



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

FIRST SECTION

**CASE OF DUBAYEV AND BERSNUKAYEVA v. RUSSIA**

*(Applications nos. 30613/05 and 30615/05)*

JUDGMENT

STRASBOURG

11 February 2010

**FINAL**

*28/06/2010*

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the cases of Dubayev and Bersnukayeva 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 21 January 2010,

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

**PROCEDURE**

1. The case originated in two applications (nos. 30613/05 and 30615/05) 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 two Russian nationals listed below (“the applicants”), on 3 August 2005.

2. The applicants were represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new representative, Mr G. Matyushkin.

3. On 11 March 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the applications and give notice of the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility. The President of the Chamber acceded to the Government's request not to make publicly accessible the documents from the criminal investigation file deposited with the Registry in connection with the applications (Rule 33 of the Rules of Court).

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant in application no. 30613/05 is Mr Rizvan Dubayev, born in 1955 (the first applicant). The applicant in application no. 30615/05 is Ms Saudat Bersnukayeva, born in 1949 (the second applicant). Both applicants live in the town of Urus-Martan, Chechnya.

6. The first applicant is the father of Islam Dubayev, born in 1982. The second applicant is the mother of Roman (also known as Zelimkhan) Bersnukayev (also spelled Bersunkayev), born in 1983.

#### **A. Disappearance of Islam Dubayev and Roman Bersnukayev**

##### *1. The applicants' account*

7. The applicants were not eye-witnesses to the abduction and the following account is based on the witness statements collected by them after the disappearance of their relatives.

8. In the autumn of 1999 Russian federal troops launched an antiterrorist operation in Chechnya. In December 1999 Islam Dubayev joined an illegal armed group ("the armed group") which was fighting the federal troops in the mountains of the Urus-Martan district, in the vicinity of the village of Martan-Chu. In December 1999 the Russian federal forces took control of the valley of the Urus-Martan district.

9. It appears that around the same time Roman Bersnukayev also joined an armed group.

10. On 13 March 2000 three members of an armed group, Mr A., Mr M. and Mr P., left the mountains to go to the village of Martan-Chu. It appears that on the outskirts of the settlement they were stopped at the Russian military checkpoint by military servicemen from infantry regiment no. 245 of the Russian Federal Forces Group "West" (*245 мотострелковый полк группировки федеральных сил «Запад»*). The servicemen were assisted by the local militia. The three men were detained and questioned. The military servicemen told them that the State Duma of the Russian Federation had announced an amnesty for those who gave up fighting with armed groups in Chechnya. They assured them that the amnesty would apply to any fighter as long as he had not been involved in serious crimes, such as hostage taking or kidnapping and he voluntarily surrendered to the authorities. The three men then confessed to being members of an armed group. They told the Russian servicemen that there were more young men in the mountains

who would be willing to surrender under the above conditions and explained where those men could be found.

11. It appears that after the questioning Mr A., Mr M. and Mr P. were taken away in an unknown direction and their whereabouts have not been established since.

12. On 14 March 2000 two members of the Martan-Chu militia went into the mountains and found a group of young men. They told them about the amnesty. They also told the group that if by 3 p.m. on 14 March 2000 they did not come down from the mountains the area would be subjected to artillery and air strikes.

13. Ten young men decided to surrender. They left the mountains and went to the checkpoint of infantry regiment no. 245. Among them were Islam Dubayev and Roman Bersnukayev.

14. It appears that on the outskirts of Martan-Chu the men who had surrendered were given food. About twenty minutes later the servicemen bound their hands, put them into a Ural truck and took them to the headquarters of the Russian Federal Forces Group "West".

15. On 17 March 2000 the military commander of the Urus-Martan district, General-Major N., and the head of the Federal Security Service (FSB) department of the Urus-Martan district, Major F., co-signed two documents, issued to Islam Dubayev and Roman Bersnukayev. Each document stated that the person in question had voluntarily surrendered his weapons to the State authorities on 14 March 2000 and that he undertook to remain at his place of residence for the follow-up to the amnesty procedure. The document issued to Islam Dubayev mentioned a Kalashnikov machine-gun without serial number, and the document issued to Roman Bersnukayev mentioned a Kalashnikov machine-gun with a serial number and ammunition. Both papers were countersigned by the applicants' sons.

16. Also on 17 March 2000 the investigator of the Urus-Martan FSB department issued two decisions certifying the intention of the authorities not to institute criminal proceedings against Islam Dubayev and Roman Bersnukayev, in application of the amnesty act. On the same day both decisions were approved by the acting district prosecutor and countersigned by the two men.

17. The above description of the events relating to the detention is based on the accounts provided by the applicants to their representatives.

18. The applicants have had no news of Islam Dubayev and Roman Bersnukayev since 17 March 2000.

## *2. Information submitted by the Government*

19. The Government stressed that the applicants had not witnessed the detention of their sons. According to their submissions, Islam Dubayev and Roman Bersnukayev had renounced their involvement in the armed groups and on 17 March 2000 were released in application of the amnesty act.

