



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

FIRST SECTION

CASE OF UMALATOV AND OTHERS v. RUSSIA

(Application no. 8345/05)

JUDGMENT

STRASBOURG

8 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 Umalatov 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 8345/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Russian nationals, Mr Imran Umalatov, Mrs Roza Khamizayeva and Mr Sharan Durdiyev (“the applicants”), on 17 February 2005.

2. The applicants, who were granted legal aid, were represented by lawyers of the International Protection Centre, a Russian NGO. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their new representative, Mr G. Matyushkin.

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

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1940, 1969 and 1943 respectively. They live in the Chechen Republic (Chechnya).

A. Disappearance of Usman Umalatov and Shamad Durdiyev

1. The applicants' account

6. The first applicant is the father of Usman Umalatov, born in 1969. The second applicant is his wife. The third applicant is the father of Shamad Durdiyev, born in 1976.

7. The applicants stated that on 15 October 2002 at 7.00 a.m. a joint operation of the Federal Security Service (FSB), the Ministry of the Interior and the military took place in the village of Nagornoye situated in the Grozny district of Chechnya.

8. Usman Umalatov was apprehended in his home in Nagornoye in the presence of his next-of-kin, including the second applicant, and brought to the FSB office for the Nadterechny district in the village of Znamenskoye.

9. Shamad Durdiyev lived in Beno-Yurt and worked as a driver for the Grozny Town Prosecutor's Office. On 15 October 2002 at about 6 a.m. he left his home village and went towards Grozny in his service car, a black "Volga". On the same day he was apprehended during the security operation and brought to the FSB office in Znamenskoye.

10. Two or three days later nine men apprehended on that day in Nagornoye were released, but Usman Umalatov and Shamad Durdiyev were not among them.

11. The applicants have had no news of Usman Umalatov and Shamad Durdiyev since 15 October 2002.

12. In support of their allegations, the applicants submitted the statements of the first and second applicants, as well as an affidavit signed by eight men who had been detained on 15 October 2002 together with Usman Umalatov.

2. The Government's account

13. In their observations the Government confirmed that both men had been detained on 15 October 2002 in Nagornoye in the course of a special security operation. Later on the same day they were transferred to the FSB office in Znamenskoye and then released after their identities had been ascertained.

B. The search for Usman Umalatov and Shamad Durdiyev and the investigation

14. Since 15 October 2002 the applicants have repeatedly applied in person and in writing to various public bodies. In their letters to the authorities the applicants and their family members referred to their relatives' detention and asked for assistance and details of the investigation. These enquiries have mostly remained unanswered, or purely formal replies have been given in which the applicants' requests have been forwarded to various prosecutors' offices. The applicants submitted some of the letters to the authorities and the replies to the Court, which are summarised below.

1. Official investigation into Usman Umalatov's disappearance

15. The first applicant submitted that several days after his son's disappearance the head of the FSB office for the Nadterechny district had told him in a personal conversation that Usman Umalatov and Shamad Durdiyev had been released on the day of their detention. However, they have not been found since.

16. On 24 October 2002 an investigator of the prosecutor's office of the Urus-Martan district of Chechnya opened criminal proceedings (case file no. 65049) in response to the first applicant's complaint about his son's abduction. The investigator noted that the applicant's son had been taken into custody by unknown masked persons and taken away to an unknown destination. It appears that at some later point the investigation was transferred to the Nadterechny district prosecutor's office ("the district prosecutor's office").

17. On 25 October 2002 the first applicant was granted victim status in the proceedings.

18. On 29 January 2003 the investigator of the district prosecutor's office adjourned the criminal proceedings given the failure to identify the persons against whom the charges must be brought (Article 208, part 1, item 1 of the Code of Criminal Procedure). The investigator's decision instructed the Nadterechny district department of the Ministry of the Interior (ROVD) to search for Usman Umalatov and the persons responsible for his disappearance. No new information was communicated to the first applicant following his subsequent complaints and requests to the prosecutor's office.

19. On 2 March 2004 the first applicant complained of unlawful inaction of the investigation authorities to the Nadterechny district court ("the district court") under Article 125 of the Code of Criminal Procedure.

