



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

1959 · 50 · 2009

FIRST SECTION

CASE OF BABUSHEVA AND OTHERS v. RUSSIA

(Application no. 33944/05)

JUDGMENT

STRASBOURG

24 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 Babusheva 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,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 33944/05) 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 the seven 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 31 March 2008 the Court decided to apply Rule 41 of the Rules of Court, grant priority treatment to the application and give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- 1) Ms Roza Babusheva, born in 1966,
- 2) Mr Kharon Babushev, born in 1928,
- 3) Mr Lomali (also spelled as Lom-Ali) Babushev, born in 1986,
- 4) Ms Khadizhat Babusheva, born in 1988,
- 5) Ms Nura Babusheva, born in 1993,
- 6) Mr Turpal-Ali Babushev, born in 1994 and
- 7) Ms Nurseda Babusheva, born in 2003.

The applicants live in the village of Makhkety, in the Veden district, Chechnya.

6. The first applicant is the wife of Ramzan (also known as Vakha) Babushev, who was born in 1960; the second applicant is his father; and the third to seventh applicants are his children.

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

A. Disappearance of Ramzan Babushev

1. The applicants' account

a. The abduction of the applicants' relative

8. At the material time Ramzan Babushev worked as a car mechanic. On 4 February 2003 the first, second and sixth applicants and Ramzan Babushev were at their home at 27 Zarechnaya Street (in the submitted documents the address was also referred to as 37 Zarechnaya Street) in Makhkety, Chechnya. The third, fourth and fifth applicants were at school. The first applicant was pregnant with the seventh applicant. Two neighbours had come to visit and were also in the applicants' house.

9. At around 11 a.m. a military UAZ car arrived at the house. A group of about ten to fifteen Russian military servicemen got out of the car; some of them remained in the street next to the house, whereas others went inside. The men spoke Russian without an accent and were of Slavic appearance. The person who was apparently in charge of the group introduced himself as Mr Y. B., the head of the department of the interior of Khattuni (also spelled as Khatuni) village (the Khattuni OVD). It appeared that he was on mission in Chechnya from the OMON (special police forces) unit of the Perm region, Russia. The servicemen asked Ramzan Babushev to repair their car.

He agreed and they moved the car into the applicants' yard. Ramzan Babushev changed into his work clothes and started the repair work.

10. Meanwhile, the servicemen contacted someone via their portable radio set. Approximately 10-15 minutes later an armoured personnel carrier ("APC") carrying a group of about twenty masked servicemen arrived at the applicants' house. The servicemen from the APC ran into the yard and put handcuffs on Ramzan Babushev and a dark sack over his head. They ordered the first applicant to go into the house, threatening to kill her if she stayed in the yard. After that they put Ramzan Babushev into the APC. The servicemen neither introduced themselves nor produced any documents. Almost all of them were wearing masks; three of them, who did not have masks, were of Slavic appearance. The first applicant asked them who their commander was and why they were taking her husband away. She did not receive any answer to her questions.

11. After that Mr Y. B. asked the servicemen from the APC whether his group was free to go. They received permission and the UAZ car and the servicemen left. Immediately after their departure, the servicemen from the APC started to search the applicants' house. The search took about one and a half hours. During the search the servicemen seized a number of the applicants' possessions, including a videocassette recorder, a TV set, Ramzan Babushev's clothing and tools, the first applicant's jewellery, the family photographs, two car engines and car repair parts. The servicemen loaded the applicants' belongings into the APC and drove away.

12. The abduction of Ramzan Babushev was witnessed by a number of the applicants' neighbours and relatives.

b. Subsequent events

13. The applicants immediately started their search for Ramzan Babushev. On the same day, 4 February 2003, the first applicant and her relatives went to the local department of the Federal Security Service (the FSB) in the village of Khattuni, in the Veden district, Chechnya. At the checkpoint located at the entrance to the building they met the deputy head of the department of the FSB, who introduced himself as officer V. He confirmed that they had arrested Ramzan Babushev in order to assist the servicemen of the Khattuni OVD, which at the time was staffed with policemen from the Perm region. Officer V. told the first applicant that the military commander of the Veden district (the district military commander) had issued an order for the arrest of Ramzan Babushev as the local authorities had opened criminal proceedings against him. According to the officer, at some point Ramzan Babushev was supposed to be transferred from the Khattuni OVD to the Veden temporary district department of the interior (the Veden VOVD). Officer V. had seen Ramzan Babushev after the arrest and agreed to take a warm jacket from the first applicant and pass it on to him.

