



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

1959 · 50 · 2009

FIRST SECTION

CASE OF VAKHAYEVA AND OTHERS v. RUSSIA

(Application no. 1758/04)

JUDGMENT

*This version was rectified on 14 December 2009
under Rule 81 of the Rules of the Court*

STRASBOURG

29 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 Vakhayeva 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,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinvernì,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 1758/04) 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 seven Russian nationals listed below (“the applicants”), on 14 November 2003.

2. The applicants, who had been granted legal aid, were represented by Mr D. Itslayev, a lawyer practising in Nazran. The Russian Government (“the Government”) were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their new Representative, Mr G Matyushkin.

3. The applicants alleged that their relative had disappeared after being detained by servicemen in Chechnya on 1 August 2000. They complained under Articles 2, 3, 5 and 13.

4. By a decision of 11 September 2008 the Court declared the application admissible.

5. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

1. Ms Rebat (Rebat) Vakhayeva, born in 1945;
2. Ms Kheda Aydamirova, born in 1976;
3. Mr Adam Vakhayev, born in 1993;
4. Ms Petimat Vakhayeva, born in 1995;
5. Mr Akhmed Vakhayev, born in 1997;
6. Mr Akhyad Vakhayev, born in 1998;
7. Ms Khadizhat Vakhayeva, born in 2000.

The applicants are Russian nationals and live in Urus-Martan, the Chechen Republic.

7. The applicants are members of one family and are close relatives of Kazbek Vakhayev, born in 1975, who was apprehended by the police and has been missing since 13 August 2000. The first applicant is his mother, the second applicant is his wife and the third to seventh applicants are his children. The applicants live together in their house in Urus-Martan at 5, Nuradilova Street, where Kazbek Vakhayev also lived before his arrest.

8. Kazbek Vakhayev worked as a furniture maker before his arrest. According to the applicants, he had never been involved in the armed conflict in Chechnya and had no connections with the paramilitary.

A. Arrest and detention of Kazbek Vakhayev

1. The applicants' account

9. On 1 August 2000 the Urus-Martan Temporary Department of the Interior of the Chechen Republic *Урус-Мартановский временный отдел внутренних дел Чеченской республики* ("Urus-Martan VOVD") conducted a sweeping operation in the eastern part of the town. From early morning military forces cordoned off the eastern sector of the town, and officers from the Ministry of the Interior carried out a security raid.

10. During the raid a van belonging to the Urals police arrived at the Vakhayevs' house. The whole family was already waiting in the courtyard with their documents, ready to be checked. According to the applicants, the servicemen were wearing police uniforms and were armed. Without any introduction or the presentation of a warrant they started searching the house. No attesting witnesses were present and no official records were made of the search. The search did not yield any incriminating evidence.

11. After the search the servicemen proceeded with the document check, and requested the passports of the adult men who were present, namely Kazbek Vakhayev and his father, Lecha Vakhayev. They showed their passports, both of which were valid and bore registration stamps confirming their legal address, which was the place where they were being checked. The servicemen examined the passports and asked who Kazbek Vakhayev was. He answered and then asked whether anything was wrong with his documents. The servicemen told him that the documents were fine, but he

was “on the list” and showed him a page from a notepad with some names on it. He was ordered to get in the van. In reply to the first applicant's question as to where he was being taken one of the policemen said: “They will see. Interrogate him. He will be released in two hours”. Another policeman explained that Kazbek Vakhayev was being taken following the receipt of an anonymous letter.

12. On the same day officers from the Urus-Martan VOVD arrested several other men from the neighbourhood, among them G., two brothers Sh. and four brothers M. At the time of their arrests their houses were also searched. All of them were taken to the Urus-Martan VOVD, a temporary police station with a detention facility set up in a former boarding school in the town centre.

13. On 2 August 2000 the applicants learned that an order to remand Kazbek Vakhayev in custody for ten days had been issued on the grounds that he was a vagrant. Under the applicable legislation this meant a person without any legal address indicated in his passport.

14. For the next ten days the first and the second applicants visited the Urus-Martan VOVD regularly to enquire about Kazbek Vakhayev and to leave food and clothes for him, to be passed to the detention facility. Every day they were told that there was nothing pending against him on the file and that he was about to be released.

15. Whenever the applicants left a parcel they attached a list of its contents, which would then be signed by Kazbek Vakhayev, and the guard would show them his signature to confirm its receipt. The applicants submit that they recognised his signature every time they left him a parcel. Sometimes he would add a short note and they were also able to recognise his handwriting.

16. On 11 August 2000 Kazbek Vakhayev was due to be released after his ten days' detention. His relatives and the families of other detainees whose release was due on the same day went to the Urus-Martan VOVD early in the morning to pick them up. They waited until 5 p.m., when Major S. announced that no one would be released on that day. The applicants then left another parcel for Kazbek Vakhayev, the receipt of which he confirmed as usual. All the detainees' families, including the applicants, stayed in front of the Urus-Martan VOVD until the start of the curfew and then left.

17. On 12 August 2000 the applicants and the other families waited outside the Urus-Martan VOVD all day, but no one was released on that day either. In the evening the applicants left another parcel, the receipt of which Kazbek Vakhayev confirmed as usual.

18. On 13 August 2000 the first and the second applicants and three relatives went to the Urus-Martan VOVD and waited there all day together with the families of the other detainees. At about 5 p.m. they submitted a parcel for Kazbek Vakhayev. However, after an unusually long delay a

policeman brought it back and told them that their relative was no longer in the detention facility.

19. The applicants asked to see the head of the Urus-Martan VOVD, Colonel Sh., and when he came to meet them outside the VOVD the first applicant asked him where her son was. Colonel Sh. took their names, went back into the police station and then returned with Kazbek Vakhayev's passport. He handed the passport to the first applicant and told her he did not know where her son was. When she pressed him for an explanation he replied that he had probably been taken to the "force groups". According to the applicants, this meant the federal force group "Zapad" (*группировка федеральных сил «Запад»*) which at the time was located to the south-west of Urus-Martan. When the first applicant protested, saying that the police were in charge of Kazbek Vakhayev and that handing him over without any documents was unheard of, Colonel Sh. replied that he would punish the head of the detention facility. The applicants were unable to obtain any more information on the matter.

