



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

1959 · 50 · 2009

FIRST SECTION

CASE OF AMANAT ILYASOVA AND OTHERS v. RUSSIA

(Application no. 27001/06)

JUDGMENT

STRASBOURG

1 October 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 Amanat Ilyasova 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 10 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 27001/06) 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 16 June 2006.

2. The applicants were represented by lawyers from 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 G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 4 June 2008 the Court decided to apply Rule 41 of the Rules of Court and grant priority treatment to the application, and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application 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 Amanat (also spelled Aminat) Ilyasova, born in 1958;
- (2) Mr Khizir Ilyasov, born in 1954, and
- (3) Ms Khadizhat Dudayeva, born in 1984.

6. The applicants live in the village of Mesker-Yurt, in the Shalinskiy District of the Chechen Republic.

7. The first and second applicants are the parents of Mr Musa (also spelled Mussa) Khizirovich Ilyasov, born in 1980. The third applicant is his common-law wife.

A. Apprehension and subsequent disappearance of Musa Ilyasov

1. The applicants' account

8. At the material time Musa Ilyasov and the applicants lived at 91 Lenina Street in a single household consisting of two separate buildings with a common courtyard. The property was surrounded by a fence and had a common entrance gate. The first and second applicants occupied one house, which had a grocery store attached to it belonging to the family. Musa Ilyasov and the third applicant, who had got married around the end of June, apparently according to the local customs, lived in the second building.

9. On the night of 11 August 2002 the first and second applicants were sleeping in their house while the third applicant and Musa Ilyasov were in the other house.

10. Between 4 and 5 a.m. a group of armed men arrived at the Ilyasovs' home in two APCs (armoured personnel carriers) and two grey UAZ vehicles (“таблетка”), and stopped at the gate. Their arrival was witnessed by Ms A., who lived at 67 Lenina Street and was woken up by the noise of the vehicles passing by her house. Having heard the noise, Ms. A. went outside and followed the APCs and the UAZ vehicles to the applicants' home. When she attempted to approach, she saw that about ten armed men wearing camouflage uniforms and masks had blocked off the perimeter of the applicants' home. She inferred that they were servicemen. They ordered her to leave immediately, threatening to kill her if she disobeyed; she therefore returned home. The majority of the group then entered the grocery store attached to the first and second applicants' house. The men took away packages of various goods such as juice, cigarettes and chicken legs.

11. Meanwhile, several intruders entered the first and second applicants' house. One of them pointed his gun and his torch at the applicants and they saw that he was wearing a camouflage uniform and a mask. The second applicant, who had served in the army, decided that the intruders were Russian servicemen because they spoke unaccented Russian, wore camouflage uniforms, carried submachine guns and had the usual military equipment. The second applicant did not specify what that equipment had

been. The man in the mask requested the second applicant to identify himself. The second applicant gave his name and showed his identity papers. Having checked them, the armed man asked the second applicant whether there were other men in the house. The second applicant replied that his son was there and immediately asked the intruders whether his son would be taken away. They reassured him that they would not take his son away and that they had just come to check whether any rebel fighters were hiding in the house. They then quickly searched the house.

12. Meanwhile, several armed men entered the house where the third applicant and Musa Ilyasov were sleeping. The armed men were speaking Russian. They checked Musa Ilyasov's identity papers and seized them. One of them said to another: "This is not the man. This is Musa Ilyasov." The other replied: "So what? We are going to sort it out later". They then handcuffed Musa Ilyasov, put a pillow case on his head and took him outside in his underwear. When the third applicant tried to object, the intruders threatened her and ordered her to stay quiet. All the applicants were ordered to stay in their houses. In particular, the intruder who stayed with the first and the second applicants ordered them not to leave the house during the ensuing fifteen minutes and warned them that he would stay at the gate and observe them. The house door being open, the first and second applicants noticed two APCs at the gate. The third applicant saw an APC and a UAZ car outside the house. She also saw Musa Ilyasov being led outside in his underwear by the servicemen, with a pillow case on his head.

13. Once outside, Musa Ilyasov was put into one of the vehicles at the gate. The vehicles drove away on the main Gudermes road in the direction of the crossroads to Mesker-Yurt and Argun.

14. When the APCs and the UAZ vehicles left, the second applicant went outside. At about the same moment Ms A. came to the applicants' home together with her husband. The second applicant took his car and tried to follow the tracks left by the APCs and the UAZ vehicles. He arrived at the roadblock of the federal forces located at the entrance to the village and asked the servicemen if they had seen a convoy of several APCs. Despite the presence of APC tyre tracks, the servicemen denied having seen them. On the same day Ms A. and her husband also went to the same roadblock. She described to the servicemen the APCs and the UAZ vehicles she had seen and asked them in which direction they had driven, but the servicemen refused to provide any information.

15. In her statement to her representatives the first applicant also submitted that her neighbours had seen a Niva vehicle.

16. The applicants have had no news of Musa Ilyasov since 11 August 2002.

17. According to the first applicant, the third applicant had a miscarriage three days after the abduction of Musa Ilyasov. The applicants did not furnish any evidence to that effect.

