



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

FIRST SECTION

CASE OF IRISKHANOVA AND IRISKHANOV v. RUSSIA

(Application no. 35869/05)

JUDGMENT

STRASBOURG

18 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 case of Iriskhanova and Iriskhanov v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 35869/05) 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, Ms Zukhrat Iriskhanova and Mr Umar-Ail Iriskhanov (“the applicants”), on 28 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 Mr A. Savenkov, First Deputy Minister of Justice, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 18 March 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. The President of the Chamber acceded to the Government's request not to make the documents from the criminal investigation file deposited with the Registry in connection with the application publicly accessible (Rule 33 of the Rules of Court).

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 were born in 1957 and 1955 respectively. They live in Samashki, Chechnya. They are the parents of Zurab Iriskhanov, who was born in 1980.

A. Disappearance of Zurab Iriskhanov

1. The applicants' account

6. At the material time Zurab Iriskhanov was a student at the Grozny State Oil Academy and was positively assessed by its administration. His brother Gilani Iriskhanov was in the 10th grade at the local school. The brothers lived with their parents and other relatives at 10 Novaya Street in Samashki village in the Achkhoy-Martan district of Chechnya. At the material time the settlement was under a curfew. Russian military checkpoints were situated on the roads leading to and from the village.

7. In the evening of 19 June 2002 the applicants, their sons Zurab and Gilani Iriskhanov and other relatives were at home. At about 7 p.m. three APCs (armoured personnel carriers) with a group of armed men arrived at the house. Another APC arrived in a neighbouring street and parked close to the applicants' house.

8. The group consisted of approximately thirty to forty men of Slavic appearance. They were armed with machine guns and spoke unaccented Russian. The men neither introduced themselves nor produced any documents. The applicants thought that they were Russian military servicemen.

9. The servicemen surrounded the applicants' house. The first applicant heard one of the officers, whom the others called "Lyekha" (*Лёха*), calling somebody on his portable radio and reporting: "These men are not here..." and the response: "Take the other ones as well". When the first applicant asked the officers what was going on, they swore at her and threatened to shoot her.

10. When Zurab and Gilani Iriskhanov heard the APCs they ran outside. The servicemen opened fire on them. As a result, Zurab Iriskhanov was wounded and Gilani Iriskhanov was hit on the head with a gun butt and forced to the ground. The servicemen handcuffed Zurab and Gilani Iriskhanov, put sacks over their heads, kicked them and beat them with gun butts. After that they dragged the brothers to the APCs and put them into different vehicles.

11. Meanwhile some of the servicemen searched the applicants' house. They did not inform the applicants of what they were looking for. It appears that they did not find anything of interest to them. After the search the APCs drove away in the direction of the Samashki military commander's office.

12. The abduction of Zurab and Gilani Iriskhanov was witnessed by a number of the applicants' relatives and neighbours.

13. The description of the events of the evening of 19 June 2002 is based on the following accounts: two accounts by the first applicant, one dated 20 February 2005 and one undated; an account by the applicants' neighbour Ms A.Sh. (undated); an account by the applicants' neighbour Ms A. M. (undated); an account by the applicants' neighbour Ms A.A. (undated); an account by the applicants' neighbour Ms Z.K. dated 21 August 2005; an account by the applicants' neighbour Ms A.M. (undated); two accounts by a number of residents of Samashki (undated); a hand-drawn map of the premises and an article published in the newspaper *Pravo-Zashchita* ("Право-Защита") in the issue for 5 June 2003.

2. Information submitted by the Government

14. The Government did not challenge most of the facts as presented by the applicants. According to their submission "...the reason for the opening of the criminal case was the complaint by Z. Iriskhanova lodged on 21 June 2002 about the abduction of her sons Zurab Iriskhanov, who was born in 1980, and Gilani Iriskhanov, who was born in 1983, on 19th June 2002.