20. On the evening of the same day the two brothers Sh. and four brothers M. were found after having been left on the Rostov-Baku motorway near the town of Argun in Chechnya. The applicants learned that all of them had sustained numerous injuries and had traces of torture. The first applicant also learned that on the night of 11-12 August 2000 they had been transferred from the Urus-Martan VOVD to the Urus-Martan District Department of the Interior (ROVD), a normal police station, and on the night of 12-13 August 2000 they had been taken to the federal force group "Zapad". After spending a night there, on 13 August 2000 they were taken to the town of Khankala, then the main federal military base for Chechnya. On the evening of the same day they were driven to the Argun district, where they were dropped off on the motorway.

21. On 14 August 2000 the applicants learned that two more detainees, Yusup Satabayev (*Satabayeva v. Russia*, application no. 21486/06) and Ch., had gone missing from the Urus-Martan VOVD at the same time as Kazbek Vakhayev. Yusup Satabayev had been in detention since 23 February 2000 on suspicion of involvement in illegal paramilitary groups; from the beginning of August he had been held in the Urus-Martan VOVD. According to the applicants, Ch. had been arrested during the sweeping operation on the Urus-Martan district on 9 August 2000. On 14 August 2000 the relatives of Yusup Satabayev and Ch. had learned of their disappearance from the Urus-Martan VOVD. G. had also gone missing from the VOVD.

22. At about noon on the same day the families of the four missing men met the head of the Urus-Martan VOVD, Colonel Sh., who initially told them that all four men had been released. He then said that only Kazbek Vakhayev had been released on 11 August 2000, but that the others had been taken to the "force groups". The first applicant talked to Colonel Sh.

afterwards, and eventually he told her that all four men, including her son, had been taken to “FSB-2” («ФСБ-2»), which formed part of the “force groups”.

2. The Government's account

23. In their submissions prior to the Court's decision of 11 September 2008 on the admissibility of the application, the Government stated that “on 1 August 2000 officers of the Urus-Martan Temporary Department of the Interior of the Chechen Republic under Decree of the President of the Russian Federation of 2 November 1993 no. 1815 'On Measures for Prevention of Vagrancy and Mendicancy' apprehended and brought to the said department Y. A. Satabayev, [G.], K.L. Vakhayev and [Ch.]. Subsequently they were released however, their whereabouts [are] still unknown”.

24. In their submissions after the Court's decision of 11 September 2008 on the admissibility of the application, the Government reiterated that Kazbek Vakhayev had been detained on 1 August 2000 on the ground of the above-mentioned Decree. At the same time they submitted that he had been released on 11 August 2000. The Government also stated that his detention was “sanctioned by the prosecutor of the Urus-Martan district as valid and justified. The applicants have never brought any complaints against this detention before the national courts”.

B. The search for Kazbek Vakhayev and the investigation

25. On 15 August 2000 the first applicant filed a complaint with the Urus-Martan District Prosecutor's Office concerning the unlawful arrest, detention and disappearance of her son.

26. On 20 August 2000 the acting prosecutor of the Urus-Martan district replied to the first applicant:

“Further to your application concerning the disappearance of your son, Kazbek Vakhayev, born in 1975, I can inform you that from 1 to 11 August 2000 he was detained in the detention facility of the Urus-Martan VOVD as a vagrant, after which he was released.”

27. On 22 August 2000 the first and the second applicants learned from informal contacts that on 13 August 2000 four young Chechen men had been executed in a military camp near the village of Goy-Chu of the Urus-Martan district. The execution had apparently been carried out by servicemen from the Urus-Martan district military commander's office (*Урус-Мартановская районная военная комендатура*) and the bodies had been buried in a shallow grave in the grounds of the military camp. When the camp was relocated one of the soldiers had told the villagers of Goy-Chu about the grave and asked them to re-bury the dead. In the place

he indicated villagers exhumed four corpses with numerous traces of violence, and also found some spent cartridges. They could not identify the bodies but they made a video recording of them. The bodies were re-buried on the same day, 22 August 2000, in the Goyskoye village cemetery. A member of the applicants' family, Mr U., came to identify the bodies, but he did not recognise Kazbek Vakhayev among them. The applicants submitted a copy of the above video recording to the Court.

28. On 27 August 2000 the first applicant wrote to the military commander of the Urus-Martan district, requesting him to take urgent measures to search for her son.

29. On 14 September 2000 the applicant filed a written complaint with the Special Envoy of the Russian President for Rights and Freedoms in the Chechen Republic, requesting his assistance in the search for her son.

30. On 16 September 2000 the first applicant and the mothers of the missing detainees Yusup Satabayev, G. and Ch. applied to the Prosecutor's Office of the Chechen Republic, complaining about the disappearance of their sons from the detention facility and alleging the use of torture against them.

31. On 17 September 2000 the Urus-Martan District Prosecutor's Office informed the applicant that her letter of 20 August 2000 had been forwarded to the Urus-Martan VOVD.

32. On 18 October 2000 the Urus-Martan District Prosecutor's Office opened a criminal investigation into the abduction of four men, i.e. Kazbek Vakhayev, Yusup Satabayev, G. and Ch. (criminal case file no. 24048). The decision stated, in particular:

“On 1 August 2000 officers of the Urus-Martan [VOVD] apprehended and brought to the [VOVD] [Mr G.], Kazbek Vakhayev, [Mr Ch.] and Yusup Satabayev pursuant to Decree no. 1815 of the President of the Russian Federation of 2 November 1993 'On Measures for the Prevention of Vagrancy and Mendicancy'.

On 14 August 2000 the detainees were released and sent to their places of residence.

However, to date [the detainees] have not returned to their places of residence, they are being searched for by their relatives and their whereabouts are not established.”

33. On 25 October 2000 the Urus-Martan District Prosecutor's Office informed the first applicant about the institution of criminal proceedings.

34. On 31 October 2000 the second applicant was granted victim status in the proceedings.

35. On 11 November 2000 the first applicant was granted victim status in the proceedings.

36. The first and second applicants, questioned on unspecified dates, made statements similar to their description of the events as submitted to the Court. At the same time, according to the Government, the first applicant informed the investigating authorities that her son had been detained

because he had not had his passport with him because it had been lost. According to the first applicant, she never made such a statement.