20. On 29 March 2004 the district court dismissed the first applicant's complaint as he had failed to appear before the court. The summons to appear before the court reached the local post office at his place of residence only on 31 March 2004.

21. On 6 April 2004 the first applicant lodged with the district court a new complaint under Article 125 of the Code of Criminal Procedure concerning the lack of an effective investigation into his son's disappearance. This complaint was dismissed on 13 April 2004 as no breach of procedural requirements had been found.

22. The first applicant allegedly received this judgment on 12 May 2004 and requested the president of the court to restore the ten-day time-limit for lodging a cassation appeal against the judgment. The applicant's request was dismissed by the district court on 28 June 2004. Following the applicant's appeal, the Supreme Court of the Chechen Republic upheld the latter decision by the district court.

2. Official investigation into Shamad Durdiyev's disappearance

23. On an unspecified date, the district prosecutor's office opened criminal proceedings (case file no. 65048) on account of Shamad Durdiyev's abduction.

24. On 25 October 2002 the third applicant was granted victim status in those proceedings. The investigator's decision indicated that on 15 October 2002 around 6 a.m. Shamad Durdiyev had gone in his own car in the direction of Grozny where he worked as a driver for the Grozny town prosecutor. On his way he was arrested in the village of Nagornoye by the FSB officers and brought to the FSB office for the Nadterechny district in the village of Znamenskoye. According to statements by unnamed FSB officials quoted by the investigator, Shamad Durdiyev was released on the same date.

25. The third applicant alleged that Shamad Durdiyev's car remained at the office of the FSB in Znamenskoye for several days and was later transferred to the Grozny town prosecutor's office. He also claimed that the FSB had transferred to the Grozny town prosecutor's office a request to dismiss Shamad Durdiyev from service, allegedly written by his son on 14 October 2002. It does not appear that any investigative steps were taken in this direction.

26. At some point the military prosecutor's office also conducted an investigation into Shamad Durdiyev's abduction. On 20 December 2002 the military prosecutor of army unit no. 20111 decided to return the relevant criminal file (no. 34/34/0117-02d) to the district prosecutor's office for further investigation. The military prosecutor found it established that Shamad Durdiyev had been apprehended on 15 October 2002 by the authorities during a joint operation by the district military commander's office, ROVD and FSB, brought to the FSB office in Znamenskoye for questioning and had left the said office in an unknown direction. The military prosecutor concluded that it had not been established that military personnel were responsible for his disappearance.

27. On 24 January 2003 the district prosecutor's office adjourned the criminal proceedings (case file no. 65048) given the failure to identify the persons against whom the charges must be brought. The investigator's decision instructed the Nadterechny ROVD to search for Shamad Durdiyev and for the persons responsible for his disappearance.

28. The third applicant's subsequent complaints and requests to the Chechen prosecutor's office and to the head of the Presidential Administration of Chechnya in connection with his son's disappearance remained without effect.

29. On 29 July 2004 the third applicant complained of unlawful inaction of the investigation authorities before the president of the district court under Article 125 of the Code of Criminal Procedure. On 23 August 2004 the district court dismissed his complaint and found the decision of 24 January 2004 to adjourn the proceedings to be well founded. The applicant did not appeal.

3. Additional information submitted by the Government

30. With reference to the information provided by the Prosecutor General's Office, the Government submitted that the investigations of the abduction of Usman Umalatov and Shamad Durdiyev had failed to solve the crimes. In their observations they also submitted additional information about the progress of the investigation and some copies of documents from the files (11 pages). They did not submit copies of any of the witness statements to which they referred.

31. The documents and the observations confirm that both men were detained on 15 October 2002 during a large security operation. The Government submitted copies of three documents relevant to this operation. The order by the military commander of the Nadterechny district of 14 October 2002 gave instructions to carry out a joint operation involving about 250 servicemen of the Ministry of the Interior, FSB and the military commander's office in order to find members of an illegal armed group who had killed three servicemen of the military commander's office on 1 October 2002, and who had apparently been hiding in Nagornoye. As regards the possibility of detaining suspect individuals, the order contained the following indications: "upon identification of persons wanted upon suspicion of involvement in crimes committed by illegal armed groups, they should be detained, brought to the filtration point and later delivered to the ROVD for the carrying out of investigative actions; if active resistance is met, measures should be taken to neutralise or destroy them".