18. In support of their account of the events the applicants submitted a written statement made by the first applicant to her representatives on 16 August 2005; a written statement made by the second applicant to his representatives on 15 June 2006; a written statement made by the third applicant to her representatives on 16 August 2005; a written statement by Ms A. made on 15 June 2006; and a hand-drawn map of the applicants' home in Mesker-Yurt.

19. In her statement of 16 August 2005 the first applicant referred to the third applicant as her “son's wife Khadizhat Ismailovna Dudayeva” and her “daughter-in-law Khadizhat”.

2. The Government's account

20. The Government submitted that on the night of 11 August 2002 unidentified persons wearing camouflage uniforms had abducted Musa Ilyasov from his house at 91 Lenina Street, Mesker-Yurt, and had taken him away.

B. The search for Musa Ilyasov and the investigation into his kidnapping

1. The applicants' account

21. As 11 August 2002 was a Sunday, on 12 August 2002 the first and second applicants went to the town of Shali. There they complained about the abduction of Musa Ilyasov to the Shalinskiy district office of the Interior (ROVD) and the Shalinskiy district prosecutor's office (“the district prosecutor's office”). According to the second applicant, the district prosecutor's office formally registered their complaint. The applicants did not furnish copies of those applications.

22. On an unspecified date the district prosecutor's office instituted a criminal investigation into the abduction of Musa Ilyasov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was assigned the number 59232.

23. On 5 September 2002 the district prosecutor's office granted the second applicant the status of victim in criminal case no. 59232 and notified him accordingly on the same day.

24. On 10 September 2002 the prosecutor's office of the Chechen Republic (“the republican prosecutor's office”) forwarded the second applicant's complaint about the abduction of his son to the district prosecutor's office for examination.

25. By letters of 23 September 2002 the republican prosecutor's office replied to the first and second applicants that it had examined their complaints of 27 August 2002 about the abduction of Musa Ilyasov. The

applicants were informed that the district prosecutor's office was investigating the abduction of their son and that it would verify the applicants' submissions in that regard.

26. On 29 October 2002 the first applicant wrote to the Minister of the Interior of the Chechen Republic and the republican prosecutor's office, describing in detail the circumstances of the abduction of Musa Ilyasov on 11 February 2002. She stated, among other things, that he had been abducted by servicemen of the Russian federal forces who had been wearing camouflage uniforms and had been carrying weapons. She pointed out that she herself had seen an APC and a UAZ vehicle at the gate and that her neighbours had seen a further APC, another UAZ vehicle and, possibly, an ARV (armoured reconnaissance vehicle). She requested that the abduction of her son be investigated and that the neighbours be questioned about the circumstances of the incident.

27. On 1 November 2002 the republican prosecutor's office forwarded the first applicant's complaint about the abduction of her son to the district prosecutor's office and instructed it "to consider whether an investigation should be opened into the abduction of Musa Ilyasov by unidentified armed men".

28. On 5 November 2002 the Ministry of the Interior of the Chechen Republic ("the MVD") forwarded the first applicant's request for assistance in the search for her son to the ROVD for the purposes of organising a search.

29. On 11 November 2002 the republican prosecutor's office informed the Envoy of the President of the Russian Federation for human rights and freedoms in the Chechen Republic that the district prosecutor's office was conducting an investigation into the abduction of Musa Ilyasov.

30. On 19 November 2002 the republican prosecutor's office informed the second applicant that on an unspecified date the investigation in criminal case no. 59232 had been suspended, but that operational and search measures aimed at identifying the culprits were under way.

31. By a letter of 28 November 2002 the republican prosecutor's office replied to the first applicant that the district prosecutor's office was investigating criminal case no. 59232 and that unspecified operational and search measures aimed at establishing the whereabouts of Musa Ilyasov were under way.

32. On 29 November and 10 December 2002 the first applicant again complained to various State bodies, including the Minister of the Interior, about the abduction of Musa Ilyasov. She described in detail the circumstances of his abduction by servicemen of the Russian federal forces who had arrived in several APCs and had worn camouflage uniforms.

33. On 9 January 2003 the republican prosecutor's office informed the first applicant that the district prosecutor's office was investigating her son's abduction.

34. By a letter of 5 February 2003 the Shalinskiy ROVD informed the first applicant that on 19 September 2002 the district prosecutor's office had instituted a criminal investigation into the abduction of her son. The letter further stated that the investigative measures had failed to provide any information concerning the whereabouts of Musa Ilyasov; however, unspecified operational and search measures aimed at solving the crime were under way.

35. On 20 February 2003 the republican prosecutor's office informed the first applicant that the district prosecutor's office was investigating criminal case no. 59232, opened in connection with her son's abduction.

36. On 5 April 2003 the military prosecutor's office of the United Group Alignment ("the UGA military prosecutor's office") forwarded the first applicant's complaint about the abduction of her son to the military prosecutor's office of military unit no. 20116 for examination.

