



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

1959 · 50 · 2009

FIRST SECTION

CASE OF KHANTIYEVA AND OTHERS v. RUSSIA

(Application no. 43398/06)

JUDGMENT

STRASBOURG

29 October 2009

FINAL

10/05/2010

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 Khantiyeva 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,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

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. 43398/06) 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 four Russian nationals, listed in paragraph 5 below (“the applicants”), on 18 October 2006.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in 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 16 June 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application, and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- 1) Ms Ayna Khantiyeva, born in 1951;
- 2) Mr Alaudin Khantiyev, born in 1940;
- 3) Ms Kulsum Baysultanova, born in 1972, and
- 4) Mr Adam Khantiyev, born in 1991.

The applicants live in Grozny, in the Chechen Republic.

6. The first and second applicants are the parents of Mr Mayrudin Khantiyev, born in 1972. The third and fourth applicants are Mayrudin Khatntiyev's wife and son.

A. The background to the case

7. According to a certificate issued on 12 March 2002 by the head of the Grozny SIZO-I remand prison, from 1998 to 1999 Mayrudin Khantiyev was employed as a junior inspector in the security department of that facility; he left his job in 1999 because of the hostilities. According to the applicants, Mayrudin Khantiyev subsequently worked as a mechanic and then as a construction worker on the construction site of a school.

8. In December 2000 the city of Grozny was under curfew. The applicants and Mayrudin Khantiyev lived in the same five-storey block of flats at no. 269 Ugolnaya Street in Grozny ("house no. 269"). The flat of Mayrudin Khantiyev's family was on the ground floor; his parents' flat was on the first floor. Two guard posts of the Russian military forces were stationed on the roof of house no. 269 on a permanent basis, the soldiers having constructed a shelter there. The building was situated about fifty metres from the military commander's office of the Staropromyslovskiy district (the district military commander's office) and its checkpoint. Two further checkpoints were located in the vicinity of the applicants' building. One of them, called "Katayama" (*"Катаяма"*), was located about 500 metres away; the other one, called "Zagryazhskiy" (*"Загрязжский"*) was about 1.5 km away from the applicants' building.

B. Abduction of Mayrudin Khantiyev

1. The applicants' account

(i) The events of 4 December 2000 as described by the applicants

9. On 4 December 2000 the applicants and Mayrudin Khantiyev were sleeping in their respective flats at the above address. At about 6.15 a.m., during curfew, the third applicant was woken up by a noise at the entrance door. She approached the door and noticed the light of a torch. She saw that the door was being forced from the outside. The third applicant called Mayrudin Khantiyev and they tried to hold the door from the inside. After a while the door lock was broken and a group of about five armed men in dark-green camouflage uniforms and masks burst into the flat. The intruders were speaking Russian. They neither identified themselves nor produced any documents. The third applicant inferred that they were servicemen.

10. The servicemen immediately grabbed the third applicant and Mayrudin Khantiyev and took them into one room. The third applicant asked one of the intruders what they were looking for. She did not receive any response to her question and was ordered to stay quiet. She heard the servicemen tying up her husband with adhesive tape; he could not say anything as apparently his mouth was covered with the tape. Having tied up Mayrudin Khantiyev, who was barefoot and in his underwear, the servicemen dragged him outside through the balcony and put him into a new white Niva vehicle with blackened windows and without licence plates, parked near the third applicant's balcony. While the servicemen were leaving the flat with Mayrudin Khantiyev the third applicant started screaming for help. Meanwhile the men got into the car and it started driving away in the direction of the 36th district (*36-й район*) of Grozny.

11. The third applicant ran outside calling for help, and saw the car drive away in the above direction. At that moment the first applicant and several neighbours ran outside. The applicants immediately asked the servicemen on the roof for help. The first applicant shouted to them that the men in the white car, which was still visible on the road, had abducted her son. Servicemen on one of the guard posts on the roof did not react to the first applicant's calls for help. Soldiers at the other guard post ordered the applicants to stay quiet and to return home as it was curfew.

12. According to the first applicant's statement to her representatives, she reached Mayrudin Khantiyev's flat while the armed masked men were still inside it. They would not let her inside.

13. One of the applicants' neighbours, the former head of a local department of the interior, also went outside and heard the applicants ask for help. He told the first applicant to get into his car and they drove to the Russian federal forces checkpoint located about 1.5 km away. At the

checkpoint the first applicant told the soldiers that her son had been abducted by men in the white VAZ-2121 car and asked whether that car had passed the checkpoint. The soldiers told her that they did not know anything and threatened to kill the first applicant and her neighbour if they did not return home.

14. On the same day the second applicant went to the district military commander's office. He complained to the military commander that Mayrudin Khantiyev had been abducted. The second applicant pointed out that the servicemen on the roof must have seen the abductors and the direction in which they had taken his son away and that they had not done anything. The commander responded that the soldiers had not seen anything as they had been asleep.

15. The above account of the events is based on the application form of 20 October 2006, the applicants' statements to their representatives dated 19 October 2006 and two hand-drawn maps of the applicants' block of flats in Grozny.

(ii) Statements by witnesses

16. The applicants produced undated statements from the residents of house no. 269 in support of their account of the events of 4 December 2000.

17. In their statements Ms V., Ms P., Mr Da. and Ms S. submitted that at about 6.15 a.m. they had been woken up by noise and screaming coming from the courtyard. Ms V. and Ms P. had looked out of their windows and Mr Da. and Ms S. had gone outside. They had all seen a white NIVA vehicle drive off and the first and third applicants run after it screaming. Ms P. specifically pointed out that at the relevant time servicemen of the district military commander's office had been stationed on the roof of the house.

18. In their statements Ms B. and Mr U. submitted that at about 6 a.m., during curfew hours, they had been woken up by the screams and weeping of women and children. Ms B. and Mr U. had got to the staircase and had seen the door of Mayrudin Khantiyev's flat broken and a white NIVA vehicle with blackened windows and without licence plates. Mayrudin Khantiyev, who was only in his underwear, had been forced into the vehicle and taken away.