32. The order of the Ministry of the Interior for the district, also dated 14 October 2002, contained similar provisions. Finally, on 15 October 2002 the head of the detachments of the Ministry of the Interior based in the district produced a report on the results of the operation. It listed thirteen men who had been detained in Nagornoye on that day on suspicion of being

involved with illegal armed groups, and who had been questioned, fingerprinted and delivered to the ROVD. Shamad Durdiyev and Usman Umalatov were listed among the thirteen men.

33. As to Usman Umalatov, the Government submitted that the investigation commenced on 24 October 2002 by the Urus-Martan district prosecutor's office under Article 126 part 2 of the Criminal Code – aggravated kidnapping. The investigation had been triggered by the first applicant's complaint to the Nadterechny district prosecutor's office of 21 October 2002 about the arrest of his son early in the morning on 15 October 2002 by the local FSB.

34. On 25 October 2002 the authorities questioned the first applicant and granted him the status of a victim in the proceedings. He had stated that his son had been detained at the district department of the FSB, but that the head of the department, Mr Kh.M., had assured him that he had personally let his son out of the building. The first applicant also mentioned that Mr A.K., who had been detained with his son, had returned home on 17 October 2002.

35. On 4 November 2002 the investigator examined the registration log of the Nadterechny ROVD and noted that Usman Umalatov had been delivered there at 10 a.m. on 15 October 2002 for an identity check and that at the same time he had been transferred to the district department of the FSB for further investigation.

36. It does not appear that any additional steps were taken in the investigation into Usman Umalatov's disappearance after this point.

37. As to Shamad Durdiyev, criminal investigation file no. 65048 was opened on 24 October 2002 in response to the third applicant's letter of 21 October 2002. Within the following days the third applicant was questioned and granted the status of a victim in the criminal case. On 30 October 2002 the investigation was forwarded to the military prosecutor of Chechnya and on 15 November 2002 the military prosecutor of military unit no. 20111 took charge of the proceedings.

38. According to the Government, in November 2002 the military prosecutor questioned a number of officials and servicemen of the Nadterechny district who had been in charge of or had participated in the operation. Among them were the deputy military commander of the district and the commander of the platoon who had taken part in the operation, the head of the ROVD and several officials of the district FSB. The Government related the statements of the head of the district department of the FSB Mr Kh.M. in the following manner:

“On 2 October 2002 [we] received information that members of the illegal armed groups which had attacked the Nadterechny district commander's office were hiding in Nagornoye. As a result of the attack three servicemen of the commander's office had been killed. On this basis a special operation was planned. Upon agreement with the military commanders of Chechnya and of the Nadterechny district, on 14 October 2002 an order was issued to include in the operation the servicemen of the military

commander's office, of the Ministry of the Interior and of the district department of the FSB. At the northern entrance to the village, on the road between Goragorsk and Grozny, an armoured personnel carrier (APC-80) was positioned in order to block the traffic and to protect the temporary point of gathering of the detainees. A black GAZ 3102 "Volga" vehicle arrived from Goragorsk at high speed, and having nearly collided with the APC, turned around and tried to leave towards Goragorsk. The police officers who had manned the block gave chase and fired shots in the air, after which the vehicle stopped. The police officers checked the documents of the driver, Shamad Durdiyev, and doubted their authenticity. On the same day at about 1 p.m. Shamad Durdiyev was brought to the district department of the FSB for a complete check. 12 other persons were also detained in the course of the operation, of whom two – Usman Umalatov and Mr A.K. – were also brought to the FSB department. Usman Umalatov and Mr A.K. produced service badges of the security service of the Administration of Chechnya, the authenticity of which was also questioned.