14. On 4 February 2003, at the checkpoint in Khattuni, the first applicant and her relatives saw the three servicemen who had participated in the arrest of Ramzan Babushev and had not been wearing masks during the abduction.

15. On 5 February 2003 the first applicant and a relative spoke to the deputy district military commander officer Yr., who assured them that their office had not opened any criminal proceedings against Ramzan Babushev and had not issued any orders for his arrest.

16. In the middle of February 2003 the first applicant went to the department of the FSB in Khattuni, together with the head of Makhkety village administration. There they met with the officer V. who showed them a written statement certifying that on 4 February 2003 at 6 p.m. hours the head of the local department of the FSB, Mr M.G., had handed Ramzan Babushev over to the head of the Khattuni OVD, Mr Y.B.

17. In the beginning of March 2003, during their visit to the Khattuni OVD, the first applicant met with a serviceman who introduced himself as an operational-search officer V. K. The applicant recognized him as one of the servicemen who had participated in the abduction of Ramzan Babushev. Officer V. K. told the first applicant that her husband had been transferred from the Khattuni OVD to “the Chechen special task group” (*чеченская группа специального назначения*) and that from there he had been transferred to a prison in Vedenov. The officer confirmed that he had seen Ramzan Babushev in prison, and that he had asked him to say hello to his family. V. K. took a package from the first applicant to pass to her husband.

18. On the following day the first applicant again met with officer V.K. He told her that he had passed on the package to her husband and that Ramzan Babushev had been beaten up, but that he was feeling better and recovering.

19. Some time later in March 2003 the first applicant spoke again to the head of the Khattuni OVD, Mr Y. B. He told her that Ramzan Babushev had been transferred to the Vedeno ROVD. He suggested to the first applicant that she speak to the head of the Vedeno ROVD, officer V.P.

20. After that, in March 2003, the first applicant went to the Vedeno ROVD and spoke to officer V.P. He told her that Ramzan Babushev had not been guilty of anything and promised that he would assist in expediting his release. However, it appears that this officer left Chechnya on or about 10 April 2003 without having helped the applicants.

21. On a number of occasions the first applicant complained in person to the Vedeno district prosecutor's office (the district prosecutor's office) requesting that they conduct a confrontation between her and the head of the Khattuni OVD, Mr Y.B. Her requests were ignored.

22. On an unspecified date the first applicant lodged a claim with the Vedeno District Court of Chechnya seeking to have her husband Ramzan Babushev declared a missing person. On 27 February 2004 the district court granted her claim and declared him a missing person as of 4 February 2003.

23. In support of their statements, the applicants submitted: an account by the applicants' neighbour Ms I.A. given on 13 March 2005; an account by the applicants' relative Mr I.B. given on 15 March 2005; an account by the applicants' neighbour Mr V.T. given on 16 March 2005; an account by the applicants' relative Ms A.A. given on 16 March 2005 and an account by the applicants' neighbour Mr S.A. given on 20 March 2005.

2. Information submitted by the Government

24. The Government did not challenge most of the facts as submitted by the applicants. According to their submission "...in connection with the abduction by unidentified persons of R.Kh. Babushev on 4 February 2003 in Makhkety in the Veden district, on 12 February 2003 the Veden district prosecutor's office instituted a criminal investigation..."

B. The search for Ramzan Babushev and the investigation

1. Information submitted by the applicants

25. Since 4 February 2003 the applicants have repeatedly applied in person and in writing to various public bodies. They have been supported in their efforts by the NGO SRJI. In their letters to the authorities the applicants referred to their relative's detention and asked for assistance and details of the investigation. Mostly these enquiries have remained unanswered, or purely formal replies have been given in which the applicants' requests have been forwarded to various prosecutors' offices. The applicants submitted some of the letters to the authorities and the replies to the Court, which are summarised below.

26. On 12 February 2003 (in the submitted documents the date is also referred to as 6 February 2003) the district prosecutor's office instituted an investigation into the disappearance of Ramzan Babushev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The decision stated, *inter alia*, the following:

"... at about 12 noon on 4 February 2003, during a special operation, a resident of Makhkety in the Veden district R. Kh. Babushev was detained by unidentified military servicemen at his house in Makhkety and taken away in an APC to an unknown destination ..."

The case file was given number 24012 (in the submitted documents the case file is also referred to under no. 25137).

27. On 14 February 2003 the first applicant was granted victim status in criminal case no. 24012. The decision stated, *inter alia*, the following:

"...on 4 February 2003, during a special operation in Makhkety in the Veden district, unidentified military servicemen took away all property from the household

at 37 Zarechnaya Street, and detained Ramzan Babushev whom they took away to an unknown destination...”