B. The search for Zurab Iriskhanov and the investigation

1. The applicants' account

15. Since 19 June 2002 the applicants have repeatedly applied in person and in writing to various public bodies. They were supported in their efforts by the SRJI. In their letters to the authorities the applicants referred to their son's abduction and asked for assistance and details of the investigation. Most of 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.

a. The applicants' search for their sons

16. Immediately after the abduction of their sons the applicants, along with other residents of the village, went to the Samashki military commander's office (the military commander's office). It appears that by midnight of 19 June 2002 a crowd of almost 300 local residents gathered

there. They demanded the release of Zurab and Gilani Iriskhanov and the reasons why they had been taken away by the servicemen.

17. At about midnight on 19 June 2002 the head of the local department of the interior, officer L.S., came out of the military commander's office building and told the crowd that Zurab and Gilani Iriskhanov would be released at 7 a.m. on the following morning, 20 June 2002.

18. In the morning of 20 June 2002 the applicants and other residents of the village returned to the military commander's office. At the office they were told that Zurab and Gilani Iriskhanov had not been detained on their premises. No explanation was provided concerning the whereabouts of the brothers. The applicants and their relatives decided to wait for the news about Zurab and Gilani Iriskhanov at the entrance to the building. They waited until midnight on 20 June 2002.

19. In the morning of 21 June 2002 the first applicant went to the Achkhoy-Martan district prosecutor's office (the district prosecutor's office) and asked them to come to the military commander's office. At about 10 a.m. the district prosecutor arrived at the military commander's office. Having spent about twenty minutes in the building, the prosecutor came out and told the applicants that about fifteen minutes before, on that very same morning, Zurab and Gilani Iriskhanov had been taken by helicopter to the main Russian military base in Khankala, Chechnya. A number of local residents saw the helicopter taking off from the yard of the military commander's office. After that three APCs drove out of the yard. Employees of the military prosecutor's office told the applicants that these APCs had arrived from the military base in Khankala.

20. When the applicants asked the district prosecutor for assistance in expediting the release of their sons, the latter told them that he could not do anything about it, as when he had arrived at the military commander's office even he had had to surrender his service gun to enter the building.

21. On several occasions from 21 to 23 June 2002 the applicants went to the military base in Khankala. The servicemen there told them that Zurab and Gilani Iriskhanov had been transferred to the ORB-2 (operational search bureau) of the Grozny department of the interior (the Grozny OVD).

22. On 26 June 2002 the applicants found a note in their yard. The letter stated that Gilani Iriskhanov had been detained in the ORB-2 of the Grozny OVD and that the applicants could pick him up from there.

23. In the morning of 27 June 2002 the applicants went to the ORB-2 in Grozny. Gilani Iriskhanov was released in exchange for money. The applicants were told that he had been transferred to the ORB-2 from the military base in Khankala. No information was available about the whereabouts of Zurab Iriskhanov.

24. While in detention Gilani Iriskhanov had been beaten and questioned about the whereabouts of his uncle, a member of illegal armed groups. After his release Gilani Iriskhanov underwent medical treatment in the Malgobek

district hospital. Neither the applicants nor Gilani Iriskhanov complained to domestic authorities that he had been ill-treated.

b. The official investigation into the disappearance

25. On 20 June 2002 the applicants complained to the district prosecutor's office that their sons had been abducted. They also informed them of the registration numbers of the APCs which had taken away their sons on 19 June 2002.

26. On 24 June 2002 the district prosecutor's office instituted an investigation into the abduction of Zurab and Gilani Iriskhanov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 63045.

27. On 16 April 2003 the first applicant requested the district prosecutor's office to assist her in the search for Zurab Iriskhanov.

28. On 19 April 2003 the district prosecutor's office informed the first applicant that they had been taking operational search measures to establish the whereabouts of Zurab Iriskhanov and identify the perpetrators of the crime.

29. On 28 April 2003 the Chief Military Prosecutor's office forwarded the first applicant's complaint that her son had been abducted by Russian military servicemen to the military prosecutor's office of the United Group Alignment (the military prosecutor's office of the UGA).

30. On 10 July 2003 the military prosecutor's office of the UGA forwarded the first applicant's complaint to the military prosecutor's office of military unit no. 20102 for examination.