On the same day, at about 3 p.m., a group of armed persons arrived at the department in three vehicles. They were headed by Mr B.Sh., who had produced the service badge of the deputy head of the Administration of Chechnya. He demanded that Usman Umalatov be transferred to him, since the latter had served under his command. At the same time, Usman Umalatov was not listed among the employees of the Chechnya Administration that had been submitted by Mr B.Sh. to the district department of the FSB in December 2001. Mr B.Sh. was told that he could wait until Usman Umalatov had been questioned and released, but B.Sh. had left. On the same day at about 4 p.m. the prosecutor of the Nadterechny district Mr S.P. phoned the department and asked if Shamad Durdiyev, the driver of the Grozny town prosecutor, had been detained there. He (Kh.M.) himself called the Grozny prosecutor who confirmed that Shamad Durdiyev worked as a driver in that office.

Later on the same day the formalities concerning Shamad Durdiyev and Usman Umalatov were concluded and he (Kh.M.) ordered to them to provide signed forms attesting the return to them of money and valuables collected upon arrest. Shamad Durdiyev and Usman Umalatov left the FSB department on 15 October 2002. Work with A.K. continued."

The Government further relayed Kh.M.'s statements about how the relatives of Shamad Durdiyev and Usman Umalatov had come to the department on several occasions after 16 October 2002 and how he had informed them that both men had been released. Kh.M. assured them that his subordinates had nothing to do with the two men's disappearance and that he had no information about their whereabouts. On 15 October 2002 they had not been delivered to any "filtration point", but a simple check through a data base had taken place.

39. The head of the district detachments of the Ministry of the Interior, Mr D.A., who was questioned on 26 November 2002, testified that he had witnessed the detention of Usman Umalatov. As cited in the Government observations, on 15 October 2002 he had taken part in the special operation in Nagornoye at the site of the temporary detention point on the road between Goragorsk and Grozny, along with 23 other servicemen. At about 5.30 p.m. a black Volga car, driving at high speed, approached the roadblock from the direction of Goragorsk. The vehicle was forced to brake

abruptly, as a result of which it slid into the roadside ditch. Several servicemen immediately ran to the car and detained the driver. According to Mr D.A.'s knowledge, the driver was later transferred to the ROVD and then to the district FSB. The servicemen under his command were not involved in the detention, but supervised and trained the members of the local police force.

40. In November 2002 the investigation questioned Mr A.K., the third man who had been detained at the FSB district department. According to the Government, he stated that on 15 October 2002 he had been detained together with Usman Umalatov and a third man, whose name he did not know. First the unknown man was taken from the room for questioning, and then later that day, at about 8 p.m., Mr Umalatov. Mr A.K. was released on the following day at about midday, after questioning and having signed a form stating that he had no complaints about the FSB servicemen.

41. On 19 November 2002 the military prosecutor of military unit no. 2011 examined the black "Volga" car driven by Shamad Durdiyev on the day of his detention. The car was examined on the premises of the Grozny town prosecutor's office and no damage was noted. The Government submitted a copy of the examination report to the Court.

42. The Government mentioned a number of other documents contained in the investigation file concerning Mr Durdiyev's disappearance. In February 2000 and in August 2002 the Ministry of the Interior and the Grozny town administration issued papers to confirm the latter's active involvement with the Chechen counter-insurgent movements and his participation in the storming of Grozny in January 2000.

43. The Government stated that the case files also contained copies of the forms signed by Usman Umalatov and Shamad Durdiyev on 15 October 2002 confirming their release and absence of complaints about the FSB, but failed to provide them to the Court. The Government also stated that at some point both forms had been submitted for graphology tests which had confirmed their authenticity, but did not submit copies of those reports either.

44. According to the Government, the military prosecutors examined the registration logs of the Nadterechny district temporary detention ward and of the ROVD. Copies of the relevant documents were contained in the investigation files. They demonstrated that Shamad Durdiyev and Usman Umalatov had been delivered to the ROVD at 10 a.m. on 15 October 2002 for identification and that on the same day at 10 a.m. both had been transferred to the district department of the FSB, without being placed in detention. The Government did not submit copies of these documents to the Court.

45. On 20 December 2002 the military prosecutor of military unit no. 20111 concluded that the military servicemen and the servicemen of the FSB had not been implicated in Shamad Durdiyev's disappearance. On the

same day he sent the file for further investigation to the district prosecutor's office. The prosecutor sent a number of requests for information to local law-enforcement authorities, medical facilities and detention centres, but these brought about no results.