19. In his statement Mr Du. submitted that at about 6 a.m. on 4 December 2000 he had been woken up by the screaming of women and crying of children. He had got outside and had seen several servicemen who were wearing masks. Mr Du. had wanted to ask them what was going on but was afraid. Two servicemen had taken Mayrudin Khantiyev to a white NIVA vehicle with blackened windows and without licence plates.

2. Information submitted by the Government

20. The Government submitted that on 4 December 2000 unidentified armed persons had kidnapped Mayrudin Khantiyev and had taken him away to an unknown destination.

C. The search for Mayrudin Khantiyev and the investigation

1. The applicants' account

21. Between 4 and 19 December 2000 the applicants complained about their relative's abduction to a number of local law enforcement agencies, including the department of the interior of the Staropromyslovskiy district (the ROVD), the local prosecutor's office and the military commander's office of the Staropromyslovskiy district (the district military commander's office). The applicants did not retain copies of their complaints.

22. On 20 December 2000 the applicants complained about the abduction of Mayrudin Khantiyev to the Grozny military commander's office. In their complaint they provided a detailed description of the circumstances of their relative's abduction. In particular, they stated that Mayrudin Khantiyev had been abducted at 6.15 a.m., during curfew, by armed men in camouflage uniforms who had tied him up and taken him away to an unknown destination. The applicants stated that immediately after the abduction, on the morning of 4 December 2000, they had complained about it to the military commander of the Staropromyslovskiy district, Mr Z.; the latter had denied knowing anything about the abduction and had refused to assist the applicants. In their complaint the applicants also submitted that they had previously applied in writing to the prosecutor's office, the ROVD and other authorities but that their complaints had not produced any results.

23. On 27 December 2000 the Grozny town prosecutor's office (the town prosecutor's office) instituted an investigation into the abduction of Mayrudin Khantiyev under Article 126 § 1 of the Criminal Code (kidnapping). The case file was given the number 12368. The decision stated that, having examined the materials of the inquiry opened following the third applicant's complaint, the town prosecutor's office had established that on 4 December 2000 at about 6.10 a.m. unidentified persons in masks and camouflage uniforms had abducted Mayrudin Khantiyev from his flat and taken him to an unknown destination.

24. On 4 January 2001 the town prosecutor's office forwarded the first applicant's request for assistance in the search for her son to the ROVD for examination.

25. On 18 January 2001 the town prosecutor's office issued the applicants with a statement concerning the investigation into the abduction

of Mayrudin Khantiyev. The document stated that on an unspecified date they had suspended the investigation in the criminal case for failure to establish the identity of the perpetrators.

26. On 20 January 2001 the town prosecutor's office granted the third applicant victim status in criminal case no. 12368.

27. On 9 February 2001 the prosecutor's office of the Chechen Republic (the republican prosecutor's office) forwarded the applicants' complaint about the abduction of Mayrudin Khantiyev to the town prosecutor's office for examination and instructed the latter to consider whether an investigation into that incident should be opened.

28. On 1 April 2001 the republican prosecutor's office forwarded the first applicant's complaint about her son's abduction by armed masked men in camouflage uniforms to the town prosecutor's office for examination.

29. On 27 July 2001 the town prosecutor's office replied to the third applicant's query and informed her that the investigation in criminal case no. 12368 was under way.

30. On 31 July 2001 the town prosecutor's office replied to the first applicant that they had examined her complaint about her son's abduction and that criminal case no. 12368 had been forwarded to the republican prosecutor's office for examination.

31. On 7 August 2001 the republican prosecutor's office informed the first applicant that they had examined the investigation file in criminal case no. 12368 and had issued unspecified instructions aimed at identifying the perpetrators.

32. On 8 August 2001 the republican prosecutor's office forwarded the first applicant's request for assistance in the search for her son to the town prosecutor's office.

33. On 21 August 2001 the Prosecutor General's office of the Russian Federation informed the first applicant that her complaint about her son's abduction had been forwarded to the republican prosecutor's office.

34. On 25 August 2001 the town prosecutor's office granted the first applicant victim status in connection with the proceedings in case no. 12368.

35. On 9 September 2001 the republican prosecutor's office forwarded the first applicant's request for assistance in the search for her son to the town prosecutor's office.

36. It appears that on 12 or 18 September 2001 the town prosecutor's office suspended the investigation in criminal case no. 12368 for failure to establish the perpetrators. There is no indication that applicants were informed about that decision.

37. On an unspecified date in September 2001 the first applicant wrote to the Prosecutor General of the Russian Federation. She complained about her son's abduction by armed men in camouflage uniforms who had arrived on the white VAZ-2121 car. In her letter she pointed out that at the time of

the abduction a number of Russian military servicemen had been stationed on the roof of the house; that the abductors had freely driven away in spite of the curfew and the presence of the soldiers on the roof. The applicant stated that her numerous complaints to various state authorities, including the ROVD, the military commander's office and the prosecutor's office, had failed to produce any results. She also complained that the investigating authorities had failed to inform her about the reasons for the suspension of the investigation in criminal case no. 12368. Lastly, the first applicant requested assistance in the search for her son.

38. On 28 January 2002 the town prosecutor's office informed the applicants that on 18 September 2001 they had suspended the investigation in criminal case no. 12368 owing to the failure to establish the perpetrators and that there were no reasons for that decision to be set aside.

39. On an unspecified date in 2002 the first applicant wrote to the military prosecutor's office of the United Group Alignment (the UGA military prosecutor's office). She described the circumstances of her son's abduction and stated that her numerous complaints to various law enforcement bodies had failed to produce any results. She also complained about the lack of information concerning the investigation in criminal case no. 12368.

40. On 16 May 2002 Human Rights Watch wrote on behalf of the applicants to the Prosecutor General. The letter provided, among other things, a detailed description of the circumstances of Mayrudin Khantiyev's abduction and requested the authorities to resume the criminal investigation into his kidnapping.

