



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

1959 · 50 · 2009

FIRST SECTION

CASE OF ISMAILOV AND OTHERS v. RUSSIA

(Application no. 33947/05)

JUDGMENT

STRASBOURG

26 November 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 Ismailov and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 33947/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by twenty-one Russian nationals, listed below (“the applicants”), on 20 September 2005.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 25 April 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. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- 1) Mr Akhmed Ismailov, born in 1949,
- 2) Mr Alkhazur Ismailov, born in 1985,
- 3) Mr Shamil (also spelled Shamal) Ismailov, born in 1995,
- 4) Ms Ruman Sokayeva (also spelled as Rumani or Khumana Sakayeva), born in 1963,
- 5) Mr Aslambek Merzhoyev (also spelled as Aslambek Merzhuyev), born in 1990,
- 6) Ms Kheda Merzhoyeva (also spelled as Kheda Merzhuyeva), born in 1981,
- 7) Ms Zalina Merzhoyeva (also known as Aset Merzhoyeva), born in 1979,
- 8) Ms Petimat Ismailova, born in 1964,
- 9) Ms Kheda Idrisova (also known as Ismailova), born in 1981,
- 10) Mr Ramzan Ismailov, born in 1982,
- 11) Ms Khazan Ismailova, born in 1984,
- 12) Ms Larisa Ismailova, born in 1986,
- 13) Ms Laila Ismailova, born in 1990,
- 14) Mr Rizvan Ismailov, born in 1992,
- 15) Ms Tanzila Ismailova, born in 1994,
- 16) Mr Iles (also spelled as Ilez) Ismailov, born in 1995,
- 17) Ms Medna Ismailova, born in 1997,
- 18) Mr Ibragim Ismailov, born in 1999,
- 19) Ms Makka Ismailova, born in 2001,
- 20) Ms Markha Ismailova, born in 2001,
- 21) Ms Liman Ismailova, born in 2003.

6. The applicants are four families of Russian nationals who live in Achkhoy-Martan, Chechnya. All four applicant families are related to each other. The first applicant is the father of Aslambek (also spelled as Aslanbek) Ismailov, who was born in 1979, and Aslan Ismailov, who was born in 1981. The second applicant family consists of applicants 2-4. The fourth applicant is the wife of Khizir Ismailov, who was born in 1962; applicants 2 and 3 are his children. The third applicant family consist of applicants 5-7, who are the children of Yusi Daydayev, who was born in 1953. The fourth applicant family consists of applicants 8-21. The eighth applicant is the wife of Yaragi Ismailov, who was born in 1956; applicants 9-21 are his children.

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

A. Disappearance of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev

1. The applicants' account

a. Abduction of Aslambek and Aslan Ismailov

8. At the material time the town of Achkhoy-Martan was under the full control of the Russian federal forces. Checkpoints manned by Russian servicemen were located on the roads leading to and from the settlement. The applicant families lived close to each other in two households situated at no. 15a and no. 22 in Orekhova Street, Achkhoy-Martan. The first house was located about 500 metres away from the nearest federal forces checkpoint.

9. On the night of 13-14 January 2003 the first applicant, his sons Aslambek and Aslan Ismailov and other relatives were sleeping at home at 15a Orekhova Street. At about 4 a.m. an APC (armoured personnel carrier) with a group of armed men in camouflage uniforms drove through their gate. About ten men got out of the APC and ran into the house. They spoke Russian without accent and were wearing masks and helmets. They neither identified themselves nor produced any documents. The family members thought they were Russian military servicemen.

10. The servicemen searched the house; they neither explained to the residents what they were looking for nor asked for identity documents. They took Aslambek and Aslan Ismailov into the yard, kicked them and threw them into the APC. The brothers were not allowed to put on any warm clothing. The officers ignored their mother's questions concerning the reason for her sons' being taken away.

11. The first applicant's wife ran after her sons into the street. She saw several APCs, a military Ural car and groups of Russian military servicemen standing along the street. The vehicles were parked next to different houses with their engines running. The soldiers, who were waiting next to the vehicles, threatened to kill the locals if the latter went outside. The vehicles with the first applicant's sons drove away to an unknown destination.

b. Abduction of Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev

12. At the material time the second and fourth applicant families lived at 22 Orekhova Street. Their household consisted of three dwellings in one yard. It was situated about 300 metres away from the first applicant's house and a few hundred metres away from the nearest Russian military forces checkpoint.