There were no grounds to suspect that they had ever been arrested or detained by State authorities.

**B. The search for Islam Dubayev and Roman Bersnukayev and the investigation**

*1. The applicants' account*

20. Since 14 March 2000 the applicants have repeatedly applied in person and in writing to various public bodies. They have been supported in their efforts by the NGO Memorial. In their letters to the authorities the applicants referred to their sons' detention and asked for assistance and details of the investigation. Mostly these enquiries have remained unanswered, or purely formal replies have been given stating that the applicants' requests have been forwarded to various prosecutors' offices. The applicants submitted some of the letters and the authorities' replies to the Court, which are summarised below.

**(a) Search for Islam Dubayev**

21. On the evening of 15 March 2000 a man named "Lema" visited the first applicant's house in Urus-Martan and told him that Islam Dubayev had surrendered to the State authorities. As proof he showed photographs found in the pockets of the applicant's son. The middleman told the first applicant that if he came to the village of Gekhi-Chu he would introduce him to the man who had detained his son. The first applicant got the impression that his son might be released against payment of money.

22. On the morning of 16 March 2000 the first applicant went to the village of Gekhi-Chu. Military servicemen, under the command of an officer named Sergei, also known as "Lame Sergei" (*Khromoy Sergei*), arrived on an APC (armoured personnel carrier) at about 11 a.m. Sergei read the names of four fighters who had surrendered and been handed over to the Urus-Martan district department of the FSB. They included Islam Dubayev.

23. It appears that on 16 March 2000 the first applicant went to the district department of the FSB to obtain information about his son, but to no avail.

24. It appears that within the next few days the first applicant went to the temporary district department of the interior of the Urus-Martan district (the Urus-Martan VOVD) and to the prosecutor's office of the Urus-Martan district (the district prosecutor's office). The interim district prosecutor told the first applicant that Islam Dubayev had been taken to the district department of the FSB and that on 17 March 2000 the amnesty had been applied to him and he had been released.

25. On 17 March 2000 the first applicant, his relatives and the relatives of the other men who had surrendered allegedly spent the entire day waiting for their sons at the entrance to the building of the district military commander's office, where the district department of the FSB was also located at the time.

26. Then on a number of occasions the first applicant tried to visit officials at the district department of the FSB, but they refused to talk to him. At some point the first applicant asked officer V. from another department of the FSB to obtain information about his son at the district department of the FSB. The officer told him that his son and three other men had been pardoned by the State authorities and that they had been released from detention in the area of the local town hospital. The first applicant and his relatives searched the area but could not find any traces of Islam Dubayev.

27. After that the first applicant went to the district department of the FSB and managed to speak to one of the officers, Mr K., and the deputy head of the department, named Sergey. They advised the first applicant to search for his son in the Urus-Martan district hospital.

28. The first applicant went to the hospital, where he was told that none of the fighters who had surrendered had been brought there.

29. In the second half of April 2000 the first applicant met the parents of Roman Bersnukayev, who had just found out that their son had surrendered to the State authorities in March 2000. The first applicant and the second applicant agreed to conduct the search for their sons together.

30. On 11 May 2000 the first applicant met with the head of the district department of the FSB, major F., who provided the first applicant with copies of the documents issued on 17 March 2000 stating the intention of the authorities not to institute criminal proceedings against Islam Dubayev and certifying that Islam Dubayev had voluntarily surrendered his weapons. The officer suggested to the first applicant that if his son had not returned home then "he must have gone into the mountains again".

**(b) Search for Roman Bersnukayev**

31. At the beginning of April 2000 a resident of Urus-Martan, Mr M., came to the second applicant's house and told her husband that Roman Bersnukayev had been detained by the Russian federal forces on his way from the mountains to Martan-Chu. Mr M. had a list of persons detained by the Russian military, including the name of the second applicant's son.

32. Some time later the second applicant found out that one of the detained persons, Mr A., had been released. Mr A. told her that at the beginning of March 2000 Roman Bersnukayev had left the Chechen fighters and was on his way home when he ran into a group of young men in the mountains of Martan-Chu.

33. According to Mr A., Roman Bersnukayev had joined the group and had been with them for about two weeks when in March 2000 two members of the Martan-Chu militia found the group and told them about the amnesty. Roman Bersnukayev had not had any weapons and the two men had told him that the amnesty would apply to him only if he had weapons to surrender. Then Roman Bersnukayev had got hold of a machine gun. After that the young men had left the mountains and surrendered to the Russian military forces at the checkpoint in Martan-Chu.

34. Mr A. told the second applicant that as her son had dark skin, the Russian military servicemen had taken him for an Arab mercenary and had wanted to execute him.

35. In April 2000 the second applicant met the parents of Islam Dubayev at the entrance to the district military commander's office. The first applicant told the second applicant that their sons had been in the same group of young men who had surrendered in March 2000.