37. On 17 April 2003 the republican prosecutor's office replied to the first applicant's query and informed her that the district prosecutor's office was investigating criminal case no. 59232, opened in connection with her son's abduction. According to the letter, the investigation had obtained information concerning special operations in Mesker-Yurt in August 2002, as well as unspecified information from the Shali department of the Federal Security Service ("the Shali department of the FSB") and the Shali military commander. However, all these efforts had failed to establish the whereabouts of Musa Ilyasov. The letter also stated that on an unspecified date the investigation in the criminal case had been suspended under Article 208 § 1 (1) of the Code of Criminal Procedure, owing to failure to identify the perpetrators.

38. On 30 July 2003 the republican prosecutor's office forwarded the first applicant's request for assistance in the search for her son to the district prosecutor's office for inclusion in the criminal case file.

39. On 1 August 2003 the UGA military prosecutor's office informed the first applicant that the military prosecutor's office of military unit no. 20116 had examined her complaint about Musa Ilyasov's abduction but had failed to establish his whereabouts or the identity of his abductors. The first applicant was directed to address any further enquiries to the district prosecutor's office, which had instituted a criminal investigation into the abduction of Musa Ilyasov on 19 November 2002.

40. By letters of 4 and 12 August 2003 the republican prosecutor's office replied to the first applicant's enquiries and informed her that her complaints had been appended to the criminal case file no. 59232 and that operational measures aimed at establishing Musa Ilyasov's whereabouts were under way.

41. On 15 August 2003 the republican prosecutor's office informed the first applicant that it had examined her request for assistance in the search for her son. According to the letter, the investigation in criminal case

no. 59232, instituted on 19 September 2002, had failed to establish the whereabouts of Musa Ilyasov and the identity of the perpetrators. Accordingly, it had been suspended on 19 November 2002. On 15 August 2003 the republican prosecutor's office overruled that decision on the ground that the criminal investigation had been incomplete and issued a number of unspecified instructions to the investigating authorities. The applicant was informed that operational and search measures aimed at solving the crime were under way.

42. On 15 August 2003 the Chechen department of the FSB informed the first applicant that it had examined her complaint about Musa Ilyasov's abduction. The letter stated that the department had not arrested him and that it had undertaken unspecified measures to establish his whereabouts and identify the perpetrators. According to the document, Musa Ilyasov had not been suspected of having committed a crime.

43. By a letter of 11 September 2003 the MVD forwarded the first applicant's request for assistance in the search for her son to the ROVD for examination. The ROVD informed the first applicant by a letter of 29 January 2004 that the district prosecutor's office was investigating the abduction of her son and that the authorities were undertaking unspecified measures to establish his whereabouts. On 24 February 2004 the ROVD forwarded the first applicant's further request for assistance in the search for her son to the district prosecutor's office.

44. On 23 April 2004 the republican prosecutor's office informed the first applicant that her request for assistance in the search for her son had been included in the criminal case file.

45. On 17 August 2004 the district prosecutor's office replied to the first applicant that her complaint about the abduction of Musa Ilyasov had been appended to the criminal case file. The letter also stated that on an unspecified date the investigation in criminal case no. 59232 had been suspended; operational and search measures aimed at solving the crime were under way.

46. On 8 September 2004 the republican prosecutor's office forwarded two complaints by the first applicant to the district prosecutor's office for inclusion in the criminal case file and instructed the latter office to intensify the operational and search measures aimed at investigating Musa Ilyasov's abduction.

47. On 14 September 2004 the republican prosecutor's office informed the first applicant that her request for assistance in the search for her son had been included in the criminal case file; operational and search measures aimed at solving the crime were under way.

48. On 4 October 2004 the Office of the Russian State Duma forwarded the first applicant's complaint about her son's abduction to the Prosecutor General of Russia for examination.

49. On 7 February 2005 the MVD forwarded the first applicant's complaint about her son's abduction to the ROVD for examination.

50. On 5 March 2005 the district prosecutor's office replied to the first applicant that her complaint about Musa Ilyasov's abduction had been included in the criminal case file.

51. On 30 September 2005 the ROVD informed the first applicant that it had examined her request for assistance in the search for her son. According to the letter, in addition to the opening of criminal case no. 59232 by the district prosecutor's office, the authorities had opened an operational and search file to establish the whereabouts of Musa Ilyasov. The authorities were looking into the possible involvement of Russian special forces, Russian servicemen and members of illegal armed groups in Musa Ilyasov's abduction. The letter stated that, within the framework of the search for the applicant's son, at some point in the future the ROVD would forward information requests to the Shali military commander's office and other law-enforcement agencies in Chechnya.

52. On 14 November 2005 the applicants' representatives wrote to the district prosecutor's office requesting information concerning the progress and the results of the investigation in criminal case no. 59232 and asking that the first applicant be granted the status of victim in the criminal case.

53. By a letter of 18 December 2005 the district prosecutor's office informed the first applicant that it had examined the request of 14 November 2005. The letter stated that the second applicant had been already granted victim status in criminal case no. 59232 and that on an unspecified date the investigation in the criminal case had been suspended owing to failure to identify the perpetrators.

2. Information submitted by the Government

54. Following the first applicant's complaint about the abduction of Musa Ilyasov, the district prosecutor's office instituted a criminal investigation into his abduction under Article 126 § 2 of the Criminal Code. The case file was assigned the number 59232. The Government did not specify the date of institution of the investigation and did not produce a copy of the district prosecutor's office decision to that effect.