31. On 27 June 2003 the Achkhoy-Martan district military commander informed the first applicant that his office had no information concerning any unlawful actions of the Russian military servicemen on 19 June 2002.

32. On 11 May 2005 the district prosecutor's office informed the first applicant that on an unspecified date the investigation of criminal case no. 63045 had been resumed.

2. Information submitted by the Government

33. According to the documents submitted by the Government, the first applicant complained on 21 June 2002 to the district prosecutor's office that her sons had been abducted. In her letter she stated that her sons had been abducted by Russian servicemen who had arrived in APCs; that they had been detained for some time at the checkpoint located on the Sunzhenskiy mountain ridge; and that thirty-four other residents of the Achkhoy-Martan district had been detained there on 18 and 19 June 2002.

34. The Government submitted that the investigation of the criminal case opened in connection with the abduction of Zurab and Gilani Iriskhanov by "unidentified men" had commenced on 24 June 2002.

35. On 24 June 2002 the investigators conducted a crime scene examination at the applicants' house. Nothing was collected from the scene.

36. On 24 June 2002 the first applicant was granted victim status in the criminal case and questioned. She stated that at about 8 p.m. on 19 June 2002 three APCs with a group of about fifty military servicemen had arrived at her yard. The registration numbers on the vehicles had been covered with mud. The servicemen were armed; they swore a lot and fired gunshots in the air. They grabbed Gilani Iriskhanov, beat him with rifle butts and put him into one of the APCs. Her second son, Zurab, tried to run away from the soldiers through the back yard, but he was caught in the vegetable garden, beaten with rifle butts and placed in another APC. The abduction of her sons took about five minutes; due to the gunshots fired by the abductors, a number of neighbours gathered next to her house and witnessed the abduction. After that the APCs drove to the military commander's office in Samashki. The applicant and her neighbours went there to inquire about the reasons for the arrest of Zurab and Gilani Iriskhanov; they waited at the entrance to the office until 11 p.m. According to the applicant, that evening she managed to speak to the military commander, who promised her that her sons would be released on the following morning. The applicant also found out that her sons' abductors were not from the local military commander's office, that they were stationed there temporarily and were from an unidentified military unit. The applicant and her neighbours spent several days waiting for news about the abducted brothers; while they were waiting they saw a helicopter, which landed in the yard of the military commander's office and took off about ten minutes later; after that the abductors drove away from the military commander's office building in four APCs and six Ural lorries with tented backs. On the third day after the abduction some employees of the military commander's office informed the applicant that Gilani and Zurab Iriskhanov had been taken by helicopter to Khankala, Chechnya.

37. On 27 June 2002 the investigators questioned the applicants' neighbour Ms R.Yu., who stated that at about 8 p.m. on 19 June 2002 she had been at home when she had heard gunfire. Through the fence she had seen a group of about ten men in camouflage uniforms and armed with automatic weapons in the Iriskhanovs' vegetable garden. These men had taken a young man from there and put him in an APC. After the military vehicle had left she learnt from the first applicant that the armed men had abducted her sons.

38. On 27 June 2002 the investigators questioned the applicants' relative, Ms Kh.Ch., whose statement concerning the circumstances of the abduction of Gilani and Zurab Iriskhanov by military servicemen and the subsequent events was similar to the first applicant's statement of 24 June 2002.

39. On 27 June 2002 the investigators questioned the applicants' neighbour, Ms L.A., who stated that at about 8 p.m. on 19 June 2002 she

had heard from her house gunshots, screams, loud swearing in Russian and the noise of armoured vehicles. After the shooting had stopped, she had gone to the Iriskhanovs, where the first applicant had told her that armed men in camouflage uniforms, who had arrived in APCs, had taken away her son Zurab Iriskhanov.