28. On 14 July 2003 the first applicant wrote to the head of the department of the search for missing persons of the Vedenovskiy ROVD, to the military prosecutor's office of military unit no. 20116 and to the military prosecutor's office of the United Group Alignment (“the military prosecutor's officer of the UGA”). In her letters she described in detail the circumstances of her husband's abduction and stated that he had been abducted by officers of the Khattuni OVD under the command of Mr Y.B. and by servicemen of Russian military forces who had arrived in an APC and taken him away in this vehicle. She pointed out that the servicemen had searched the house and had taken away family possessions; that some time later she had found out that her husband had been transferred from the local department of the FSB to the Khattuni OVD; that officer V. K. had seen Ramzan Babushev in prison in Vedenovskiy; and that, in spite of all this information, the investigative authorities had failed to establish the whereabouts of Ramzan Babushev.

29. On 17 July 2003 the military prosecutor's officer of the UGA forwarded a letter from the applicants' relative concerning the search for Ramzan Babushev to the military prosecutor's office of military unit no. 20116 for examination.

30. On 22 July 2003 the Chechnya prosecutor's office forwarded the first applicant's request for assistance in the search for Ramzan Babushev to the district prosecutor's office for inclusion in criminal case no. 25137.

31. On 22 July 2003 the military prosecutor's officer of the UGA forwarded the first applicant's request to the military prosecutor's office of military unit no. 20116. The letter stated that the latter was to examine the first applicant's version of the involvement of servicemen of the 45th airborne regiment of the Russian military forces in the abduction of her husband.

32. On 12 September 2003 the Chechnya prosecutor's office forwarded the first applicant's request for assistance in the search for Ramzan Babushev to the district prosecutor's office for examination.

33. On 17 January 2004 the military prosecutor's officer of the UGA informed the first applicant that the examination of her complaint had not established any involvement of the Russian military forces in the abduction of Ramzan Babushev.

34. On 28 January 2004 the first applicant wrote to the military prosecutor's officer of the UGA. She stated that her husband had been abducted by Russian military servicemen together with representatives of the Khattuni OVD and complained that the criminal investigation had failed to establish the whereabouts of Ramzan Babushev.

35. On 4 February 2004 the military prosecutor's officer of the UGA informed the first applicant that her complaint had not disclosed any

information demonstrating the involvement of the Russian military forces in the abduction of Ramzan Babushev.

36. On 18 February 2004 the military prosecutor's office of the North-Caucasus military circuit forwarded the first applicant's request concerning the search for her husband to the military prosecutor's officer of the UGA.

37. On 20 February 2004 the Chechnya Ministry of the Interior forwarded the first applicant's complaint about her husband's abduction to the Vedeno ROVD for examination.

38. On 26 February 2004 the department of the Prosecutor General's office in the Southern Federal Circuit informed the first applicant that her complaint had been forwarded to the Chechnya prosecutor's office.

39. On 3 March 2004 the Chechnya prosecutor's office forwarded the first applicant's request for assistance in the search for her husband to the district prosecutor's office.

40. On 27 March 2004 the military prosecutor's officer of the UGA forwarded the first applicant's request for assistance in the search for her husband to the military prosecutor's office of military unit no. 20116 for examination.

41. On 20 April 2004 the Chief Military Prosecutor's office forwarded the first applicant's request for assistance in the search for her husband to the military prosecutor's officer of the UGA for examination.

42. On 22 April 2004 the Perm regional department of the interior (the Perm UVD) informed the first applicant of the following:

“...Your complaint was examined by the chiefs of the Perm UVD. Our inquiry established that the arrest of your husband Ramzan Babushev had been conducted at the initiative of the local [Chechen] law-enforcement bodies. Officers of the Vedeno VOVD had participated only in his detention; his further whereabouts were unknown to them...”

43. On 8 June 2004 the military prosecutor's officer of the UGA informed the first applicant that the examination of her complaint had established that the Russian military servicemen had not been involved in the abduction of Ramzan Babushev.

44. On 25 June 2004 the Vedeno ROVD informed the first applicant that in order to establish the whereabouts of her abducted husband, they had opened operational-search file no. 141395 and the search was under way.

45. On 24 August 2004 the Chechnya prosecutor's office forwarded the first applicant's complaint about the search for her husband to the district prosecutor's office. The letter stated that the investigation of criminal case no. 24012 had been taken over by the Chechnya prosecutor's office.