55. On 5 September 2002 the second applicant was granted the status of victim in connection with the proceedings in case no. 59232 and was questioned. He stated that at about 4 a.m. on 11 August 2002 unidentified persons wearing masks and camouflage uniforms and armed with submachine guns had entered his courtyard. Musa Ilyasov and his wife, who had got married a month before, had occupied a separate house located within the same premises. Two armed men had entered the second applicant's house. They had not identified themselves. They had been wearing masks. They had checked the second applicant's identity papers and had asked him whether there were other men in the household. The second

applicant had replied that his son lived there. One armed man stayed in the second applicant's house, keeping the first and second applicants inside. The second applicant had not seen his son being brought outside but he had seen the armed men in camouflage uniforms leaving in an APC and a grey UAZ vehicle. The second applicant had not been able to describe the intruders because they had been wearing masks. His son had been taken outside wearing only his underwear; the armed men had taken his identity papers. While the intruders had been in the second applicant's house, they had searched it. However, no valuables had been missing afterwards. Musa Ilyasov had not been involved in any illegal armed groups. The second applicant suspected that his son had been abducted by servicemen of the federal forces. The copy of the transcript of the second applicant's interview furnished by the Government contained a reference to the particulars in his identity papers.

56. On 5 September 2002 the investigation questioned the first applicant as a witness. She stated that at about 4 a.m. on 11 August 2002 unidentified armed men in camouflage uniforms and masks had burst into the courtyard of the family home. Musa Ilyasov, who had got married a month before, occupied a separate house which was located within the same property as the first and second applicant's house and shared a common courtyard with them. Two armed men wearing masks had entered the first and second applicants' house. They had not identified themselves and had proceeded to check the applicants' identity papers. Having checked them, they had asked the applicants whether there were other men in the household. The second applicant had replied that his son was living nearby. One armed man had then left and the other had stayed in the house, preventing the first and second applicants from going outside. The first applicant had not seen her son being brought outside but she had seen the masked men leave in an APC and a UAZ vehicle. The first applicant submitted that Musa Ilyasov had been taken away in his underwear and that his identity papers had been taken with him. She stated that Musa Ilyasov had not been involved in illegal armed groups. The copy of the first applicant's interview transcript produced by the Government contained a reference to the particulars in her identity papers.

57. On unspecified dates the district prosecutor's office requested the Shali department of the FSB, the ROVD and the military commander of the Shalinskiy District to provide information on whether those bodies had carried out any special operations in Mesker-Yurt, whether they had arrested Musa Ilyasov and whether he had been on the list of members of illegal armed groups or had been suspected of having committed a crime. The authorities in question were further instructed to take operational and search measures aimed at establishing the whereabouts of Musa Ilyasov and identifying those responsible for his abduction. According to the Government, the replies of those State bodies revealed that they had not

conducted any special operations in Mesker-Yurt on 11 August 2002, that they had not arrested Musa Ilyasov and that he had not been a member of any illegal armed groups and had not been suspected of having committed a crime. The operational and search measures taken by the above authorities had not established either his whereabouts or the persons implicated in his abduction.

58. On unspecified dates the investigators inspected the crime scene and carried out a door-to-door check (*"подворный обход"*) in Lenina Street. The investigators also carried out checks in the Shali town hospital and unspecified medical centres in the town. However, no relevant information was obtained as a result of those investigative steps.

59. The Government further submitted that on 10 September 2003 the investigators questioned a certain Ms S. as a witness. She stated that Musa Ilyasov was her husband and that they had lived together at 91 Lenina Street in Mesker-Yurt. Ms S.'s statement reproduced almost verbatim the statement made by the first applicant during her interview on 5 September 2002. The last part of Ms S.'s statement went as follows:

"...At about 4 a.m. on 11 August 2004 three unidentified men wearing camouflage uniforms and masks and carrying automatic weapons entered our house. They did not identify themselves and started checking our identity cards. Having checked them, they told us that they would take [my] husband away in order to clarify certain issues. They did not explain what those issues were and where they would take him. They handcuffed [my] husband and took him outside in his underwear. The masked men left in a UAZ vehicle and an APC. I did not notice the registration numbers on the vehicles. I cannot describe the persons who took away [my] son. Nothing was stolen from the house..."

60. A copy of Ms S.'s interview transcript produced by the Government did not contain any reference to Ms S.'s identity papers in the section specifically provided for it but bore the printed comment "identity checked".

61. According to the Government, the investigation in case no. 59232 was pending.

62. Despite specific requests by the Court the Government did not disclose any documents from the investigation file in case no. 59232, apart from the above-mentioned interview transcripts of the first and second applicants and Ms S. The Government stated that the investigation was in progress and that disclosure of other 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 the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING THE THIRD APPLICANT'S *LOCUS STANDI*

A. The parties' submissions

64. Referring to the transcript of Ms S.'s interview, the Government pointed out that she claimed to be the wife of Musa Ilyasov, and referred to the *ratione personae* criterion in relation to the third applicant.