40. On 27 June 2002 the investigators also questioned the applicants' neighbour, Ms A.M. who stated that at about 8 p.m. on 19 June 2002 she had been at home when she had heard gunshots. She had gone out into the street, where she had seen an APC and a group of nine armed men in camouflage uniforms standing next to it and swearing in Russian. Her neighbour, the first applicant, was standing next to the gate crying. After the APC had gone she found out from the first applicant that the men had beaten and abducted her son Zurab Iriskhanov. On 8 June 2005 the witness was questioned again and stated that after the military servicemen had taken away Gilani and Zurab Iriskhanov, the applicants and about 300 other residents of the village had gone to the local military commander's office, where they had spent three days waiting for news of the abducted men. On 1 July 2002 Gilani had returned home; according to the applicants, he had been handed over to them by officers of the Regional Department of the Fight Against Organised Crime of the Ministry of the Interior (the RUBOP) and that he had been detained in a pre-trial detention centre in Grozny.

41. On 28 June 2002 the investigators questioned Gilani Iriskhanov, who stated that at about 8 p.m. on 19 June 2002 two APCs with a group of about fifty unidentified armed men in camouflage uniforms had arrived at his family's house. The men placed him in one of the APCs. His brother Zurab had tried to run away from them, but was caught and also put into the APC. After that the brothers were taken to the military commander's office in Samashki, where they were detained for two days; on the third day they were taken by a helicopter to Khankala, where they were detained for three more days. After that they were taken to the RUBOP in Grozny. Throughout the detention the brothers were kept separately and did not see each other. According to the witness, he was not beaten during the detention. On 27 July 2002 he was released and returned home. The Government did not provide a copy of this witness statement.

42. On 28 and 29 June 2002 the investigators questioned the applicants' neighbours, Ms M.S. and Ms Ma.S., whose statements concerning the circumstances of the abduction were similar to the one provided by Ms A.M.

43. On 30 June 2002 the investigators questioned the applicants' neighbour, Ms G.A., who stated that at about 8 p.m. on 19 June 2002 she had been at home when she had heard gunshots and gone outside. In the vegetable garden adjacent to the Iriskhanov family's garden she had seen a group of about ten armed men in camouflage uniforms and an APC in the

street. The armed men put Zurab Iriskhanov into the APC and took him away.

44. On 26 and 30 June and 5 July 2002 the investigators requested the ROVD and other district departments of the interior in Chechnya to take operational search measures to identify and question witnesses to Zurab Iriskhanov's abduction, to establish whether he had been detained by local law-enforcement and military structures, whether he was detained in any of the detention centres of the Achkhoy-Martan district and whether his corpse had been found. According to the replies of 27-29 August and 2, 4, 6, 16, 17 and 20 September 2002, Zurab Iriskhanov had not been detained by the State authorities and his corpse had not been found.

45. On 13, 15, 16, 17, 19, 20 and 22-26 May and 1, 3-5, 9 and 10 June 2005 the investigators questioned a number of the applicants' fellow villagers, including Ms L.Z., Ms Z.Kh., Mr M.T., Ms Z.S., Mr S.G., Mr Kh.S., Mr A.S., Mr Kh.I., Ms S.Ch., Mr A.O., Mr I.A., Mr M.I., Mr M.G., Mr Sh. M., Ms Z.A., Mr M.D., Ms Kh.U., Mr A.U., Mr I.S., Mr A.A., Ms Kh.M., Ms M.D., Mr D.Kh. and Ms T.Sh., all of whom provided similar statements concerning the abduction. The witnesses stated that they had not witnessed the events, but had been informed by their relatives and neighbours that in the evening of 19 June 2002 a group of military servicemen had arrived at the Iriskhanovs' house in three APCs, opened fire and taken away Zurab and Gilani Iriskhanov and that at some point later Gilani Iriskhanov had been released and returned home.