37. On 18 December 2000 the investigation into criminal case no. 24048 was adjourned.

38. On 22 January 2001 the Prosecutor's Office of the Chechen Republic forwarded the first applicant's letter to the Urus-Martan District Prosecutor's Office.

39. On 25 January 2001 the Urus-Martan District Prosecutor's Office wrote to the first applicant, informing her that criminal proceedings had been instituted further to her complaints.

40. In March 2001 the first applicant watched the video recording of the bodies exhumed in Goy-Chu on 22 August 2000 and noted that one of the dead resembled Kazbek Vakhayev and was dressed in similar clothes. She also noted that the body was disfigured by torture; in particular, it was covered in bruises, parts of the flesh had been ripped off, and the fingernails had been pulled out. Relatives of the other three missing men, Yusup Satabayev, G. and Ch., also watched the video-tape and, likewise, considered that the other bodies looked like their relatives. Accordingly they all concluded that the four missing men were likely to have been executed on 13 August 2000. They requested the Urus-Martan District Prosecutor's Office, in person, to order the exhumation and a forensic examination of the bodies buried in Goyskoye.

41. On 12 April 2001 the applicants obtained a death certificate in respect of Kazbek Vakhayev from the Urus-Martan civil register. 24 March 2001 was indicated as the date of death. No other details were stated. It is not clear what constituted the basis for the issue of the death certificate. According to the Government, a check was instituted by the prosecuting authorities concerning its issue. There is no information on the outcome of the check.

42. On 6 June 2001 the Urus-Martan District Prosecutor's Office informed the first applicant that Kazbek Vakhayev, Yusup Satabayev, G. and Ch., who had been arrested on 1 August 2000, had been released on 14 August 2000 and sent to their places of residence. In this letter the applicant was also informed about the adjournment of the criminal investigation as of 18 December 2000.

43. On 3 September 2001 the first applicant filed a complaint with the Prosecutor General, requesting that the head of the Urus-Martan VOVD, Colonel Sh., and the acting District Prosecutor I. be brought to justice. She also requested that there should be a criminal investigation in relation to the discovery of four unidentified bodies near Goy-Chu.

44. On 13 October 2001 the Prosecutor's Office of the Chechen Republic ordered the Urus-Martan District Prosecutor's Office to submit the investigation file in case no. 24048 for examination.

45. On 25 February 2002 the first applicant complained to the Prosecutor's Office of the Chechen Republic that she had received no reply to her previous letters. She asked for the resumption of the criminal investigation and that all her previous applications be considered.

46. On 12 March 2002 the investigation was resumed.

47. On 19 March 2002 the Urus-Martan District Prosecutor's Office issued the first applicant with a certificate stating that the criminal investigation into the disappearance of her son had been opened on 18 October 2000.

48. On 12 April 2002 the investigation was suspended on account of the failure to identify the perpetrators. The decision reiterated that the four detainees had been released on 14 August 2000.

49. On 14 June 2002 the first applicant wrote to the Human Rights Department of the Chechen Republic, requesting their assistance in establishing the whereabouts of Kazbek Vakhayev. On the same day she sent a similar request to the Deputy Prime Minister of the Government of the Chechen Republic.

50. On 19 March 2003 the first applicant wrote to the Urus-Martan District Prosecutor's Office, asking them to question Colonel Sh.

51. On 15 July 2003 the Urus-Martan District Prosecutor's Office lifted the adjournment of the criminal proceedings in case no. 24048 and resumed the investigation.

52. On 22 August 2003 the first applicant requested the Urus-Martan District Prosecutor to inform her of the measures taken further to her earlier applications.

53. On 8 September 2003 the Urus-Martan District Prosecutor's Office informed the applicant that Colonel Sh. had not been charged with the abduction of her son and that there had been insufficient evidence to bring charges in the case.

54. On 28 September 2003 the investigation was resumed.

55. On 28 October 2003 the Urus-Martan District Prosecutor's Office again adjourned the investigation on account of the failure to identify the perpetrators. The decision reiterated that the four detainees had been released on 14 August 2000.

56. On 15 December 2003 the first applicant requested the Urus-Martan district prosecutor to allow her access to criminal case file no. 24048.

57. On 19 December 2003 the acting Urus-Martan district prosecutor informed the applicant that access could not be granted as the case file had been sent to the Prosecutor's Office of the Chechen Republic.

58. On 27 January 2004 the first applicant wrote to the head of the Federal Security Service (FSB) of the Urus-Martan district, asking whether her son had been suspected of any illegal activities.

59. On 27 February 2004 the FSB of the Urus-Martan district replied to the first applicant that they had no information concerning Kazbek Vakhayev.

60. On 2 April 2004 the first applicant requested the Prosecutor's Office of the Chechen Republic to inform her which prosecutor's office was in charge of the investigation into case no. 24048 and asked them to inform her of the measures taken. On 19 April 2004 the applicant re-sent the same request to the Prosecutor's Office of the Chechen Republic and the Urus-Martan District Prosecutor's Office. On 18 May 2004, having received no reply, she repeated her enquiry.

61. On 21 May 2004 the first applicant requested the Urus-Martan District Prosecutor's Office to bring criminal charges against Colonel Sh., against the head of the detention facility of the Urus-Martan VOVD and against all the servicemen of that department involved in the arrest of Kazbek Vakhayev, his remanding in custody and, possibly, his murder. She further requested that the four unidentified bodies discovered on 22 August 2000 in Goy-Chu and re-buried in Goyskoye be exhumed. She also requested that she be allowed access to case file no. 24048 in order to take copies of it.

62. On 10 June 2004 the investigation was resumed.

63. On 15 June 2004 the acting prosecutor of the Urus-Martan district replied to the first applicant, informing her that the materials in the case file were insufficient to either establish the whereabouts of Kazbek Vakhayev or identify the persons responsible for his abduction. She was invited to submit all evidence, if she had any, to the prosecutor's office.

64. On 29 June 2004 the Prosecutor's Office of the Chechen Republic informed the applicant that an investigation in case no. 24048 was underway.

