



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

FIRST SECTION

CASE OF MUTSOLGOVA AND OTHERS v. RUSSIA

(Application no. 2952/06)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

04/10/2010

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

In the case of Mutsolgova and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 11 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 2952/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Russian nationals, listed in paragraph 5 below (“the applicants”), on 13 January 2006.

2. The applicants were represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 7 May 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application, and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- 1) Ms Zakhidat Mutsolgov, born in 1946;
 - 2) Mr Adam Mutsolgov, born in 1943;
 - 3) Mr Magomed Mutsolgov, born in 1973;
 - 4) Ms Aminat Buzurtanova, born in 1982, and
 - 5) Ms Dzhannat Mutsolgov, born in August 2003.
6. The applicants live in the town of Karabulak, in the Ingushetiya Republic. The first and second applicants are the parents of Mr Bashir Mutsolgov, born in 1975. The third applicant is his brother. The fourth and fifth applicants are Bashir Mutsolgov's wife and daughter.

A. Apprehension and disappearance of Bashir Mutsolgov

1. The applicants' account

7. At the material time the fourth and the fifth applicants together with Bashir Mutsolgov lived at 83 Oskanova Street in the town of Karabulak, Ingushetia. The first and second applicants lived in a house nearby, about 50 metres away.

8. The applicants were not eyewitnesses to Bashir Mutsolgov's abduction and the following account of events is based on the witness statements collected by them after his disappearance and on other documents furnished by them to the Court.

9. At about 3.20 p.m. on 18 December 2003 Bashir Mutsolgov, who was heading from the grocery store to his home, met a neighbour, Kh. Kh. The men were talking next to Bashir Mutsolgov's house when a white VAZ-2121 ("Niva") vehicle with blacked-out windows and a dark blue VAZ-2106 car pulled over. Although the vehicles' registration plates were covered with mud, the Niva had part of its number, "26", visible. Five to eight masked men in camouflage uniforms emerged from the cars. They were armed with AK assault rifles and spoke unaccented Russian. The men ran up to Bashir Mutsolgov and Kh. Kh. and hit the latter in the face so that he fell to the ground. They then forced Bashir Mutsolgov into the white Niva vehicle. According to the statement by V.G., Bashir Mutsolgov was forced to the ground and then put in the Niva vehicle. Kh. Kh. submitted in his statement that, before being forced into the Niva vehicle, Bashir Mutsolgov had been hit with a rifle-butt in the stomach.

10. Bashir Mutsolgov's neighbour, Ya. Kh., heard a noise and looked out of the window of her house. She saw across the street a group of men throw Bashir Mutsolgov into the white Niva vehicle. After that the vehicles with Bashir Mutsolgov drove away in the direction of the Karabulak department of the interior ("the GOVD") and the local road police station ("the GAI station") located about 700-900 metres from Bashir Mutsolgov's house.

11. A number of other local residents witnessed the abduction of Bashir Mutsolgov. In particular, prior to arriving at Bashir Mutsolgov's

house, the white Niva vehicle had caused a traffic accident with two minivans which both had about 25-30 passengers on board. The passengers in the minivans, as well as their drivers, including V.G., and the crowd gathered at the place of the accident witnessed the abduction of Bashir Mutsolgov by a group of armed masked men.

12. One of the local residents, M. B., was driving past the applicants' house when he saw a group of armed men throw a man into a white Niva vehicle. Several minutes later, passing by the GAI station, he informed the on-duty officer Ch. about the incident and told him that two vehicles, a white Niva and a dark blue VAZ with the abducted man, were driving behind him on the same road. Ch. stopped the two cars. A man of Slavic appearance, about 35-40 years old, got out of the white Niva vehicle. He spoke unaccented Russian and produced a special permit of the Regional Operational Headquarters of the Federal Security Service ("*Региональный Оперативный Штаб Федеральной Службы Безопасности*"), prohibiting any search of the permit owner and his vehicle. The man introduced himself as an officer of the FSB and ordered Ch. to let the two vehicles through. Ch. recognised him as the man who had been introduced to him as an FSB officer during an investigation into an explosion in Karabulak, and who had participated in the investigation together with other FSB officers. Having checked the permit, Ch. let the two vehicles pass. From the GAI station the two vehicles took the Baku-Rostov highway and drove in the direction of the town of Magas, Ingushetia.

13. The applicants have had no news of Bashir Mutsolgov since 18 December 2003.

14. The above description of the events of 18 December 2003 is based, among other things, on the applicants' application form dated 13 January 2006; written statements by V.G. and M.B. of 22 September 2005; written statements by Ya.Kh. and Kh. Kh. made on 22 September 2005; a written statement by the third applicant made on 14 October 2005; written statements by the first and second applicants dated 6 December 2005, and a hand-drawn map of the premises at Oskanova Street in Karabulak with detailed indications of the objects and persons at the time of the abduction and the direction taken by the abductors.

15. In their statements the first to third applicants referred to the time of Bashir Mutsolgov's abduction as approximately 3.30 p.m.; according to the statements by Kh. Kh. and Ya. Kh., it occurred "at about 3 p.m." According to all witness and applicants' statements submitted to the Court, there had been five to eight abductors who had arrived in a white Niva and a dark blue VAZ vehicle; Bashir Mutsolgov had been put into the white Niva vehicle.

2. The Government's account

16. The Government submitted that on 18 December 2003 at about 4.20 p.m., a group of unidentified armed men in camouflage uniforms had forced Bashir Mutsolgov into a white Niva vehicle near house no. 83 at Oskanova Street in Karabulak and had taken him to an unknown destination.

B. The applicants' search for Bashir Mutsolgov and the investigation

1. The applicants' account

(a) The applicants' search for Bashir Mutsolgov

17. Immediately after the abduction of Bashir Mutsolgov, at about 4 p.m. on 18 December 2003, Ya. Kh. alerted the first, second and third applicants about their relative's abduction. At about 4.20 p.m. the applicants complained about Bashir Mutsolgov's abduction to a number of local law enforcement agencies, including the GOVD. The authorities denied having arrested the applicants' relative.

18. On 24 or 25 December 2003 the third applicant's car was stopped by a grey VAZ-21099 vehicle with blacked-out windows and without number plates. Two men in camouflage uniforms got out of the vehicle, while the driver stayed inside. One of them, aged thirty to thirty-five and of Slavic appearance, approached the third applicant and identified himself as an FSB officer, but refused to provide his name. He carried a Makarov pistol – the usual equipment of members of the Russian “power structures”. He told the third applicant that he could provide him with information on the whereabouts of Bashir Mutsolgov in exchange for 300 United States dollars (USD). The officer described in detail the clothing worn by Bashir Mutsolgov on the day of his abduction.

19. Having received the money, the officer told the applicant that his brother had been abducted by a group of officers of the Ingushetia department of the FSB, the Chechnya department of the FSB and the Regional Department of the FSB in the North Caucasus (*УФСБ по Республике Ингушетии, Чечне и Региональное Управление по Северному Кавказу*). The officer told the applicant that after the abduction Bashir Mutsolgov had been taken to the Ingushetia department of the FSB in Magas and had been detained in a basement. The following day, presumably on 19 December 2003, Bashir Mutsolgov had allegedly been taken by two grey UAZ vehicles (“*таблетка*”) to the Khankala settlement in the Chechen Republic, where the main base of the Russian military forces was located. According to the officer, while in detention Bashir Mutsolgov

had been subjected to beatings and torture with a view to making him confess to an unspecified crime he had not committed.

20. On an unspecified date in the end of December 2003 the third applicant met with an acquaintance who had come over with a young armed man in a camouflage uniform, who was carrying a pistol. The latter spoke Ingush and introduced himself as an officer of the FSB headquarters in Magas. In exchange for USD 200 he promised to find out more information about Bashir Mutsolgov. On the following day the applicant met with him again. According to the officer, on 18 December 2003 a man answering to the description of Bashir Mutsolgov had been brought to the FSB headquarters in Magas and taken into the building through a side entrance.

