



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

FIRST SECTION

CASE OF TASATAYEVY v. RUSSIA

(Application no. 37541/05)

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 Tasatayevy v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 37541/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Ms Khadishat Tasatayeva and Ms Amena (also spelled Amina) Tasatayeva (“the applicants”), on 11 August 2005.

2. The applicants were represented by Mr D. Itslayev, a lawyer practising in Nazran, Russia. 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 5 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. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1950 and 1949 respectively. They live in Urus-Martan, Chechnya. The applicants are sisters-in-law; they are married to two brothers. The first applicant is the mother of Aslan Tasatayev, who was born in 1975, and the second applicant is the mother of Aslanbek Tasatayev, who was born in 1979. Aslan Tasatayev and Aslanbek Tasatayev are cousins.

A. The abduction of Aslan Tasatayev and Aslanbek Tasatayev and the subsequent events

1. The applicants' account

a. The abduction of the applicants' relatives

6. At the material time the applicants, their sons Aslan and Aslanbek Tasatayev and other relatives lived in a household situated at 5 Shvernika Street, Urus-Martan, Chechnya. At some point later the number of the house was changed to 7 Shvernika Street. The applicants' household consisted of several dwellings occupied by eight related families and was located in the town centre, in the vicinity of the local law enforcement agencies. At the time the town of Urus-Martan was under curfew. Military checkpoints were situated on the roads leading to and from the town. In addition, two watch posts set up by local residents were situated in the vicinity of the applicants' household. One of the posts was a hundred metres from the applicants' household; the other one was sixty or seventy metres from it.

7. On the night of 31 May to 1 June 2001 (in the submitted documents the date is also referred to as 31 May and 1 June 2001) the applicants, their sons and other relatives were at home. At about 3 a.m. a group of twenty-five to thirty armed men arrived at their household. They were wearing black masks, were equipped with a portable radio station and had a grey sniffer dog. Some of the men were armed with sniper rifles with telescopic sights. When the men spoke to each other, they did so in unaccented Russian; they mainly communicated by gesturing and behaved like an organised group with a chain of command. The intruders neither identified themselves nor produced any documents. The applicants and their relatives thought they were Russian military servicemen.

8. The servicemen split into several groups and went into the different dwellings through the windows. They searched the houses and demanded and checked identity documents.

9. In the first applicant's house one of the men demanded in unaccented Russian that the first applicant hand over her husband's passport for checking; after that he took the document and went outside, ordering everyone to stay inside and threatening to shoot if anyone disobeyed.

10. The first applicant managed to go onto the porch. In the yard she saw around twenty-five to thirty servicemen who were accompanied by a sniffer dog. At the gates the applicant saw Aslanbek Tasatayev standing with his hands up against the wall. Meanwhile the officers took Aslan Tasatayev out of the house where he lived with his family. The servicemen refused to answer the applicants' questions about the reasons for their sons' abduction and referred to an order of their superiors. One of them, who was unmasked and of Slavic appearance, told the second applicant that her son was being arrested "by order" and that Aslan and Aslanbek Tasatayev would be home by the next morning.

11. In the yard one of the officers called someone on his portable radio and requested a car. About ten minutes later a grey UAZ minivan (*tabletka*) arrived at the gate. Its back windows were covered with plywood instead of glass. Aslan and Aslanbek Tasatayev were placed in the vehicle and taken in the direction of the town centre. The rest of the servicemen followed the car on foot; the group went in the direction of the Urus-Martan district military commander's office ("the district military commander's office"). According to local residents, the UAZ car with the applicants' sons in it drove into the yard of the district military commander's office.

b. The subsequent events

12. In the morning, immediately after the end of the curfew, the first applicant went with her neighbour Ms L. to the local law-enforcement agencies to find out where Aslan and Aslanbek Tasatayev had been taken. On the way there the women spoke with the men who had stood watch at the guard post located towards the town centre. According to the men, on the night of the abduction the grey UAZ (*tabletka*) vehicle with the abducted men in it had driven towards the town centre. They also confirmed that those of the servicemen who had left the applicants' house on foot had also gone in the direction of the town centre.

13. After that the applicants and their relatives went to the district military commander's office and the Urus-Martan temporary district department of the interior (the Urus-Martan VOVD) and asked about the whereabouts of the abducted men. The agencies denied any involvement in the abduction. After that the applicants with their relatives lodged written complaints about the abduction of Aslan and Aslanbek Tasatayev to the Urus-Martan district prosecutor's office ("the district prosecutor's office")

and the Urus-Martan district department of the interior (the Urus-Martan ROVD).