65. On 10 July 2004 the investigation was again suspended for failure to identify the perpetrators.

66. On 29 September 2004 the Urus-Martan District Prosecutor's Office informed the applicant about the resumption of the investigation in case no. 24048.

67. On 27 October 2004 the first applicant submitted the video tape recorded on 22 August 2000 to the Urus-Martan District Prosecutor's Office, requesting that it be included in the case file.

68. On 28 October 2004 the tape was added to the case file.

69. On 29 October 2004 the Urus-Martan District Prosecutor's Office again suspended the investigation of case no. 24048.

70. On 6 June 2005 the investigation was resumed.

71. On 6 July 2006 the Urus-Martan District Prosecutor's Office again suspended the investigation.

72. On 21 July 2006 the investigation was resumed.

73. On 4 August 2006 the materials concerning the discovery of the four unidentified bodies were made part of a separate investigation, no. 57051.

74. On 21 August 2006 investigation no. 24048 was again suspended. It was resumed on the next day.

75. On 22 September 2006 the investigation was again suspended.

76. On 23 September 2006 the investigation was resumed. It was subsequently again suspended and resumed on 23 and 25 October 2006 respectively.

77. The following information concerning the progress of the investigation was submitted by the Government after the decision of 11 September 2008 on the admissibility of the application.

78. On 26 and 27 September 2006 the investigating authorities sent requests for information to the head of the FSB department in the Chechen Republic and the head of Operative-Search Bureau no. 2 at the Ministry of the Interior concerning the possible involvement of Yusup Satabayev, Mr G., Kazbek Vakhayev and Mr Ch. in illegal armed groups and their possible detention by law-enforcement authorities. According to the replies received, those authorities had no relevant information.

79. On 11 October and on 10 November 2006 the second applicant was questioned. She confirmed her previous statements and, on the basis of the video footage, identified one of the bodies found near the village of Goy-Chu as Kazbek Vakhayev. According to the Government, she refused to indicate his burial place so that the authorities could conduct an exhumation, since that would be in breach of Muslim traditions.

80. On 12 October 2006 Tamara Satabayeva, the mother of Yusup Satabayev, was questioned. She confirmed the account of the events provided in her previous statements and in the statements of the second applicant. She identified, on the basis of the video footage, one of the bodies found near the village of Goy-Chu as Yusup Satabayev, since he had the same stature and was wearing the same clothes.

81. On 13 October 2006 Ms G. was questioned. She submitted that her daughter-in-law had watched the above-mentioned video footage and had identified one of the bodies as Mr G.

82. On 20 and 25 November 2006 and 18 January 2007 numerous inquiries and instructions were sent to various law-enforcement authorities and detention facilities, requesting information on the fate of Yusup Satabayev, Mr G., Kazbek Vakhayev and Mr Ch. and on their abductors. According to the replies received, the addressees had no relevant information.

83. On 25 November 2006 the investigation was suspended.

84. On 28 December 2006 the investigation was resumed. The decision reiterated that the four detainees had been released on 14 August 2000.

85. On 8 February 2007 the investigating authorities instructed the head of the Urus-Martan District Department of the Interior (ROVD) to locate the

persons held at the detention facility of the Urus-Martan VOVD simultaneously with Yusup Satabayev, Mr G., Kazbek Vakhayev and Mr Ch. The ROVD located seven persons: Mr A.M., Mr M.M., Mr A.E., Mr Kh.D., Mr S.-A.E., Mr Z.V. and Mr A.Z. It appeared impossible to establish the whereabouts of other detainees because they no longer resided in the Chechen Republic.

86. On 11 February 2007 Mr A.E. was questioned. He submitted that at the beginning of August 2000 he had been detained by officers of the Urus-Martan VOVD because he had had no identity documents. He had been held for three days in cell no. 4 with his acquaintances Mr G. and Kazbek Vakhayev. He did not know the reasons for their detention. At the time of his release they were still held in cell no. 4. He had never seen them again.

87. On 22 February 2007 Mr M. M. was questioned. He stated that on 1 August 2000 he had been detained by officers of the Urus-Martan VOVD because he had had no identity documents. He had been held in a cell with Mr G. and Kazbek Vakhayev until 11 August 2000. At the time of his release they remained in detention. He and other detainees had not been subjected to physical or psychological pressure.

88. On 24 February 2007 Mr A.M. was questioned. He made a statement similar to those of Mr A.E. and Mr M.M.

89. Mr Kh.D., Mr A.V., Mr . S. and Mr S.-A.E. were questioned on 13, 15, 18 and 20 February 2007 respectively. They did not provide any relevant information.

90. On 23 April 2008 an inquiry was sent to remand prison SIZO-20/2 concerning Yusup Satabayev. According to the reply, Yusup Satabayev had been detained in SIZO-20/2 until 1 August 2000, when he was transferred to the detention facility of the Urus-Martan VOVD.

91. On 25 April 2008 the investigating authorities of the Penza district were instructed to question Mr Sh., the former head of the Urus-Martan VOVD.

92. On the same date and on 26 April 2008 the head of the Urus-Martan ROVD was instructed to identify eye-witnesses to the murder and burial of the four corpses near the village of Goy-Chu, and the person who had handed over the video footage of the bodies to the first applicant. The replies received did not contain any relevant information.

93. On 27 June 2008 the second applicant was questioned. She confirmed her previous statements, agreed to show the burial place of Kazbek Vakhayev and stated that she had no objections to his exhumation. She also stated that she had never been subjected to any form of pressure in relation to her application to the Court.

94. On 15 September 2008 the investigating authorities decided to apply to a court with requests for the seizure of certain documents and items classified as State secrets, kept in the archives of the FSB, the

North-Caucasian Circuit of Internal Forces of the Ministry of the Interior, the Federal Service of Execution of Punishments, Interior Troops and the Ministry of Defence. The requests were granted by an unspecified court on an unspecified date and investigating officials proceeded to carry out the seizure.

95. On 30 September 2008 a special investigative group was set up. It included officers from the Military Investigation Department of the Investigation Committee of the Prosecutor's Office of the Russian Federation.