36. Since then the first and second applicants have been conducting the search for their sons together.

37. On 11 May 2000 the second applicant received from the district department of the FSB a copy of the order, dated 17 March 2000, concerning the authorities' intention not to institute criminal proceedings against Roman Bersnukayev.

38. On an unspecified date the second applicant received a copy of the statement dated 17 March 2000, issued by the district department of the FSB, certifying that Roman Bersnukayev had voluntarily surrendered his weapons.

#### **(c) Investigation into the disappearance**

39. On 3 May 2000 the Chechnya prosecutor's office forwarded the first applicant's complaint concerning his son's disappearance to the Chechnya department of the interior for a search to be organised.

40. On 8 May 2000 the first applicant's wife and the second applicant complained to the district military commander's office about the disappearance of Islam Dubayev and Roman Bersnukayev. They stated that according to information obtained from two sources, Mr Kh. and Mr A., on 14 March 2000 several persons, including their sons, had voluntarily surrendered to infantry regiment no. 245, and that on 17 March 2000 the authorities had applied amnesty to them.

41. On 31 May 2000 the first applicant complained to the Urus-Martani VOVOD about the disappearance of his son after his release from the district department of the FSB on 18 March 2000. The first applicant asked for his son's name to be put on the list of missing persons and provided a photograph of Islam Dubayev.

42. On 22 August 2000 the Urus-Martani VOVOD informed the first applicant's wife that Islam Dubayev had not been detained by the VOVOD.

43. On 16 November 2000 the second applicant complained to the military prosecutor of the Chechen Republic asking for assistance in the search for Roman Bersnukayev. In her complaint she stated that her son had voluntarily surrendered to the Russian federal forces at the checkpoint of infantry regiment no. 245. She stated that her numerous complaints to the law enforcement agencies had been to no avail.

44. On 12 December 2000 the interim head of the Chechnya department of the FSB informed the first applicant that on 14 March 2000 Islam Dubayev had voluntarily surrendered to the Russian federal troops and had handed over his AK-74 machine gun with ammunition. Pursuant to Articles 208 and 222 of the Criminal Code and the Russian State Duma's decree of 13 December 1999 "On amnesty to persons who committed socially dangerous acts during the antiterrorist operation in the Northern Caucasus", Islam Dubayev had been absolved from criminal charges. According to the letter, on 17 March 2000 the district department of the FSB had decided not to institute criminal proceedings against Islam Dubayev. The letter informed the first applicant that the Department had no information concerning his son's whereabouts and that searching for missing persons was the job of the police.

45. On 20 December 2000 the Chechnya deputy prosecutor forwarded the first applicant's complaint concerning his son's disappearance to the Chechnya department of the FSB.

46. On 14 January 2001 the second applicant complained to the Prosecutor General. She stated that her son had voluntarily surrendered to the Russian federal forces at the checkpoint of infantry regiment no. 245. She stated that her numerous complaints to the law enforcement agencies about his disappearance had not produced any results.

47. On 20 April 2001 the Chechnya prosecutor's office informed the second applicant that Roman Bersnukayev had not been listed among the detainees held in detention centres in Chechnya.

48. On 19 May 2001 the prosecutor's office of the Urus-Martan district (the district prosecutor's office) informed the second applicant that on 15 February 2001 their office had instituted an investigation into the disappearance of Roman Bersnukayev under Article 126 § 1 (kidnapping). They did not specify the criminal case file number. According to the letter, the investigation had been suspended owing to failure to establish the whereabouts of the second applicant's son.

49. On 28 May 2001 the district prosecutor's office informed the first applicant that on 25 November 2000 they had instituted an investigation into the disappearance of Islam Dubayev under Article 126 § 1 (kidnapping) of the Criminal Code. The office did not specify the criminal case file number. According to the letter, on 25 January 2001 the investigation had been suspended owing to failure to establish the

whereabouts of Islam Dubayev. The first applicant was requested to provide the office with a photograph of his son.

50. On 14 June 2001 the first applicant complained to the Prosecutor General of the Russian Federation about the disappearance of his son. In his letter he stated that his son had been seen on 14 March 2000 at the checkpoint of infantry regiment no. 245; on the same day he had been transferred to the district department of the FSB; according to copies of the documents provided by the authorities, his son had been pardoned by the amnesty act, and the documents concerned had been issued by the heads of the Urus-Martan VOVD, the district department of the FSB and the local prosecutor's office and signed by Islam Dubayev. He further stated that the application of the amnesty act had taken only three days, that after 18 March 2000 his son had disappeared and that all his complaints to various state bodies about the disappearance had been to no avail.

51. On 11 July 2001 the first applicant complained to the district prosecutor about the disappearance of his son. He pointed out that Islam Dubayev had disappeared after being detained by the district department of the FSB. The first applicant stated that he knew people who could testify that his son had been detained in the district department after the date of his alleged release.

52. On 12 July 2001 the district prosecutor informed the first applicant that the investigation in criminal case no. 24071 had been reopened.