13. On the night of 13-14 January 2003 Yusi Daydayev was visiting the applicants and staying in the first house. Khizir Ismailov and his family

were sleeping in the second house; Yaragi Ismailov and his family were in the third one.

14. At about 4 a. m. a group of armed men in camouflage uniforms broke into Yusi Daydayev's house. It appears that the men beat him up, as the applicants heard him screaming.

15. Another group of intruders knocked on the door of the second house. When Khizir Ismailov opened the door, they rushed in, forced everyone to lie down on the floor and took Khizir Ismailov away.

16. The last group of four armed men broke into the third house and took away Yaragi Ismailov. The intruders asked the eighth applicant to bring his passport. While she went to fetch it, the men took her husband outside. The eighth applicant attempted to follow them, but the intruders drove away. None of the men were allowed to put on warm clothing.

17. The intruders who raided the household at 22 Orekhova Street and took away Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev were wearing masks and helmets. They spoke unaccented Russian and used swear words. They neither introduced themselves nor produced any documents. The applicants thought they were Russian military servicemen.

18. According to the applicants and their neighbours, eight APCs and a military Ural car were parked in Orekhova Street while Aslambek and Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev were being taken away.

19. It appears that after Aslambek and Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev were taken away the military vehicles drove towards Samashki village and stopped in the area of the local wheat processing plant, where Russian troops were stationed.

20. On 23 January 2004 the Achkhoy-Martan district court granted the eighth applicant's claim and declared Yaragi Ismailov a missing person as of 15 January 2003.

21. The description of the circumstances surrounding the abduction of the applicants' relatives is based on the following documents: an account by Mr V.R. given on 3 August 2005; an account by Ms Z. Kh. given on 3 August 2005; an account by the fourth applicant given on 14 August 2005 and an account by the first applicant's wife Ms M. D. given on 14 August 2005.

2. Information submitted by the Government

22. The Government did not challenge most of the facts as presented by the applicants. According to their submission "at about 4 a.m. on 14 January 2003 unidentified armed men in camouflage uniforms and masks, who were driving Ural vehicles and APCs, arrived at Orekhova Street in Achkhoy-Martan, Chechnya, abducted and took away from house no. 15 Aslambek Ismailov, who was born in 1979, and Aslan Ismailov, who was

born in 1981, and from house no. 22 Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev.”

23. On 23 January 2004 the Achkhoy-Martan district court declared Yaragi Ismailov a missing person with effect from 15 January 2003.

B. The search for the applicants' relatives and the investigation

1. The applicants' account

24. Immediately after her relatives were taken away the eighth applicant called the Achkhoy-Martan district department of the interior (the ROVD) and complained that they had been abducted. The officers told her that they could not do anything about it.

25. In the morning of 14 January 2003 the applicants complained to a number of State authorities, including the ROVD, the Achkhoy-Martan district prosecutor's office (the district prosecutor's office), the Achkhoy-Martan district department of the Federal Security Service (the FSB) and the Achkhoy-Martan district military commander's office (the district military commander's office), that their relatives had been abducted.

26. Since 14 January 2003 the applicants have repeatedly applied in person and in writing to various public bodies. They have been supported in their efforts by the SRJI NGO. In their letters to the authorities the applicants referred to their relatives' detention and asked for assistance and details of the investigation. Mostly these enquiries have remained unanswered, or purely formal replies have been given in which the applicants' requests have been forwarded to various prosecutors' offices. The applicants submitted some of the letters to the authorities and the replies to the Court, which are summarised below.

27. In the morning of 14 January 2003 a group of representatives of the district prosecutor's office examined the crime scene and questioned the witnesses.

28. On 17 January 2003 the district prosecutor's office instituted an investigation into the abduction of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The criminal case file was given the number 44009.

29. On 17 March 2003 the district prosecutor's office informed the applicants that on an unspecified date the investigation in criminal case no. 44009 had been suspended for failure to establish the identities of the perpetrators.

30. On 21 March 2003 the Chechnya prosecutor's office forwarded the first applicant's complaint about his relatives' abduction to the district prosecutor's office for examination.

31. On 31 March and 24 April 2003 the Chechnya prosecutor's office informed the first applicant that on 23 January 2003 the district prosecutor had instructed the investigators to take a number of additional operational search measures to establish the whereabouts of the abducted men and identify the perpetrators. The text of the letter of 31 March 2003 also stated:

“...the investigation established that the applicant's relatives had been abducted by unidentified servicemen in military vehicles; however, the investigators were unable to establish to which military units these vehicles had belonged.”