14. On the same morning the applicants and their relatives learnt from their neighbours that on the night of the abduction groups of military servicemen had also broken into the houses of their neighbours, the families of Kh. and G. In one of the houses, one of the intruders had taken off his mask; he was of Slavic appearance.

15. Later in the morning the applicants and their relatives spoke with the local residents who had manned the residential guard posts the night before. According to the applicants' neighbours, Mr R.D. and Mr I., who had stood watch at the mosque, on the night of the abduction a group of military servicemen had arrived there and ordered them to stay inside the mosque, threatening to shoot if they went outside. At the other post one of the applicants' neighbours, Mr U.M., who had been on duty during the abduction, told the applicants that the night before a group of military servicemen had arrived at the post, pulled his and other men's hats down over their faces and ordered everyone to get down on the ground and not to move. After that the military servicemen had gone away, leaving one soldier to guard the watchmen. According to Mr U.M., he had seen the abductors' UAZ car driving in the direction of the town centre.

16. On the same day, 1 June 2001, during their visit to the military commander's office, the second applicant and her son Mr A.T. saw the sniffer dog used by the abductors there.

17. About two or three days after the abduction the applicants spoke with the head of the Urus-Martan town administration, Mr S.G., who informed them that Aslan and Aslanbek Tasatayev were detained in the military commander's office and that he would try to expedite their release. However, a couple of days later the official told the applicants that he had been mistaken.

18. The applicants have had no news of Aslan and Aslanbek Tasatayev since the night of the abduction.

19. In support of their statements the applicants submitted: a statement by the first applicant dated 8 September 2008; a statement by the second applicant dated 9 September 2008; a statement by the applicants' relative Mr A.T. dated 9 September 2008; a statement by the applicants' relative Ms Z.M. dated 2 September 2008; a statement by the applicants' neighbour Ms M.G. dated 19 September 2008; a statement by the applicants' neighbour Ms M. Kh. dated 19 September 2008 and copies of documents received from the authorities.

2. Information submitted by the Government

20. The Government did not challenge most of the facts as presented by the applicants. According to their submission of 22 August 2008 "...the interim prosecutor of the Urus-Martan district opened criminal case

no. 25088 in connection with the abduction of Aslan and Aslanbek Tasatayev by unidentified men ...”

B. The search for Aslan and Aslanbek Tasatayev and the investigation

1. Information submitted by the applicants

21. On 1 or 2 June 2001 the district police officer M.M. visited the applicants' household with two colleagues. They questioned some of their relatives and a neighbour. The officials did not conduct a crime scene examination during the visit.

22. On 8 July 2001 the district prosecutor's office instituted an investigation into the abduction of Aslan and Aslanbek Tasatayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given number 25088. The applicants were informed about it in writing by the Chechnya prosecutor's office on 20 December 2002.

23. On 8 September 2001 the investigation in criminal case no. 25088 was suspended for failure to establish the identities of the perpetrators. The applicants were not informed about this decision.

24. On 10 October, 9 December 2002 and 20 January 2003 the applicants wrote to a number of the State authorities, including the district military commander, the Chechnya military commander, the Chechnya prosecutor's office, the district prosecutor's office and the Urus-Martan ROVD. They stated that their sons had been abducted by a group of twenty-five to thirty masked military servicemen, who had communicated with each other by gesturing and acted as a group with chain of command; that the servicemen had refused to explain the reasons for the arrest of the applicants' sons and promised to release them on the following morning. According to the applicants, this evidence indicated that their sons had been abducted by servicemen of Russian security services. The applicants further stated that their complaints to various State bodies had failed to produce any results and requested assistance in the search for their abducted sons.

25. On 20 December 2002 the Chechnya prosecutor's office informed the applicants that the criminal investigation had been suspended on 8 September 2001 for failure to establish the identity of the perpetrators.

26. On 19 April 2003 the second applicant was granted victim status in the criminal case.

27. On 7 May 2003 the Chief Military Prosecutor's office forwarded the applicants' complaint about the abduction of their sons by Russian servicemen to the military prosecutor's office of the United Group Alignment (the military prosecutor's office of the UGA) for examination.

28. On 9 April 2003 the investigators suspended the investigation in the criminal case for failure to establish the identities of the perpetrators. The applicants were informed about this decision on 9 May 2003.

29. On 12 May 2003 the department of the Prosecutor General's office in the Southern Federal Circuit informed the applicants that their complaint, that the investigation in the criminal case had been ineffective, had been forwarded to the Chechnya prosecutor's office for examination.

30. On 24 June 2003 the Chechnya prosecutor's office informed the applicants that they had examined their complaints about the abduction of Aslan and Aslanbek Tasatayev. The letter stated that on 8 September 2001 the investigation in the criminal case had been suspended; that on two occasions, that is on 9 April and on 21 June 2003, the decisions to suspend the investigation had been overruled by the acting district prosecutor due to the incompleteness of the investigation. The letter further stated that on an unspecified date the investigation had been resumed and that measures aimed at identifying the perpetrators were under way.