53. On 25 July 2001 the second applicant complained to the military prosecutor of the Urus-Martan district asking for assistance in the search for Roman Bersnukayev. In her complaint she stated that her son had voluntarily surrendered to the Russian federal forces at the checkpoint of infantry regiment no. 245 and that she had requested the investigation to forward information requests to detention centres in other regions of the Russian Federation.

54. On 27 July 2001 both applicants requested the district prosecutor's office to grant them the status of victims in the criminal proceedings instituted in connection with their sons' disappearances. On the same day the first applicant was granted victim status and both applicants were recognised as civil plaintiffs. It is unclear whether at that time the proceedings were conducted together. Later, on 21 November 2001, the second applicant was also recognised as a victim in the proceedings related to her son's abduction.

55. On 7 September 2001 the military prosecutor's office of the North-Caucasus military circuit informed the first applicant that his complaint had been forwarded to the military prosecutor's office of military unit no. 20102, based in Khankala, the main military base in Chechnya.

56. On 26 September 2001 the second applicant requested the district prosecutor's office to question the former head of the district department of

the FSB, the former senior investigator of that department and the former military commander of the Urus-Martan district.

57. On 18 September 2001 the first applicant lodged a complaint with the Urus-Martan district court. He described the circumstances of his son's disappearance, complained about the lack of information from the district department of the FSB and described his search for Islam Dubayev. He requested the court to oblige the State authorities to provide him with information concerning the whereabouts of his son. It is unclear whether the applicant's complaint was examined by the court.

58. On 24 October 2001 both applicants complained to the Prosecutor General. They described the circumstances of their sons' detention by the Russian military servicemen and complained that their numerous letters and requests to the State authorities had produced no tangible results. They also stated that according to a letter obtained by one of the missing young men's relatives from the district prosecutor's office, Islam Dubayev, Roman Bersnukayev and two other men had been in detention after 17 March 2000 as they had to be taken to a "filtration point" (*фильтрационный пункт*). The applicants asked the prosecutor to reopen the investigation in the criminal case and question the heads of the local law enforcement agencies, to find out what had happened to the detainees after they had been handed over to the district department of the FSB, where they could have been transferred from that department and where they had been taken for "filtration".

59. On 3 June 2003 the district prosecutor's office informed the second applicant that the investigation in criminal case no. 24071 (also referred to in the submitted documents under no. 25028) had been reopened on 3 May 2003.

60. On 17 July 2003 the district prosecutor's office ordered the Urus-Martan VOVD to conduct investigative operational search measures in criminal case no. 24071 to identify persons who could have seen Islam Dubayev and Roman Bersnukayev at the Urus-Martan VOVD, at the local military commander's office or at local military checkpoints.

61. On 14 August 2003 the first applicant complained to the Prosecutor General and to the military prosecutor of the United Group Alliance (UGA). He described the circumstances of his son's disappearance and requested the following measures: reopening of the investigation into the abduction of Islam Dubayev and transfer of the case, if necessary, to the military prosecutor's office for investigation; questioning of the former head of the district department of the FSB and the former district military commander, and establishment of the whereabouts of Islam Dubayev.

62. On 10 November 2003 the district prosecutor's office informed the second applicant that the investigation in criminal case no. 24071 had been suspended on 31 October 2003 and reopened on 10 November 2003.

63. On 9 March and 9 April 2004 the first applicant requested the district prosecutor's office to question the former head of the Urus-Martan VOVD. On 11 March 2004 the district prosecutor's office informed the first applicant that the authorities had forwarded a number of information requests to establish the whereabouts of the former head of the Urus-Martan VOVD.

64. On 30 April 2004 the district prosecutor's office informed the second applicant that the investigation in criminal case no. 25028, opened on 15 February 2001, had been suspended owing to failure to identify the perpetrators.

65. On 30 May 2004 the district prosecutor's office rejected the applicants' request to question the former head of the Urus-Martan VOVD because they were unable to establish the officer's whereabouts.

66. In June and July 2004 both applicants requested the district prosecutor's office to grant them access to the materials of criminal case no. 24071.

67. On 19 June and 29 July 2004 the district prosecutor's office informed the first and second applicants that under Article 42 of the Code of Criminal Procedure they were entitled to access to the case file materials only after completion of the criminal investigation. Prior to that, they were entitled only to receive copies of decisions on the opening of criminal proceedings, the granting of victim status and the suspension of the investigation. The applicants were also informed that the investigation in case no. 24071 had been suspended owing to failure to identify the perpetrators.

68. On 9 September 2004 the district prosecutor's office again informed the applicants that the investigation in criminal case no. 24071 had been suspended owing to failure to identify the perpetrators.

69. On 3 December 2004 the first applicant again requested the district prosecutor's office to question the former head of the Urus-Martan VOVD. In his request the first applicant pointed out that the officer had been appointed to the post in March 2000 and had come from the department of the interior of the Penza Region. On 4 December 2004 the district prosecutor's office informed the first applicant that his request of 3 December 2004 was granted in full. No further information concerning the questioning has been communicated to the applicant.