32. On 30 September 2003 the district prosecutor's office informed the first applicant that they had examined his complaint about ineffectiveness of the investigation in criminal case no. 44009. As a result, the proceedings had been resumed and the investigators had been instructed to verify the supposition that the abducted men were being detained on the premises of the operational search bureau of the Ministry of the Interior (the ORB) in Grozny (*OPB*).

33. On 24 October 2003 the deputy head of the Achkhoy-Martan district administration wrote to the district prosecutor's office requesting that the investigators find out whether the abducted men were being detained on the premises of the 6th department of the Main Intelligence Service of the Ministry of Defence (*6-й отдел ГПВ*) in Grozny.

34. On 31 October 2003 the deputy head of the Achkhoy-Martan district administration informed the first applicant that the authorities' reply to his request of 24 October 2003 stated that the investigation in criminal case no. 44009 had been suspended on 26 June 2003 for failure to establish the identities of the perpetrators; that it had been resumed on 1 October 2003; and that on an unspecified date the investigators had forwarded to the ORB in Grozny a request for assistance in the search for the abducted men.

35. On 1 November 2003 the district prosecutor's office suspended the investigation in criminal case no. 44009 for failure to establish the identities of the perpetrators and informed the applicants.

36. On 14 January 2004 the Chief Military Prosecutor's office forwarded the first applicant's complaint about his relatives' abduction to the military prosecutor's office of the United Group Alignment (the military prosecutor's office of the UGA) for examination.

37. On 7 February and 4 March 2005 the military prosecutor's office of the UGA forwarded the first applicant's complaints about the abduction to the military prosecutor's office of military unit no. 20102 for examination.

38. On 10 and 12 March 2005 the military prosecutors' offices of military unit no. 20102 and the UGA informed the first applicant that the examination of his complaints had not established any involvement of Russian military servicemen in his relatives' abduction.

39. On 8 June 2005 the Chechnya prosecutor's office forwarded the first applicant's complaint about the abduction to the district prosecutor's office for examination.

40. On 28 July 2008 the investigators informed the applicants that on the same date they had suspended the investigation in the criminal case for failure to establish the identities of the perpetrators.

2. Information submitted by the Government

41. The Government submitted that the district prosecutor's office had received the applicants' complaints about the abduction of their relatives by "unidentified armed men in camouflage uniforms, who had arrived in APCs", on 14 January 2003.

42. On 14 January 2003 investigators from the district prosecutor's office conducted a crime scene examination at nos. 15a and 22 Orekhova Street in Achkhoy-Martan. Nothing was collected from the scene.

43. On 14 January 2003 the investigators questioned the fourth applicant; on 21 January 2003 the investigators granted her victim status in the criminal case and questioned her again. The applicant stated that on the night of 14 January 2003 she and her family had been sleeping at home at 22 Orekhova Street. At about 4 a.m. she had heard some noise and gone to the window. She saw a military Kamaz ('*Камаз*') lorry next to the house; as it was dark she could not see whether the vehicle had registration numbers. Then someone knocked at the door; her husband Khizir Ismailov opened it and two armed military servicemen in camouflage uniforms and masks entered the house. They ordered everyone to lie down on the floor. Having checked the rooms, the armed men left with Khizir Ismailov. One of them took his passport. After that the intruders went to the house of Yaragi Ismailov and took him away in an APC which had arrived at the house. When she went outside she saw the eighth applicant in the yard, who told her that unidentified armed men had also taken their relatives Aslambek and Aslan Ismailov and Yusi Daydayev and driven them away in APCs to an unknown destination. After that the fourth applicant ran out in the street and saw a convoy of six or seven APCs and the Kamaz lorry driving away along Sovetskaya Street.

44. On 17 January 2003 the district prosecutor's office opened criminal case no. 44009 in connection with the abduction of the applicants' relatives and informed the applicants.

45. On 21 January 2003 the investigators questioned the first applicant, who stated that on 14 January 2003 he had been at work in Grozny. At about 10 a.m. he had learnt that around 4 a.m. the previous night his sons, Aslambek and Aslan Ismailov, his brothers Khizir and Yaragi Ismailov and his brother-in-law Yusi Daydayev had been abducted by unidentified armed men in APCs. From the Government's submission it follows that the applicant was questioned again on 22 January 2003, but the contents of this statement were not disclosed by the Government.