21. In mid-November 2004, when returning from his parents' home, the third applicant was allegedly approached by a young man in a camouflage uniform and a black knitted hat, who called the third applicant by name. He spoke Russian without accent. The man identified himself as an FSB officer and showed the third applicant a dark-red or brown certificate with a laminated picture. The third applicant could not read the man's family name on the certificate because it was dark and the latter was covering it with his fingers. Having showed the certificate the man told the third applicant that he was not going to identify himself because "if (the third applicant) fell into the hands of the FSB he would tell them everything". While the man was talking, the third applicant noticed two grey VAZ vehicles and a white VAZ vehicle on the opposite side of the street. The man offered to give the third applicant the name of one of Bashir Mutsolgov's abductors in exchange for USD 5,000. The third applicant asked him to give the name of the officer who had shown Ch. a special permit at the GAI station, thinking that Ch. would be able to identify that officer during an eventual confrontation. The man agreed and the third applicant gave him USD 2,000 and Bashir Mutsolgov's picture, with the third applicant's mobile number written on its reverse side. The remainder of the amount was to be paid on receipt of the information.

22. On 18 December 2004 the third applicant allegedly received a call on his mobile. A man who did not identify himself told him that the person who had abducted Bashir Mutsolgov and shown the special permit at the GAI station was L.T., an officer of the FSB department in Kostroma. About two months later an unidentified person visited the third applicant at night to obtain the remaining USD 3,000 and allegedly told the third applicant that L.T. was serving in the FSB with the rank of lieutenant-colonel.

23. In their search for Bashir Mutsolgov the applicants also contacted, both in person and in writing, various official bodies, such as the Russian President, the Deputies of the Russian State Duma, the Envoy of the President of the Russian Federation for Ensuring Human Rights and Freedoms in the Republic of Ingushetia, the administration of the Republic of Ingushetia and departments of the interior and prosecutors' offices at

different levels, describing in detail the circumstances of their relative's abduction and asking for help in establishing his whereabouts. The applicants retained copies of a number of those letters and submitted them to the Court.

(b) The official investigation into Bashir Mutsolgov's disappearance

24. Following the applicants' complaint about Bashir Mutsolgov's abduction, at about 6 p.m. on 18 December 2003 two law-enforcement officers arrived at the applicants' house. They introduced themselves as the head of the local department of the fight against organised crime (the RUBOP) and the district police officer. The officers interviewed an unspecified number of witnesses to the abduction of Bashir Mutsolgov.

25. According to the third applicant, on the same day he went to the Karabulak town prosecutor's office ("the town prosecutor's office") to submit a written complaint about his brother's abduction. He was received by investigator O., who refused to accept his complaint and first called, in the third applicant's presence, the FSB department in Ingushetiya and asked them whether their officials had carried out special operations in Karabulak. O. then allegedly asked his interlocutor on the phone whether he could accept the third applicant's complaint about the abduction of his brother. O. then told the third applicant that, according to his interlocutor, the FSB department in Ingushetiya had not carried out any special operations or arrests in Karabulak and that he had been allowed to accept the third applicant's complaint.

26. On 19 December 2003 the prosecutor's office of the Ingushetiya Republic ("the republican prosecutor's office") forwarded the third applicant's complaint about the abduction of Bashir Mutsolgov to the town prosecutor's office for examination.

27. On 26 December 2003 the town prosecutor's office instituted an investigation into the abduction of Bashir Mutsolgov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given number 23520016 (in the submitted documents the number is also referred to as 2352016).

28. By a letter of 26 December 2003 the town prosecutor's office informed the third applicant that a criminal investigation into the abduction of Bashir Mutsolgov had been opened. The decision stated, in particular, that at about 4.20 p.m. on 18 December 2003 unidentified persons in camouflage uniforms, who had arrived in a Niva vehicle and a VAZ-2106 vehicle, had forced Bashir Mutsolgov into one of the vehicles near 83 Oskanova Street and had taken him to an unknown destination. By a letter of the same date addressed to the third applicant the latter, as well as "other relatives" of Bashir Mutsolgov, were requested to come to the town prosecutor's office for an interview and eventual recognition as victims in that criminal case.

29. On 26 December 2003 the second applicant complained to the military prosecutor's office of military unit no. 04062 that his son had been abducted by armed men in camouflage uniforms in several vehicles. He pointed out that when the abductors had been stopped at the GAI station, one of them had produced a special permit which had allowed the cars to pass without being checked. The second applicant also stated that he had managed to find out that Bashir Mutsolgov had been abducted by officers of the Ingushetia department of the FSB, the Chechnya department of the FSB and the Regional Department of the FSB in the North Caucasus; that he had been taken to the headquarters of the Ingushetia department of the FSB in Magas and put into a basement; that on the following day his son had been taken to the settlement of Khankala in the Chechen Republic, where he had been and was still detained. According to the second applicant that information had been provided by officers of the above-mentioned departments of the FSB who had asked that their names not be disclosed; they had also told the second applicant that Bashir Mutsolgov had been subjected to beatings and torture and pressurised to confess to an unspecified crime. The second applicant emphasised that both he and the first applicant were suffering because they knew nothing about their son's fate and had no information about what was being done about it by the investigating authorities.

30. On 30 December 2003 the third applicant was granted victim status in criminal case no. 23520016.

31. On 22 January 2004 the Ingushetia department of the FSB informed the military prosecutor's office of military unit no. 04062 that they had not arrested Bashir Mutsolgov and had no information concerning his whereabouts.

32. On 22 January 2004 the investigators in criminal case no. 23520016 issued a statement concerning the progress of the investigation. The document provided, *inter alia*, a detailed description of the circumstances of Bashir Mutsolgov's abduction and stated that he had not committed any crimes and that his name had not been on the authorities' wanted list. According to the document, the investigation had questioned a number of witnesses to the abduction, including officer Ch. and M. B. The document, in so far as relevant, continues as follows:

“... ”

In his explanation of 20 December 2003 officer Ch. of the GOVD submitted that on 18 December 2003, while he was on duty at the Kursk-I GAI station,... between 4 and 5 p.m., he was approached by an acquaintance M.B. who had told him that ... he was being followed by a green VAZ-2106 vehicle and a white Niva vehicle; he saw a man being forced into one of those vehicles - those vehicles had been closely following M.B.

Ch. ordered the two vehicles to stop. The Niva vehicle was in front and was followed by a VAZ-2106 vehicle; neither of them had registration plates. The driver of the Niva vehicle had got out and had shown [Ch.] a special permit exempting the vehicles and the persons inside from checking. Ch. recognised the driver as an officer of the Ingushetiya department of the FSB, whom he had seen earlier in connection with various incidents, most recently at the scene of a crime at 6 Chkalova Street, where, as a result of an explosion, a GOVD officer, T., had had his hand torn off. Ch. did not know the family name of the FSB officer but could identify him at any time. Ch. described [that officer's] distinctive marks.

At his interview on 21 January 2004 Ch. gave a similar statement.

Witness M.B. in his explanation and during his interview on 21 January 2004 submitted that on 18 December 2003, at about 4.20 p.m., when he had been driving towards the centre of Karabulak,... four armed persons had stepped into the road and stopped the traffic. At the same moment, their accomplices had forced a young man, who had previously been held in the VAZ-2106 vehicle, into the white Niva and taken him away; M.B. had informed the GAI station located near the GOVD about this. The on-duty officer had stopped vehicles without licence plates, checked their documents and let them through. In answer to M. B.'s question why he had let them pass, the officer answered that he knew one of them as an FSB officer. From [Ch.'s] explanation M.B. understood that the FSB officers had not abducted but arrested Bashir Mutsolgov. M.B. would not be able to identify those persons because they had been wearing masks....