70. On 26 April 2005 the district prosecutor's office reopened the investigation in criminal case no. 24071.

71. On 6 May 2005 the district prosecutor's office suspended the investigation in criminal case no. 24071 owing to failure to identify the perpetrators.

72. On 19 December 2005 the applicants complained to the district military commander. In their letters they described in detail the events of 14-17 March 2000 and asked for help in locating their sons.

73. On 13 February 2006 the first applicant requested the district prosecutor's office to question him as he wanted to provide the investigation with new information. It is not clear from the submitted materials whether the district prosecutor's office conducted the requested questioning.

74. On 2 June 2006 the second applicant asked the district prosecutor for news of progress in the criminal investigation. She also asked him to explain the delays in the investigation.

## *2. Information submitted by the Government*

75. The Government submitted 181 pages from criminal investigation file no. 24071. The contents of these documents and the Government's observations can be summarised as follows.

76. The investigation of the disappearance of Islam Dubayev had commenced on 25 November 2000. The case file was assigned the number 24071. The investigation into Roman Bersnukayev's disappearance was opened on 15 February 2001 and the case file was assigned the number 25028. On 4 February 2002 both cases were joined under no. 24071, but it does not appear that the applicants were ever officially informed of this.

77. According to the Government, the first applicant was questioned on 28 November 2000, but no copy of the transcript has been submitted. He was granted victim status in the proceedings on 27 July 2001. The second applicant was questioned on 4 February 2001. She was granted victim status on 21 February 2001. According to the Government, the first applicant was additionally questioned eight times in 2001 – 2007. The second applicant was additionally questioned on five occasions. No copies of their testimonies were submitted to the Court.

78. The investigation questioned some other local residents. On 4 February 2001 one neighbour of the Bersnukayevs' stated that he had not seen Roman for about a year or a year and a half. The witness had heard that Roman Bersnukayev had been killed by unknown men in military uniforms. In September and November 2001 the investigators questioned Roman Bersnukayev's two brothers and father, who all confirmed that they had not seen him since November 1999 and that he had disappeared after surrendering on 14 March 2000 to the 245th infantry regiment. On 7 October 2003 and 20 January 2004 the investigation again questioned Roman Bersnukayev's father. In December 2003 Roman Bersnukayev's sister was questioned. In June 2005 Roman Bersnukayev's aunt stated that she was unaware of his whereabouts since 1999. In May 2007 the investigation questioned Islam Dubayev's brother and sister, who had had no news of him since his surrender in March 2000.

79. According to the Government, on 1 October 2003 the investigation questioned the first applicant's wife, who stated that certain FSB officers

had told her that Islam Dubayev had been released on 17 March 2000. The Government did not provide a copy of that questioning to the Court.

80. The Government stated in their observations that on 16 January 2001 and on 4 February 2002 the investigation had questioned Mr I.A., the father of A., one of the young men who had been detained together with Islam Dubayev and Ruslan Bersnukayev, who had also disappeared. He confirmed that his son and three other young men had been detained on 14 March 2000 by the military servicemen to whom they had surrendered, and transferred to the local department of the FSB, where an amnesty act has been applied to them on 17 March 2000. After that they had disappeared. The Government did not submit the transcripts of his questioning.

81. The investigation took some steps to identify and question officials who might be aware of the detainees' fate. On 30 May 2004 the investigator of the district prosecutor's office rejected the first applicant's request to question the former head of the Urus-Martan VOVD, having failed to establish the officer's whereabouts. The order also mentioned that it had proved impossible to find and question other officials who had worked in the district department of the FSB, the military commander's office and the VOVD at the relevant time.

82. Without providing a copy of the transcript, the Government referred to the questioning of the head of the temporary detention ward of the Urus-Martan ROVD on 20 January 2004, who had explained that in 2000 criminal suspects had been delivered to the premises of the VOVD. The latter temporary body had been closed in May 2002, after which the usual department of the interior (ROVD) had taken over. He had no information about the missing men.

83. In August 2003 a former official of the Urus-Martan district administration was questioned and stated that he had no recollection of the applicants' case. In January 2004 the then head of administration of Gekh-Chu stated that the previous head of administration had been killed by unknown gunmen in 2001. The witness had no information about the applicants' case. On 4 December 2004, following a court ruling to that effect (see below), the investigation asked the Penza regional prosecutor's office to question Ministry of the Interior Colonel Sh. [who had been the head of the Urus-Martan VOVD at the relevant time] about the detention of the two men at the Urus-Martan VOVD on 17 March 2000. On 15 January 2005 Colonel Sh. stated that he did not recall anything relevant to the investigation, that he could not name any other servicemen who had served there at the time and that he was not aware of the whereabouts of the registration logs of the VOVD.