46. On an unspecified date the investigators questioned Ms M.D., the mother of Aslambek and Aslan Ismailov, who stated that on the night of

13-14 January 2003 she had been at home at 15a Orekhova Street with her two sons and daughter. At about 4 a.m. she had gone into the yard and seen an APCs with armed men in camouflage uniforms and masks sitting on top of it. Next to the house she saw her brother-in-law, Khizir Ismailov, several APCs and a lorry with armed men in camouflage uniforms and masks. After that the armed men took her sons Aslambek and Aslan Ismailov outside and drove them away. About ten minutes later a convoy of seven or eight APCs and a lorry drove down the street. The vehicles did not have registration numbers. After that the witness went to her relatives' house at 22 Orekhova Street where she found out about the abduction of her brother Yusi Daydayev and her brothers-in-law Khizir Ismailov and Yaragi Ismailov.

47. On 21 January 2003 the investigators questioned the eighth applicant, who stated that on the night of 14 January 2003 she and her family members had been at home at 22 Orekhova Street. At about 4 a.m. they had heard screams and noise. Her husband Yaragi Ismailov went outside. He returned and said that military servicemen were on the street. After that two armed men in camouflage uniforms and masks entered the house. They made Yaragi Ismailov lie down on the floor and then ordered him to put his clothing on. The men walked through the rooms and took Yaragi Ismailov, who was barefoot, into the yard where more military servicemen were waiting.

48. On 27 January 2003 the investigators questioned an officer of the ROVD, Mr U.S. He stated that on the night of 14 January 2003 he had been on duty at the police station. At about 5 a.m. the ROVD received information that unidentified armed men in Ural lorries and APCs had abducted five residents from Orekhova Street that is Aslambek and Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev. The officer immediately informed about it the head of the ROVD, the district department of the FSB and the district military commander's office. After that he sent a group of investigators to the crime scene. Meanwhile, police unit no. 3, stationed next to the cemetery on the outskirts of Achkhoy-Martan, informed him by radio that a convoy of armoured vehicles was leaving Achkhoy-Martan. About ten to fifteen minutes later the unit reported that the convoy was returning to the settlement. The officer ordered them to watch the convoy's movement. After the convoy drove back into the town, it became impossible to track its movements. According to the information received by the witness from the FSB and the district military commander's office, their units were not participating in a special operation and had not left the base. Therefore, it was impossible to establish the owners of the convoy of armoured vehicles.

49. On 28 March 2003 the investigators questioned an officer of the ROVD, Mr D.A. He stated that he worked as a district police officer in Achkhoy-Martan. At about 4 a.m. on 14 January 2003 a group of unidentified armed men in APCs and Ural lorries had arrived at Orekhova

Street, where from house no. 15a they had abducted Aslambek and Aslan Ismailov and from house no. 22 Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev. In connection with this he and another officer from the ROVD had taken operational search measures; however, it was impossible to establish the whereabouts of the abducted men and the owners of the APCs and the lorries.

50. On 28 April 2003 the investigators questioned the head of the Achkhoy-Martan administration, Mr S.Kh. He stated that in January 2003 unidentified armed men in APCs and Ural lorries had taken away five residents from Orekhova Street, namely Aslambek and Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev. In connection with this he had taken measures to establish their whereabouts and requested information about the disappeared men from the ROVD and the district military commander's office. However, these agencies did not have any relevant information.

51. On 25, 26, 28 and 29 April and 5 May 2003 the investigators questioned five officers of the ROVD, all of whom provided similar statements. According to the officers, at the material time they had been serving at checkpoints nos. 1, 2 and 3 located on the bridge over the river Foranga and at a place called Vodozabor. During their duty hours, from 8 a.m. on 13 January to 8 a.m. on 14 January 2003, the APCs and lorries had not passed through the checkpoints.

52. On 13 May 2003 the investigators again questioned the first applicant, who stated that after the abduction he had complained to various law enforcement agencies, but to no avail. He and his relatives had been searching for the abducted men and meeting other people whose relatives had also been abducted. One of these men had informed him that his sons and Yusi Daydayev had been initially detained in Khankala, Chechnya, and then transferred to the Republic of North Ossetia, either to Mozdok or Vladikavkaz.

53. On 28 September 2003 the first applicant wrote to the district prosecutor and stated that he had received information about the detention of his abducted relatives on the premises of the 6th department of the ORB ('6-й отдел ОПБ') located on the Staropromyslovskiy main highway in Grozny. The applicant requested that the investigators took measures to verify this information. On the same date the applicant was questioned and reiterated his request.

