant's mental anguish in connection with her husband's disappearance must have been exacerbated by the fact that, whilst the District Court explicitly stated that her husband had been apprehended by

officials of power structures and with the knowledge of the MVD officials, the investigation persisted in denying any implication of State agents in the abduction.

112. In view of the above, the Court finds that the applicants suffered distress and anguish as a result of the disappearance of their close relative and their inability to find out what happened to him. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

113. The applicants further stated that Bekman Asadulayev was detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. The parties' submissions

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

115. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

116. 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 and must therefore be declared admissible.

2. Merits

117. 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).

118. The Court has found it established that Bekman Asadulayev was abducted by State agents on 14 January 2004 and has not been seen since. His detention was not acknowledged, it 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).

119. 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 close relative had been apprehended 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.

120. In view of the foregoing, the Court finds that Bekman Asadulayev 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.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

121. 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

122. 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.

123. The applicants reiterated the complaint.

B. The Court's assessment

1. *Admissibility*

124. 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*

125. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, 25 June 1997, § 64, *Reports* 1997-III).

126. As regards the complaint of lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a

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

127. In view of the Court's above findings with regard to Article 2, this complaint is clearly “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

128. It follows that in circumstances where, as here, the criminal investigation into the disappearance has been ineffective and the effectiveness of any other remedy that may have existed has consequently been undermined, the State has failed to discharge its obligation under Article 13 of the Convention.

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

130. As regards the violation of Article 3 of the Convention found on account of the applicants' mental suffering as a result of the disappearance of their relative, their inability to find out what had happened to him and the way the authorities had handled their complaints, the Court notes that it has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

131. As regards the applicants' reference to Article 5 of the Convention, the Court reiterates that, according to its established case-law, the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a violation of Article 5 of the Convention as a result of unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

132. The applicants complained that they had been discriminated against in the enjoyment of their Convention rights, because the violations of which

they complained had taken place because of their being residents in Chechnya and their ethnic backgrounds as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

“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.”

133. The Court observes that no evidence has been submitted to it that suggests that the applicants were treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated.

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

135. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

1. Pecuniary damage

136. The second applicant claimed that she and her two children had sustained damage in respect of loss of her husband's earnings following his apprehension and disappearance. She claimed a total of 1,031,794.70 Russian roubles (RUB) under this head (approximately 29,147 euros (EUR)). The first and third applicants made no claims as regards compensation for pecuniary damage.

137. The second applicant furnished a certificate from the Groznenskiy ROVD confirming that Bekman Asadulayev's salary for the last month of his employment had amounted to RUB 6,159.16. With reference to the provisions of the Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary Department in 2007 (“the Ogden tables”), the second applicant submitted that she would have benefitted from Bekman Asadulayev's support in the amount of 20% of his earnings, while each of

their two children would have benefitted from their father's support in the amount of 10% of his earnings.

138. The Government submitted, without providing further details, that the second applicant should have based her claims on Article 1088 of the Civil Code instead of the Ogden tables. They further pointed out that she had not made use of the domestic avenues for obtaining compensation for the loss of a breadwinner.

139. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the second applicant's husband and the loss by her of the financial support which he could have provided. The Court further finds that the loss of earnings also applies to dependent children and that it is reasonable to assume that Bekman Asadulayev's children would have benefitted from his support (see *Imakayeva*, cited above, § 213). Having regard to the second applicant's submissions, the Court awards EUR 20,000 to the second applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

2. Non-pecuniary damage

140. The applicants claimed compensation for the suffering they had endured as a result of the loss of their relative, their inability to properly bury him and the indifference shown by the authorities in connection with the investigation of his abduction. The first and third applicants claimed EUR 25,000 each, while the second applicant claimed EUR 50,000 under this head.

141. The Government contested the applicants' claims as excessive.

142. 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 have been found victims of a violation of Article 3 of the Convention. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award EUR 31,000 to the second applicant and EUR 2,000 each to the first and third applicants in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

B. Costs and expenses

143. 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 for SRJI senior staff, as well as administrative expenses, translation and courier mail fees. The aggregate claim in respect of costs and expenses related to the applicants' representation amounted to EUR 6,118.39.

144. The Government submitted that reimbursement of costs was to be ordered by the Court only if those had been actually incurred and were reasonable as to quantum.

145. The Court has to establish first whether the costs and expenses indicated by the applicants' relatives 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).

146. 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.

147. 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, however, that the case involved little documentary evidence, in view of the Government's refusal to submit the case file. Furthermore, due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on the admissibility and merits in one set of documents. The Court thus doubts that research was necessary to the extent claimed by the applicants' representatives.

148. Having regard to the details of the claims submitted by the applicants, the Court awards them EUR 5,200, together with any value-added tax that may be chargeable to the applicants; the award to be paid into the representatives' bank account in the Netherlands, as indicated by the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies and rejects it;

2. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Bekman Asadulayev;
4. *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 Bekman Asadulayev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants' mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Bekman Asadulayev;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 20,000 (twenty thousand euros) to the second applicant in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 31,000 (thirty one thousand euros) to the second applicant, EUR 2,000 (two thousand euros) to the first and third applicants each in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) EUR 5,200 (five thousand two 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;

10. *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