65. The applicants replied that they were not acquainted with Ms S. and specified that Ms Khadizhat Dudayeva was Musa Ilyasov's common-law wife, that is, they were living in an unregistered relationship. The applicants produced two formal notes (*akm*) drawn up on 30 October 2008 in which two residents of Mesker-Yurt village, Mr Am. and Mr V., confirmed that Ms Khadizhat Ismailovna Dudayeva, born in 1984, was the wife of Musa Ilyasov, born in 1980. The notes contained detailed references to the particulars in Mr Am. and Mr V.'s identity papers and their respective addresses in Mesker-Yurt. The authenticity of their signatures was certified by the head of the administration and the imam of Mesker-Yurt. The notes bore the stamps of both authorities.

B. The Court's assessment

66. In so far as the Government challenge the third applicant's standing, the Court reiterates that the word "victim" in the context of Article 34 of the Convention denotes the person directly affected by the act or omission in issue (see *Lüdi v Switzerland*, 15 June 1992, § 34, Series A no. 238). The Convention institutions have always and unconditionally considered in their case-law that the parent, sibling or nephew of a person whose death is alleged to engage the responsibility of the respondent Government can claim to be the victim of an alleged violation of Article 2 of the Convention even where closer relatives, such as the deceased person's children, have not submitted applications (see *Velikova v. Bulgaria* (dec.), no. 41488/98, 18 May 1999, with further references). Furthermore, in a number of cases

where complaints about the death of a person had been lodged by his or her partner and their relationship existed outside marriage, the Court recognised that the latter could claim to be personally affected by, and therefore a victim of, the alleged violations of the Convention in respect of his or her partner's death and the subsequent investigation (see *Ceyhan Demir and Others v. Turkey*, no. 34491/97, § 85, 13 January 2005; *Üçak and Others v. Turkey* (dec.), nos. 75527/01 and 11837/02, 28 March 2006; and *Velikova*, cited above).

67. The Court points out that the first, second and third applicants introduced their complaints jointly using the same application form and that they are represented by the same lawyers. In her statement of 16 August 2005, produced before the Court, the first applicant explicitly referred to the third applicant as her “son's wife Khadizhat Ismailovna Dudayeva” and her “daughter-in-law Khadizhat”. The applicants specified that the third applicant was Musa Ilyasov's common-law wife. They submitted statements by residents of their village to that effect, certified by the head of the village administration and the village imam, and the Court finds no reasons to question the authenticity or credibility of those documents. As regards the transcript of Ms S.'s interview submitted by the Government, the Court notes that it does not contain any reference to the particulars in her identity papers, whereas other interview transcripts furnished by the Government do contain such particulars. Furthermore, it reproduces almost verbatim the text of the first applicant's interview record and on one occasion refers to Musa Ilyasov as Ms S.'s “son” (see paragraph 59 above). In any event, the Court's task in the present case is not to establish the identity of Ms S. or her possible connection with the applicants, particularly given the fact that the Government provided no further information in that respect, but to decide whether the third applicant may claim to be a victim of the alleged violations of the Convention in connection with the disappearance of Musa Ilyasov.

68. Having examined carefully the evidence presented by the applicants, the Court finds it consistent and coherent and concludes that there is no reason to doubt that the third applicant and Musa Ilyasov were cohabiting and that she had been present in their house at the time of his abduction. The Court is thus satisfied that the third applicant has standing to complain about Musa Ilyasov's disappearance and dismisses the Government's objection in that regard.

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

A. The parties' submissions

69. 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 Musa Ilyasov had not yet been completed. They further argued that it had been open to the applicants to challenge in court any actions or omissions of the investigating authorities or to lodge a civil claim for damages in that connection. However, they had failed to avail themselves of any such remedy.

70. The applicants challenged that objection and stated that the criminal investigation, pending for over six years, had proved to be ineffective.

B. The Court's assessment

71. 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, and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

72. 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 v. Turkey*, 16 September 1996, § 68, *Reports* 1996-IV, and *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

73. 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.

74. 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. 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, §§ 119-21, 24 February 2005). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

75. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement authorities after the abduction of Musa Ilyasov and that an investigation into his abduction has been pending since September 2002. The applicants and the Government disagree as to the effectiveness of this investigation.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

77. The applicants complained under Article 2 of the Convention that their husband and son had disappeared after having been detained by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation into 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

1. The Government

78. The Government argued that it had not been proved that State servicemen had been involved in the kidnapping of Musa Ilyasov or that he had been killed. They suggested that he might have been abducted by insurgents. They further claimed that there was no information on any special operations in Mesker-Yurt at the time of Musa Ilyasov's abduction and no State body had formally confirmed the fact of his detention. Musa Ilyasov had not been suspected of having been involved in illegal armed groups or having committed a crime and thus the authorities had had no grounds to arrest him. In any event, his body had not been discovered.

79. The Government further pointed out that the applicants had been unable to identify the abductors or to provide any details on the registration numbers of their vehicles or the direction in which they had left. The fact that the abductors had worn uniforms and had been armed was not, in itself, sufficient to prove that they had been State agents. In any event, a considerable number of armaments had been stolen from Russian arsenals by insurgents in the 1990s. Similarly, although the applicants claimed that their relative had been abducted from the territory under control of the federal forces, there had been several situations where the insurgents had passed themselves off as members of the armed forces by using forged service certificates and other documents.