46. In their additional memorandum submitted in September 2008 the Government, without indicating the dates and without providing copies of the documents, informed the Court that the investigation into both cases was ongoing. The prosecutors had questioned seven local residents who had been detained on 15 October 2002 or their family members. They confirmed that Shamad Durdiyev and Usman Umalatov had been detained at the local FSB department on that day and that all other detainees had been released and returned home.

47. Despite specific requests by the Court, the Government did not disclose most of the contents of criminal case files nos. 65048 and 65049. The Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the files contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

48. For a summary of the relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007) and *Akhmadova and Others v. Russia* (no. 3026/03, §§ 104-113, 4 December 2008).

THE LAW

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

49. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that it had been open to the applicants to pursue civil complaints but that they had failed to do so.

50. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. 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.

51. The Court notes that as regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

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

A. The parties' arguments

52. The applicants maintained that State agents were responsible for the disappearance and death of Usman Umalatov and Shamad Durdiyev. They pointed out that the two men had been detained in the course of a security operation, that they were last seen alive in the hands of State agents and that the Government had failed to discharge its burden of proof by submitting any explanation as to what had happened to them afterwards. The applicants also asked the Court to draw inferences from the Government's failure to present more than a few relevant documents from the investigation files, either to them or to the Court. Since their relatives had been missing for a very lengthy period, they could be presumed dead.

53. The Government submitted that, even though Usman Umalatov and Shamad Durdiyev had been briefly detained on 15 October 2002, they were released on the same day. The documents contained in the criminal investigation files, including witness statements by the officials and copies of the forms signed by the two men on their release, attested to that. They further contended that the investigation of the disappearances was ongoing and that there was no convincing evidence that the applicants' relatives were dead. The Government also noted that the applicants had been inconsistent in their descriptions of the exact dates and conversations they had had with various officials in the days following the disappearance of their relatives. The Government referred to the witness statements made to the domestic investigators; but did not submit them to the Court. Finally, the Government drew the Court's attention to the fact that both men had worked for the State authorities: Shamad Durdiyev had been a driver for the Grozny town prosecutor's office and Usman Umalatov had been a member of the security service of the head of administration of Chechnya. Their respective

employers were happy with them, and it could not be excluded that the illegal groups held a grudge against them.

B. The Court's evaluation of the facts

54. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). It 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*, 18 January 1978, § 161, Series A no. 25).

55. The Court notes that despite its requests for a copy of the investigation files into the abduction of Usman Umalatov and Shamad Durdiyev, the Government produced hardly any documents. The Government referred to Article 161 of the Code of Criminal Procedure. 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)).

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

57. The Government suggested in their submissions that Usman Umalatov and Shamad Durdiyev may have been killed or abducted by members of paramilitary groups. However, this allegation was not specific and the Government did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

58. The parties do not dispute that on 15 October 2002 Usman Umalatov and Shamad Durdiyev were detained in Nagornoye during a security operation aimed at finding persons responsible for a terrorist act and delivered to the ROVD, from which they were transferred to the district department of the FSB. The orders of the district commander of the Ministry of the Interior and of the military commander cited "suspicion of involvement in crimes committed by illegal armed groups" as the possible grounds for detention, though no formal charges have been ever brought. It does not appear that any formal records were drawn up in relation to the detention or any other actions carried out in respect of Usman Umalatov and

Shamad Durdiyev, except to note that both men had been transferred to the district department of the FSB from the ROVD premises. They have not been seen since 15 October 2002 and their families have had no news of them. The investigation failed to establish what had happened to them or to charge anyone in relation to their disappearance.

59. The Government suggested that certain documents in the criminal investigation files proved that the two men had been released. However, since none of these documents have been submitted to the Court, it is reluctant to rely on them in order to absolve the Government from their responsibility to account for the fate of detainees last seen alive within their hands (see *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

60. The Government also questioned the credibility of the applicants' statements in view of certain discrepancies in their descriptions of the days immediately following the detention. The Court notes in this respect that no other elements underlying the applicants' submissions of facts have been disputed by the Government. The Government did not provide to the Court the witness statements to which they referred in their submissions. In any event, the fact that over a period of several years the applicants' recollection of an extremely traumatic and stressful event differed in rather insignificant details does not in itself suffice to cast doubt on the overall veracity of their statements.