54. On 30 September 2003 the district prosecutor's office informed the first applicant that the investigation in the criminal case had been resumed because it was necessary to take investigative measures and verify the information concerning the detention of the abducted men on the premises of the 6th department of the ORB in Grozny.

55. On 1 November 2003 the investigation in the criminal case was suspended for failure to establish the identities of the perpetrators.

56. On 26 October 2006 the eighth applicant's lawyer requested that the investigators provide him with access to the entire content of the criminal case file. On 9 November 2006 the investigators partially granted his request, stating that he was allowed to access only the documents reflecting the eighth applicant's participation in the proceedings. The document stated that full access to the case file would be granted only on completion of the investigation.

57. On an unspecified date the investigators questioned the applicants' neighbour, Mr V.M., who stated that on the night of 14 January 2003 he had been sleeping at home, at 19 Orekhova Street in Achkhoy-Martan. At about 4 a.m. he had heard some noise and gone outside. He saw a convoy of seven APCs in Orekhova Street; soldiers were jumping out of the vehicles and taking up combat positions. Several minutes later he heard women screaming. When he saw the servicemen going into the Ismailov family house he thought they were looting and called the police. About five minutes later the convoy drove away towards the centre of Achkhoy-Martan. There, driving along the central street, the vehicles continued in the direction of Katyr-Yurt in Achkhoy-Martan district. After the servicemen left, he found out that they had taken away his neighbours Aslambek and Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev.

58. On an unspecified date the investigators received a letter from the Special Envoy of the Russian President in the Chechen Republic for Rights and Freedoms ("the Envoy"), stating that the first applicant had complained to him about the abduction of his relatives by federal servicemen under the command of colonel L.Ch.

59. On unspecified dates the investigators forwarded requests to the military prosecutor's office of military unit no. 20102 in Khankala and the Chechnya FSB, asking whether the abducted men were being detained on their premises. According to the replies, these agencies had not conducted any special operations in Achkhoy-Martan at the material time and had not detained the applicants' relatives.

60. On unspecified dates the investigators forwarded requests to various law enforcement agencies in Chechnya and the Northern Caucasus, including prosecutors' offices and military commanders' offices, asking for any information these agencies had concerning the abducted men. According to the replies, no information was available; no criminal proceedings were pending against the abducted men, no special operations had been conducted against them, they had not applied for medical help, their corpses had not been found and no custody records were available in respect of them.

61. On an unspecified date the investigators forwarded a request to the ORB in Grozny, asking whether they had arrested and detained the

applicants' relatives. According to the agency's reply, they had not arrested or detained them.

62. The Government further submitted that although the investigation had failed to establish the whereabouts of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev, it was still in progress and all necessary investigative and operational search measures were being taken to solve the crime.

63. Despite specific requests by the Court the Government did not disclose most of the contents of criminal case no. 44009, providing copies of only twenty-two documents. They stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

64. 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

65. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev 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 authorities, but the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to claim damages through civil proceedings but that they had failed to do so.

66. The applicants contested that objection. They stated that the only effective remedy in their case was the criminal investigation, which had proved to be ineffective. With reference to the Court's practice, they argued

that they were not obliged to pursue civil remedies in order to exhaust domestic remedies.

B. The Court's assessment

67. 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).

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

69. As regards civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 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. The Government's objection in this regard is thus dismissed.

70. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities immediately after the kidnapping of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev, and that an investigation has been pending since 17 January 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

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

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

A. The parties' arguments

72. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev had been State agents. In support of their complaint they referred to the following facts. At the material time Achkhoy-Martan had been under the total control of federal

troops. There had been Russian military checkpoints on the roads leading to and from the settlement. The armed men who had abducted Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev spoke Russian without accent, which proved that they were not of Chechen origin. The men had arrived in military vehicles, such as APCs, which could only have been deployed at the time by representatives of the State. They had arrived at the applicants' houses late at night, which indicated that they had been able to circulate freely past curfew. The men acted in a manner similar to that of special forces carrying out identity checks. All the information disclosed from the criminal investigation file supported their assertion as to the involvement of State agents in the abduction. Since their relatives had been missing for a very lengthy period, they could be presumed dead. That presumption was further supported by the circumstances in which they had been arrested, which should be recognised as life-threatening.