80. Furthermore, there had been some contradictions in the applicants' statements. While being questioned by the investigating authorities, the applicants had submitted that the abductors had arrived in an APC and a UAZ vehicle. In their statements to their representatives the applicants had mentioned two APCs and, referring to other witnesses, a UAZ and a Niva vehicle. In some statements they had also referred to an ARV. Lastly, none of the applicants had seen the abductors put Musa Ilyasov in any of these vehicles.

81. The Government further submitted that the investigation into the kidnapping had been effective and was pending before an independent State agency. The second applicant had been granted victim status in connection with those criminal proceedings. The investigators had carried out a whole series of investigative, operational and search measures. Although the investigation had been suspended on several occasions, the authorities were pursuing their attempts to establish all the circumstances of the abduction of Musa Ilyasov.

2. The applicants

82. The applicants claimed that it was beyond reasonable doubt that the men who had taken away Musa Ilyasov were State agents. In support of

their assertion they referred to the following. At the material time the village of Mesker-Yurt had been under the control of federal troops and it had only been possible to access it through guarded roadblocks. The abductors had used military vehicles, in particular APCs, and thus could not possibly have passed through the roadblocks unnoticed. Had those vehicles been used by insurgents, the servicemen at the roadblocks would have reacted, at the very latest after the second applicant had arrived at one of the roadblocks and alerted the servicemen to the abduction of Musa Ilyasov. However, nothing indicated that this had occurred. Furthermore, the abductors had spoken unaccented Russian, a fact which lent further credence to the applicants' submission. The applicants' relative had been abducted in a life-threatening situation and the absence of any news of him strongly suggested that he had been killed.

83. The applicants further claimed that the investigation into their relative's abduction had not met the requirements of effectiveness and adequacy under Article 2 of the Convention. The Government had failed to give the exact date of the opening of the investigation. The applicants themselves had been confused in that respect because in some authorities' replies that date was given as 19 September 2002 and in others as 19 November 2002. Assuming that it had been the former date, that meant that the investigation had been opened five weeks after the authorities had become aware of the disappearance. The investigators had failed to question any members of the armed forces who might have been involved in the disappearance and had confined themselves to simply sending written requests to various State bodies. The applicants had not been properly informed about any significant developments in the investigation. Lastly, the investigation had been suspended several times and had failed to produce any known results.

B. The Court's assessment

1. Admissibility

84. The Court observes, 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. 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 76 above). The complaint under Article 2 must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Musa Ilyasov

(i) General principles

85. 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).

(ii) Establishment of the facts

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

87. The applicants alleged that on 11 August 2002 their relative, Musa Ilyasov, had been apprehended by Russian servicemen and had then disappeared. In support of their account of the events the applicants, who had been eyewitnesses to the abduction, produced their own statements, a hand-drawn map of their home and a witness statement.

88. The Government denied that servicemen had been involved in the abduction of Musa Ilyasov and suggested that he might have been abducted by members of illegal armed groups. They referred to the absence of conclusions from the ongoing investigation and several inconsistencies in the applicants' statements.

89. The Court notes at the outset that despite its requests for a copy of the file on the investigation into the abduction of Musa Ilyasov, the Government produced only copies of the first and second applicants'

interview transcripts and of the transcript of an interview with Ms S. The Government refused to produce any other documents from the case file, invoking Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has 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)).

90. In view of the foregoing and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in this respect.

91. The Court further considers that the applicants presented a coherent and convincing picture of their relative's abduction. It is also noted that the Government did not dispute the main factual elements underlying the application and corroborated by the applicants' and witnesses' statements, such as the fact that the applicants' relative had been abducted by armed men in camouflage uniforms who had arrived and left in military vehicles, including APCs.

92. The Government pointed out that the applicants' account of the events was not entirely consistent in the course of the investigation, particularly in respect of the exact number of military vehicles and the possible presence at the scene of a Niva vehicle and an ARV. They also submitted that none of the applicants had witnessed Musa Ilyasov being put into any of these military vehicles.

93. The Court takes note of the Government's submissions but is not persuaded that they are such as to cast doubt on the veracity of the applicants' statements. Firstly, in its view, it is understandable that the applicants might have omitted or added certain details to their depositions made at different stages of the investigation. Secondly, in all the statements examined by the Court the applicants consistently referred to several APCs and UAZ vehicles. Furthermore, Ms A. in her statement, the accuracy of which was not contested by the Government, confirmed that on the night of 11 August 2002 she had seen two APCs and two UAZ vehicles parked at the applicants' home. As regards the alleged presence of an ARV and a Niva vehicle at the scene, the Court observes that whenever the first applicant mentioned it, she explicitly stated that she herself had not seen it but had obtained that information from other persons. Lastly, in so far as the Government argued that the applicants had not seen their relative being put into any of the abductors' vehicles, the Court notes that the third applicant saw the armed men lead Musa Isayev outside his house with a pillow case on his head. The applicants also saw the abductors' vehicles leave shortly thereafter. The Court further observes that the applicants had been ordered to stay in their houses and considers that they could not be blamed for having complied with that order, given by a group of men armed with submachine guns. In those circumstances the Court cannot but assume that the intruders took Musa Isayev with them, even though the applicants did

not see the exact moment of his being put into any of the vehicles parked at their houses.