41. On 23 July 2002 the first applicant wrote to the prosecutor of the Chechen Republic. She complained about her son's abduction by armed men in camouflage uniforms and stated that her numerous requests for assistance in the search for Mayrudin Khantiyev had failed to produce any results.

42. On 3 October 2002 the prosecutor of the Chechen Republic replied to Human Rights Watch. The letter stated that the authorities had been undertaking unspecified measures to establish the whereabouts of the applicants' relative.

43. It appears that at some point in 2003 the investigation in criminal case no. 12368 was transferred from the town prosecutor's office to the Staropromyslovskiy district prosecutor's office ("the district prosecutor's office"). There is no indication that applicants were informed about it.

44. On 17 May 2003 the UGA military prosecutor's office forwarded the first applicant's request for assistance in the search for her son to the military prosecutor's office of military unit no. 20102 for examination.

45. On 21 May 2003 the district prosecutor's office informed the first applicant that they had examined her complaint. The letter stated that on 12 September 2001 the town prosecutor's office had suspended the investigation in criminal case no. 12368 owing to the failure to identify the

perpetrators and that the search for Mayrudin Khantiyev had been entrusted to the ROVD.

46. On 16 June 2003 the republican prosecutor's office informed the first applicant that it had examined case file no. 12368 opened into the abduction of Mayrudin Khantiyev on 4 December 2000 at about 6.10 a.m. by unidentified persons. The first applicant was informed that on 16 June 2003 the republican prosecutor's office had set aside the decision of 12 September 2001 to suspend the investigation in criminal case no. 12368. The district prosecutor's office had been given unspecified instructions and would inform the applicants about the progress in the criminal investigation.

47. On 26 June 2003 the ROVD informed the first applicant that they had been conducting operational and search measures aimed at establishing Mayrudin Khantiyev's whereabouts and identifying the perpetrators. However, those measures had failed to produce any results.

48. On 15 June 2004 the UGA military prosecutor's office forwarded the first applicant's request for assistance in the search for her son to the military prosecutor's office of military unit no. 20102 for examination. They informed the first applicant by a letter of 17 July 2004 that the examination of her complaint about her son's abduction had not established any implication of the Russian military forces in the crime.

49. On 29 July 2004 the district prosecutor's office provided the first applicant with a certificate to the effect that on 4 December 2000 Mayrudin Khantiyev had been abducted from his flat in Grozny; that a criminal case had been opened into his abduction and that his whereabouts had not been established.

50. On 24 August 2005 the ROVD provided the third applicant with a statement concerning the investigation into her husband's abduction. The document stated that on 1 January 2003 they had opened an operational and search file no. 043064 in that connection, but the whereabouts of the applicant's husband had not been established.

51. On 18 April 2006 the first applicant complained to the district prosecutor's office about the lack of information concerning the investigation into her son's abduction and requested the authorities to inform her about the progress of the investigation in criminal case no. 12368.

52. It appears that on 21 April 2006 the district prosecutor's office replied to the first applicant that on an unspecified date they had suspended the investigation in criminal case no. 12368 for failure to identify the perpetrators.

53. On 27 October 2006 the first applicant wrote to the prosecutor of the Staropromyslovskiy district, seeking information on the progress of the investigation.

54. On 30 October 2006 the prosecutor of the Staropromyslovskiy district replied to the first applicant that on 24 May 2006 the investigation in

case no. 12368 had been suspended. However, on an unspecified date that decision was set aside and the investigation resumed.

2. Information submitted by the Government

55. On 5 December 2000 unspecified authorities inspected the third applicant's flat. The inspection established that the door lock was damaged and that several pieces of stucco were missing from the doorway. No objects were seized from the crime scene and no photographs were taken.

56. On 17 December 2000 the ROVD forwarded the third applicant's complaint about the abduction of her husband to the prosecutor's office of the Shalinskiy District, which transmitted it on an unspecified date to the town prosecutor's office.

57. On 27 December 2000 the town prosecutor's office instituted an investigation into the abduction of Mayrudin Khantiyev under Article 126 § 1 of the Criminal Code (kidnapping). The case was assigned the number 12368.

58. On 20 January 2001 the third applicant was granted victim status in connection with the proceedings in case no. 12368 and questioned. She submitted that she had been living in the same flat as her husband Mayrudin Khantiyev and their two children. On the night of 4 December 2000 she had been woken up by a noise coming from the entrance door. Four armed men in camouflage uniforms and masks had burst into the flat and tied her husband up with adhesive tape. From their conversation she had understood that they were not Russian. They had told her that they would question her husband and then release him after which they had taken him outside. The third applicant then saw a white Niva vehicle without licence plates drive away from the house. Having heard the third applicant's calls for help, several neighbours and her mother-in-law who resided in the same block of flats had come outside. The servicemen who had been on duty on the roof of the house that morning had been observing the incident from the roof. Mayrudin Khantiyev's parents had complained about his abduction to the ROVD and the local military commander's office.

59. On 20 January 2001 the investigators questioned the first applicant as a witness. She submitted that on 4 December 2000 she had been woken up by the third applicant's calls for help. When she rushed outside, the first applicant learnt that unidentified men had abducted her son. The neighbours who had gathered outside had shown the first applicant the Niva vehicle which at that moment was about 150-200 metres away from them and was moving in the direction of the motorway. The first applicant shouted to the servicemen on the roof, asking them for help. In response they requested her to be quiet because the curfew was not over yet. The first applicant then went to the "Zagryazheskiy" and "Neftyanik" checkpoints. She was told there that no NIVA vehicle had passed through those checkpoints. Mayrudin Khantiyev had not participated in illegal armed groups and had

not been implicated in any illegal activities. The first applicant did not suspect any particular person of having abducted her son.