73. The Government submitted that unidentified armed men had kidnapped Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev. They further contended that the investigation of the incident was pending, that there was no evidence that the men had been State agents and that therefore there were no grounds to hold the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relatives were dead. The Government raised a number of objections to the applicants' presentation of facts. The fact that the perpetrators of the abduction spoke unaccented Russian and were wearing camouflage uniforms did not mean that these men could not have been members of illegal armed groups. The Government further alleged that the applicants' description of the circumstances surrounding the abduction was inconsistent. In particular, the fourth applicant and Ms M.D. stated that along with the APCs the abductors had used a Kamaz lorry, whereas other witnesses stated that the abductors had used a Ural lorry; there were no direct witnesses who had seen the direction in which the abductors had left, and the first applicant had failed to inform the investigators about the source of information concerning the detention of his relatives in Grozny.

B. The Court's evaluation of the facts

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

taken into account (see *Ireland v. the United Kingdom*, § 161, Series A no. 25).

75. The Court notes that despite its requests for a copy of the entire investigation file into the abduction of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev, the Government produced only some of the documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006- ... (extracts)).

76. In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relatives can be presumed dead and whether their deaths can be attributed to the authorities.

77. The applicants alleged that the persons who had taken Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev away on 14 January 2003 and then killed them had been State agents.

78. The Government suggested in their submissions that the abductors of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev may have been members of paramilitary groups. However, this allegation was not specific and the Government did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

79. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. It finds that the fact that a large group of armed men in uniform during curfew hours, equipped with military vehicles, was able to move freely in the settlement and proceed to check identity documents and take several persons out of their homes strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their application to the authorities the applicants consistently maintained that Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev had been detained by unknown servicemen, and requested the investigation to look into that possibility (see paragraphs 33, 43, 47, 52, 53, 57 and 58 above). The domestic investigation also accepted factual assumptions as presented by the applicants, and took steps to check whether law enforcement agencies were involved in the kidnapping. The

investigation confirmed the involvement of military servicemen in the abduction, but it was unable to establish precisely which military or security units had detained the applicants' relatives (see paragraph 31 above). It does not appear that any serious steps had been taken in that direction.

80. The Government questioned the credibility of the applicants' statements in view of certain discrepancies relating to the exact circumstances of the arrests and the description of the hours immediately following the detention. The Court notes in this respect that no other elements underlying the applicants' submissions of facts have been disputed by the Government. The Government did not provide the Court with the witness statements to which they referred in their submissions. In the Court's view, the fact that the applicants' recollections of an extremely traumatic and stressful event differed in very insignificant details does not in itself suffice to cast doubt on the overall veracity of their statements.

81. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government, and if they fail in their arguments issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

82. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were taken away by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev were abducted on 14 January 2003 by State servicemen during an unacknowledged security operation.

83. There has been no reliable news of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev since the date of the kidnapping. Their names have not been found in any official detention facility records. Finally, the Government have not submitted any explanation of what happened to them after their arrest.

84. 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 finds that in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev or of any news of them for several years supports this assumption.

85. Accordingly, the Court finds that the evidence available permits it to establish that Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev must be presumed dead following their unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

86. The applicants complained under Article 2 of the Convention that their relatives had been deprived of their lives by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

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

A. The parties' submissions

87. The Government contended that the domestic investigation had obtained no evidence to the effect that Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev were dead or that any servicemen of the federal law-enforcement agencies had been involved in their kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants' relatives met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible.

88. The applicants argued that Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. The applicants also argued that the investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law. The applicants pointed out that the district prosecutor's office had not taken some crucial investigative steps. The investigation into the kidnapping had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and that the relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any known results was further proof of its ineffectiveness. They also invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

89. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 71 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev

90. The Court has already found that the applicants' relatives must be presumed dead following unacknowledged detention by State servicemen. In the absence of any justification put forward by the Government, the Court finds that their deaths can be attributed to the State and that there has been a violation of Article 2 in respect of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev.

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

91. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation

when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

92. In the present case, the kidnapping of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

93. The Court notes at the outset that most of 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.

94. The Court notes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation in case no. 44009 was instituted on 17 January 2003, which is three days after the abduction of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were not taken at all. The Court notes that the investigators had not questioned the district military commander or other commanding officers of the local power structures about possible participation of their servicemen in the abduction; they had not established the identity of the owners of the APCs used by the abductors; they had failed to elucidate the discrepancies in the witness statements concerning the movement of the APCs on the night of the abduction (see paragraphs 43, 48 and 51 above). In addition, it does not appear that the investigators took tangible measures to verify the information concerning the detention of the abducted men on the ORB's premises in Grozny (see paragraphs 53, 54, 61 above) or that they tried to identify and question colonel L.Ch. (see paragraph 58 above). It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II.)