94. The Court is likewise not persuaded by the Government's argument that the persons who arrived in Mesker-Yurt village could have been insurgents since it is unclear how a motorcade of several military vehicles carrying armed members of illegal armed groups could have driven through military roadblocks and remained unnoticed. The Court considers that the fact that a group of armed men in uniform was able to move freely around a village controlled by the federal forces, late at night, to abduct a person and to pass through a roadblock of the federal forces, strongly supports the applicants' allegation that these were State servicemen.

95. It is reiterated that where an applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the withholding of documents by the Government, it is for the latter to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, 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).

96. Taking into account the above elements, the Court is satisfied that the applicants have made out a *prima facie* case that Musa Ilyasov was arrested by State servicemen. The Government's statement that the investigation 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. Drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court considers that Musa Ilyasov was arrested on 11 August 2002 at his house in Mesker-Yurt by State servicemen during an unacknowledged security operation.

97. The Court has to decide further whether Musa Ilyasov is to be presumed dead. It notes in this regard that there has been no reliable news of him since 11 August 2002. His name has not been found in any official records of detention facilities. Lastly, the Government did not submit any explanation as to what had happened to him after his abduction.

98. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court considers that, in the context of the conflict in the Chechen 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 Musa Ilyasov or of any news of him for over six years corroborates this assumption.

99. Accordingly, the Court finds it established that on 11 August 2002 Musa Ilyasov was apprehended by State servicemen and that he must be presumed dead following his unacknowledged detention.

(iii) The State's compliance with Article 2

100. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

101. The Court has already found that Musa Ilyasov must be presumed dead following his unacknowledged detention by State servicemen. Noting that the authorities did not rely on any ground capable of justifying the use of lethal force by their agents or otherwise accounting for his death, it follows that the responsibility for his presumed death is attributable to the respondent Government.

102. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in respect of Musa Ilyasov.

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

103. 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 was 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).

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

105. Turning to the facts of the present case the Court notes that, according to the applicants, on 12 August 2002, that is, on the day following the abduction of Musa Ilyasov, they complained about his abduction to the district prosecutor's office. The Government did not contest the applicants' submission and failed to provide any information on the date of institution of the proceedings in case no. 59232. When replying to the applicants' enquiries the State authorities referred to different dates of institution of the investigation in case no. 59232, citing either 19 September or 19 November 2002 (see paragraphs 34 and 39 above). It also appears that on 5 September 2002 the investigation questioned the first and second applicants and that on the same day the second applicant was granted victim status. In the absence of information or evidence that any investigative steps had been taken prior to 5 September 2002 the Court is led to assume that the authorities took their first investigative steps on that date, that is, three weeks after they had been notified of the abduction of Musa Ilyasov. This substantial 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 it is crucial for action to be taken expeditiously.

106. The Government submitted that the investigators had carried out several important investigative measures. In particular, they had inspected the crime scene, conducted a "door-to-door check" in Lenina Street, carried out checks in the Shali town hospital and some further unidentified medical centres in Shali, and sent several requests for information to various State bodies. However, beyond simply referring to those measures, the Government did not even specify the dates when they had allegedly been taken, let alone provide any supporting documents. In the absence of that information the Court cannot assess whether the investigative steps in question were taken expeditiously or whether, indeed, they were taken at all.

107. Even assuming that the above-mentioned measures were indeed carried out, the Court cannot but note that certain crucial investigative steps were not taken at all. Most notably, the Court has no information to indicate that any efforts were made to identify and question the servicemen who had been on duty at the roadblock in Mesker-Yurt on the night of Musa Ilyasov's abduction. There is also no indication that the investigation made any attempts to find the vehicles described by the applicants or to identify their owners. Furthermore, although the Government vaguely referred to a "door-

to-door check” in Lenina Street, it does not emerge from the available information that the investigation attempted to identify and question possible witnesses to Musa Ilyasov's abduction among the applicants' neighbours such as Ms A.

108. The Court further observes that while the second applicant was eventually granted victim status, the investigating authorities refused to grant that status to the first applicant despite her explicit request to that effect (see paragraph 53 above). There is also no indication that the authorities ever considered the issue of recognising the third applicant as a victim in connection with the proceedings in case no. 59232. In any event, it transpires from the documents submitted by the applicants that they were not properly informed even about the most basic decisions to suspend or resume the investigation. Accordingly, the investigators failed to ensure that the investigation was subjected to the required level of public scrutiny, and to safeguard the interests of the next of kin in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

109. Finally, the Court notes that the investigation has been pending for over six years and was suspended and resumed several times, resulting in lengthy periods of inactivity on the part of the investigators.

110. Having regard to the limb of the Government's objection that was joined to the merits of the application, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for over six years and has produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection in this regard.