96. On 8 October 2008 the investigation was suspended on account of the failure to identify the perpetrators.

97. On 18 October 2008 the investigation was resumed.

C. Court proceedings concerning the inactivity of investigating authorities

98. On 5 January 2003 the first applicant applied to the Urus-Martan Town Court seeking to have the inaction of the Urus-Martan District Prosecutor declared unlawful. She complained about the absence of an effective investigation and requested the court to order the prosecutor's office to resume criminal proceedings.

99. On 16 April 2003 the first applicant lodged a complaint with the Supreme Court of the Chechen Republic about the town court's failure to examine her claim and requested the Supreme Court to act as a first-instance court in her case. On 14 May 2003 the President of the Supreme Court of the Chechen Republic forwarded this letter to the Urus-Martan Town Court with a notice "to consider it on the merits".

100. On 1 July 2003 the first applicant had a meeting with the President of the Urus-Martan Town Court, who told her that she should have lodged a complaint with the prosecutors' office. The applicant concluded that the court would not consider her claim.

101. On 2 July 2003 the first applicant requested the Supreme Court of the Chechen Republic to act as a court of first-instance in respect of her complaint against the Urus-Martan District Prosecutor's Office.

102. On 21 July 2003 the President of the Supreme Court of the Chechen Republic sent an enquiry to the Urus-Martan Town Court concerning the progress in the examination of the applicant's claim.

103. On 30 July 2003 the first applicant requested the President of the Supreme Court of the Chechen Republic to inform her when her claim would be considered.

104. On 15 August 2003 the President of the Urus-Martan Town Court informed the President of the Supreme Court of the Chechen Republic that the investigation in criminal case no. 24048 had been resumed as of 15 July 2003.

105. On 12 September 2003 the first applicant requested the Supreme Court of the Chechen Republic to act as a court of first-instance in her case against the Urus-Martan District Prosecutor's Office.

106. On 7 October 2003 the Deputy President of the Supreme Court of the Chechen Republic informed the applicant that the criminal investigation in case no. 24048 had been resumed and was to be completed in one month. Her complaint, together with her claims against the Urus-Martan District Prosecutor's Office, were therefore forwarded to the Prosecutor's Office of the Chechen Republic.

107. On 22 July 2004 the first applicant filed a new complaint in the Urus-Martan Town Court against the Urus-Martan District Prosecutor's Office. She challenged their failure to conduct an effective investigation.

108. On 14 September 2004 the Urus-Martan Town Court granted the first applicant's complaint and declared the failure to act on the part of the Urus-Martan District Prosecutor's Office unlawful. The court ordered that the applicant's request of 21 May 2004 to bring criminal charges against officers of the Urus-Martan VOVD, exhume the bodies re-buried in Goyskoye and allow her access to the case file be dealt with by the prosecutor's office.

109. On 3 December 2004 the first applicant filed another complaint with the Urus-Martan Town Court against the Urus-Martan District Prosecutor's Office. She challenged their failure to charge the officers of the department of the interior with criminal offences related to the abduction and, possibly, the murder of her son, the failure to give her access to the case file and to take measures to identify the bodies re-buried in Goyskoye.

110. On 28 December 2004 the Urus-Martan Town Court granted the first applicant's complaint in part and ordered the Urus-Martan District Prosecutor's Office to take measures in relation to the unidentified bodies. The remainder of the complaint was dismissed.

111. On 18 January 2005 the first applicant appealed.

112. On 9 February 2005 the Supreme Court of the Chechen Republic dismissed the first applicant's appeal and upheld the judgment of 28 December 2004.

D. The Court's request to submit the investigation file

113. Despite the Court's repeated requests, the Government has not submitted a copy of the investigation file into the abduction of Kazbek Vakhayev. They have submitted case file materials extending to ninety-three pages, containing decisions on the institution, suspension and resumption of the investigation and the decisions to grant victim status, and copies of judicial decisions concerning the first applicant's complaints. Relying on the information obtained from the Prosecutor General's Office, 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 information of a military nature and personal data concerning the witnesses or other participants in criminal proceedings.

114. Despite the Court's specific request, made after the decision as to admissibility of the application of 11 September 2008, to submit copies of all documents related to Kazbek Vakhayev's arrest on 1 August 2000 and subsequent detention, including the decisions to remand him in custody and to release him and an extract from the detention facility register confirming his release, the Government submitted no documents.

II. RELEVANT DOMESTIC LAW

115. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR (Russian Soviet Federative Socialist Republic). On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation.

116. Article 125 of the new CCP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

117. Article 161 of the new Code of Criminal Procedure establishes the rule that data from the preliminary investigation cannot be disclosed. Part 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of the participants in criminal proceedings without their permission.

118. Presidential Decree no. 1815 of 2 November 1993 on Measures for the Prevention of Vagrancy and Mendicancy provided for the reorganisation of the system of "reception and distribution centres", for persons detained by the bodies of the Ministry of the Interior for vagrancy and mendicancy, into centres of social rehabilitation for such persons. Section 3 of the Decree provides:

"Placement of persons engaged in vagrancy and mendicancy in centres of social rehabilitation is permitted subject to the prosecutor's authorisation, for a term not exceeding ten days."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

119. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies, since the investigation into the disappearance of Kazbek Vakhayev had not yet been completed.

120. The applicants disputed that objection. In their view, the fact that the investigation had been pending for eight years with no tangible results proved that it was an ineffective remedy in this case.

121. In the present case, the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will now proceed to 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).

122. The Court observes that the applicants complained to the law-enforcement authorities shortly after the disappearance of Kazbek Vakhayev and that an investigation has been pending since 18 October 2000. The applicant and the Government dispute the effectiveness of this investigation.

123. The Court considers that 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. Thus, it considers that these matters fall to be examined below under the substantive provisions of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

124. The applicants complained under Article 2 of the Convention that their family member 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 provides:

“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. Alleged violation of Kazbek Vakhayev's¹ right to life

1. Arguments of the parties

125. The applicants argued that it was beyond reasonable doubt that Kazbek Vakhayev had been killed by representatives of the federal forces. He had disappeared in the hands of the federal forces and the authorities had failed to provide any explanation as to his subsequent fate.

126. The Government submitted that the circumstances of Kazbek Vakhayev's disappearance were under investigation. The information about his death had not been confirmed. Nor had it been established that any State agents had violated his right to life.