46. On 13 January 2005 the first applicant wrote to the district prosecutor's office about her husband's abduction. She said that he had been arrested by Russian military servicemen together with the representatives of the Khattuni OVD and that for two years the criminal investigation had failed to establish his whereabouts. She also requested to be informed of the

reasons for the suspension of the investigation in the criminal case and that the proceedings be resumed.

47. On 13 January 2005 the first applicant complained to the Prosecutor General. She requested that the authorities investigate the involvement of representatives of the Perm UVD in the abduction of Ramzan Babushev.

48. On 22 January 2005 the district prosecutor's office informed the first applicant that on an unspecified date the investigation in criminal case no. 24012 had been suspended and that on 22 January 2005 it had been resumed.

49. On 9 February 2005 the Chechnya prosecutor's office informed the first applicant that they had instructed the district prosecutor's office to undertake a number of operational-search measures in the investigation of the abduction.

50. On 24 February 2005 the Chechnya Ministry of the Interior (the MVD) informed the first applicant that they had instructed the Vedeno ROVD to activate their operational-search measures to solve the abduction of Ramzan Babushev.

51. On 22 July 2005 the Chechnya prosecutor's office forwarded the first applicant's request for assistance in the search for her husband to the district prosecutor's office.

52. On an unspecified date the first applicant again complained to the Prosecutor General. In her letter she said, in particular, that her husband Ramzan Babushev had been abducted by representatives of the Khattuni OVD under the command of Mr Y.B. and representatives of Russian military forces; that they had taken her husband away in an APC; that they had searched the house and taken away family possessions; that officer V. K. had later seen her husband in prison in Vedeno; and that the criminal investigation initiated by the district prosecutor's office had failed to establish her husband's whereabouts.

53. On an unspecified date the district prosecutor's office informed the first applicant that the investigation in criminal case no. 24012 had been suspended for failure to establish the identities of the perpetrators.

2. Information submitted by the Government

54. The Government submitted that the investigation into Ramzan Babushev's abduction by "unidentified persons" had commenced on 12 February 2003.

55. On 6 February 2003 the investigators requested information about the detention of Ramzan Babushev from military unit no. 45 stationed in Khattuni. According to their reply of 22 February 2003, the Vedeno district military commander's office had not detained Ramzan Babushev and had no information about his whereabouts.

56. On 7 February 2003 the investigators requested information about the arrest of Ramzan Babushev from the Chechnya FSB and the Khattuni

OVD. They also requested to be informed whether the applicants' relative was suspected of participation in illegal armed groups. According to the replies from the Khattuni OVD of 11 February 2003 and the Chechnya FSB of 14 February 2003, Ramzan Babushev was on the wanted list, but their offices had not detained him.

57. On 14 February 2003 the investigators questioned the first applicant's sister-in-law, Ms E.B. She stated that on 4 February 2003 the first applicant had come to her house and told her that at about 11 a.m. on that day the head of the Khattuni OVD and police officers had arrived at their house and asked Ramzan Babushev to repair their car. Then a group of military servicemen had arrived at their house in an APC and taken Ramzan Babushev away without providing any explanation; they had also searched the first applicant's house. After that the witness and the first applicant had gone to the checkpoint in Khattuni and asked the duty officer for news of Ramzan Babushev. They were told that he had been arrested on the order of the Vedenov military commander and that he would be transferred to Vedenov. The next day, 5 February 2003, the witness and the first applicant went to Vedenov and met the deputy military commander, who told them that Ramzan Babushev had not been delivered to their office. The Vedenov VOVD also denied that Ramzan Babushev was detained on their premises. On the same date, 5 February 2003, at the checkpoint in Khattuni, officer V., the deputy head of the local department of the FSB, informed the witness and the first applicant that he had a receipt confirming that Ramzan Babushev had been taken by officers of the Vedenov VOVD.

58. On an unspecified date the investigators granted the first applicant victim status and questioned her. She stated that on 4 February 2003 she and her husband Ramzan Babushev had been at home, at 27 Zarechnaya Street in Makhkety. At about 11 a.m. a group of six officers from the Khattuni OVD had arrived at their house in an UAZ vehicle. One of them had introduced himself as the head of the Khattuni OVD officer B. He and the driver of the vehicle went into the applicant's house and spoke to Ramzan Babushev about some repair work for the UAZ vehicle. Then Ramzan suggested that the officers move the car into the yard and changed into his work clothes. When the driver moved the car into the yard and the applicant's husband started inspecting it, an APC pulled up to the house. A group of about fifteen masked men, supposedly military servicemen, got out of it. They rushed into the yard and demanded that the OVD officers turn their faces to the UAZ. After that, without providing any explanation, they grabbed Ramzan Babushev, put handcuffs on him and placed him in the APC. Then the servicemen and the OVD officers left. According to the first applicant, she told her sister-in-law about the events and went with her to the checkpoint located at the entrance to the Khattuni military commander's office. The officer on duty called officer V. over from the FSB who had informed the applicant that Ramzan Babushev had been arrested on the