According to a certificate of the head of the GOVD dated 29 December 2003, on 18 December 2003 Bashir Mutsolgov, born in 1975, had been taken to an unknown destination by officers of the power structures..."

33. In a letter of 26 January 2004 the military prosecutor's office of military unit no. 04062 informed the second applicant that the examination of his complaint had established that officers of the Ingushetia and Chechnya departments of the FSB had not participated in the abduction of Bashir Mutsolgov. According to the letter, the military prosecutor's office of the United Group Alignment (the UGA military prosecutor's office) had forwarded a request for assistance in the search for Bashir Mutsolgov to the Regional Operational Headquarters of the FSB.

34. On 25 February 2004 the republican prosecutor's office informed the second applicant that they had studied the case concerning the abduction of Bashir Mutsolgov and had issued instructions for the investigation aimed at establishing the identity of the perpetrators of his abduction. According to the letter, the authorities were verifying the thesis of possible involvement of the FSB officers in the abduction and his detention in Khankala.

35. On 12 April 2004 the second applicant complained about Bashir Mutsolgov's abduction to the head of the FSB of the Russian Federation and the Prosecutor General. He described in detail the circumstances of his son's abduction by armed men in camouflage uniforms in several vehicles and pointed out that when the abductors had been stopped at the GAI station one of them had produced a special permit which

had allowed the vehicles to pass without a check. The second applicant also stated that he had managed to find out that his son had been abducted by officers of the Ingushetia department of the FSB, the Chechnya department of the FSB and the Regional Department of the FSB in the North Caucasus; that he had been taken to the headquarters of the Ingushetia department of the FSB in Magas and put in a basement; that on the following day his son had been taken to the settlement of Khankala in Chechnya, where he was still detained. According to the second applicant, that information had been provided to him by officers of the above-mentioned departments of the FSB, who had asked him not to disclose their names; they had also told the second applicant that Bashir Mutsolgov had been subjected to beatings and torture and pressurised to confess to an unspecified crime. Lastly, he stressed that both he and the first applicant had experienced enormous suffering because of the lack of news about their son and the investigating authorities' failure to take any measures to find him or to identify the perpetrators.

36. By a letter of 11 May 2004 the republican prosecutor's office informed the second applicant that his complaint about the abduction of Bashir Mutsolgov had been forwarded to the town prosecutor's office for examination.

37. By a letter of 20 May 2004 the town prosecutor's office informed the second applicant that they had opened a criminal investigation into his son's abduction; that they were verifying the information submitted by the second applicant during the preliminary investigation, and that he would be given any relevant information in due course.

38. On 26 May 2004 the republican prosecutor's office wrote to the second applicant that the town prosecutor's office had opened a criminal investigation into his son's abduction and that operational and search measures were under way. The letter stated the investigation of the criminal case was under the control of the republican prosecutor's office.

39. By a decision of 26 June 2004 the town prosecutor's office suspended the investigation in criminal case no. 23520016 for failure to identify the perpetrators and establish Bashir Mutsolgov's whereabouts; the operational and search measures aimed at identification of the culprits were to be continued.

40. In a letter of 1 August 2004 the third applicant requested the town prosecutor's office to provide him with information on the status and the progress in the investigation into his brother's abduction.

41. On 3 November 2004 the third applicant wrote to the town prosecutor's office seeking detailed information on the investigation in case no. 23520016 and access to the case file.

42. By a decision of 5 November 2004 the town prosecutor's office refused his request, stating that the third applicant would be allowed to have detailed information concerning the investigation and access to the case file

materials only when the investigation was complete. In a letter of the same day the town prosecutor's office notified the third applicant accordingly and provided him with copies of three procedural decisions issued by it: the decision to open the criminal investigation; the decision to grant the third applicant victim status, and the decision to suspend the investigation.

43. On 11 November 2004 the third applicant requested the town prosecutor's office to reopen the investigation in case no. 23520016 and to carry out additional investigative measures. In particular, he asked the authorities to compile a photofit image of one of the abductors based on the statements by officer Ch. and to conduct an identification procedure.

44. By a decision of 12 November 2004 the town prosecutor's office granted the third applicant's request concerning the photofit image. The decision also stated that the third applicant was to be notified of it. It is unclear whether the requested investigative measures have been carried out by the authorities.

45. On 12 November 2004 the republican prosecutor's office informed the third applicant that the investigation in criminal case no. 23520016 had been resumed on an unspecified date.

46. On 18 December 2004 the third applicant wrote to the town prosecutor's office, submitting that on that day an unidentified man had told him on the phone that one of Bashir Mutsolgov's abductors was Mr L. T., an officer of the Kostroma Region department of the FSB. In connection with that information the third applicant requested the authorities to carry out the following investigative measures in criminal case no. 23520016: establishing whether L.T. was indeed an FSB officer in the Kostroma region; establishing whether he had been stationed in Ingushetia on 18 December 2003; having his photograph identified by officer Ch. and carrying out of a confrontation between officer Ch. and officer L.T. Lastly, the third applicant requested to be informed about the results.

47. By a decision of 20 December 2004 the town prosecutor's office granted the third applicant's request. On the same date the third applicant was informed about it. It is unclear whether the investigating authorities took any of the requested measures.

48. On 20 December 2004 the town prosecutor's office informed the third applicant that the investigation in criminal case no. 23520016 had been resumed on an unspecified date.

49. On 10 August 2005 the third applicant wrote to the town prosecutor's office seeking access to the case file materials in criminal case no. 23520016 and permission to make copies of them.

50. On 13 August 2005 the town prosecutor's office informed the third applicant that his request for access to the case file had been refused and that the applicant would be allowed to have access to it only when the investigation was complete.

51. It appears that the investigation into the abduction of Bashir Mutsolgov is still pending.

2. Information submitted by the Government

52. On 26 December 2003 the town prosecutor's office instituted a criminal investigation into the abduction of Bashir Mutsolgov under Article 126 § 2 of the Criminal Code. The case file was assigned the number 23520016.

53. On 30 December 2003 the third applicant was granted victim status in connection with the proceedings in case no. 23520016.

(a) Statements by the third applicant

54. On being questioned as a victim on 30 December 2003, the third applicant submitted that on 18 December 2003 at about 3 p.m. unidentified persons wearing masks had abducted and taken away his brother, Bashir Mutsolgov. According to eyewitnesses to the abduction, about five unidentified persons had arrived in two blue VAZ-2106 vehicles without number plates and a white Niva vehicle whose number plates were covered with mud but the number 26 was visible on it.

55. During an additional interview as a victim the third applicant explained that on 18 December 2004, at about 10 a.m. a person unknown to him had called him on his mobile phone and had stated that one of the abductors of the third applicant's brother had been L. T., officer of the Kostroma regional or town department of the FSB.

(b) Statement by Ya.Kh.

56. According to the Government, Ya.Kh., interviewed on an unspecified date, stated that at about 3.50 p.m. on 18 December 2003 she had been in her house at 82 Oskanova Street, Karabulak. Looking out of the window she had seen several unidentified armed men in masks and camouflage uniforms force Bashir Mutsolgov into a Niva vehicle and leave thereafter in the direction of Ordzhonikidzevskaya. Ya.Kh. would not be able to identify those persons.

(c) Statement by M.B.

57. M.B., questioned as a witness on an unspecified date, submitted that at about 4.20 p.m. on 18 December 2003 he had been driving along Oskanova Street. As he was passing the Tashkent café, he had seen four unidentified people step into the road and stop the traffic. Other unidentified people put a young man into a white Niva vehicle and went off with him towards the Ordzhonikidzevskaya settlement, the VAZ-2106 vehicle following the Niva. When the two vehicles turned into Ryumakova Street, M.B. told an on-duty police officer at the Kursk-I GAI station what he had

seen. The police officer had checked the documents of the drivers and passengers in the vehicles and let them through. In reply to M.B.'s question as to why they had not been stopped, the police officer answered that an FSB officer of the Ingushetiya department of the FSB had been in one of the vehicles.