95. The Court also notes that even though the fourth applicant was granted victim status in the investigation concerning the abduction of her relatives, she and the other applicants were only informed of the suspension and resumption of the proceedings, and not of any other significant

developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

96. Finally, the Court notes that the investigation was adjourned and resumed several times and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending.

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

98. 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 Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

99. The applicants relied on Article 3 of the Convention, submitting that as a result of their relatives' 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

100. The Government disagreed with these allegations and argued that the investigation had not established that the applicants and Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

101. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

102. 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

103. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

104. In the present case the Court notes that the applicants are close relatives of the disappeared persons. For more than six years they have not had any news of the missing men. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing relatives. Despite their attempts, the applicants have never received any plausible explanation or information about what became of them following their detention. The responses they received mostly denied State responsibility for their relatives' arrest or simply informed them that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

105. In view of the above, the Court finds that the applicants suffered distress and anguish as a result of the disappearance of their close relatives and their inability to find out what happened to them. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3. At the same time the Court notes that the twenty-first applicant was born in June 2003, more than four months after her father's disappearance. Having regard to this, the

Court does not find that this applicant has suffered such distress and anguish as a result of her father's disappearance that it would amount to a violation of Article 3 of the Convention.

106. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the applicants, except for the twenty-first applicant. Consequently, there has been no violation of Article 3 of the Convention in respect of the twenty-first applicant.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

107. The applicants further stated that Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev 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

108. The Government asserted that no evidence had been obtained by the investigators to confirm that Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev had been deprived of their liberty. They were not listed among the persons kept in detention centres

and none of the regional law enforcement agencies had information about their detention.

109. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

110. 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

111. 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).

112. The Court has found that Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev were abducted by State servicemen on 14 January 2003 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their 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).

113. 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 relatives had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2, and in particular as regards the conduct of the investigation, leave no doubt that the authorities failed to take prompt and effective measures to safeguard them against the risk of disappearance.

114. In view of the foregoing, the Court finds that Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev were

held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

115. The applicants alleged that the search carried out in their houses on 14 January 2003 was illegal and constituted a violation of their right to respect for home. Under the same heading they complained that the disappearance of their relatives after their detention by the State authorities caused them distress and anguish which had amounted to a violation of their right to family life. It thus disclosed a violation of Article 8 of the Convention, which provides:

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

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

(a) The right to respect for home

116. The Court reiterates that while, in accordance with Article 35 § 1 of the Convention, those seeking to bring their case against the State before the Court are required to use first the remedies provided by the national legal system, there is no obligation under the said provision to have recourse to remedies which are inadequate or ineffective. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/000 et seq., 10 January 2002). There is no evidence that the applicants properly raised before the domestic authorities their complaints alleging a breach of their right to respect for home. But even assuming that in the circumstances of the present case no remedies were available to the applicants, the events complained of took place on 14 January 2003, whereas their application was lodged on 20 September 2005. The Court thus concludes that this part of the application was lodged outside the six-month limit (see *Musayeva and Others v. Russia* (dec.), no. 74239/01, 1 June 2006, and *Ruslan Umarov v. Russia* (dec.), no. 12712/02, 8 February 2007).

117. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) The right to respect for family life

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

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

119. 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

120. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the acts or omissions of the investigating authorities in court and they could also claim damages through civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

121. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

122. 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

123. 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).

124. As regards the complaint of lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life 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 *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 v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

125. In view of the Court's above findings with regard to Article 2, this complaint is clearly “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, Series A no. 131, § 52). 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.

126. 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.

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

128. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate

issues arise in respect of Article 13 in conjunction with Articles 3 and 5 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

129. As for the complaint under Article 13 in conjunction with Article 8 concerning the right to family life, the Court notes that in paragraph 118 above it found that no separate issue arises under that provision. Therefore, it considers that no separate issue arises under Article 13 in this respect either.