60. On an unspecified date the investigators questioned the second applicant as a witness. He submitted that he had not witnessed his son's abduction. He had learnt from his wife and the third applicant that his son had been abducted on 4 December 2000 by four unidentified persons who had arrived in a white NIVA vehicle with blackened windows. After the abduction the second applicant had asked Mr S., a former police officer, for assistance in the search for Mayrudin Khantiyev. Mr S. had contacted several checkpoints but had been told that no white NIVA vehicle had passed through those checkpoints.

61. On an unspecified date the investigators questioned Mr Z., who had held at the time of the incident the post of military commander of the Staropromyslovskiy district. He submitted that on 4 December 2000 he had learnt from the residents of house no. 269 at Ugolnaya Street that unidentified persons had taken Mayrudin Khantiyev to an unknown destination. At the relevant time the area had been under curfew from 8 p.m. to 6 a.m. and a watch post of servicemen of the military commander's office had been stationed on the roof of house no. 269. On the same day Mr Z. had been contacted by Mr S., the former head of the Staropromyslovskiy ROVD, who had enquired whether Mr Z. had any information about the abduction of Mayrudin Khantiyev. Mr Z. replied that he did not know anything about it. Some servicemen had told Mr Z. that they had seen a white NIVA vehicle but that they had not seen anyone being taken away.

62. On an unspecified date the investigators questioned Mr K., who had been the acting military commander of the Staropromyslovskiy district since 19 December 2000. He submitted that he had not known anything about the abduction of Mayrudin Khantiyev. The names of the servicemen who had been on duty on 4 December 2000 on the roof of house no. 269 could have been obtained from the duty log [*постовая ведомость*]. The task of the servicemen stationed on the roof had been to secure compliance with the curfew, that is to survey the adjacent premises within their sight, including all pedestrians and vehicles. They had to notify an on-duty officer of the district military commander's office of any breach of curfew. In the event of a special operation the on-duty officer was informed about it. He was then to inform the unit on the roof that at a specific time a specific vehicle would arrive at a specific place. If the unit on the roof had not seen the Niva vehicle this could have been either because of negligence on the part of the servicemen or because there had been no special operations. If the unit on the roof had been informed about a special operation there would have been a record to that effect.

63. On an unspecified date Mr K. was again questioned as a witness. He submitted that in December 2000 he had occupied the post of executing officer of the district military commander's office. On the day of Mayrudin

Khantiyev's abduction he had been on leave. No special operations had been carried out on that day. Had there been a special operation, Mr K. would have been notified about it.

64. On an unspecified date the investigators questioned as a witness Mr Ut., a serviceman of the district military commander's office. Mr Ut. stated that on 4 December 2000 he and other servicemen of the district military commander's office had been on duty on the roof of house no. 269 at Ugolnaya Street in Grozny. House no. 269 was located near the district military commander's office. On the night of 4 December 2000 everything had been calm and nothing had attracted Mr Ut.'s attention. He had not seen a NIVA vehicle arrive at house no. 269. At about 6 a.m. he had seen a group of civilians who were shouting something. He had had a permanent connection to the district military commander's office via military communication channels but on that morning he had not communicated with them. No one had mentioned a NIVA vehicle to him. He had learnt about the abduction of Mayrudin Khantiyev from the residents of the house in the morning. He had not heard any calls for help. On 18 December 2001 he had been summoned to the military commander's office where he had met the first applicant. She had accused him of not telling the truth about the abduction of her son and he had answered that he had told the investigators everything he knew. Mr Ut. had known Mayrudin Khantiyev only by his face. He had heard from someone that Mayrudin Khantiyev had been taking drugs.

65. On an unspecified date the investigators questioned Mr P. as a witness. He stated that he had been serving in the mine unit of the commander's squadron with the district military commander's office since June 2000. His unit duty was to secure compliance with the curfew and to provide fire support to the adjacent checkpoints in case of necessity. On the night of 4 December 2000 Mr P. had taken up his duties together with Mr Ut. and Mr Dug. Mr P. could not remember the names of the other servicemen on duty that night. At about 6.15 a.m. he had heard people speaking Chechen in the courtyard of the house. At about 9 a.m. he had learnt that Mayrudin Khantiyev had been abducted from house no. 269. The eyewitnesses to the incident and relatives of the abducted had submitted that a vehicle had arrived at the house. Mr P.'s duty hours had finished at 6 a.m. At about that time he had gone to the shelter where other servicemen were resting in order to wake up Mr Ut. The latter and Mr P. were absent for about ten minutes and did not hear a vehicle arriving. If it had indeed arrived at the house, servicemen from the second watch point located on the roof of house no. 269 would have noticed it. Mr P. had not known Mayrudin Khantiyev personally and had not had communicated with him.

66. On an unspecified date the investigators requested the FSB Department of the Chechen Republic to provide information on Mayrudin Khantiyev's eventual implication in illegal armed groups. From the reply of

that authority it followed that Mayrudin Khantiyev had been a member of an organised criminal group that had been trading in arms and ammunition, including their acquisition in exchange for drugs.

67. On an unspecified date the investigators questioned Ms V., a neighbour of the abducted, as a witness. She stated that on 4 December 2000 she had heard from the street a woman's cry for help. Ms V. had learnt from other neighbours that Mayrudin Khantiyev had been abducted. At that time servicemen of the military commander's office had been on duty on the roof the house. The first applicant had started shouting at them, asking them what they had been doing during the abduction. The servicemen had asked the first applicant what had occurred. When she had explained to them that Mayrudin Khantiyev had been abducted, they had got out of sight. They had not subsequently showed up and had not spoken to the crowd gathered in the courtyard.

68. On an unspecified date the investigators questioned a certain Mr M. as a witness. He stated that he had known Mayrudin Khantiyev since childhood. In the summer of 2000 they had started taking drugs together. Subsequently, Mayrudin Khantiyev had started dealing in drugs. Mayrudin Khantiyev had had close connections with the servicemen of the district military commander's office. In November 2000 Mr M. had stopped taking drugs and seeing Mayrudin Khantiyev. The latter had not had any debts or enemies.