(d) Statements by officer Ch.

58. According to the Government, officer Ch., questioned as a witness on an unspecified date, stated that on 18 December 2003 he had been on duty at the GAI station in Karabulak. M.B. applied to him, saying that armed persons driving two vehicles without number plates had arrested Bashir Mutsolgov and had been taking him in the direction of the GAI station. When Ch. stopped those vehicles the driver of the Niva showed a special permit allowing unhindered passage for his vehicle. Ch. did not pay attention to the name on the permit, as the driver was an officer of the Ingushetiya FSB department whom Ch. had previously met, most recently on 30 September 2003 at the scene of a crime at 6 Chkalova Street in Karabulak.

59. During an additional interview as a witness Ch. confirmed his earlier statement in full but submitted that, owing to the time which had elapsed since the abduction of Bashir Mutsolgov, he would not be able to identify the FSB officer who had shown him the special permit.

(e) Statements by officers of the GAI station

60. According to the Government, officers L., B., Ki., T., O. and Ka. of the GAI station, interviewed as witnesses, made statements similar to those given by officer Ch.

(f) Statement by L.T.

61. According to the Government, L.T., interviewed as a witness on an unspecified date, stated that, as a senior officer of the Kostroma regional department of the FSB, he had been stationed in Ingushetiya from 15 July to 1 November 2003. On 18 December 2003 he had been at his permanent post in the Kostroma Region.

(g) Further investigative steps

62. The Government further submitted that unspecified authorities had requested that the Ingushetiya department of the FSB provide information in connection with officer Ch.'s statements. From their reply it followed that officers of that authority had not been at the crime scene at 6 Chkalova Street, Karabulak.

63. With a view to establishing Bashir Mutsolgov's whereabouts and obtaining information on whether he had been arrested or prosecuted, the

investigation sent out requests [*норычение*] to numerous authorities, including unspecified prosecutors of the Ingushetiya Republic, heads of the FSB departments in the North Caucasus and the UGA military prosecutor's office. According to the replies of those State bodies, he was not under arrest or criminal prosecution and his whereabouts were unknown.

64. From the replies of the GOVD, and the remand centres in the Argunskiy, Nozhay-Yurtovskiy, Urus-Martanovskiy, Kurchaloyskiy, Itum-Kalinskiy, Sharoyskiy, Leninskiy, Shatoyskiy, Oktyabrskiy, Gudermesskiy and Groznenskiy districts, as well as several remand centres in the North Ossetia-Alania Republic, it followed that Bashir Mutsolgov was not detained in those detention facilities.

65. The investigation in the case concerning Bashir Mutsolgov's abduction had been repeatedly suspended for failure to identify those responsible and subsequently resumed with a view to verifying new information. It found no evidence that Bashir Mutsolgov had been abducted by State officials or that he was not alive. The investigation in case no. 23520016 was pending.

66. Despite specific requests by the Court, the Government refused to furnish any copies from the investigation file in case no. 23520016. They claimed that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure and would “breach the rights of the parties to the criminal proceedings”. Neither did the Government indicate the exact dates or provide any further details of the witness' interviews and other investigative measures referred to in their submissions to the Court.

C. Proceedings against law-enforcement officials

67. On 14 March 2005 the third applicant complained to the Karabulak Town Court (“the Town Court”) that the investigation in criminal case no. 23520016 was ineffective. He submitted, among other things, that it had taken the district prosecutor's office an unjustifiably long time to launch the investigation; that the main witness, officer Ch., had only been questioned a month after the opening of the investigation and that the district prosecutor's office had failed to take the most basic investigative steps in due time. In particular, they had failed to interview some witnesses and to compile a photofit image of the abductor who had shown the special passage permit at the GAI station. Despite the information concerning L.T., the investigation had failed to check it with the relevant FSB departments. On a more general level, the third applicant complained that he had had to beg for each and every investigative measure and that the investigating authorities had carried them out only after numerous requests from him, which was demonstrated by his voluminous correspondence with the town prosecutor's office. Lastly, the third applicant stressed that the numerous omissions in

the investigation had made it impossible to solve his brother's abduction and to identify and punish the persons responsible for it, and that the culprits had been able to conceal the traces of their crime forever. He also averred that those omissions had been in breach of the European Convention on Human Rights.

68. By a decision of 26 May 2005 the Town Court dismissed the third applicant's complaint as unfounded. The court found that, having received the third applicant's complaint about the abduction of Bashir Mutsolgov on 19 December 2003, the town prosecutor's office, had sent a query to the Ingushetiya department of the FSB on the same day to find out whether they had arrested the applicant's brother. The reply to that query had been received only on 26 December 2003 and on the same day the town prosecutor's office had instituted criminal proceedings into the abduction. The town prosecutor's office could not have instituted the proceedings earlier; it had had first to satisfy itself that Bashir Mutsolgov had not been lawfully arrested.

69. In respect of the remainder of the third applicant's complaints, the Town Court held as follows:

“...As to the submission about the belated interviewing of officer Ch., who had seen one of the abductors, the following should be noted.

It follows from the materials available to the court that ... [on 26 December 2003] the head of the GOVD had been requested to carry out operational and search measures aimed at liberating Bashir Mutsolgov and identifying his abductors. Analogous requests had been sent to [various departments of the Ministry of the Interior] of the Ingushetiya Republic. On the same day the UGA prosecutor and the prosecutors of the NOAR and the Chechen Republic had been requested to verify whether any law-enforcement authorities responsible to them had arrested Bashir Mutsolgov. Those requests had been repeatedly sent to those authorities in January 2004.... Those requests could not have given an immediate result. Before interviewing witnesses it is necessary to identify them. As early as January 2004 the deputy prosecutor of the Ingushetiya Republic had issued a written direction to for witness Ch. to be interviewed. Those directions have been complied with in full and within the time-limits set...

...

The complainant also submits that, despite the information implicating L.T. in the crime, the investigation had failed to verify it. However, from the prosecutor's submissions it transpires that the check conducted by the prosecutor's office had established that L.T. had not been involved in the abduction of Bashir Mutsolgov.

The suspension of the investigation in view of the failure to identify the persons having committed the abduction of Bashir Mutsolgov is in accordance with the requirements of Article 208 of the CCP.”

70. The third applicant appealed against the decision, submitting that the Town Court's reasoning concerning the promptness of the institution of the investigation was absurd. In particular, applying that reasoning, the

investigating authorities would be free not to institute a criminal investigation for months if the authority which they had requested to provide the information failed to reply in due time. He further challenged the court's finding that the investigation had carried out all necessary steps and had taken them in due time. In particular, he stressed that the investigation had not confronted officer Ch. and officer L.T., although the former expressly stated that he had seen L.T. at the scene of an explosion where L.T. was working in a group of FSB officers and had identified himself as an FSB officer. Lastly, the third applicant pointed out that the photofit image of the abductor seen by officer Ch. had been compiled only a year after the opening of the investigation and after the applicant's repeated requests.

71. On 5 July 2005 the Supreme Court of the Ingushetiya Republic dismissed the third applicant's appeal, having found that the investigating authorities had taken all necessary measures to find the missing man and those involved in the abduction.

II. RELEVANT DOMESTIC LAW

72. 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

73. The Government contended that the applicants' complaints should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Bashir Mutsolgov had not yet been completed. They further argued that it had been open to the applicants, who had not been granted victim status, to request that it be granted to them and to challenge any refusal to do so. Being recognised victims of the crime, the applicants would be - and the third applicant was - entitled to request the investigating authority, orally or in writing, to carry out specific investigative measures. Furthermore, it had been open to all applicants to challenge in court any acts or omissions of the investigating or other law-enforcement authorities. The Government also pointed out that

the applicants had not lodged a claim for compensation of non-pecuniary damage under Articles 1069-70 of the Civil Code.

74. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that, by challenging its ineffectiveness before the courts of two instances, they had complied with the exhaustion requirement. 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

75. 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).

76. 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.

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

78. As regards criminal law remedies, the Court observes that the applicants complained to the law-enforcement authorities immediately after the abduction of Bashir Mutsolgov and that an investigation has been pending since 26 December 2003. The applicants and the Government dispute the effectiveness of this investigation.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

80. The applicants complained under Article 2 of the Convention that their relative had disappeared after being detained by State agents and that the investigation into his disappearance had not been effective. Article 2 reads:

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

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

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Submissions by the parties

1. The Government

81. The Government submitted that there was no evidence that the applicants' relative had been abducted by State agents or that he was not alive. In their opinion, the fact that the abductors wore masks and uniforms, were armed and spoke Russian did not prove that they were State agents. In any event, the applicants had not referred to insignia or other details which could have permitted to identify any particular service of the law-enforcement bodies to which the abductors would have belonged. The fact that the abductors had used private vehicles also refuted the applicants' allegation that they were State agents and rather suggested that they could have been members of illegal armed groups, who frequently passed themselves off as officials of law-enforcement agencies. In the Government's view, the applicants' relative might have been abducted by private “persons belonging to criminal structures” or for the reasons of personal feud.

82. Officer Ch.'s submission that he had identified one of the abductors as an FSB officer whom he had previously met at a crime scene during an investigation did not prove that officials of that State authority had been involved in the abduction and in any event, it had not been confirmed. According to a reply from the Ingushetiya department of the FSB, their officers had not been sent to the crime scene referred to by Ch. Furthermore, although Ch. had initially stated that he knew the presumed FSB officer, he had stated during further questioning that he would not be able to identify him on a photo or at a confrontation.

83. The Government further argued that there were inconsistencies in the applicants' and the witnesses' accounts of the events regarding the time of the abduction, the number of the abductors and their vehicles and the

colour of the vehicles and that their statements contradicted the statements by M.B. that the abduction had taken place at about 4.20 p.m. and that the second vehicle was violet in colour. They challenged as untrustworthy the applicants' submissions regarding their alleged contacts with the FSB officials and the information so obtained because the applicants had failed to provide any details about their interlocutors, such as their names or ranks in the FSB or any evidence that they existed at all. In any event, the Government considered that State officials would not have behaved the way described by the applicants. They particularly stressed that the third applicant had concealed the information on those alleged meetings from the investigation. The third applicant informed the investigation only about the call he had allegedly received in December 2004, being silent on the events which had preceded it. By withholding that information, the third applicant had intentionally hindered the effective investigation of the case. As regards L.T., he had been interviewed by the investigator and had submitted that on 18 December 2003 he had been at his place of service in Kostroma and that he had not known anything about the abduction of Bashir Mutsolgov. L.T.'s statements during his interview had not raised any doubts as to their truthfulness and thus there had been no need for their verification.

84. As regard the investigation, the Government argued that it was being carried out by an independent body which had considered various theories, including Bashir Mutsolgov's abduction by members of the law-enforcement authorities and in particular the FSB. The domestic authorities had promptly opened a criminal case and taken the necessary investigative steps. Numerous queries had been sent to various State bodies; the victim and all witnesses who could have known anything about the abduction had been interviewed. The authorities had identified and interviewed the FSB officer whom the applicants accused of having been implicated in their relative's abduction. According to the applicants' own submissions, the abduction had taken only a few minutes. Thus, there had been no traces of the crime and hence no need to inspect the crime scene or to make pictures of it. There had also been no need to interview the second minivan driver and the passengers in the minivans present at the time of the abduction, since their statements would not have added anything to the statements by Ya.Kh. and M.B.

2. The applicants

85. The applicants argued that they had submitted a bulk of evidence which proved beyond reasonable doubt that their relative had been abducted by State agents and was to be presumed dead following his unacknowledged detention. They particularly stressed that the Government had acknowledged that the domestic authorities had considered the thesis of the involvement of State agents, and in particular the FSB, in the abduction of Bashir Mutsolgov, and that they had not challenged the authenticity of the

official information statement saying that he had been abducted by State agents. At the same time the Government failed to furnish any evidence to demonstrate that the investigation had considered or verified other theories of the abduction mentioned by them. The applicants further stated that it was common knowledge that State agents participating in special operations always removed the number plates from their vehicles and insignia from their uniforms. As regards officer Ch., according to the Government's own submissions, eleven months after Ch.'s first interview the investigation had compiled a photofit image based on his description of the abductor. Hence, Ch.'s later statement that he would be unable to recognise the abductor meant that he could have been subjected to pressure and intimidation. Importantly, during his first interview, Ch. had given the name of the abductor – L. - and it corresponded to the information provided to the applicants by the people who had introduced themselves as FSB officers and who had said that the abductor was L.T. The applicants further stressed that the minor differences, if any, between their own and the witnesses' submissions concerning the abduction were explained by the state of shock experienced by those who witnessed that traumatic event, as well as by the different angles from which each of them had witnessed it. Those minor differences in no way undermined the overall credibility and consistency of their submissions on the most important elements of the sequence of the events. In any event, it had been the task of the investigation to clarify those details and, by blaming the applicants for it, the Government unfairly shifted that task onto them.

86. As regards the alleged withholding of the information from the investigation, the applicants submitted that their interlocutors had warned them that disclosing it could have been dangerous for the applicants. Moreover, the information obtained during the first two contacts was rather general, and once the third applicant had obtained specific information on one of the abductors, on 18 December 2004, he immediately brought it to the attention of the town prosecutor's office, requesting them to verify it. Had the investigation been interested in that information and its source, it could have verified it by seeking access to the records of that phone call.

87. As to the investigation by the domestic authorities, the applicants submitted that it had taken the town prosecutor's office an unjustified amount of time to open the criminal case. For eight days the authorities had been unable to ascertain whether Bashir Mutsolgov had been detained by the FSB and during that period of time they had simply failed to take any action whatsoever. The granting of victim status to the third applicant had also occurred too late, depriving the latter of important procedural rights at that crucial initial stage of the investigation. The authorities had failed to examine and photograph the crime scene and to identify and interview numerous witnesses to the abduction, in particular, the passengers in the two minivans which had collided because of the actions of the abductors, as well

as the driver of the second minibus, V.G. The Government's failure to provide copies of the interview records of the witnesses allegedly questioned by the investigation not only made it impossible to assess the quality of those interviews but also raised doubts as to whether they had taken place at all. There were also delays in interviewing the crucial witnesses - according to the Government itself, officer Ch. and witness B.M. were interviewed for the first time only a month after the events.

88. Apart from merely stating that the investigation had verified the possible involvement of the Ingushetiya department of the FSB and L.T. in the abduction and vaguely referring to a reply from that body and an interview with L.T., of which no further details were given, the Government had furnished no evidence that the town prosecutor's office had carried out an independent verification of that information. Although the Government confirmed that L.T. had been an FSB officer serving in Kostroma, they failed to explain how the third applicant had become aware of that information. More importantly, despite the applicants' requests for a confrontation between Ch. and L.T., no such confrontation has been carried out. Moreover, the Government failed to provide an explanation for a one-year delay in compiling a photofit image of the abductor, which measure had been repeatedly requested by the applicants from the beginning.

89. Contrary to the Government's assertion, the applicants received no substantial information on the investigation because the domestic authorities simply informed them that an investigation was ongoing or that they had been unable to identify the perpetrators. The refusal of access to the case file had deprived the applicants from an effective opportunity to check whether all relevant investigative measures had been taken. The investigation dragged on for years and had been suspended on numerous occasions; it was only reopened because of the applicants' numerous requests to that effect.

B. The Court's assessment

1. Admissibility

90. The Court reiterates, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic criminal remedies should be joined to the merits of the complaint (see paragraph 79 above). The complaint under Article 2 must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Bashir Mutsolgov

(i) General principles

91. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

(ii) Establishment of the facts

92. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, § 161, Series A no. 25).