46. On 20 May and 11 June 2005 the investigators questioned the applicants' neighbours Ms T.A. and Ms L.M. accordingly, who provided similar statements concerning the circumstances surrounding the abduction. According to the witnesses, they had been at home when they had heard armoured vehicles and gunfire. They had seen armed men in camouflage uniforms in the street, got scared and stayed inside. About half an hour later, when the shooting was over, they went to the Iriskhanovs' and learnt about the abduction of their sons. After that along with the applicants and about 300 other residents of the village they went to the local military commander's office to obtain information about the abducted brothers. They spent three days next to the office waiting for the news, but to no avail. On the third day they saw a helicopter land on the premises of the office and take off about ten minutes later. Shortly afterwards several armoured vehicles drove out of the yard of the military commander's office; their registration numbers were covered with mud. However, it started raining and those present were able to see the numbers when the mud was washed off by the rain. They wrote them down and submitted them to the authorities in their collective letter. The witnesses further stated that the Iriskhanov brothers had been taken by helicopter to Khankala, Chechnya.

47. On 19, 20, 23 and 25 May and 1, 6 and 9 June 2005 the investigators questioned the applicants' neighbours, Ms Kh.Ts., Ms M.D., Ms Z.Sh.,

Mr R.A., Ms R.Kh., Mr Kh.Z., Ms M.A. and Ms R.I., whose statements concerning the events surrounding the abduction were similar to those provided by Ms T.A. and Ms L.M.

48. On 5 June 2005 the investigators questioned the applicants' neighbour, Ms M.T., who stated that at about 6 p.m. on 19 June 2002 she had been at home and had gone out in the street and seen military armoured vehicles. It was the third time the vehicles had arrived in her street that day. This time they stopped at the Iriskhanovs' house. From the balcony she saw three APCs with military servicemen in camouflage uniforms; the servicemen opened fire and the shooting lasted for about half an hour. According to the witness, she watched Gilani Iriskhanov being taken away. After the shooting was over she went to the Iriskhanovs' house, where she was told that the soldiers had also taken away Zurab Iriskhanov.

49. On 6 June 2005 the investigators questioned the deputy head of the Samashki village administration, Mr Kh.Ts., who stated that in the summer of 2002 he had learnt about the abduction of the Iriskhanov brothers by military servicemen. According to the witness, the brothers had not participated in the activities of illegal armed groups.

50. On 7 June 2005 the investigators questioned the applicants' neighbour, Ms Z.N., who stated that at about 7 p.m. on 19 June 2002 she had been at home when she had heard armoured vehicles in the street. She had gone outside and next to the Iriskhanovs' house she had seen three APCs and a group of military servicemen, who had just opened fire. After the shooting was over, she went to the applicants' house and learnt that the servicemen had taken away their sons Gilani and Zurab. Then about 300 local residents gathered and went to the military commander's office. For three days they waited for news of the abducted men, but to no avail. On the third day a convoy of military vehicles drove away from the military commander's office. The locals wrote down the registration numbers of the vehicles and provided them to the authorities in a collective letter, signed by a number of local residents including the witness.

51. On 11 June 2005 the investigators questioned the applicants' neighbour, Ms M. Dzh., who provided a statement similar to those given by her fellow villagers (see paragraph 45 above). In addition, she stated that on the third day they had been waiting at the military commander's office, a helicopter had landed there for about ten minutes and then had taken off again. After that a convoy of APCs and Ural military lorries had driven away from the military commander's office; their numbers had been written down by the residents, who had submitted them later to the authorities in a collective letter. According to the witness, these were the same military vehicles which had participated in the abduction of the applicants' relatives.

52. On 16 August 2007 the investigators questioned the second applicant, who stated that at about 8 p.m. on 19 June 2002 he had been at home when he had heard gunshots. He had gone into the street and seen his

son Zurab being forced into an APC. His other son, Gilani, was in the vegetable garden with his hands up and then was also forced into an APC. After the brothers had been forced inside, the vehicles drove away. Several days later the applicant learnt that his sons were detained in the RUBOP in Grozny; some time later Gilani was released, but Zurab never returned home.

53. According to the Government, the investigators also requested information about the disappearance from various State authorities. According to the responses received from various district prosecutors' offices, district departments of the interior, military prosecutors' offices, and detention centres in the Southern Federal Circuit, no information concerning the detention of Zurab Iriskhanov or the discovery of his corpse was available.