31. On 11 July 2003 the military prosecutor's office of the UGA forwarded the applicants' complaint about the abduction of their sons to the military prosecutor's office of military unit no. 20102 for examination; the latter was to look into possible involvement of Russian military servicemen in the abduction of Aslan and Aslanbek Tasatayev.

32. On 23 July 2003 the investigators again suspended the investigation in the criminal case for failure to establish the identities of the perpetrators. The applicants were not informed about this decision.

33. On 4 September 2003 the military prosecutor's office of military unit no. 20102 informed the applicants that the examination of their complaint had established that on 31 May 2001 during special operations conducted in the Urus-Martan district Aslan and Aslanbek Tasatayev had not been abducted by Russian military servicemen.

34. On 3 March 2005 the applicants wrote to the district prosecutor's office describing the circumstances of their sons' abduction and pointing out that there was evidence of the involvement of Russian military forces in the incident. The applicants also complained that the investigation in the criminal case was ineffective and that there was no information about it, and requested access to the investigation file.

35. On 11 March 2005 the district prosecutor's office informed the applicants that their complaint of 3 March 2005 had been rejected.

36. On 14 March 2005 the investigators resumed the investigation in the criminal case.

37. On 14 April 2005 the investigators suspended the investigation in the criminal case for failure to establish the identities of the perpetrators. The applicants were not informed about this decision.

2. Information submitted by the Government

38. Without providing copies of any relevant documents and dates of the investigating measures, the Government summarised the progress of the investigation in the criminal case as follows.

39. On unspecified dates the investigators requested information about the abducted men from various authorities, including law-enforcement agencies, the military commanders' offices and medical institutions. No information of interest was received in response to these requests. According to a letter from the Urus-Martan town administration, the disappeared Aslan and Aslanbek Tasatayev were attested positively by the local administration.

40. On an unspecified date the investigators conducted a scene of crime examination in the applicants' household.

41. The investigators granted three persons, including the second applicant, Ms T.D. and Ms A.U. victim status in the criminal case and questioned them about the circumstances of the abduction.

42. On an unspecified date the investigators questioned the second applicant, who stated that on the night between 31 May and 1 June 2001 she had been woken up by noise in her house. She had got out of bed and seen four unidentified armed masked men in camouflage uniforms without insignia in her room. Without any explanation the men had taken her son Aslanbek Tasatayev's passport. In the yard she had seen a large group of masked armed men in camouflage uniforms and Aslanbek and Aslan Tasatayev. She had not seen any vehicles in the yard or next to the house in the street. The unidentified men had taken away Aslan and Aslanbek Tasatayev. The men had told the applicant that her relatives would be released in the morning. However, Aslan and Aslanbek never returned home. The applicant did not know who had abducted her relatives and for what reasons. At some point later the second applicant was additionally questioned by the investigators and stated that her abducted relatives did not belong to any illegal armed groups; that the abductors had broken into her house through one of the windows; and that only one of them had exchanged words with her, whereas the rest communicated between themselves and with her relatives only by gestures.

43. On an unspecified date the investigators questioned the applicants' relative Ms T.D., who stated that on 1 June 2001 she had learnt from her parents about the abduction of Aslan and Aslanbek Tasatayev by unidentified armed men in camouflage uniforms and masks. According to Ms T.D. her parents had not seen any vehicles in the applicants' yard or next to the house.

44. On an unspecified date the investigators questioned the applicants' relative Ms A.U., who stated that on the night of 1 June 2001 a group of unidentified armed men in camouflage uniforms without insignia had taken away her husband Aslan Tasatayev and her relative Aslanbek Tasatayev.

The intruders also had taken away Aslanbek Tasatayev's passport. She had not seen any vehicles in the yard or next to the house. She had no idea as to the reasons for her relatives' abduction.

45. On unspecified dates the investigators questioned Mr A.T. and the first applicant whose statements were similar to the one given by Ms A.U.

46. At some point later the investigators further questioned Ms A.T., who stated that the abductors had broken into his house through a window, that they had spoken Russian and that during the abduction he had been in his room.

47. On 17 November 2005 the applicants wrote to the Chechnya prosecutor's office demanding that an effective investigation of the abduction be conducted to establish the whereabouts of their disappeared sons. According to the reply of the Chechnya prosecutor's office, the investigation in the criminal case was under way and operational-search measures were being taken to establish the identities of the perpetrators.