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

130. The applicants complained that they had been discriminated against in the enjoyment of their Convention rights, because the violations of which they complained had taken place because of them being resident in Chechnya and their ethnic background as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

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

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

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

133. 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

134. The applicants claimed damages in respect of loss of earnings by their relatives after their arrests and subsequent disappearances. They submitted that they had been financially dependent on their disappeared relatives and that they would have benefited from their financial support in

the following amounts. The first applicant as the father of Aslambek and Aslan Ismailov claimed 483,551 Russian roubles (RUB) under this heading (13,816 euros (EUR)). The applicants of Khizir Ismailov's family claimed a total of RUB 381,934 (EUR 10,913): the second applicant claimed EUR 111, the third applicant claimed EUR 1,995 and the fourth applicant claimed EUR 8,807. The fifth applicant as the son of Yusi Daydayev claimed RUB 58,572 under this heading (EUR 1,673). The applicants of Yaragi Daydayev's family claimed a total of RUB 350,594 under this heading (EUR 10,016): the eighth applicant claimed EUR 3,639, the twelfth applicant claimed EUR 39, the thirteenth applicant claimed EUR 264, the fourteenth applicant claimed EUR 404, the fifteenth applicant claimed EUR 583, the sixteenth applicant claimed EUR 722; the seventeenth applicant claimed EUR 854; the eighteenth applicant claimed EUR 910, the nineteenth applicant claimed EUR 853, the twentieth applicant claimed EUR 853 and the twenty-first applicant claimed EUR 895.

135. The applicants submitted that their relatives had been unemployed at the time of their arrest and that in such cases the calculation should be made on the basis of the subsistence level established by national law. They calculated their earnings for the period, taking into account an average inflation rate of 13.67 %. Their calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("Ogden tables").

136. The Government regarded these claims as unsubstantiated. They also pointed to the existence of domestic statutory machinery for the provision of a pension for the loss of the family breadwinner.

137. 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' relatives and the loss by the applicants of the financial support which they could have provided. Having regard to the applicants' submissions and the fact that Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev were not employed at the time of their abduction, the Court awards EUR 13,000 to the first applicant; EUR 10,000 to the second, third and fourth applicants jointly; EUR 1,500 to the fifth applicant and EUR 10,000 to the eighth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty-first applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Non-pecuniary damage

138. The applicants claimed various amounts ranging from EUR 30,000 to EUR 80,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives. The first applicant, as the father of Aslambek and Aslan Ismailov, claimed EUR 80,000; the second, third and fourth applicants, as children and the wife of Khizir Ismailov, claimed a total of EUR 100,000; the fifth, sixth and seventh applicants, as children of Yusi Daydayev, claimed a total of EUR 90,000 and the eighth to twenty-first applicants, as the wife and children of Yaragi Ismailov, claimed a total of EUR 430,000.

139. The Government found the amounts claimed excessive.

140. 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' relatives. The applicants themselves (except for the twenty-first applicant) 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 to the first applicant EUR 70,000; to the second, third and fourth applicants jointly EUR 35,000; to the fifth, sixth and seventh applicants jointly EUR 35,000 and to the eighth to twenty-first applicants jointly EUR 35,000 plus any tax that may be chargeable thereon.

C. Costs and expenses

141. 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 for the work in the area of exhausting domestic remedies and of EUR 150 per hour for the drafting of submissions to the Court. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,610.

142. The Government did not dispute the reasonableness of and justification for the amounts claimed under this heading.

143. The Court has to establish first whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

144. 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.

145. As to whether the costs and expenses were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that the legal drafting was necessarily time-consuming to the extent claimed by the representatives.

146. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 5,500 together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

147. 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 domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2, 3, 5, 8 in respect of the right to family life and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev;
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 the applicants' relatives disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants, except in respect of the twenty-first applicant;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Aslambek Ismailov, Aslan Ismailov, Yaragi Ismailov, Khizir Ismailov and Yusi Daydayev;

7. *Holds* that no separate issues arise under Article 8 of the Convention regarding the applicants' right to respect for family life;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3, 5 and 8 in respect of the right to family life;
10. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 13,000 (thirteen thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the first applicant;
 - (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the second, third and fourth applicants jointly;
 - (iii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage to the fifth applicant;
 - (iv) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the eighth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty first applicants jointly;
 - (v) EUR 70,000 (seventy thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first applicant;
 - (vi) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the second, third and fourth applicants jointly;
 - (vii) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the fifth, sixth and seventh applicants jointly;
 - (viii) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants from the eighth to the twenty-first jointly;
 - (ix) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;

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

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

Done in English, and notified in writing on 26 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President