69. On 1 February 2001 the investigators sought from the military prosecutor of military unit no. 20102 information on Mayrudin Khantiyev's eventual arrest. However, no relevant information was received from that authority. The investigators also requested remand prisons IZ-20/2 in Chernokozovo and IZ-20/2 in Grozny to provide information on Mayrudin Khantiyev's eventual placement in custody or detention in those facilities. It followed from the replies of those bodies that they did not have information of interest to the investigation. The investigators also instructed unspecified authorities of the Chechen Republic to verify unidentified corpses of persons with features similar to those of Mayrudin Khantiyev; to furnish information on his eventual criminal prosecution or on any special operations aimed at arresting him. No relevant information was received as a result of those requests.

70. On 20 June 2003 unspecified authorities had severed the materials concerning Mayrudin Khantiyev's implication in drug trafficking from case file no. 12368 and transferred them to the ROVD.

71. The investigation in case no. 12368 had been repeatedly suspended for failure to identify those responsible and then resumed. It had not established the implication of Russian servicemen in the abduction of Mayrudin Khantiyev. The investigation in case no. 12368 was pending.

72. Despite specific requests by the Court, the Government refused to furnish any copies from the investigation file in case no. 12368. They

claimed that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning witnesses and other participants in the criminal proceedings.

D. Judicial proceedings against the investigators

73. On an unspecified date in 2007 the first applicant lodged a complaint with the Staropromyslovskiy District Court of the Chechen Republic (the District Court). She submitted, among other things, that the investigators in case no. 12368 were taking no action to elucidate Mayrudin Khantiyev's abduction and that they had repeatedly failed to provide her with information about the progress in the investigation.

74. On 4 April 2007 the District Court dismissed the first applicant's complaint. It noted that the investigation had been suspended on numerous occasions for failure to identify the perpetrators and then resumed, and noted that the latest decision to suspend was dated 12 March 2007. The court further held that the investigators had carried out a considerable number of unspecified investigative measures and noted that the first applicant and her lawyer had not previously sought access to the case file. There is no indication that the first applicant challenged the decision on appeal.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

76. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Mayrudin Khantiyev had not yet been completed. They further argued that it had been open to the applicants

to challenge in court any acts or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of that remedy. They also pointed out that the applicants had not lodged a claim for compensation of non-pecuniary damage under Articles 1069-70 of the Civil Code.

77. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. Referring to the other cases concerning such crimes reviewed by the Court, they also alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in Chechnya rendered any potentially effective remedies inadequate and illusory in their case. With reference to the Court's practice, they argued that they were not obliged to apply to civil courts in order to exhaust domestic remedies.

B. The Court's assessment

78. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73-74, 12 October 2006).

79. 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.

80. As regards a civil action to obtain redress for damage sustained through illegal acts or unlawful conduct on the part of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

81. As regards criminal law remedies, the Court observes that the applicants complained to the law-enforcement authorities immediately after the abduction of Mayrudin Khantiyev and that an investigation has been pending since 27 December 2000. The applicants and the Government dispute the effectiveness of this investigation.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

83. The applicants complained under Article 2 of the Convention that their relative had disappeared after being detained by State agents and that the authorities had not taken any measures to prevent his abduction. They also complained that the investigation into his disappearance had not been effective. Article 2 reads:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. The parties' submissions

1. Submissions by the Government

84. The Government submitted that there was no evidence that the applicants' relative had been abducted by Russian servicemen or that he was not alive. The domestic investigation had not established that the security forces had carried out any special operations on 4 December 2000 aimed at arresting Mayrudin Khantiyev. None of the applicants had submitted in the course of the investigation that their relative's abductors belonged to any specific service of the Russian army. In particular, the third applicant had claimed that the abductors had had no insignia, had not addressed each others by rank or name and that she had inferred that they were not Russians. In her statement to representatives of the SRJI the first applicant had submitted that the abductors had worn camouflage uniforms and masks and had been armed with sub-machine guns. However, according to the third applicant, the first applicant had come outside already after Mayrudin Khantiyev had been put into the NIVA vehicle and the abductors had left, taking him away. Hence, she could not have seen them. In fact, only the third applicant had witnessed the abduction. Other persons, including the first applicant, had gone outside later and had only seen the NIVA vehicle driving off and the first and third applicants running after it. In any event, the fact that Mayrudin Khantiyev's abductors were wearing camouflage

uniforms and masks and were armed was not sufficient to conclude that they were State agents. The Government further stressed that members of illegal armed groups had often passed themselves off as servicemen or members of law-enforcement bodies by wearing camouflage uniforms, carrying arms and passing unimpeded through federal forces checkpoints.

85. The applicants' allegation that their relative could not have been abducted without the connivance of State authorities because the soldiers on the roof and on the checkpoints had not reacted to the abduction was unfounded. Mr Ut. and Mr P. submitted that they had not seen the Niva vehicle, had not heard it arrive and had learnt about the abduction later. Furthermore, while being questioned by investigators, the second applicant submitted that when Mr S. had contacted some checkpoints, the latter had been told that no Niva vehicle had passed through those checkpoints.

86. The domestic authorities had promptly opened an investigation into the abduction of Mayrudin Khantiyev and had checked various theses, including his kidnapping by State officials. The investigation had been conducted by an independent body which had sent out numerous requests for information. The third applicant was provided with sufficient information on the progress in the investigation.

2. The applicants' submissions

87. The applicants submitted that it had been proved beyond reasonable doubt that their relative had been abducted by State agents and was to be presumed dead following his unacknowledged detention. They pointed out that soldiers from the district military commander's office had been on the roof during the entire night and that, according to Mr Z., some servicemen had told him they had seen the Niva vehicle. It had not been contested that the applicants had asked the soldiers on the roof for help; that the applicants' block of flats was only fifty metres from the district military commander's office and that several checkpoints were located in the vicinity. In December 2000 only State representatives were allowed to carry weapons and to wear uniforms. If the abductors were rebels and not State agents it was unclear why the soldiers had not tried to stop them. Furthermore, had they been rebels their attack should have entailed a reaction on the part of the authorities but there was no evidence that such a thing had happened.