93. The applicants alleged that on 18 December 2003 their relative, Bashir Mutsolgov, had been abducted by State agents and then disappeared. The applicants were not eyewitnesses to their relative's abduction. However, they produced in support of their submission statements of eyewitnesses to the event; a detailed hand-drawn map of the place of the abduction and an information note from the criminal case file on Bashir Mutsolgov's abduction, according to which their relative was abducted by officers of law-enforcement bodies (see paragraphs 14 and 32 above). Furthermore, they referred to officer Ch.'s submissions to the investigation (their existence and content being not contested by the Government) that the abductors had produced a special passage permit, usually used by members of law-enforcement bodies, and that he had recognised one of the abductors

as an FSB officer, whom he had previously met during an investigation into another crime.

94. The Government denied that State agents had been involved in the abduction of the applicants' relative and challenged the applicants' and the witnesses' statements as inconsistent.

95. The Court notes at the outset that despite its requests for a copy of the investigation file into the abduction of Bashir Mutsolgov, the Government produced no documents from the case file. They referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

96. In view of this and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect. The Court will thus proceed to examine the crucial elements in the present case that should be taken into account in order to decide whether the applicants' relative's disappearance should be attributed to the State authorities and whether he should be presumed dead.

97. The Government submitted that the applicants' and the witnesses' submissions as to the time of the abduction, the exact number of the abductors and their vehicles and the colour of the vehicles were inconsistent and differed from the statements made in that respect by M.B.

98. In this connection the Court notes in the first place that the Government failed to provide M.B.'s statement. The statement by M.B. produced by the applicants fully confirms their own and other witnesses' account of the events surrounding the abduction and, in particular, the number and the colour of the abductors' vehicles. Apart from the alleged differences between the statements by M.B. and the applicants, mentioned above, the Government failed to point to any other inconsistencies in the applicants' submissions. Having carefully examined those submissions and the documents furnished by the applicants, the Court itself does not find any inconsistencies of the sort indicated by the Government. On the contrary, it notes that in those documents the applicants and the witnesses consistently submitted that Bashir Mutsolgov had been abducted at approximately 3 p.m. by five to eight armed men in masks and uniforms, who had arrived in two vehicles – a white Niva and a dark blue VAZ (see paragraph 15 above). In sum, the Court is satisfied that, contrary to the Government's assertion, the applicants presented a coherent, consistent and convincing picture of the events surrounding their relative's abduction.

99. The Court further observes that the Government failed to produce any evidence whatsoever to support their submissions that they had verified officer Ch.'s statement that one of the abductors had been an FSB officer or that his submission in that respect had not been confirmed, as alleged by them. In this connection the Court emphasises that the Government disputed

neither the existence of Ch.'s statement to that effect nor its content. Similarly, the Government produced no elements to demonstrate that the investigation had indeed interviewed officer L.T. and had validly discarded the thesis of his presumed participation in the applicants' relative's abduction.

100. The Court is also not persuaded by the Government's submission that Bashir Mutsolgov might have been abducted by private persons from "the criminal structures" or because of a personal feud, for which assertion no evidence had been produced. Moreover, it finds no elements in the case file to suggest that the investigating authorities seriously pursued that thesis, if at all. In the Court's view, the fact that a group of five to eight armed men in masks and camouflage uniforms, driving two vehicles without number plates, having caused an accident involving several dozen persons and apparently not being disturbed by this, could have, immediately after that accident, forced a person inside their vehicle in broad daylight and in the sight of numerous witnesses and could have passed unhindered through a GAI checkpoint, having presented a special passage permit usually used by members of law-enforcement officials, rather supports the applicants' allegation that the abductors were State agents (compare *Asadulayeva and Others v. Russia*, no. 15569/06, § 85, 17 September 2009; *Alikhadzhiyeva v. Russia*, no. 68007/01, § 59, 5 July 2007; *Nasukhanova and Others v. Russia*, no. 5285/04, § 95, 18 December 2008; and *Ruslan Umarov v. Russia*, no. 12712/02, § 91, 3 July 2008).

101. It is reiterated that where an applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the withholding of documents by the Government, it is for the latter to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, 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).

102. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that Bashir Mutsolgov was abducted by State agents. The Government, on the contrary, have failed to discharge the burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court considers that Bashir Mutsolgov was arrested on 18 December 2003 in Karabulak by State agents during an unacknowledged security operation. Having made this finding, the Court does not consider it necessary to establish further the particular service to which the abductors of the applicants' relative would have belonged.

103. It remains to be decided whether Bashir Mutsolgov is to be presumed dead following his abduction by State agents. In this connection the Court reiterates that in a number of cases concerning disappearances of persons in the Chechen Republic it has repeatedly held that when a person is detained by unidentified State agents without any subsequent acknowledgment of the detention, this can be regarded as life-threatening (see, among many other authorities, *Bazorkina and Imakayeva*, both cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, 10 May 2007; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007). Furthermore, the Court held that a finding of State involvement in the disappearance of a person is not a condition *sine qua non* for the purposes of establishing whether that person can be presumed dead; in certain circumstances the disappearance of a person may in itself be considered as life-threatening (see *Medova v. Russia*, no. 25385/04, § 90, ECHR 2009-... (extracts), and *Osmanoğlu v. Turkey*, no. 48804/99, § 57, 24 January 2008).

104. Turning to the circumstances of the present case, the Court notes that it has found it established that Bashir Mutsolgov had been abducted by State agents. There has been no news of him since the date of his abduction, which is more than six years ago. His name has not been found in the official records of any detention facility. Lastly, the Government failed to provide any explanation for his disappearance, and the official investigation into his kidnapping, which has been dragging on for more than six years, has produced no known results.

105. Accordingly, the Court finds that the evidence available permits it to establish that Bashir Mutsolgov must be presumed dead following his unacknowledged detention by State agents.

(iii) *The State's compliance with Article 2*

106. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

107. The Court has already found that Bashir Mutsolgov must be presumed dead following his unacknowledged detention by State agents. Noting that the authorities did not rely on any ground capable of justifying the use of lethal force by their agents or otherwise accounting for his death,

it follows that the responsibility for his presumed death is attributable to the respondent Government.

108. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in respect of Bashir Mutsolgov.

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

109. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such an investigation is to secure effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or was otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

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

111. Turning to the circumstances of the present case, the Court observes, and this is not contested by the parties, that the applicants immediately put the authorities on notice about the abduction of Bashir Mutsolgov (see paragraphs 17, 25 and 26 above). However it took the town prosecutor's office seven days to launch the investigation because during that period of time they were allegedly waiting for confirmation from the Ingushetiya department of the FSB as to whether officers of that authority had arrested the applicants' relative (see paragraph 68 above). The Court has already stressed in a similar situation that once the law-enforcement authorities are duly and promptly made aware of the disappearance, it is incumbent on them to organise cooperation between various State agencies in such a manner that would guarantee the effectiveness of the investigation (see *Takhayeva and Others v. Russia*,

no. 23286/04, § 90, 18 September 2008). Bearing this in mind, the Court is particularly struck by this laxity on the part of the town prosecutor's office at the critical time when urgent action was needed from them, having regard to the applicants' submission, uncontested by the Government, that upon receipt of the applicants' complaint about the abduction, the investigator, in the third applicant's presence, immediately called the Ingushetiya department FSB and received a reply to the same question which had allegedly prompted the seven-day delay in launching the investigation. Hence, the Court cannot agree with the Town Court's findings and considers that the investigating authorities failed to promptly commence the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

112. The Court further notes with grave concern the investigating authorities' failure to take, at the initial and crucial stage of the investigation, such basic steps as examining the crime scene and interviewing a number of eyewitnesses – the passengers in the minivans and the driver of the second minivan – the last omission being particularly striking because identifying those persons should not have presented a major or insurmountable problem. In the Court's opinion, the explanation advanced by the Government for those omissions (see paragraph 84 above) cannot but give rise to a serious doubt as to whether the investigating authorities intended from the outset to elucidate all relevant facts. The same holds true for the investigation's failure to take any steps to identify the abductors' vehicles, despite the existing information in that respect, and the delay in interviewing one of the key witnesses, M.B., particularly in the absence of a convincing explanation for those omissions put forward either by the Government or the domestic courts (see paragraph 68 above).