61. Furthermore, a number of serious and unresolved contradictions about the exact circumstances of the arrest and alleged release of the two men transpire from the statements of witnesses cited in the Government's observations. While the Court will address these issues in more detail below under the procedural obligation of Article 2, it notes that the official investigation was unable to come up with a coherent picture of these crucial facts. There has been no reliable news of Usman Umalatov and Shamad Durdiyev since the date of the arrest. Their names have not been found in any official detention facility records. The Government have not submitted any explanation as to what happened to them after their arrest.

62. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that the circumstances in which Usman Umalatov and Shamad Durdiyev were detained can be regarded as life-threatening. The absence of the two men or of any news of them for many years supports this assumption.

63. Accordingly, the Court finds that the evidence available permits it to establish that Usman Umalatov and Shamad Durdiyev must be presumed dead following their detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

A. The parties' submissions

65. The Government first argued that the complaint is manifestly ill-founded and should be dismissed as such. They further contended that the domestic investigation had obtained no evidence to the effect that Usman Umalatov and Shamad Durdiyev were dead or that any servicemen of the federal law-enforcement agencies had been involved in their kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants' relatives met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible.

66. The applicants argued that Usman Umalatov and Shamad Durdiyev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. The applicants also argued that the investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law. They pointed out that the district prosecutor's office had not taken certain crucial investigative steps. The investigations into Usman Umalatov and Shamad Durdiyev's kidnapping had been opened with delays and then the taking of the most basic steps was protracted. The relatives had not been properly informed of the most important investigative measures and had no access to the case files. The fact that the investigation had been pending for such a long period of time without producing any known results was further proof of its ineffectiveness. They also invited the Court to draw conclusions from the

Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

67. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Usman Umalatov and Shamad Durdiyev

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

(b) The alleged inadequacy of the investigation

69. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

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

71. The Court discerns that the authorities were immediately made aware of the disappearance by the applicants. The investigations were instituted on 24 and 25 October 2002, that is, nine and ten days after Usman Umalatov and Shamad Durdiyev's abduction. Such a postponement *per se* was liable to affect the investigation of a kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the

event. It appears that within the following days the applicants and a number of key officials were questioned. The applicants were granted victim status. However, it also appears that after December 2002 the investigation failed to make any progress. In particular, the Court is struck by the investigation's failure to resolve major discrepancies concerning the witnesses' descriptions of the two men's arrest and alleged release. It notes, for example, that the head of the district detachment of the Ministry of the Interior, Mr D.A., indicated that Shamad Durdiyev had been detained at about 5.30 p.m. on the road between Goragorsk and Grozny. At the same time, the registration log of the Nadterechny ROVD, as cited in the Government's observations, indicated that both detainees had been delivered there at 10 a.m. and transferred to the FSB at the same time (see paragraphs 39 and 44 above). The investigation failed to explain why Shamad Durdiyev's service vehicle, in which he had arrived in Nagornoye, had remained at the local department of the FSB and was eventually transferred to the Grozny town prosecutor's office intact, where it was examined in November 2002 (see paragraph 41).

72. The Court also notes that even though the applicants were granted victim status in the investigations concerning the abduction of their relatives, they were only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigation failed to receive the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

73. 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 Usman Umalatov and Shamad Durdiyev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

74. The applicants relied on Article 3 of the Convention, submitting that as a result of their relatives' disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. The parties' submissions

75. The Government disagreed with these allegations and argued that the investigation had not established that the applicants had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. They also pointed out that it has not been established that the State was responsible for the disappearances.

76. In their observations the applicants reiterated the complaint concerning the mental suffering endured.

B. The Court's assessment

1. Admissibility

77. 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

78. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victims 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).