88. The applicants further argued that their relative should be presumed dead following his unacknowledged detention because he had disappeared in a life-threatening situation and there had been no news of him for over eight years.

89. The authorities had failed to conduct an effective investigation into the disappearance of Mayrudin Khantiyev. Although the authorities had inspected the crime scene on 5 December 2000, they had waited until 27 December 2000 to launch the investigation. The authorities had failed to question all witnesses properly and had done nothing to try to elucidate the

discrepancies in their statements. The investigation has been dragging on for eight years without result and the third applicant was not granted victim status until 20 January 2001. The applicants had not been provided with sufficient information on the progress in the investigation.

B. The Court's assessment

1. Admissibility

90. The Court reiterates, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic criminal remedies should be joined to the merits of the complaint (see paragraph 82 above). The complaint under Article 2 must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Mayrudin Khantiyev

(i) General principles

91. 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

92. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention

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

93. The applicants alleged that on 4 December 2000 Mayrudin Khantiyev had been abducted by Russian servicemen and then disappeared. In support of their submission they produced their own statements describing the events of that day, including the statement of the third applicant who had witnessed the abduction from the beginning, two hand-drawn maps of the applicants' block of flats, and statements by several witnesses (see paragraphs 15-19 above).

94. The Government denied that State agents were involved in the abduction of the applicants' relatives and challenged the applicants' and their witnesses' statements as inconsistent.

95. The Court notes at the outset that despite its requests for a copy of the investigation file into the abduction of Mayrudin Khantiyev, the Government produced no documents from the case file. 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- ... (extracts)). In view of this and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect.

96. The Court further observes that there are indeed several inconsistencies in the applicants' submissions. In particular, whilst the first applicant mentioned in her statement that she had seen the servicemen in Mayrudin Khantiyev's flat, it transpires from the third applicant's statement that the first applicant rushed outside shortly after Mayrudin Khantiyev had been put into the Niva vehicle and it had started taking off. Hence, the Court considers it unlikely that the first applicant could have seen the intruders in Mayrudin Khantiyev's flat. Furthermore, the Court does not find it likely that Ms B. and Mr U. could have seen the Niva vehicle from inside the house when they got to the staircase (see paragraph 18 above).

97. The Court is however not persuaded that the above-mentioned inconsistencies are such as to cast doubt on the overall veracity of the applicants' submissions. Bearing in mind the difficulties for the applicants of obtaining the necessary evidence in support of their allegations and having examined the first to third applicants' statements, their description of the events in the application form, their hand-drawn maps of the applicants' block of flats, importantly, statements by Ms V., Ms P., Mr Da., Ms S. and Mr Du., the Court finds that the applicants have presented an overall coherent and convincing picture of the abduction of their relative by armed men in camouflage uniforms who spoke Russian and had arrived and left on

a white Niva vehicle with blackened windows and without registration plates.

98. Having regard to the considerations mentioned in paragraphs 92-97 above, the Court will thus proceed to examine the crucial elements in the present case that should be taken into account in order to decide whether the applicants' relative's disappearance should be attributed to the State authorities and whether he should be presumed dead.

99. The Court first points out that by January 2000 the Staropromyslovskiy district of Grozny was under the firm control of the authorities (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 39-42, 24 February 2005, and *Goygova v. Russia*, no. 74240/01, § 90, 4 October 2007). It is common ground between the parties that at the material time the city of Grozny was under curfew and that the applicants' house was situated about 50 metres from the district military commander's office which had its own checkpoint (see paragraphs 8 and 64 above). It is likewise undisputed that there were two permanent watch posts of servicemen of the district military commander's office on the roof of the applicants' house and that their task was to secure compliance with the curfew by surveying the adjacent premises and all moving objects, including vehicles and persons, and to provide fire support to the adjacent checkpoints in case of need (see paragraph 62 above). Besides the checkpoint of the district military commander's office there were at least two further checkpoints of the Russian military forces in the vicinity of the applicants' house, one of them being located about 500 metres away and the other – at about 1.5 km away (*ibid.*). Having regard to the above-mentioned considerations and, in particular, to the permanent presence of servicemen on the roof of the applicants' house and the aims of their presence there, the Court is led to conclude that the authorities exercised exclusive control over the area and the premises from which Mayrudin Khantiyev had been abducted.

100. It is further observed that, according to the statement by Mr Z., as summarised by the Government, at the relevant time the area was under curfew from 8 p.m. to 6 a.m. However, the Government did not furnish either Mr Z.'s statement or any other documents in that respect. At the same time the Court cannot overlook that in their complaints to the domestic authorities and written statements the applicants, as well as some of the witnesses to whom they referred, consistently submitted that Mayrudin Khantiyev had been abducted during the curfew (see paragraphs 9, 18 and 22 above). Be that as it may, and even assuming that the abductors were not State agents, as suggested by the Government, and that they had started forcing the third applicant's entrance door at about 6.15 a.m. at the latest, it would mean that their group consisting of several armed men in camouflage uniforms moving in a vehicle without registration plates must have been able to arrive at the applicants' house despite the curfew, past the

checkpoints located in the area and notwithstanding the presence on the roof of the applicants' house of soldiers from the military commander's office stationed there with the specific aim of observing the adjacent premises - a fact which the Court finds hard to accept in the absence of any convincing explanation on the part of the Government.

101. The Court also notes that there are numerous contradictions which cast serious doubts on the veracity of the Government's submission that the soldiers on the roof of the applicants' house had not seen the Niva vehicle arrive at the house and the armed men put Mayrudin Khantiyev into it and leave. First, whilst Mr Ut. claimed that at about 6 a.m. he had been on the roof and had seen a group of persons shouting something, Mr P. submitted that at 6 a.m. he had gone to the shelter to wake Mr Ut. up, that both of them had been absent for about ten minutes and had not heard the sound of the arriving vehicle (see paragraphs 64 and 65 above).