order of the Vedenov military commander. The next day, 5 February 2003, the applicant and her sister-in-law went to Vedenov, where the deputy military commander and the head of the Vedenov VOVD informed her that they had not detained her husband and that they had not issued any orders to that effect.

59. On an unspecified date the investigators questioned the applicants' neighbour, Ms A.A. who stated that on 4 February 2003, at about 11 a.m., she had gone to the house of the first applicant. When she was there, an UAZ car without registration numbers arrived at the house. Five or six men in camouflage uniform, of Slavic appearance, got out of the car. They introduced themselves as police officers and explained that they had brought the car for repairs. Some time later, from the window of her house, the witness had seen an APC which had arrived at the applicants' house. About ten men in masks had got out of the APC, cordoned the street and went into the applicants' house. They spent about an hour there; after that they took some sacks from the house outside and loaded them into the APC. After these men had left, the witness learnt from the first applicant that they had taken Ramzan Babushev away.

60. On an unspecified date the investigators questioned the applicants' relative, Mr M.B., who provided a statement similar to the one given by Ms A.A.

61. On an unspecified date the investigators questioned another witness, Mr A. Kh., who provided a statement similar to one given by Ms A.A. In addition, he stated that after the unidentified men had left the applicants' house, he had gone there and spoken to the first applicant. The latter told him that the men had searched the house and taken away valuables. According to the witness, the first applicant and other local residents had applied to the Khattuni OVD on a number of occasions trying to obtain information about her husband's whereabouts. The police officers had denied having any information about him.

62. According to the Government, on unspecified dates the investigators requested information, *inter alia*, about special operations conducted in the area between 1 and 5 February 2003 and officers who had served in the Vedenov district at the material time, from various State authorities, including a number of the district prosecutor's officers in Chechnya, the district military commander's offices and military unit no. 20116. The investigators also requested that the Chechnya FSB inform them whether they had detained Ramzan Babushev and transferred him to the Vedenov district military commander's office.

63. The investigation failed to establish the whereabouts of Ramzan Babushev, even though the investigating authorities sent requests for information to the competent State agencies and took other steps to have the crime resolved. At the same time the investigation found no evidence to support the involvement of the federal forces in the crime. The

law-enforcement authorities of Chechnya had never arrested or detained Ramzan Babushev on criminal or administrative charges and had not carried out a criminal investigation in his respect. No special operations had been carried out in Makhkety on 4 February 2003.

64. According to the Government, the investigation of the criminal case had been suspended and resumed on a number of occasions. However, it was still in progress and operational-search measures aimed at establishing the whereabouts of Ramzan Babushev were being taken.

65. Despite specific requests by the Court the Government did not disclose any documents of criminal case no. 24012. The Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

66. 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 AS TO ABUSE OF THE RIGHT OF PETITION

67. The Government submitted that the application had not been lodged in order to restore the allegedly violated rights of the applicants. According to them, the actual object and purpose of the application were incompatible with the tasks and activities of the European Court of Human Rights. They concluded that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

68. The Court considers that the Government may be understood to be suggesting that there was an abuse of the right of petition on the part of the applicants. It observes in this connection that the complaints the applicants brought to its attention concerned genuine grievances. Nothing in the case file reveals any appearance of abuse of their right of individual petition. Accordingly, the Government's objection must be dismissed.

II. THE GOVERNMENT'S OBJECTION REGARDING THE VALIDITY OF THE APPLICATION FORM

69. The Government suggested that the applicants had probably been unaware of the contents of the application form, which had been signed not by the applicants, but by the lawyers working for SRJI.

70. The Court considers that the Government may be understood to be suggesting that the lawyers are not acting under instructions of the applicants. The Court observes that the applicants gave the SRJI and its lawyers powers of attorney, thus duly authorising this NGO to represent their interests in the Strasbourg proceedings, and in particular to sign on their behalf the application form submitted to the Registry. There are no grounds to indicate that there has been anything inappropriate in the lodging of this application. Accordingly, the Government's objection must be dismissed.