84. In September 2006 the first applicant asked the investigation to identify and question members of the 245th infantry regiment who had served near Tangi-Chu and might be aware of the subsequent whereabouts of the men who had surrendered. In February 2007 he repeated his request

to reopen the proceedings, to identify and question the officials involved and to inform him of the progress made.

85. In October 2003 both disappeared young men were described by the local police as law-abiding persons who had had no part in any serious crimes during their involvement with extremist groups.

86. The investigators also requested information about the disappearances from various State authorities. In their letters they stated that “it has been established that on 17 March 2000 Islam Dubayev and Roman Bersnukayev were detained at the Urus-Martan VOVD”. On 11 December 2003 the district department of the FSB stated that their office had not detained Islam Dubayev and Roman Bersnukayev or carried out a criminal investigation into their activities. Their office was also unable to assist with the identification and questioning of eye-witnesses of the arrest and questioning of the two men. A similar reply was received from them in May 2007. In March and April 2006 the district departments of the interior in Chechnya informed the investigation that they had never detained Islam Dubayev and Roman Bersnukayev or delivered them to a temporary detention ward. In March 2001 and in September 2003 the remand centres in the Southern Federal Circuit informed the investigation that the missing men had never been detained there. The district department of the interior reported their lack of findings to the district prosecutor's office in response to their requests on numerous occasions between 2003 and 2007.

87. According to the documents and information submitted by the Government, between 2001 and 2008 the investigation was suspended and resumed on several occasions, and has so far failed to identify those guilty or to establish the whereabouts of Islam Dubayev and Roman Bersnukayev.

88. The Government further submitted that the applicants had been duly informed of all decisions taken during the investigation.

89. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the remaining documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

### **C. Proceedings against law-enforcement officials**

#### *1. Court proceedings initiated by the first applicant*

90. On an unspecified date the first applicant lodged a complaint with the Urus-Martan town court. He complained about the failure of the district prosecutor's office to conduct a thorough and impartial investigation in the criminal case concerning the abduction of his son.

91. On 7 April 2004 the town court allowed the applicant's complaint and instructed the district prosecutor's office to conduct a thorough and effective investigation in the criminal case.

92. On an unspecified date in 2004 the first applicant lodged another complaint with the Urus-Martan town court. He complained about the failure of the district prosecutor's office to conduct a thorough and impartial investigation in the criminal case concerning the abduction of his son. In particular, he complained about the failure of the investigation to examine his request of 9 March 2004 concerning the questioning of the former head of the Urus-Martan VOVD and about the lack of access to the criminal case file materials.

93. On 27 May 2004 the town court allowed the applicant's complaint in part. The court stated that the district prosecutor's office had unlawfully failed to examine the applicant's request of 9 March 2004, and instructed the investigative authorities to conduct a proper examination. It rejected the remainder of his complaints.

94. The applicant's appeal against the decision of 27 May 2004 was rejected on 3 September 2004 by the Supreme Court of the Chechen Republic.

95. On 19 October 2004 the first applicant lodged a new complaint with the town court. He complained about the failure of the district prosecutor's office to conduct a proper investigation in the criminal case concerning the abduction of his son. He sought a ruling obliging the authorities to conduct a thorough and effective investigation in the criminal case.

96. On 11 November 2004 the town court rejected the applicant's complaint. On 16 March 2005 that decision was overruled on appeal and the complaint was remitted for fresh examination.

97. On 7 April 2005 the district court again reviewed the first applicant's complaint. It concluded that the investigation had failed to take steps to locate and question a number of officials of the FSB and the Ministry of the Interior who had taken part in the proceedings related to the application of the amnesty act in respect of the applicants' sons. By its decision it again required the district prosecutor's office to carry out a complete and effective investigation into the crime.

98. On 28 March 2007 the district court allowed another complaint by the first applicant and obliged the district prosecutor's office to grant his request, to reopen the adjourned proceedings and to carry out an "effective" investigation.

## *2. Court proceedings initiated by the second applicant*

99. On an unspecified date the second applicant lodged a complaint with the Urus-Martan town court. She complained about the failure of the district prosecutor's office to conduct a thorough and impartial investigation in the criminal case concerning the abduction of her son. In particular, she

complained about the failure of the investigation to examine her request of 26 September 2001 concerning the questioning of a number of witnesses.

100. On 30 June 2004 the town court allowed the applicant's complaint in part and instructed the district prosecutor's office to conduct a proper examination of the applicant's complaint of 26 September 2001.

101. An appeal lodged by the applicant against the decision of 30 June 2004 was rejected on 3 September 2004 by the Supreme Court of the Chechen Republic.

102. Sometime in 2005 the second applicant again lodged a complaint with the town court. She sought a ruling obliging the authorities to conduct a thorough and effective investigation in the criminal case concerning the abduction of her son.

103. On 3 March 2005 the town court rejected the second applicant's complaint. On 25 May 2005 that decision was upheld on appeal by the Supreme Court of the Chechen Republic.