54. Although the investigation failed to establish the whereabouts of Zurab Iriskhanov, the investigators sent requests for information to the competent State agencies and took other steps to have the crime resolved. The law enforcement authorities of Chechnya had never arrested or detained Zurab Iriskhanov on criminal or administrative charges and had not carried out a criminal investigation in his respect. No special operations had been carried out in respect of the applicants' son.

55. The Government submitted the investigation had found no evidence to support the involvement of the federal forces in the crime and that the investigators were verifying two theories concerning the abduction. Firstly, that Zurab Iriskhanov had staged his abduction with the assistance of his close relatives in order to join illegal armed groups. Secondly, that he had been kidnapped by criminals for a ransom. No documents pertaining to the verification of these theories by the authorities were submitted by the Government.

56. According to the Government, the investigation into the abduction of the applicant's son was suspended and resumed on several occasions; it has so far failed to establish his whereabouts or the identity of the perpetrators of his kidnapping. The applicants had been duly informed of all decisions taken during the investigation.

57. Despite specific requests by the Court the Government did not disclose the entire contents of criminal case no. 63045, providing only copies of a number of documents, running to 229 pages. The Government stated that the investigation was in progress and that disclosure of other documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information and personal data concerning witnesses or other participants in criminal proceedings.

II. RELEVANT DOMESTIC LAW

58. 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

59. 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 Zurab Iriskhanov had not yet been completed. They further argued that it had been open to the applicants to challenge in court any acts or omissions on the part of the investigating authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil complaints but that they had failed to do so.

60. The applicants contested that objection. They stated that the only effective remedy in their case, the criminal investigation into the disappearance, had proved to be ineffective. Referring to the other cases concerning forced disappearances in Chechnya which had been reviewed by the Court, they also alleged that the ineffectiveness of the criminal investigation rendered any other potential remedy, including civil claims, illusory and inadequate in their case.

B. The Court's assessment

61. 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).

62. 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.

63. 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.

64. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities shortly after the kidnapping of Zurab Iriskhanov and that an investigation has been pending since 24 June 2002. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

65. 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

66. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Zurab Iriskhanov were State agents. In support of their complaint they referred to the following facts. At the material time Samashki had been under the total control of federal troops. There had been Russian military checkpoints at the roads leading to and from the village. The armed men who had abducted Zurab Iriskhanov had Slavic features and spoke Russian without an accent, which proved that they were not of Chechen origin. The men had arrived at the applicants' house late in the evening, which indicated that they had been able to move around past curfew. They had arrived in APCs, the military vehicles which had been deployed at the time only by State representatives. The men acted in a manner similar to that of special forces carrying out identity checks. They were wearing specific camouflage uniforms, were armed and had portable radios. The men fired a number of shots without fear of being heard by law enforcement agencies located in the village. The officer who had come out to the applicants and their neighbours from the local military commander's office had confirmed that Zurab and Gilani Iriskhanov had been detained in their office. All the information disclosed from the criminal investigation file supported their assertion as to the involvement of State agents in the abduction. Since their son had been missing for a very lengthy period, he could be presumed dead. That presumption was further supported by the

circumstances in which he had been arrested, which should be recognised as life-threatening.

67. The Government submitted that unidentified armed men had kidnapped Zurab Iriskhanov. They further contended that the investigation of the incident was pending, that there was no evidence that the men were State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. The Government asserted that the abduction could have been attributable to criminals who could have kidnapped Zurab Iriskhanov for a ransom or that he could have staged his abduction with the assistance of his relatives, in order to join illegal armed groups. They further argued that there was no convincing evidence that the applicants' relative was dead. The Government raised a number of objections to the applicants' presentation of the 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 or criminals pursuing mercenary goals. The Government further alleged that the applicants' description of the circumstances surrounding the abduction was inconsistent. In particular, the applicants' descriptions of the abductors and the insignia on their uniforms were not sufficiently precise and Gilani Iriskhanov's allegations about his subsequent detention in the local law enforcement agencies were unsubstantiated.

B. The Court's evaluation of the facts

68. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of the facts of matters 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).

69. The Court notes that despite its requests for a copy of the investigation file into the abduction of Zurab Iriskhanov, the Government produced only a part 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)).