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

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

81. The applicants further stated that Usman Umalatov and Shamad Durdiyev 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

82. The Government asserted that no evidence had been obtained by the investigators to confirm that Usman Umalatov and Shamad Durdiyev had been deprived of their liberty. They were not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had authorised their detention either on criminal or on administrative charges. On 15 October 2002 they were simply invited to the Nadterechny ROVD and then to the district department of the FSB in order to ascertain their identities and for a conversation with the FSB officers. This description was confirmed by the statements of the officials of the ROVD and of the FSB and by the documents contained in the investigation files. The actions of the servicemen were lawful in view of the order of the district military commander and, in a wider sense, the Law on the Suppression of Terrorism.

83. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

84. 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*

85. 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).

86. The Court has found that Usman Umalatov and Shamad Durdiyev were apprehended by State servicemen on 15 October 2002 and have not been seen since. Their detention was not acknowledged in any meaningful and reliable manner, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. According to the Court's practice, 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). In fact, the Government's argument points to the heart of the problem, because even though there is overwhelming evidence, not contested by the parties, that the two men were deprived of their liberty by State agents (see paragraphs 31 and 32, for example), none of the safeguards against arbitrary detention contained in the domestic legal order were employed.

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

88. In view of the foregoing, the Court finds that Usman Umalatov and Shamad Durdiyev were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

89. 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

90. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the acts or omissions of the investigating authorities in court pursuant to Article 125 of the Code of Criminal Procedure and had availed themselves of it. They added that participants in criminal proceedings could also claim damages in civil proceedings and referred to a case where victims in criminal proceedings had been awarded damages from the prosecutor's office. In sum, the Government submitted that there had been no violation of Article 13.

91. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

92. 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

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

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

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

95. 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.”

96. 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 of 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.

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

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicants claimed damages in respect of loss of earnings by their relatives after their arrests and subsequent disappearances. They did not provide any calculations or attesting documents, but indicated that the first and third applicants were pensioners and had counted on the financial support of their sons. The second applicant had lost her husband and thus the financial support he could have provided to her. Each applicant claimed 15,000 euros (EUR).

100. The Government regarded these claims as based on suppositions and unfounded. They also pointed to the existence of domestic statutory machinery for the provision of a pension for the loss of the family breadwinner.

101. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the

Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. Since the applicants have failed to produce any calculations or justifications regarding the pecuniary damage claimed, the Court decides to make no award under this head (see *Elmurzayev and Others v. Russia*, no. 3019/04, § 156, 12 June 2008).

B. Non-pecuniary damage

102. The first and the third applicants claimed EUR 100,000 and the second applicant claimed EUR 150,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives.

103. The Government found these amounts exaggerated.

104. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relatives. The applicants themselves have been found to have been victims of a violation of Article 3 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 60,000 and to the third applicant EUR 60,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

105. The applicants also claimed EUR 5,600 for the costs and expenses incurred before the Court. They listed four lawyers who had worked in 2004, 2005 and 2008 on this complaint and asked to be reimbursed for the costs of translation.

106. The Government left the issue of costs to the Court's discretion.

107. The Court may make an award in respect of costs and expenses in so far that they were actually and necessarily incurred and are reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V and *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). In the present case the Court notes that the initial powers of attorney were issued in respect of two lawyers of the International Protection Centre, Mrs Moskalenko and Mrs Arutyunyan, who prepared the initial application form. In February 2005 the first and the third applicants issued powers of attorney for Mrs Mikhaylova and Mr Magomadov. The applicants' observations were submitted by Mrs Moskalenko and Mrs Mikhaylova. The Court is unable to award any costs allegedly incurred by Mr Magomadov (the claim of EUR 2,000) in the absence of any information about his

involvement in the preparation of the case. The Court awards to the applicants the global sum of EUR 3,600, less the sum of EUR 850 received in legal aid from the Council of Europe.

D. Default interest

108. 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. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder inadmissible;
2. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Usman Umalatov and Shamad Durdiyev;
3. *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 Usman Umalatov and Shamad Durdiyev disappeared;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
5. *Holds* that there has been a violation of Article 5 of the Convention in respect of Usman Umalatov and Shamad Durdiyev;
6. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement:
 - (i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first and the second applicants jointly;

- (ii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the third applicant;
- (iii) EUR 2,750 (two thousand seven hundred and fifty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account;
- (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;

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

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President