## II. RELEVANT DOMESTIC LAW

104. 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. JOINDER OF THE APPLICATIONS

105. The Court notes that the applications under examination concern the same issue. It is therefore appropriate to join them, in application of Rule 42 § 1 of the Rules of Court.

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

#### A. The parties' submissions

106. 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 Islam Dubayev and Roman Bersnukayev had not yet been completed. The applicants could apply and had indeed applied to the courts with complaints about the progress of the investigation, which was an appropriate domestic remedy. The Government

also argued that it had been open to the applicants to pursue civil complaints but that they had failed to do so.

107. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect, including their application to the district court, had been futile. 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**

108. 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).

109. 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.

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

111. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities shortly after the disappearance of Islam Dubayev and Roman Bersnukayev and that an investigation has been pending. The applicants and the Government dispute its effectiveness.

112. 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 to examine the issue below.

### III. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS

#### A. The parties' arguments

113. The applicants maintained that it was beyond reasonable doubt that Islam Dubayev and Roman Bersnukayev had been detained by State agents on 17 March 2000, the last time there had been any news of them. After that date no one had seen them alive or had any news of them. All the information disclosed by the criminal investigation file supported their assertion as to the involvement of State agents in the disappearance. Since their relatives had been missing for a very long time, they could be presumed dead.

114. The Government submitted that Islam Dubayev and Roman Bersnukayev had been released following the application of an amnesty act. The Government stated that the investigation had suspected that the applicants' relatives might have returned to the illegal armed groups after their release, or been the victims of a crime motivated by revenge, or kidnapped for ransom or for possible exchange, or with the aim of discrediting the federal authorities. There were no witnesses to their detention by State authorities and the applicants themselves were not eye-witnesses to the alleged arrest. They further contended that the investigation of the incident was pending and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They argued that there was no convincing evidence that the applicants' relatives were dead.

#### B. The Court's evaluation of the facts

115. 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).

116. The Court notes that despite its requests for a copy of the entire investigation file into the abduction of Islam Dubayev and Roman Bersnukayev, the Government produced only a part of the documents. 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)).

117. 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.

118. The parties do not dispute that between 14 and 17 March 2000 State agents detained Islam Dubayev and Roman Bersnukayev. On the last date in question the two men had been absolved from criminal liability by application of an amnesty act, signed the appropriate papers and undertaken an obligation to remain at their respective places of residence (see paragraphs 15 and 16 above). It does not appear that any proper records were drawn up in relation to their detention and release or in relation to any other actions carried out in respect of Islam Dubayev and Roman Bersnukayev. They have not been seen since that day and their families have had no news of them. The investigation failed to establish what had happened to them or to charge anyone with the disappearance.

119. The Government suggested that the two men had been released. However, no documents relating to the detention and release of the two men have ever been found; nor has any other evidence thereof, such as witness statements, been submitted to the Court. In such circumstances the two decisions dated 17 March 2000 relating to the application of the amnesty act are insufficient to absolve the Government from their responsibility to account for the fate of detainees last seen alive within their hands (see *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

120. The Government suggested in their submissions that Islam Dubayev and Roman Bersnukayev might have returned to paramilitary groups following their release, or become victims of a crime motivated by blood feud or by pecuniary motives. 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).

121. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among other cases, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luhuyev 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 Islam Dubayev and Roman Bersnukayev or of any news of them for several years supports this assumption. The Court also remarks that, as it follows from the documents contained in the file, the fate of at least two other detainees who had surrendered on the same day was investigated and remains unknown (see paragraph 80 above). This sequence strongly suggests that the group was treated together.

122. Accordingly, the Court finds that the evidence available permits it to establish that Islam Dubayev and Roman Bersnukayev must be presumed dead following their unacknowledged detention by State servicemen.

#### IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

123. 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**

124. The Government contended that the domestic investigation had obtained no evidence that Islam Dubayev and Roman Bersnukayev 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. They pointed out the difficulties encountered by the investigation in identifying and questioning a number of persons who might have had information about the events in question, in particular, other detainees, the “informants” and FSB officers named by the applicants. The numerous decisions to suspend

and resume the proceedings did not demonstrate their ineffectiveness, but showed that the authorities in charge had continued to take steps to solve the crime.

125. The applicants argued that Islam Dubayev and Roman Bersnukayev 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 failed to take some crucial investigative steps. The investigation into the kidnapping of Islam Dubayev and Roman Bersnukayev had been opened belatedly and had then been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and the relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long 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*

126. 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 112 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 Islam Dubayev and Roman Bersnukayev**

127. The Court has already found that the applicants' relatives must be presumed dead following unacknowledged detention by State servicemen and that the deaths can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Islam Dubayev and Roman Bersnukayev.

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

128. 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).

129. In the present case, the kidnapping of Islam Dubayev and Roman Bersnukayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

130. The Court notes at the outset that some 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 documents submitted by the parties and the information about its progress presented by the Government.