2. The Court's assessment

(a) General principles

127. 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).

(b) Establishment of the facts

128. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when

¹ Rectified on 14 December 2009: the text was “Alleged violation of Yusup Satabayev’s...”

faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

129. The applicants maintained that Kazbek Vakhayev had been apprehended on 1 August 2000 at his home, subsequently placed in the detention facility of the Urus-Martan VOVD and never released. They alleged that he had been killed by State agents and that his body had been discovered near the village of Goy-Chu.

130. The Government submitted that Kazbek Vakhayev had been detained on 1 August 2000 under the Decree on Measures for the Prevention of Vagrancy and Mendicancy. He had been placed in the detention facility of the Urus-Martan VOVD on the same date and released on 11 August 2000.

131. The Court observes that it is not disputed between the parties that Kazbek Vakhayev had been arrested on 1 August 2000. However, according to the applicants, he was never released and had eventually been killed by State agents, whereas the Government contended that he was released on 11 August 2000.

132. The Court notes, firstly, that despite its repeated requests for a copy of the investigation file concerning the disappearance of Kazbek Vakhayev, the Government have failed to produce it, despite having submitted ninety-three pages of case file materials, which contained decisions on the institution, suspension and resumption of the investigation, decisions to grant victim status and court decisions concerning the first applicant's complaints. They 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-...).

133. The Court further notes that in response to its direct request to submit copies of all documents related to Kazbek Vakhayev's arrest on 1 August 2000 and his subsequent detention, including an extract from the detention facility register confirming his release, the Government submitted no documents and provided no explanation for such failure.

134. As regards the substance of the Government's submissions, the Court observes that they are not consistent with the interim findings of the domestic investigation. Whereas the Government submitted that, after having been arrested for vagrancy on 1 August 2000, Kazbek Vakhayev was released on 11 August 2000, in the decision to institute criminal proceedings of 18 October 2000 and subsequent decisions to suspend and resume the investigation which have been made available to the Court, it is stated that Kazbek Vakhayev and the other three men were released on

14 August 2000. In view of the Government's failure to submit documents related to Kazbek Vakhayev's detention or any documents from the investigation file which would allow the Court to determine on which basis the Government's submissions and the above interim findings were founded, the Court cannot rely on either of them.

135. Having regard to the inconsistency in the Government's submissions and the interim findings of the domestic investigation and to the Government's failure, despite the Court's requests for documents, to provide any proof of Kazbek Vakhayev's release from custody, the Court finds it established that he remained in continued detention under State control from 1 August 2000 onwards.

136. The Court must further decide whether Kazbek Vakhayev may be presumed dead. The applicants contended that they identified one of the bodies found near the village of Goy-Chu on 22 August 2000 as Kazbek Vakhayev, on the basis of the video footage of the bodies before their re-burial. The Government argued that the fact of his death had not been established.

137. The Court notes that no conclusive identification of the bodies found near the village of Goy-Chu was carried out. Accordingly, it cannot establish that one of the bodies was Kazbek Vakhayev. At the same time, it observes that he disappeared after having been placed in State custody. There has been no reliable news of him since 14 August 2000. His name has not been found in any official records of detention facilities after that date. Lastly, the Government did not submit any explanation as to what had happened to him during his detention.

138. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-...), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is placed in detention without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Kazbek Vakhayev or any news of him for over nine years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of Kazbek Vakhayev's disappearance and the official investigation in this respect, dragging on for nine years, has produced no tangible results.

139. The Court also notes that on 12 April 2001 the Urus-Martan civil register issued the applicants with a death certificate in respect of Kazbek Vakhayev, giving 24 March 2001 as the date of death. However, since it is unclear on which basis the civil register determined the date of death (see paragraph 41 above), the Court is reluctant to accept it as conclusive and confines itself to the finding that Kazbek Vakhayev must be presumed dead.

140. Having regard to the foregoing, the Court finds it established that Kazbek Vakhayev disappeared after 14 August 2000 while he remained in

State custody and that he must be presumed dead following his unacknowledged detention.

(c) The State's compliance with Article 2

141. Article 2, which safeguards the right to life and sets out the circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to 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, §§ 146-147, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

142. The Court has already found it established that the applicants' family member must be presumed dead following his placement in State custody. Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, or otherwise accounting for his death, it follows that liability for his presumed death is attributable to the respondent Government.

143. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Kazbek Vakhayev.

B. The alleged inadequacy of the investigation into the abduction

1. Arguments of the parties

144. The applicants argued that the investigation had not met the requirements to be effective and adequate, as required by the Court's case-law on Article 2. They noted that the investigation was opened belatedly. In particular, the investigation into the discovery of the four unidentified bodies near the village of Goy-Chu had not been opened until after the communication of the present application to the Government. Furthermore, no effective measures were taken to establish what had happened to Kazbek Vakhayev and the other three detainees. The officers of the Urus-Martan VOVD who had held them in custody had not been questioned. The investigation had been repeatedly suspended and resumed, which had only added to the delay. Finally, the applicants had not been properly informed of the most important investigative steps.

145. The Government submitted that a considerable number of investigative actions had been conducted and that persons having victim status in the proceedings had been duly informed of them.

2. *The Court's assessment*

146. 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, *mutatis mutandis*, *McCann and Others*, cited above, p. 49, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

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

148. Turning to the facts of the case, the Court notes that, according to the applicants, the first applicant applied to the authorities asking for assistance in establishing the whereabouts of Kazbek Vakhayev on 15 August 2000. On 20 August 2000 she received a prosecutor's reply to her query. This information is not contested by the Government. However, an official investigation was not opened until 18 October 2000, that is, approximately two months later. This delay, for which no explanation has been provided, was in itself liable to affect the investigation into a disappearance in life-threatening circumstances, where crucial action must be taken in the first days after the events complained of.

149. The Court observes that on 31 October 2000 the second applicant and on 11 November 2000 the first applicant were granted victim status in the proceedings. However, it appears that a number of crucial steps were subsequently delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all.

150. In particular, according to the information available to the Court, between October 2000 and September 2006 the investigating authorities

questioned the first and second applicants. However, the Government did not furnish the transcripts of these interviews. Accordingly, it is impossible to establish conclusively whether they were actually conducted.