113. A further element in the investigation which calls for comment is the town prosecutor's office's failure to make use of Ch.'s statements, with a view to identifying the abductors of the applicants' relative. In this respect the Court is particularly surprised that it was not until almost a year after the abduction and only after the third applicant's request that the town prosecutor's office agreed to compile a photofit image of one of the perpetrators whom officer Ch. had been able to describe and identify at the initial stage of the investigation (see paragraph 32 above). In any event no evidence was submitted to the Court to suggest that that investigative step had actually been carried out. In this connection the Court considers particularly worrisome the Government's submission that when questioned further Ch. had allegedly declared to be unable to describe the abductor.

114. Having regard to the nature of the information on the alleged implication of L.T. in the abduction of the applicants' relative and even assuming that there might have been legitimate questions as to the reliability of that information and its source, the Court nonetheless considers that it merited an independent verification. However, it appears that the authorities

limited themselves to interviewing L.T. and accepting his statement at face value, despite non-negligible coincidences between his submissions and the applicants' information as to his rank, the permanent place of service and the mission to the Ingushetiya Republic (see paragraphs 22 and 61). From the same angle, a failure to conduct a confrontation between L.T. and Ch. deprived the domestic authorities of an opportunity to dispel any doubts about the quality of the investigation, legitimately expressed by the applicants, in the Court's opinion.

115. As to the applicants' alleged concealing of information from the investigation, the Court observes that in his complaints to various authorities the second applicant referred to the impugned information in detail, those complaints having been routinely transferred to the town prosecutor's office (see paragraphs 29 and 33-36 above). However, there is no indication that the investigating authorities took any steps in that connection. In the same vein, as soon as the third applicant received information concerning L.T. he immediately contacted the prosecutor's office with a request that it be checked. In sum, the Government's argument that the applicants hindered the effectiveness of the investigation by withholding important information does not stand.

116. Having regard to its considerations above, the Court cannot but observe that the information at its disposal shows the incomplete and inadequate nature of the domestic investigation. This is particularly striking in view of the substantial body of evidence which was available to the authorities and which they simply chose to disregard, for reasons the Court finds utterly unconvincing. The authorities' behaviour in the face of the applicants' well-substantiated complaints gives rise to a strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation carried out by the town prosecutor's office (compare *Utsayeva and Others v. Russia*, no. 29133/03, § 164, 29 May 2008).

117. The Court further notes that only the third applicant was eventually granted victim status in connection with criminal case no. 23520016. Furthermore, from the third applicant's repeated and unsuccessful requests for information, it follows that the applicants were not notified about the progress in the investigation beyond the most general information about its suspension or reopening. Accordingly, the investigators failed to ensure that the investigation was subjected to the required level of public scrutiny, and to safeguard the interests of the next of kin in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

118. Lastly, the Court notes that the investigation has been pending for over six years and was suspended and resumed several times, resulting in lengthy and unjustified periods of inactivity on the part of the investigators, the only reason for its reopening on several occasions being the applicants' requests to that effect.

119. Having regard to the limb of the Government's objection that was joined to the merits of the application, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for over six years and has produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection in this regard.

120. The Government also mentioned, in the context of the exhaustion of the domestic remedies, that the applicants had had the opportunity to request the investigating authorities to take specific measures and apply for judicial review of their decisions. In this connection the Court refers in the first place to its findings concerning the third applicant's requests for a photofit image of one of the abductors, in respect of which, though it had been granted on paper, there is no indication that it had been carried out in reality. In this respect it cannot but observe that the grant of victim status to the third applicant appears to have had no bearing on his ability to have specific investigative measures carried out. Furthermore, the Court notes that the applicants did, in fact, complain to the courts about the alleged omissions of the investigation. Having examined the applicants' complaints, the domestic courts at two levels of jurisdiction dismissed their submissions and upheld the decision to suspend the investigation, for reasons which the Court found hard to accept. In any event, the effectiveness of the investigation was undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures, such as identifying and interviewing a number of eyewitnesses or inspecting the crime scene. Moreover, owing to the time that had elapsed since the events complained of occurred, it is doubtful whether those investigative measures that ought to have been carried out much earlier could usefully be conducted. In such circumstances, the Court considers that the applicants could not be required to challenge in court every single decision of the district prosecutor's office. It thus rejects the Government's objection in this part as well.

121. In sum, the Court is not persuaded, in the circumstances of the case, that the remedies suggested by the Government were effective. Therefore, it finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

122. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Bashir Mutsolgov, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

123. The applicants relied on Article 3 of the Convention, submitting that during and after his abduction Bashir Mutsolgov had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention and that the authorities had failed to investigate that allegation. They also submitted that, as a result of their relative's disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

124. The Government disagreed with these allegations and argued that the investigation had not established that the applicants and Bashir Mutsolgov had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

125. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

(a) The complaint concerning ill-treatment of Bashir Mutsolgov

126. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). To assess this evidence the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161).

127. The Court has established that the applicants' relative was abducted on 18 December 2003 by State agents; that he must be presumed dead, and that the responsibility for his death lies with the State authorities (see paragraphs 105 and 107 above). However, the exact way in which he died and whether he was subjected to ill-treatment while in detention are not entirely clear and the information at the Court's disposal does not permit it to establish to the requisite standard of proof whether Bashir Mutsolgov was subjected to ill-treatment after his arrest. As to the alleged use of force against him during the arrest, the Court considers that the witness

statements available to it are not consistent in that respect and do not contain conclusive evidence to support the applicants' allegations (see paragraph 9 above, and compare *Bazorkina*, cited above, § 132). Furthermore, the Court has doubts that the abductors' alleged actions attained the threshold of severity required by Article 3 (see *ibid*). In sum, the material in the case file does not lay down an evidentiary basis sufficient to enable the Court to find “beyond reasonable doubt” that the applicants' relative was subjected to ill-treatment during or after his abduction on 18 December 2003.

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

129. As regards the investigation of the alleged ill-treatment, the Court reiterates that Article 3 only requires the authorities to investigate allegations of ill-treatment when they are “arguable” and “raise a reasonable suspicion” (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 101-102, *Reports* 1998-VIII). Having regard to its findings that the applicants failed to lay down an arguable claim of ill-treatment of their relative, the Court considers that the procedural obligation of the authorities of the respondent Government cannot be said to have been breached (see *D.E. v. Bulgaria* (dec.), no. 44625/98, 1 July 2004, and *Gusev v. Russia* (dec.), no. 67542/01, 9 November 2006).

130. Accordingly, the Court dismisses this part of the application as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

(b) The complaint concerning the applicants' moral suffering

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

2. Merits

132. 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).

133. In the present case, the Court observes that the missing person was a son of the first and second applicants, a brother of the third applicant and the husband and the father of the fourth and fifth applicants. Having regard to the fact that the fifth applicant was three months old at the time of Bashir Mutsolgov's disappearance, the Court considers that she cannot

claim to be a victim of the alleged violation of Article 3 (compare *Musikhanova and Others v. Russia*, no. 27243/03, § 81, 4 December 2008, and *Dokayev and Others v. Russia*, no. 16629/05, § 105, 9 April 2009). It further notes that although various enquiries and applications to the domestic authorities in connection with the disappearance of Bashir Mutsolgov appear to have been mostly made by the second and third applicants, it transpires that the first and fourth applicants, who constituted the immediate family of Bashir Mutsolgov, were also involved to a certain extent in the search for the missing man and the contacts with the domestic authorities in that connection. The applicants have had no news of Bashir Mutsolgov for over six years. Throughout this period they have applied to various bodies with enquiries about his fate. Despite those attempts, the applicants have never received any plausible explanation as to what became of him following his abduction. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

134. In view of the above, the Court finds that the first to fourth applicants suffered distress and anguish as a result of the disappearance of Bashir Mutsolgov and their inability to find out what had happened to him. The manner in which their complaints were dealt with by the authorities must be considered to constitute inhuman and degrading treatment contrary to Article 3 of the Convention.

135. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the first, second, third and fourth applicants. It further finds that there has been no violation of Article 3 of the Convention in respect of the fifth applicant.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

136. The applicants further stated that Bashir Mutsolgov 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

137. The Government asserted that no evidence had been obtained by the investigators to confirm that Bashir Mutsolgov 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.

138. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

139. 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

140. 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).

141. The Court has found that Bashir Mutsolgov was abducted by State agents on 18 December 2003 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).

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

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

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

144. 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

145. 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.

146. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

147. Insofar as the applicants' submissions under Article 13 concerned their complaint about the alleged ill-treatment of Bashir Mutsolgov and the related investigation, the Court reiterates that, according to its constant case-law, Article 13 applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention right (see *Boyle and Rice*

v. the United Kingdom, 27 April 1988, § 52, Series A no. 131). The Court notes that it has dismissed the above mentioned complaint as manifestly ill-founded. Article 13 is therefore inapplicable to this complaint. It follows that the complaint should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

148. As to the remainder of the applicants' submissions under Article 13, 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

149. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, 25 June 1997, § 64, *Reports* 1997-III).

150. As regards the complaint of a lack of effective remedies in respect of the applicant's submissions under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

151. In view of the Court's findings above with regard to Article 2, this complaint is clearly “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

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

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

154. As regards the violation of Article 3 of the Convention found on account of the applicants' mental suffering as a result of the disappearance of their relative, their inability to find out what had happened to him and the way the authorities handled their complaints, the Court notes that it has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises under Article 13 in conjunction with Article 3 of the Convention.

155. As to the applicants' reference to Article 5 of the Convention, the Court reiterates that, according to its established case-law, the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements. In view of its finding of a violation of Article 5 of the Convention on account of the unacknowledged detention of the applicant's relative, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

VI. ALLEGED VIOLATIONS OF ARTICLES 34 AND 38 OF THE CONVENTION

156. The applicants argued that the Government's failure to submit the documents requested by the Court, namely the entire criminal investigation file, disclosed a failure to comply with their obligations under Articles 34 and 38 § 1 (a) of the Convention. The Court finds that in the circumstances of the present case the above issue should be examined under Article 34 of the Convention, which provides as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

157. The Court points out that it has already taken note of the Government's failure to produce a copy of the investigation file and drawn inferences from it. Nevertheless, it reiterates that the main objective of Article 34 of the Convention is to ensure the effective operation of the right of individual petition. There is no indication in the present case that there

has been any hindrance of the applicants' right to individual petition, either in the form of interference with the communication between the applicants or their representatives and the Court, or in the form of undue pressure placed on the applicants (see *Betayev and Betayeva v. Russia*, no. 37315/03, § 132, 29 May 2008).

158. It follows that this part of the application should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

159. Article 41 of the Convention provides:

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

A. Pecuniary damage

160. The applicants claimed damages in respect of loss of earnings by their relative after his arrest and subsequent disappearance. They submitted that before his abduction Bashir Mutsolgov was officially unemployed and earned his living by installing various software on private individuals' computers. With reference to a written statement by the third applicant the applicants stated that Bashir Mutsolgov's monthly income as a result of those activities was approximately USD 600. Applying the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department (“Ogden tables”) and the provisions of the Russian legislation, the first, second, fourth and fifth applicants claimed a total of 95,685.35 pounds sterling (GBP) in respect of pecuniary damage. The third applicant made no claims under this head.

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

162. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its conclusions above, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relative and the loss to them of the financial support which he could have provided. The Court further finds that the loss of earnings also applies to the dependent children and, in some instances, to elderly parents (see *Imakayeva*, cited above, § 213). The Court notes at the

same time that it has some reservations concerning the substantiation by the applicants of the amounts allegedly earned by their relative unofficially.

163. Having regard to the applicants' submissions and the materials in its possession and accepting that it is reasonable to assume that their relative would eventually have had some earnings resulting in financial support for his family, the Court awards 4,000 euros (EUR) to the first and second applicants jointly and EUR 6,000 to the fourth and fifth applicants jointly.

B. Non-pecuniary damage

164. The applicants claimed jointly EUR 100,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the investigating authorities and the failure to provide any information about the fate of their close relative.

165. The Government found the amounts claimed exaggerated.

166. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The first to fourth applicants themselves have been found to have been victims of a violation of Articles 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the first and second applicants jointly EUR 20,000, to the third applicant EUR 5,000 and to the fourth and fifth applicants jointly EUR 35,000, plus any tax that may be charged thereon.

C. The applicants' request for an investigation

167. The applicants also requested, referring to Article 41 of the Convention, that “an independent investigation which would comply with the requirements of the Convention be conducted” into the disappearance of Bashir Mutsolgov. They relied in this connection on the cases of *Assanidze v. Georgia* ([GC], no. 71503/01, §§ 202-203, ECHR 2004-II).

168. The Court notes that in several similar cases it has decided that it was most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention (see, among other authorities, *Kukayev v. Russia*, no. 29361/02, §§ 131-134, 15 November 2007, and *Medova*, cited above, §§ 142-143). It does not see any exceptional circumstances which would lead it to reach a different conclusion in the present case.

D. Costs and expenses

169. 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 GBP 3,054.25 and the applicants asked that that amount be paid into their representatives' account in the UK. They submitted the following breakdown of costs:

- (a) GBP 2,000 for 20 hours of research and drafting legal documents submitted to the Court by Mr B. Bowring and Ms J. Evans at a rate of GBP 100 per hour;
- (b) GBP 879.25 for translation costs, as certified by invoices, and
- (c) GBP 175 for administrative and postal costs.

170. The Government submitted that reimbursement of costs could be ordered by the Court only if they had been actually incurred and were reasonable as to quantum.

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

172. Having regard to the details of the information submitted by the applicants, the Court is satisfied that these rates are reasonable. It notes at the same time that although the applicants furnished a fee note referring to the amount of GBP 500 in respect of Mr Bowring's services, they failed to substantiate their claims in respect of the services of Ms Evans. Having said this, it considers, in respect of the remainder of the applicants' claims under this head, that those costs and expenses have been actually and necessarily incurred.

173. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 2,001.89, 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.

E. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objection as to non-exhaustion of civil domestic remedies;
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 (concerning the applicants' moral suffering), 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
4. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Bashir Mutsolgov;
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 Bashir Mutsolgov disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention on account of the mental suffering endured by the first to fourth applicants;
7. *Holds* that there has been no violation of Article 3 of the Convention in respect of the fifth applicant;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Bashir Mutsolgov;
9. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2;
10. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
11. *Holds*
 - (a) that the respondent State is to pay, within three months of 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 4,000 (four thousand euros) to the first and second applicants jointly, EUR 6,000 (six thousand euros) to the fourth and fifth applicants jointly in respect of pecuniary damage;

- (ii) EUR 20,000 (twenty thousand euros) to the first and second applicants jointly, EUR 5,000 (five thousand euros) to the third applicant, and EUR 35,000 (thirty five thousand euros) to the fourth and fifth applicants jointly in respect of non-pecuniary damage, plus any tax that may be chargeable;
- (iii) EUR 2,001.89 (two thousand and one euros and eighty nine cents) in respect of costs and expenses, plus any tax that may be chargeable to the applicants, 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;

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

Done in English, and notified in writing on 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President