102. Furthermore, although Mr Ut. stated that at about 6 a.m. he had seen a group of persons shouting something in the courtyard, he claimed that he had not heard any cries for help (*ibid.*). More importantly, in the Government's own submission, when being questioned by the investigators, Mr Z. explicitly stated that servicemen from the roof unit had told him they had seen the white Niva vehicle on 4 December 2000 (see paragraph 61 above). In this connection the Court finds it particularly striking that the investigating authorities had not taken any steps to identify the servicemen referred to by Mr Z., notwithstanding Mr K.'s statement that the names of the servicemen on duty on 4 December 2000 could have been easily obtained from the relevant duty log and Mr P.'s submission that servicemen from the second watch post would have noticed the Niva vehicle (see paragraphs 62 and 65 above). In any event, the Government's submission that the servicemen had not heard or seen anything is hardly reconcilable with the fact that numerous neighbours had been woken up by the third and first applicants' shouting and screaming.

103. Having therefore found that the servicemen on the roof were aware of the presence of the vehicle and the fact that Mayrudin Khantiyev was being abducted and even assuming that the related events were advancing very quickly, the Court is particularly struck by the absolute lack of any reaction on the part of the servicemen. Thus, although they had the necessary communication equipment (see paragraph 64 above), it transpires that they made no attempts whatsoever to alert the adjacent checkpoints to be on the lookout for the Niva vehicle (compare *Osmanoğlu v. Turkey*, no. 48804/99, § 80, 24 January 2008). Neither did they come downstairs to verify what had occurred. The Court considers that this blatant passivity of State agents in the face of an abduction of a person in their full view is yet another element which weighs heavily against the Government's submission that State agents were not implicated in Mayrudin Khantiyev's disappearance.

104. The Court also took note of the Government's submission that, according to the FSB Department of the Chechen Republic, Mayrudin Khantiyev was a member of an organised group trading in arms and ammunition, including their acquisition in exchange for drugs (see paragraph 66 above). In view of the fact that the security forces had the above-mentioned information on the applicants' relative and having regard to the nature of that information and the overall situation in the Chechen Republic at the material time, the Court is led to surmise that Mayrudin Khantiyev was, at the very least, closely surveyed by State bodies.

105. Having regard to all elements enunciated in paragraphs 92-104 above, the Court attaches particular weight to the authorities' exclusive control over the area, the lack of any action on the part of the servicemen from the roof unit in the face of the abduction, the Government's failure to furnish a convincing explanation as to how a group of armed men could have arrived at the place of the abduction in a vehicle without registration plates and could have abducted the applicants' relative without any reaction on the part of the servicemen from the roof unit, and also to the Government's unjustified refusal to submit any documents from the investigation case file. On the basis of all those elements taken together the Court finds it established, to the requisite standard of proof, that on 4 December 2000 Mayrudin Khantiyev was abducted by State agents during an unacknowledged security operation.

106. The Court has to decide further whether Mayrudin Khantiyev is to be presumed dead. It notes in this regard that there has been no reliable news of him since 4 December 2000. 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.

107. 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 Mayrudin Khantiyev or of any news of him for over seven years corroborates this assumption.

108. Accordingly, the Court finds it established that on 4 December 2000 Mayrudin Khantiyev was abducted by State servicemen and that he must be presumed dead following his unacknowledged detention.

(iii) *The State's compliance with the substantive obligation under Article 2*

109. 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)).

110. The Court has already found that Mayrudin Khantiyev 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.

111. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in respect of Mayrudin Khantiyev.

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

112. 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).

113. The Court observes at the outset that no documents from the investigation file were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicants and the information about its progress submitted by the Government.

114. Turning to the facts of the present case, the Court notes that on 5 December 2000, following the applicants' complaint, representatives of a

State body, apparently the ROVD, inspected the crime scene. It appears that the ROVD was subsequently in charge of an inquiry into the circumstances of Mayrudin Khantiyev's abduction and then, between 17 and 27 December 2000, transferred the materials of the inquiry to the town prosecutor's office (see paragraphs 23, 55 and 57 above). From the parties' submissions it transpires that the only investigative step taken by the ROVD was the crime scene inspection which was carried out on 5 December 2000 and there is no indication that between 5 and 17 December 2000 the ROVD or any other authority took any further investigative steps. While the town prosecutor's office received the file on 17 December 2000, it took it further ten days to institute the investigation. The Court considers that those delays, for which no explanation was provided, were in itself liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action must be taken promptly.

115. From the Government's submissions it follows that the investigators had carried out various investigative measures. However, beyond simply referring to those measures, the Government mostly 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.

116. In any event, having regard to the investigative measures referred to by the Government, the Court emphasises 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 from the roof unit on duty on 4 December 2000, other than Mr P. and Mr U. As the Court has emphasised above, this omission is particularly striking in view of the evident contradictions between Mr P.'s and Mr U.'s statements and the fact that their fellow servicemen names could have been easily obtained from the relevant duty logs (see paragraph 62 above). In those circumstances it appears even more striking to the Court that the investigators made no attempt to question Mr Dug., another servicemen from the roof unit, whose name Mr P. explicitly mentioned while being questioned by investigators (see paragraph 65 above). It likewise does not transpire from the Government's submissions that the investigators made any attempts to question the residents of house no. 269, except for Ms V. There is no indication that Mr S., the former head of the ROVD who might have had information of relevance to the investigation, was questioned. In the Court's opinion, the above-mentioned omissions seriously undermined the ability of the investigation to establish the circumstances of the abduction of the applicant's relative and to identify those responsible for it.