70. 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' son can be presumed dead and whether his death can be attributed to the authorities.

71. The applicants alleged that the persons who had taken Zurab Iriskhanov away on 19 June 2002 and then killed him were State agents.

72. The Government suggested in their submissions that the abductors of Zurab Iriskhanov may have been criminals pursuing mercenary goals or that he had staged his abduction himself in order to join illegal armed groups. However, these allegations were not specific and the Government did not submit any material whatsoever in support of them. 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 *Çelikkbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

73. 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 through military roadblocks and proceeded to check identity documents and take two persons away from their home strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their applications and witness statements to the authorities the applicants and the other witnesses consistently maintained that Zurab Iriskhanov had been detained by military servicemen, and requested the investigation to look into that possibility (see paragraphs 29, 33, 36-41, 46 and 50-52 above).

74. 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 furnish to the Court a number of witness statements to which they referred in their submissions. In the Court's view, the fact that over a period of several years the applicants' recollection of an extremely traumatic and stressful event differed in rather insignificant details does not in itself suffice to cast doubt on the overall veracity of their statements.

75. 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).

76. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their son was abducted by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. 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 Zurab Iriskhanov was arrested on 19 June 2002 by State servicemen during an unacknowledged security operation.

77. There has been no reliable news of Zurab Iriskhanov since the date of the kidnapping. His name has not been found in any official detention facility records. Finally, the Government have not submitted any explanation as to what happened to him after his arrest.

78. Having regard to 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 Zurab Iriskhanov or of any news of him for several years supports this assumption.

79. Accordingly, the Court finds that the evidence available permits it to establish that Zurab Iriskhanov must be presumed dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

80. The applicants complained under Article 2 of the Convention that their son had been deprived of his life 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

81. The Government contended that the domestic investigation had obtained no evidence to the effect that Zurab Iriskhanov was dead or that any servicemen of the federal law-enforcement agencies had been involved in his kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants' son met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible.

82. The applicants argued that Zurab Iriskhanov had been detained by State servicemen and should be presumed dead, in the absence of any reliable news of him 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 by 2005 the district prosecutor's office had not taken some crucial investigative steps, such as questioning a number of witnesses to the abduction. The investigation into Zurab Iriskhanov's kidnapping had been opened five days after the events and then 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

83. 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 65 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 Zurab Iriskhanov

84. The Court has already found that the applicants' son 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 his death can be attributed to the State and that there has been a violation of Article 2 in respect of Zurab Iriskhanov.

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

85. 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).

86. In the present case, the kidnapping of Zurab Iriskhanov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

87. 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 documents partially submitted by the parties and the information about its progress presented by the Government.

88. The Court notes that the authorities were made aware of the crime by the applicants' oral submissions immediately after the abduction and by their written submission on 21 June 2002. The investigation in case no. 63045 was instituted on 24 June 2002, that is five days after Zurab Iriskhanov's abduction. 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 delayed and were eventually taken only several years after the events or not at all. It follows from the submitted documents that the investigation questioned a number of witnesses to the abduction only in May-June 2005, that is three years after the events in question. Furthermore, the district prosecutor's office failed to take such basic investigating steps as to establish the identity of the owners of the military vehicles used by the abductors and question their drivers, or to try to identify and question the servicemen who had been manning the checkpoints in Samashki about the passage of the APCs on 19 June 2002; they failed to question the local military commander about the possible involvement of his staff in the abduction of the applicants' sons and the

subsequent detention of Zurab and Gilani Iriskhanov in his office building; they failed to verify a number of concurring witness statements concerning the helicopter's involvement in the transportation of the abducted men to Khankala and Gilani Iriskhanov's allegations concerning his detention in the military commander's office, Khankala and in the RUBOP in Grozny. 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 had begun. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own accord 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).

89. The Court also notes that even though the first applicant was granted victim status in the investigation concerning the abduction of her son, she was 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.

90. Finally, the Court notes that the investigation was adjourned and resumed on several occasions and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending. For instance, it follows from the documents submitted that no proceedings whatsoever were pending between July 2002 and May 2005.