151. The Court further notes that the investigation concerning the discovery of the four dead bodies in the vicinity of the village of Goy-Chu, which the relatives claimed to be the disappeared detainees, was instituted only on 4 August 2006, that is, six years after the bodies were discovered in August 2000. Such an inexplicable delay could not but considerably affect the efficiency of the investigation.

152. According to the Government, after September 2006 the investigating authorities carried out a substantial number of investigative actions. In particular, they questioned numerous witnesses, including the detainees' cellmates, and sent numerous requests to various State authorities with a view to establishing their whereabouts. The Government have produced no documents to corroborate their submissions in this respect either. Accordingly, the Court cannot establish with sufficient certainty whether those measures were actually taken. However, even assuming that they were, no explanation has been provided as to why they were taken with a delay of over six years, in a situation where active investigative steps had to be taken in the first days after the events under investigation.

153. Furthermore, from the materials available to the Court it appears that a number of essential steps were never taken. Most notably, there is no information that the register of the detention facility of the Urus-Martan VOVD was ever inspected. Neither was an inspection conducted of the sites where the four bodies were discovered near the village of Goy-Chu and where they were reburied. Moreover, their exhumation has still not been carried out and, consequently, no meaningful measures for their conclusive identification have been taken, despite the decisions of the domestic courts in this respect (see paragraphs 108 and 110 above). Furthermore, there is no evidence that the officers of the Urus-Martan VOVD who held the four detainees in custody were questioned.

154. The Court observes that in the present case the investigating authorities not only failed to comply with 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), but failed to take the most elementary investigative measures.

155. The Court also notes that although the first and second applicants were granted victim status shortly after the institution of the investigation, they were not informed of any significant developments in the investigation, apart from several decisions on its suspension and resumption. Accordingly, the Court finds that 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.

156. Finally, the Court notes that the investigation was adjourned and resumed on numerous occasions. Such handling of the investigation could not but have had a negative impact on the prospects of identifying the perpetrators and establishing the fate of Kazbek Vakhayev.

157. Having regard to the Government's preliminary objection, which was joined to the merits of the complaint, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays and long periods of inactivity, has been ongoing for many 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 dismisses their preliminary objection in this part.

158. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Kazbek Vakhayev, in breach of Article 2 under its procedural head. Accordingly, there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

159. The applicants further relied on Article 3 of the Convention, submitting that as a result of their close relative's disappearance and the State's failure to investigate those events properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

160. The applicants maintained the complaint.

161. The Government submitted that the investigation had produced no evidence that the applicants had been subjected to treatment prohibited by the above-cited Convention provision.

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

is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

163. In the present case the Court notes that the applicants are the mother, wife and children of the individual who disappeared. They were eyewitnesses to his arrest. For more than nine years they have not had any news of him. During this period the applicants have applied to various official bodies with enquiries about their family member, 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 detention. The responses received by the applicants mostly denied the State's responsibility for his fate 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.

164. In view of the above, the Court finds that the applicants suffered, and continue to suffer, distress and anguish as a result of the disappearance of their family member 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.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

166. The applicants further stated that Kazbek Vakhayev had been detained in violation of the guarantees of Article 5 of the Convention, which, in so far as relevant, provides:

“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;

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

...

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.”

167. The applicants contended that Kazbek Vakhayev's detention had been unlawful, since he was clearly not a vagrant, given that he was arrested at his home and had his passport with him.

168. The Government submitted that Kazbek Vakhayev had been detained as a person of no fixed residence. After his identity was established, he had been released. The Government also pointed out that the applicants had never lodged any complaints concerning Kazbek Vakhayev's detention before the domestic courts. They concluded that there had been no violation of Article 5 of the Convention in respect of Kazbek Vakhayev's detention.

169. Inasmuch as the Government may be understood to raise the plea of non-exhaustion with respect to the present complaint on account of the applicants' failure to challenge the lawfulness of Kazbek Vakhayev's detention before a court, the Court reiterates that, under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII, and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). However, in their submissions prior to the Court's decision as to the admissibility of the present application the Government did not raise this argument. There are no exceptional circumstances which would have absolved the Government from the obligation to raise their preliminary objection before the adoption of that decision. Consequently, the Government are estopped from raising a preliminary objection of non-exhaustion of domestic remedies in this respect at the present stage of the proceedings.

170. 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).

171. The Court has found it established that Kazbek Vakhayev was apprehended by State servicemen on 1 August 2000 and has not been seen

since. According to the detailed account of the circumstances provided by the applicants, he was apprehended at his home. This was not disputed by the Government, who provided no alternative account of the relevant circumstances. However, they submitted that he had been arrested on 1 August 2000 and detained until 11 August 2000 on the basis of Presidential Decree of 2 November 1993 no. 1815 on Measures for the Prevention of Vagrancy and Mendicancy.

172. In view of the Government's reference to Kazbek Vakhayev's detention within the legal framework relating to the prevention of vagrancy, the Court will first proceed to examine whether his detention in the relevant period can be considered to fall within the scope of Article 5 § 1 (e).

173. In the first place, the Court harbours doubts as to whether the Decree in question could in principle constitute a legal basis for Kazbek Vakhayev's detention, since it does not provide grounds for detention, but establishes time-limits for placement in rehabilitation institutions.

174. Secondly, given that it is not disputed by the parties that Kazbek Vakhayev was apprehended at his home, the Court finds it difficult to accept that the Decree could have been applicable in the present circumstances, and that the detention could therefore have fallen within the scope of Article 5 § 1 (e), since it is far from clear how a person can be arrested for vagrancy at his own home.

175. Finally, even assuming that the Decree could have been applied in the present case and constituted a legal basis for Kazbek Vakhayev's detention, the Government have failed to submit to the Court a prosecutor's order for his detention which, according to section 3 of the Decree, was a prerequisite for placement in a rehabilitation centre. Thus, Kazbek Vakhayev's detention from 1 to 11 August 2000 was not in conformity with either the domestic law or with Article 5 § 1 (e) of the Convention (*Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, § 115, 21 June 2007).