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

A. The parties' submissions

71. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Ramzan Babushev had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints about any acts or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil complaints but that they had failed to do so.

72. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. With reference to the Court's practice, they argued that they were not obliged to claim damages through civil proceedings in order to exhaust domestic remedies.

B. The Court's assessment

73. 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).

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

75. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

76. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement authorities immediately after the kidnapping of Ramzan Babushev and that an investigation has been pending since 12 February 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

77. 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.

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

A. The parties' arguments

78. The applicants maintained that it was beyond reasonable doubt that the men who had taken Ramzan Babushev away had been State agents. In support of their complaint they referred to the following facts. At the material time the village of Makhkety had been under the total control of federal troops. There were Russian military checkpoints on the roads leading to and from the settlement. Russian federal forces had conducted a special operation on 4 February 2003, as had been confirmed by the investigation (see paragraphs 26, 27 and 42). Ramzan Babushev was wanted by the authorities (see paragraph 56 above). The armed men who had abducted Ramzan Babushev had had Slavic features and had spoken Russian without an accent, which proved that they were not of Chechen origin. The men had arrived in a military APC in broad daylight, which indicated that they were able to pass through the roadblocks and were not afraid to be seen by the authorities. The men were wearing specific camouflage uniform, were armed and had portable radios. They acted in a manner similar to that of special forces carrying out identity checks. All the information disclosed to the applicants from the criminal investigation file supported their assertion as to the involvement of State agents in the

abduction. Since Ramzan Babushev 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.

79. The Government submitted that unidentified armed men had kidnapped Ramzan Babushev. They further contended that the investigation of the incident was pending, that there was no evidence that the men had been 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. The Government raised an objection to the applicants' presentation of facts. The fact that the perpetrators of the abduction spoke unaccented Russian, were wearing camouflage uniforms and used military vehicles did not mean that these men could not have been members of illegal armed groups or criminals. They asserted that the crime could have been attributable to illegal armed groups and pointed out that groups of mercenaries had committed crimes in the Chechen Republic. They further emphasised 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 military vehicles.

B. The Court's evaluation of the facts

80. 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, §§ 103-09, 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).

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

82. 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.

83. The applicants alleged that the persons who had taken Ramzan Babushev away on 4 February 2003 and then killed him had been State agents.

84. The Government suggested in their submissions that the abductors of Ramzan Babushev may have been members of paramilitary groups. However, this allegation was not specific and the Government did not submit any material to support it. The Court takes note of the Government's allegation that the military vehicles, firearms and camouflage uniforms had probably been stolen by insurgents from Russian arsenals in the 1990s. Nevertheless, it considers it very unlikely that several military vehicles, such as APCs and Ural vehicles, unlawfully possessed by members of illegal armed groups, could have moved freely through Russian military checkpoints without being noticed. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

85. 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 in broad daylight, equipped with military vehicles, was able to move freely through military checkpoints and proceed to check identity documents and arrest the applicants' relative at his home strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their application to the authorities the applicants consistently maintained that Ramzan Babushev had been detained by unknown servicemen and requested the investigation to look into that possibility (see paragraphs 28, 31, 34, 46, 47, 52, 57 and 58 above). The domestic investigation accepted factual assumptions as presented by the applicants (see paragraphs 26, 27 and 42 above) and took steps to check whether law-enforcement agencies were involved in the kidnapping (see paragraphs 31, 35 and 43 above), but it does not appear that any serious steps have been taken in that direction.

86. 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).

87. Taking into account the above elements, the Court is satisfied that the applicants have made out a *prima facie* case that their relative was

arrested 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 applicants, and drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Ramzan Babushev was arrested on 4 February 2003 by State servicemen during an unacknowledged security operation.

88. There has been no reliable news of Ramzan Babushev 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.

89. Having regard to the previous cases which have come before it concerning disappearances in Chechnya (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 Ramzan Babushev or of any news of him for several years supports this assumption.

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

V. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

91. 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

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

93. The applicants argued that Ramzan Babushev 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 in spite of their numerous credible indications concerning the involvement of Russian servicemen in the abduction of their relative, the investigators had failed to take such basic investigative measures as questioning representatives of law-enforcement agencies or military structures or establishing the identity of the owners of the APC used during the abduction. The investigation into Ramzan Babushev's kidnapping had been opened eight days after the events and then it had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and the relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any 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

94. 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 77 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 Ramzan Babushev**

95. 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 Ramzan Babushev.

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

96. 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, §§ 117-19).

97. In the present case, the kidnapping of Ramzan Babushev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

98. The Court notes at the outset that none of the documents from the investigation was disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicants and the information about its progress presented by the Government.