131. The Court notes that the authorities were aware of the disappearance of the two young men at the latest in May 2000 (see paragraphs 39-43 above). Despite that, the investigation in case no. 24071 in respect of Islam Dubayev was instituted only on 25 November 2000, and the investigation in respect of Roman Bersnukayev – only on 15 February 2001. Such a long postponement, for which no explanation has been provided, was liable *per se* to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It also appears that within the following months the applicants and some of their neighbours were questioned (see paragraphs 77, 78 and 80). The applicants were granted victim status in February and July 2001 respectively. However, it appears that after that a number of crucial steps, such as identifying and questioning the relevant officials were delayed (see paragraphs 81-83). 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).

132. A number of essential steps were never taken. Most notably, the Court finds it striking that by April 2005 the investigators had yet failed to question the officers who had been directly involved in the two men's detention and alleged release (see the rulings of the district court cited in paragraph 97 above). No documents were sought or obtained about the

alleged questioning and detention of Islam Dubayev and Roman Bersnukayev.

133. The Court also notes that even though the applicants were eventually granted victim status, they were informed only of the suspension and resumption of the proceedings, and not of any other significant developments. It is particularly characteristic of the investigation's attitude that the families were not properly informed that the two files had been joined in February 2002 (see paragraph 76 above). 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.

134. Finally, the Court notes that the investigation was adjourned and resumed on numerous occasions and that there were lengthy periods of inactivity of the district prosecutor's office when no proceedings were pending. The district court on several occasions criticised deficiencies in the proceedings and ordered remedial measures. It appears that its instructions were not complied with.

135. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years without producing any tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection.

136. 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 Islam Dubayev and Roman Bersnukayev, in breach of Article 2 in its procedural aspect.

## V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

137. 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

138. The Government disagreed with these allegations and argued that the investigation had not established that the applicants had been subjected

to inhuman or degrading treatment prohibited by Article 3 of the Convention. The authorities had duly processed all the applicants' requests and they had enjoyed the rights to which victims were entitled in criminal investigations. They stressed that the applicants had not witnessed the alleged arrest of their relatives and that, on the contrary, the latest documents available concerning the whereabouts of their sons attested that they had been absolved of criminal liability and released, demonstrating that the State had no reasons to prosecute them.

139. The applicants maintained their submissions.

## **B. The Court's assessment**

### *1. Admissibility*

140. 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*

141. 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).

142. In the present case the Court notes that the applicants are parents of the disappeared persons. For more than nine 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, they have never received any plausible explanation or information about what became of their sons 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.

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

## VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

144. The applicants further stated that Islam Dubayev and Roman Bersnukayev 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

145. The Government asserted that no evidence had been obtained by the investigators to confirm that Islam Dubayev and Roman Bersnukayev 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.

146. The applicants reiterated the complaint.

### B. The Court's assessment

#### *1. Admissibility*

147. 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

148. 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).

149. The Court has found that Islam Dubayev and Roman Bersnukayev were detained by State servicemen between 14 and 17 March 2000 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).

150. 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 disappeared 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 them against the risk of disappearance.

151. In view of the foregoing, the Court finds that Islam Dubayev and Roman Bersnukayev 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.

## VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

152. 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**

153. 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 had availed themselves of it. They added that participants in criminal proceedings could also claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

154. The applicants reiterated the complaint.

### **B. The Court's assessment**

#### *1. Admissibility*

155. 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*

156. The Court reiterates that in circumstances where, as here, a criminal investigation into the disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

## **VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

158. Article 41 of the Convention provides:

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

### **A. Damage**

159. The applicants did not submit any claims for pecuniary damage. As regards non-pecuniary damage, the applicants referred to 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. They asked the Court to determine the amount of the award.

160. 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 have been found to have been victims of a violation of Article 3. 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 each of the applicants 60,000 euros (EUR), plus any tax that may be chargeable thereon.

### **B. Costs and expenses**

161. The applicants were represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 639 (571 pounds sterling (GBP)). They submitted the following breakdown of costs:

- (a) GBP 251 for translation costs, as certified by invoices; and
- (b) GBP 320 for administrative and postal costs.

162. The Government questioned the reasonableness of the amounts claimed under this heading.

163. 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).

164. 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 and necessarily incurred by the applicants' representatives.

165. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount as claimed, 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 UK, as identified by the applicants.

### **C. Default interest**

166. 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 the applications;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
3. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible;
4. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Islam Dubayev and Roman Bersnukayev;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Islam Dubayev and Roman Bersnukayev disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Islam Dubayev and Roman Bersnukayev;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention;
9. *Holds*
  - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, the payment in respect of non-pecuniary damage to be converted into Russian roubles at the rate applicable at the date of settlement:
    - (i) EUR 60,000 (sixty thousand euros) to each of the applicants in respect of non-pecuniary damage, plus any tax that may be chargeable thereon;
    - (ii) EUR 639 (six hundred and thirty-nine 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 UK;
  - (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.

Done in English, and notified in writing on 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President