91. 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 the 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.

92. 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 Zurab Iriskhanov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

93. The applicants relied on Article 3 of the Convention, submitting that Gilani Iriskhanov had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention and that as a result of the disappearance of their son Zurab Iriskhanov 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 complaint concerning Gilani Iriskhanov

94. In their observations on the admissibility and merits of the application the applicants stated that they no longer wished to maintain this complaint.

95. The Court, having regard to Article 37 of the Convention, notes that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). It finds no reasons of a general character affecting respect for human rights as defined in the Convention which require further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, among other authorities, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unpublished; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

96. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

B. The complaint concerning the applicants' mental and emotional suffering

1. The parties' submissions

97. 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.

98. The applicants maintained their submissions.

2. *The Court's assessment*

a. Admissibility

99. 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.

b. Merits

100. 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).

101. In the present case the Court notes that the applicants are the parents of the disappeared person who witnessed his abduction. For more than seven years they have not had any news of the missing man. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing son. Despite their attempts, the applicants have never received any plausible explanation or information about what became of him following his detention. The responses they received mostly denied State responsibility for their relative's 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.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

103. The applicants further stated that their sons Gilani Iriskhanov and Zurab Iriskhanov 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 complaint concerning Gilani Iriskhanov

104. In their observations on the admissibility and merits of the application the applicants stated that they no longer wished to maintain this complaint.

105. The Court, having regard to Article 37 of the Convention, notes that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character, affecting respect for human rights, as defined in the Convention, which require further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, among other authorities, *Stamatios Karagiannis*, cited above).

106. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

B. The complaint concerning Zurab Iriskhanov

1. The parties' submissions

107. The Government asserted that no evidence had been obtained by the investigators to confirm that Zurab Iriskhanov had been deprived of his liberty. He was not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

108. The applicants reiterated their complaint in respect of Zurab Iriskhanov.

2. *The Court's assessment*

a. Admissibility

109. 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.

b. Merits

110. 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).

111. The Court has found that Zurab Iriskhanov was abducted by State servicemen on 19 June 2002 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

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

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

114. 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

115. 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 could also claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

116. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

117. 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

118. 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).

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

120. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read 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).

VII. ALLEGED VIOLATIONS OF ARTICLES 8 AND 14 OF THE CONVENTION

121. In their initial application form the applicants complained under Article 8 that their house had been searched unlawfully on 19 June 2002 and that the disappearance of Zurab Iriskhanov had adversely affected their family life. Under Article 14 they alleged that they had been discriminated against on the grounds of their ethnic origin.

122. Article 8 of the Convention, in so far as relevant, provides:

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

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.”

Article 14 of the Convention provides:

“The enjoyment of the rights 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.”

123. In their observations on admissibility and merits of the application the applicants stated that they no longer wished their complaints under Articles 8 and 14 of the Convention to be examined.

124. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character affecting respect for human rights as defined in the Convention, which require further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, among other authorities, *Stamatios Karagiannis*, cited above).

125. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. 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

127. The applicants did not submit any claims in respect of pecuniary damage. As regards non-pecuniary damage, they claimed 70,000 euros (EUR) jointly for the suffering they had endured as a result of the loss of their son, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relative.

128. The Government found the amounts claimed exaggerated.

129. 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' son. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicants jointly EUR 60,000, plus any tax that may be chargeable thereon.

B. Costs and expenses

130. 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 6,066.

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

132. 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).

133. 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.

134. 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 legal drafting was necessarily time-consuming to the extent claimed by the representatives.

135. 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.

C. Default interest

136. 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 Article 2, Article 3 in respect of the applicants, Article 5 in respect of Zurab Iriskhanov and Article 13 of the Convention admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Zurab Iriskhanov;
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 Zurab Iriskhanov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Zurab Iriskhanov;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaints under Articles 3 and 5 in respect of Gilani

Iriskhanov and the complaints under Articles 8 and 14 of the Convention;

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 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;

(ii) 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 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President