99. The Court observes that the authorities were immediately made aware of the kidnapping by the applicants' submissions. The investigation in case no. 24012 was instituted on 12 February 2003, that is, eight days after Ramzan Babushev's abduction. Such a postponement was liable per se 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. In the course of the following days the first applicants, her relative and two of her neighbours were questioned. It appears that these were the only investigative steps taken by the prosecutor's office. After that a number of essential investigative measures were not taken at all. For instance, the investigators failed to conduct a crime-scene examination at the applicants' house; failed to identify and question the officers from the Khattuni OVD who had been present during the abduction; failed to question the Vedenov district military commander or any other chief officers of local law-enforcement authorities who could have issued an order for Ramzan Babushev's arrest; failed to establish the identity of the owner of the APC which had been used by the abductors or to question a number of residents of the village who might have witnessed the abduction. It is obvious that

these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

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

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

102. The Government argued that the applicants could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged acts or omissions of investigating authorities before a court. Furthermore, the Court emphasises in this respect that while the adjourning or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to adjourn were made without the necessary investigative steps being taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

103. 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 Ramzan Babushev, in breach of Article 2 in its procedural aspect.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

104. 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

105. 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.

106. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

107. 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

108. 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).

109. In the present case, the Court observes that the disappeared Ramzan Babushev was the applicants' close relative. He was the husband of the first applicant; the son of the second applicant and the father of the third, fourth, fifth, sixth and seventh applicants. For more than five years the applicants have not had any news of their close relative. During this period the applicants have applied to various official bodies with enquiries about their close relative, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of their family member following his kidnapping. The

responses received by the applicants mostly denied that the State was responsible for his arrest or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

110. 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. At the same time the Court notes that the seventh applicant was born in July 2003, more than five months after Ramzan Babushev's disappearance. Having regard to this, the Court does not find that this applicant has suffered such distress and anguish as a result of the disappearance of her father that it would amount to a violation of Article 3 of the Convention.

111. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the first six applicants. It further finds that there has been no violation of Article 3 of the Convention in respect of the seventh applicant.

VII. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

112. The applicants further stated that Ramzan Babushev 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

113. The Government asserted that no evidence had been obtained by the investigators to confirm that Ramzan Babushev 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.

114. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

115. 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

116. 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).

117. The Court has found that Ramzan Babushev was arrested by State servicemen on 4 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).

118. 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.

119. In view of the foregoing, the Court finds that Ramzan Babushev 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.

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

120. The applicants alleged that the disappearance of their relative had amounted to a violation of their right to respect for family life. They also complained that the search carried out at their house on 4 February 2003 had been illegal and constituted a violation of their right to respect for their home. It thus disclosed a violation of Article 8 of the Convention. They also referred to the unlawful seizure of their property during the search and relied on Article 1 of Protocol No. 1 to the Convention. These Articles provide as follows:

Article 8

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

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

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

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

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

121. The Government contended that State agents had not been involved in the alleged search of the applicants' house and that the applicants had

failed to exhaust domestic remedies in respect of their complaints under this head by failing to claim damages through domestic courts.

122. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

123. The Court considers, in the light of the parties' submissions, that the applicants' complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 77 above). The complaints under Article 8 and Article 1 of Protocol No. 1 to the Convention must therefore be declared admissible.

2. Merits

(a) The right to respect for home and protection of property

124. As to the Government's objection that the applicants failed to exhaust available domestic remedies, the Court points out that on several occasions the applicants reported the events of 4 February 2003 to the domestic authorities and mentioned, in particular, the unlawful search of their house and the seizure of their property and documents by the abductors (see paragraphs 27, 28, 52, 59 and 61 above). The official bodies denied that those who had intruded into the applicants' home and abducted Ramzan Babushev were State agents (see, by contrast, *Chitayev and Chitayev v. Russia*, no. 59334/00, §§ 64, 77 and 143, 18 January 2007). In the absence of any domestic findings of State responsibility for the allegedly unlawful search and the seizure of the applicants' property, the Court is not persuaded that the court remedy referred to by the Government was accessible to the applicants and would have had any prospects of success (see *Betayev and Betayeva v. Russia*, no. 37315/03, § 112, 29 May 2008). The Government's objection concerning non-exhaustion of domestic remedies must therefore be dismissed.

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

applicants' house carried out on 4 February 2003 and the seizure of the applicants' property was imputable to the respondent State.