176. As regards the subsequent period, although the Government alleged that Kazbek Vakhayev was released on 11 August 2000, they provided no proof to this effect, such as extracts from the detention facility register. Moreover, the Government's submissions are not consistent with the interim findings of the domestic investigation, according to which he had been released on 14 August 2000. However, no proof of his release on that date has been provided to the Court either, having regard to which the Court has already found in paragraph 135 above that Kazbek Vakhayev remained in continued detention under State control from 1 August 2000 onwards.

177. Therefore, Kazbek Vakhayev's ensuing 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).

178. 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 family member 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.

179. Consequently, the Court finds that from 1 August 2000 Kazbek Vakhayev was held in arbitrary detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

180. 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.”

181. The applicants argued that the possible effectiveness of domestic remedies had been undermined by the authorities' failure to conduct an effective investigation into Kazbek Vakhayev's disappearance.

182. The Government contended that the applicant had had effective domestic remedies, as required by Article 13 of the Convention. In particular, she could have appealed to a court against the actions or omissions of investigating authorities.

183. 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. 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 and infliction of treatment contrary to Article 3, 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, §§ 161-162, ECHR 2002-IV, and *Süheylya 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 v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

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

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

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

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

VI. OBSERVANCE OF ARTICLE 38 § 1 (a) OF THE CONVENTION

188. The applicants argued that the Government's failure to submit the documents requested by the Court at the communication stage disclosed a failure to comply with their obligations under Article 38 § 1 (a) of the Convention, the relevant part of which provides:

“1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

...”

189. The applicants invited the Court to conclude that the Government's refusal to submit a copy of the entire investigation file in response to the Court's requests was incompatible with their obligations under Article 38 of the Convention.

190. The Government reiterated that the submission of the case file would be contrary to Article 161 of the Code of Criminal Procedure.

191. The Court reiterates that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications.

192. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their possession without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention. In a case where the application raises issues as to the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrıkuş v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

193. The Court notes that despite its repeated requests for a copy of the investigation file opened into the disappearance of the applicants' relative, the Government refused to produce such a copy, relying on Article 161 of the Code of Criminal Procedure, having provided only copies of decisions to suspend and resume the investigation and to grant victim status and of courts decisions concerning the first applicant's complaints. The Court observes that in previous cases it has already found this reference insufficient to justify refusal (see, among other authorities, *Imakayeva*, cited above, § 123).

194. Referring to the importance of a respondent Government's cooperation in Convention proceedings, and mindful of the difficulties associated with the establishment of facts in cases of such a nature, the

Court finds that the Government fell short of their obligations under Article 38 § 1 of the Convention on account of their failure to submit copies of the documents requested in respect of the disappearance of Kazbek Vakhayev.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

195. Article 41 of the Convention provides:

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

A. Pecuniary damage

196. The second to seventh applicants claimed that they had sustained damage in respect of the loss of financial support from their family member following his detention and subsequent disappearance. They claimed a total of 1,034,551 roubles (RUB) under this head (approximately 23,000 euros (EUR)).

197. The applicants claimed that Kazbek Vakhayev worked as a furniture maker before his detention. They provided a certificate issued by the Urus-Martan Administration on 27 January 2004, stating that until Kazbek Vakhayev's death the second to seventh applicants had been his dependents. The applicants further submitted that, since they were unable to obtain documents to corroborate the amount of Kazbek Vakhayev's earnings, they would refer to provisions of the Civil Code on the calculation of lost earnings, to the effect that the earnings of an unemployed person should be equalled to the usual amount of remuneration of a person with similar qualifications and could not be based on an amount smaller than the subsistence level determined by federal laws. The second to seventh applicants submitted that they would have benefited from Kazbek Vakhayev's financial support in the amount indicated above, taking into account an average inflation rate of 12 %, that is, 14.3 % of his earnings in respect of each of them.

198. The Government regarded these claims as based on suppositions and unfounded.

199. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

200. 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. 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' family member and the loss by the applicants of the financial support which he could have provided. The Court further finds that it is reasonable to assume that Kazbek Vakhayev would eventually have had some earnings from which the applicants would have benefited (see, among other authorities, *Imakayeva* cited above, § 213). Having regard to the applicants' submissions and, in particular, the fact that they failed to corroborate the amount of his earnings, the Court awards EUR 7,000 to the second to seventh applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

201. The applicants claimed EUR 210,000 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 him and the failure to provide any information about his fate.

202. The Government found the amounts claimed to be exaggerated.

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

C. Costs and expenses

204. The applicants also claimed EUR 8,363 and 1,482 roubles (RUB) for the costs and expenses incurred in the domestic proceedings and before the Court. They submitted a copy of the contract with their representative and an itemised schedule of costs and expenses, which included interviews with the applicants and the drafting of complaints to the domestic courts and legal documents submitted to the Court at a rate of EUR 50 per hour. They also submitted an invoice for translation expenses for the amount of EUR 632 and postal invoices for the amount of RUB 1,482. The applicants also claimed EUR 506 on account of administrative expenses.

205. The Government disputed the reasonableness and the justification of the amounts claimed under this head. They also objected to the

representative's request to transfer the award for legal representation directly into his account.

206. The Court may make an award in respect of costs and expenses in so far as they were actually and necessarily incurred and were reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V, and *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

207. Having regard to the details of the contract between the applicants and their representative and the information submitted, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representative. Further, the Court notes that this case was rather complex and required a certain amount of research and preparation. Accordingly, it accepts that the costs and expenses incurred for legal representation were necessary.

208. Furthermore, the Court notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicant's representatives' accounts (see, for example, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII, and *Imakayeva*, cited above).

209. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 8,400, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representative's bank account, as identified by the applicants.

D. Default interest

210. 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 preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of Kazbek Vakhayev;
3. *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 Kazbek Vakhayev disappeared;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants' mental suffering;
5. *Holds* that there has been a violation of Article 5 of the Convention in respect of Kazbek Vakhayev;
6. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
7. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Articles 3 and 5 of the Convention;
8. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
9. *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:
 - (i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, to the second to seventh applicants in respect of pecuniary damage;
 - (ii) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, to the applicants jointly in respect of non-pecuniary damage;
 - (iii) EUR 7,550 (seven thousand five hundred and fifty euros), plus any tax that may be chargeable, in respect of costs and expenses, to be paid into the representative's bank account;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President