111. The Government also mentioned, in the context of the exhaustion of domestic remedies, that the applicants had the opportunity to apply for judicial review of the decisions of the investigating authorities. In this connection the Court observes that the applicants, since they had no access to the case file and were not properly informed of the progress of the investigation, could not have effectively challenged acts or omissions of the investigating authorities before a court. Furthermore, the Court emphasises in this regard that while the adjourning or reopening of proceedings is not in itself a sign that the proceedings are ineffective, it does not appear in the present case that the decisions to adjourn were made after the necessary investigative steps had been taken; this led to substantial periods of inactivity and hence unnecessary prolongation. Moreover, owing to the time that had elapsed since the events complained of occurred, certain investigative measures that ought to have been carried out much earlier, such as identifying the servicemen at the roadblock, could no longer usefully be conducted. Hence, it is extremely doubtful whether the remedy relied on would have had any prospect of success. Therefore, 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.

112. 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 Musa Ilyasov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

113. 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

114. The Government submitted that the investigation had not established that the applicants had been subjected to treatment contrary to Article 3 of the Convention.

115. The applicants maintained 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. It must therefore be declared admissible.

2. Merits

117. 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 applicant 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).

118. In the present case the Court notes that the first and second applicants are the parents of Musa Ilyasov and the third applicant is his common-law wife. The applicants were witnesses to the abduction of their close relative. They have had no news of him for over six years. Throughout this period the applicants applied to various bodies with enquiries about his fate. Despite those attempts, the applicants have never received any plausible explanation as to what became of him following his abduction. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

121. The applicants further argued that Musa Ilyasov 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

122. In the Government's opinion, no evidence had been obtained by the investigators confirming that Musa Ilyasov had been deprived of his liberty in breach of the guarantees of Article 5 of the Convention.

123. The applicants reiterated their 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 the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

125. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 for securing 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).

126. The Court has found it established that Musa Ilyasov was apprehended by State servicemen on 11 August 2002. His detention was not acknowledged or 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).

127. 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. 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.

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

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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.

131. The applicants reiterated their 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 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).

134. As regards the complaint of a lack of effective remedies in respect of the applicant's 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 leading to the identification and punishment of those responsible (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).

135. In view of the Court's findings above 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.

136. 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, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

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

138. 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 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 under Article 13 in conjunction with Article 3 of the Convention.

139. 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. In view of its finding of a violation of Article 5 of the Convention on account of the unacknowledged detention of the applicant's relative, 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.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

140. 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*

141. The third applicant claimed that she had sustained damage in respect of the loss of her common-law husband's earnings following his apprehension and disappearance. She claimed a total of 600,128.30 Russian roubles (RUB) under this head (approximately 17,360 euros (EUR)). The first and second applicants made no claims as regards compensation for pecuniary damage.

142. The third applicant submitted that Musa Ilyasov was unemployed at the time of his arrest, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. Her calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 (the so-called “Ogden tables”). The third applicant assumed that she would have been financially dependent on her husband. She calculated his earnings, with an adjustment for 10% yearly inflation, and argued that she should be entitled to 30% of the total amount.

143. The Government argued that the third applicant's claims were unsubstantiated and that she had not made use of the domestic avenues for obtaining compensation for the loss of a breadwinner.

144. 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 conclusions above, it finds that there is a direct causal link between the violation of Article 2 in respect of the third applicant's common-law husband and the loss to her of the financial support which he could have provided.

145. Having regard to the third applicant's submissions and the fact that Musa Ilyasov was not employed at the time of his apprehension, the Court awards EUR 2,000 to the third applicant in respect of pecuniary damage plus any tax that may be chargeable to her.

2. Non-pecuniary damage

146. The applicants claimed compensation in respect of non-pecuniary damage for the suffering they had endured as a result of the disappearance of their relative, the indifference shown by the authorities towards them and the latter's failure to provide any information about the fate of their close relative. The first and second applicants claimed EUR 40,000 jointly, while the third applicant claimed EUR 40,000 under this head.

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

148. 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 the 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 to the first and second applicants jointly EUR 20,000 and to the third applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

B. Costs and expenses

149. 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 the SRJI lawyers and EUR 150 for the SRJI senior staff, as well as administrative expenses, translation and courier delivery fees. The aggregate claim in respect of costs and expenses related to the applicants' representation amounted to EUR 6,939.01

150. The Government submitted that reimbursement of costs could be ordered by the Court only if they had been actually incurred and had been reasonable as to quantum.

151. The Court has to establish first whether the costs and expenses indicated by the applicants' relative were actually incurred and, second, whether they were necessary (see *McCann and Others*, cited above, § 220).

152. Having regard to 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.

153. As to 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 most of the case file. Furthermore, due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that the case involved the amount of research claimed by the applicants' representatives.

154. 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 them; the award is to be paid into the representatives' bank account in the Netherlands, as indicated by the applicants.

D. Default interest

155. 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 regarding the third applicant's *locus standi*;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
3. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Musa Ilyasov;

5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Musa Ilyasov disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants' mental suffering;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Musa Ilyasov;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
10. *Holds*
 - (a) that the respondent State is to pay to 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 2,000 (two thousand euros) in respect of pecuniary damage to the third applicant, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (ii) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage to the first and second applicants jointly, EUR 15,000 (fifteen thousand euros) to the third applicant, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (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;
11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 1 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President