126. The Court also notes that the servicemen did not show the applicants a search warrant. Neither did they indicate any reasons for their actions. Furthermore, it appears that no search warrant was drawn up at all, either before or after the events in question. In sum, the Court finds that the search in the present case was carried out without any, or any proper, authorisation or safeguards.

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

(b) The right to respect for family life

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

IX. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

129. 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

130. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the acts or omissions of the investigating authorities in court and they could also claim damages through

civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

131. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

132. 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

133. 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).

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

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

136. 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).

137. As for the complaint under Article 13 in conjunction with Article 8 concerning the right to family life, the Court notes that in paragraph 128 above it has found that no separate issue arises under that provision. Therefore, it considers that no separate issue arises under Article 13 in this respect either.

X. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

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

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

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

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

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

XI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

142. 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. The Government's objection

143. The Government submitted that the document containing the applicants' claims for just satisfaction had been signed by Mr R. Lemaitre and Mr D. Itsleyev, while, in the Government's opinion, the applicants had been represented by Ms D.I. Straisteanu, Ms E. Ezhova, Ms A. Maltseva and Mr A. Nikolayev. They insisted therefore that the applicants' claims for just satisfaction were invalid.

144. The Court points out that the applicants issued powers of attorney in the name of the SRJI, an NGO that works with a number of lawyers.

Since the SRJI lists Mr R. Lemaitre and Mr D. Itslayev as its staff member and expert, the Court has no doubt that they were duly authorised to sign the claims for just satisfaction on behalf of the applicants. The Government's objection must therefore be dismissed.

A. Pecuniary damage

145. The applicants claimed damages in respect of loss of earnings by their relative after his arrest and subsequent disappearance. The first applicant, as the wife of Ramzan Babushev, claimed 172,322 Russian roubles (RUB) under this head; the third and sixth applicants, as his sons, claimed RUB 4,288 and RUB 44, 946 respectively; and the fourth, fifth and seventh applicants, as his daughters, claimed RUB 11,829, RUB 38,711 and RUB 84,914 respectively. The applicants thus claimed a total of RUB 357,010 under this head (EUR 10,200).

146. They claimed that Ramzan Babushev had been unemployed at the time of his arrest and that in such a case the calculation should be made on the basis of the subsistence level established by national law. Their calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("Ogden tables").

147. The Government regarded these claims as unsubstantiated. They also referred to the existence of domestic statutory provisions for a pension for the loss of the family breadwinner.

148. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. The Court further finds that the loss of earnings also applies to the dependent children and that it is reasonable to assume that Ramzan Babushev would eventually have had some earnings from which the applicants would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relative and the loss by the applicants of the financial support which he could have provided. Having regard to the applicants' submissions and the fact that Ramzan Babushev was not employed at the time of his arrest, the Court awards EUR 8,000 to the first, third, fourth, fifth, sixth and seventh applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

149. The applicants claimed EUR 70,000 jointly 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.

150. The Government found the amounts claimed exaggerated.

151. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Articles 3 and 8 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 the applicants jointly EUR 35,000 plus any tax that may be chargeable thereon.

C. Costs and expenses

152. 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 6,550.

153. The Government disputed the reasonableness and justification for the amounts claimed under this head. They questioned, in particular, whether it had been necessary for the applicants to use courier mail.

154. 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).

155. 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.

156. 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 the 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.

157. 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

158. 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. *Dismisses* the Government's objection as to the abuse of the right of petition and their objection regarding the validity of the application form;
2. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 14 of the Convention;
3. *Decides* to join to the merits the Government's objection as to non-exhaustion of domestic remedies and rejects it;
4. *Declares* the complaints under Articles 2, 3, 5, 8, 13 and Article 1 of Protocol No. 1 to the Convention admissible;
5. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Ramzan Babushev;
6. *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 Ramzan Babushev disappeared;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of all the applicants, save the seventh one;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ramzan Babushev;
9. *Holds* that there has been a violation of the applicants' right to respect for home guaranteed by Article 8 of the Convention and their right to protection of property guaranteed by Article 1 of Protocol No. 1 to the Convention;

10. *Holds* that no separate issues arise under Article 8 of the Convention regarding the applicants' right to respect for family life;
11. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
12. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with the violation of the applicants' right to respect for home guaranteed by Article 8 of the Convention and the right to protection of property guaranteed by Article 1 of Protocol No. 1 to the Convention;
13. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3, 5 and 8 regarding the applicant's right to respect for family life;
14. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the first, third, fourth, fifth, sixth and seventh applicants jointly;
 - (ii) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
 - (iii) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
15. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President