117. The Court further observes that while the third applicant was promptly granted victim status, it took the town prosecutor's office over

seven months to declare the first applicant a victim in connection with the investigation into the abduction of her son. Moreover, there is no indication that the town or district prosecutor's office ever considered the issue of granting victim status to the second applicant. In any event, it transpires from the documents submitted by the applicants that they were either not informed about important developments in the investigation, such as the decisions to suspend it or to transfer the case file from the town to the district prosecutor's office, or were notified of those developments with a considerable delay (see paragraphs 36-38 and 43 above). 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).

118. It is further noted that the investigation has been pending for over seven years and was suspended and resumed several times, resulting in lengthy periods of inactivity on the part of the investigators.

119. 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 and omissions, has been ongoing for over seven 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 objection in this regard.

120. 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. The Court observes that the applicants did, in fact, make use of that remedy. However, it did not lead to the resumption of the investigation and, in any event, the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures. In this connection the Court specifically emphasises that the first decision to suspend the investigation, issued in January 2001 and referring to the impossibility of identifying the perpetrators, was taken less than a month after the investigation had been launched. It transpires that by the time of that first suspension no measures other than the crime scene inspection had been taken (see paragraph 36 above).

121. The Court observes that the investigation was repeatedly suspended and resumed in the same way, but it appears that no significant investigative measures were taken to identify those responsible for the kidnapping. In such circumstances, the Court considers that the applicants could not be required to challenge in court every single decision of the district prosecutor's office, particularly in view of the lack of information on the developments in the investigation established above. Accordingly, the Court

finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

122. 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 Mayrudin Khantiyev, in breach of Article 2 in its procedural aspect. Accordingly, there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

123. 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

124. The Government submitted that there was no indication that the applicants had been subjected to treatment contrary to Article 3 of the Convention. They also argued that in the absence of evidence of the involvement of State authorities in the disappearance of Mayrudin Khantiyev, there was no causal link between the applicants' alleged suffering and the actions of representatives of the State.

125. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

126. The Court notes that this complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

127. 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).

128. In the present case the Court notes that the first and second applicants are the parents of Mayrudin Khantiyev and the third and fourth applicants are his wife and son. The third and first applicants were witnesses to the abduction of their close relative. The first to third applicants were involved in the search for Mayrudin Khantiyev. The Court considers that although the fourth applicant could not have been expected to communicate with the authorities owing to his young age, he was also adversely affected by the fact of his father's disappearance. The applicants have had no news of Mayrudin Khantiyev for over seven years. Throughout this period they 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.

129. In view of the above, the Court finds that the applicants suffered distress and anguish as a result of the disappearance of Mayrudin Khantiyev 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.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

131. The applicants further stated that Mayrudin Khantiyev 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

132. The Government asserted that no evidence had been obtained by the investigators to confirm that Mayrudin Khantiyev had been deprived of his liberty by State agents in breach of the guarantees of Article 5 of the Convention.

133. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

134. 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

135. 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).

136. The Court has found that Mayrudin Khantiyev was abducted by State agents on 4 December 2000 and has not been seen since. 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).

137. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relative had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

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

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

139. 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

140. 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.

141. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

142. 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

143. 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).

144. 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).

145. 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.

146. 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.

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

148. 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.

149. 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

150. 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

151. The applicants submitted that they had sustained damage in respect of the loss of Mayrudin Khantiyev's earnings following his apprehension and disappearance. The first applicant claimed a total of 47,009.31 Russian roubles (RUB) under this head (approximately 1,341.59 euros (EUR)). The second applicant claimed RUB 36,636.57 (approximately EUR 1,045.56). The third applicant claimed RUB 94,018.60 (approximately EUR 2,603.18) and the fourth applicant claimed RUB 25,319.51 (approximately EUR 722.59).

152. The applicants furnished a certificate from the Chechenagropromstroy company, according to which Mayrudin Khantiyev was employed by that company from June to July 2000 and his salary amounted to RUB 1,315 and RUB 1,169 for the respective months. With reference to the provisions of the Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary Department in 2007 (“the Ogden tables”), the applicants calculated Mayrudin Khantiyev's earnings with an adjustment for 10% yearly inflation and submitted that the first and second applicants should each be entitled to 10% of the total amount of his earnings, while the third and fourth applicants should each be entitled to 20% of that amount.

153. The Government argued that the applicants' claims were unsubstantiated and that they had not made use of the domestic avenues for obtaining compensation for the loss of their breadwinner.

154. 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. The Court has held that the loss of earnings also applies to dependant children and, in some instances, to elderly parents (see, among other authorities, *Imakayeva*, cited above, § 213). 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 applicants' relative and the loss to them of the financial support which he could have provided. The Court notes however that the certificate furnished by the applicants concerned Mayrudin Khantiyev's employment in June and July 2000 and that they did not furnish any other documents to certify that he had been employed after that latter date. Nonetheless, the Court finds that it is reasonable to assume that Mayrudin Khantiyev eventually would have had some earnings from which the applicants would have benefited (*ibid.*). Having regard to the applicants' submissions and the fact that Mayrudin Khantiyev was unemployed at the time of his abduction, the Court finds it appropriate to award the applicants jointly EUR 2,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

155. The applicants claimed jointly EUR 70,000 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.

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

157. 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 they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award the first and second applicants jointly EUR 15,000 and the third and fourth applicant jointly EUR 20,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

158. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff, as well as administrative expenses, translation and courier delivery fees. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 5,875.82.

159. The Government submitted that reimbursement of costs should have been ordered only in so far as they had been actually incurred and were reasonable as to quantum.

160. 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 v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

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

162. 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.

163. Having regard to the details of the claims submitted by the applicants, the Court awards them EUR 4,200, together with any value-added tax that may be chargeable to them; the net award is to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Mayrudin Khantiyev;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Mayrudin Khantiyev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants' mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Mayrudin Khantiyev;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds*
 - (a) that the respondent State is to pay 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 applicants jointly, 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 15,000 (fifteen thousand euros) in respect of non-pecuniary damage to the first and second applicants jointly, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage to the third and fourth applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(iii) EUR 4,200 (four thousand two hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen
Registrar

Christos Rozakis
President