48. According to the Government, the investigation failed to establish the whereabouts of Aslan and Aslanbek Tasatayev. However, it found no evidence to support the involvement of federal forces in the crime. The law enforcement authorities of Chechnya had never arrested or detained Aslan and Aslanbek Tasatayev on criminal or administrative charges and had not carried out a criminal investigation in their respect. No special operations had been carried out in respect of the applicants' relatives. Their corpses had not been found.

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

50. Despite specific requests by the Court the Government did not disclose any documents of criminal case no. 25088. They stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained data concerning participants in the criminal proceedings.

C. Proceedings against law-enforcement officials

51. In March 2003 the applicants lodged a complaint with the Urus-Martan town court (the town court) that the investigation in the criminal case was ineffective. On 11 March 2003 the town court set aside their complaint without examination due to the applicants' failure to comply with compulsory procedural requirements

52. On 3 April 2003 the applicants lodged another complaint with the town court. They complained that the investigation in the criminal case was ineffective and sought a ruling obliging the prosecutor's office to conduct an effective investigation into the abduction of their sons. It is unclear whether this complaint was examined by the court.

53. On an unspecified date in 2004 the applicants lodged another complaint with the town court. They complained that the investigation in the criminal case was ineffective and sought a ruling obliging the authorities to resume the investigation in the criminal case and to conduct it in an effective and thorough manner. On 29 March 2004 the town court rejected their complaint. On an unspecified date in 2004 the applicants lodged a request with the town court asking for reinstatement of the time-limits for the appeal against the decision of 29 March 2004. On 20 October 2004 the court rejected their request and refused to examine the appeal.

54. On an unspecified date in 2005 the applicants lodged another complaint with the town court. They again complained that the investigation in the criminal case was ineffective and sought a ruling obliging the authorities to conduct an effective investigation and provide them with access to the investigation file.

55. On 14 May 2005 the town court allowed this complaint in part. The text of the decision included the following:

“...the court established:

At about 3 a.m. on 31 May 2001 a group of masked servicemen of the Urus-Martan power structures had broken into the house at 5 Shernika Street in Urus-Martan and conducted an unlawful search... among themselves the servicemen had spoken Russian. As a result, the military servicemen had arrested and taken away the applicants' sons Aslan Tasatayev, who was born in 1975, and Aslanbek Tasatayev, who was born in 1979....

On 8 September 2001 the investigation in the criminal case had been suspended for failure to establish the identities of the perpetrators. The whereabouts of the Tasatayevs had not been established, even though their arrest had been carried out by representatives of power structures. The following facts confirm this:

- the arrest had been carried out by a group of about thirty military servicemen, during curfew... not far away from the town centre of Urus-Martan, in an open manner...;
- the military servicemen who had carried out the arrest... were wearing camouflage uniforms, were well-armed and spoke clear [unaccented] Russian;
- a shepherd dog had been used during the arrest;
- the military servicemen had used a portable radio to call for a UAZ *tabletka* car, which had arrived ten minutes later;
- the car had taken the arrested men to the town centre, where the VOVD, the ROVD and the FSB were situated;
- not far away from the Tasatayevs' house were two guard posts set up by local residents, who had been on duty that night. Before cordoning off the Tasatayevs' household the military servicemen had gone to one of the guard posts where two Chechens were on duty, pulled their hats down over their

faces and told them: “You did not see us. We did not see you”. At the other guard post, at the mosque, the federal servicemen had locked the Chechen watchmen in the mosque. There are witnesses who saw the car with the arrested men in it going into the yard of the military commander's office.

The above and other facts had not been investigated by the prosecutor's office

....the investigator's decision to suspend the investigation in the criminal case cannot be considered as lawful and justified for the following reasons:

the investigation failed to identify and question those residents who had been on duty at the guard posts ... the investigation failed to establish the identity of the UAZ *tabletk*a vehicle used during the abduction ...; the investigators failed to identify and question the witnesses who saw the car with the arrested men in it driving into the yard of the military commander's office... the investigators failed to question the supervisor from the military commander's office and the Urus-Martan temporary district department of the interior, who had been on duty on the date of the abduction...”

The court instructed the investigators to conduct an effective investigation into the abduction and take all possible measures to solve the crime. The remainder of the complaint was rejected. On 6 June 2005 the town court upheld this decision on appeal.

II. RELEVANT DOMESTIC LAW

56. 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

57. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Aslan and Aslanbek Tasatayev had not yet been completed. They also argued that it had been open to the applicants to pursue civil complaints but that they had failed to do so.

58. The applicants contested that objection. They stated that the only effective remedy in their case, the criminal investigation, had proved to be

ineffective and that their complaints to that effect, including their applications to the domestic court, had been futile.

B. The Court's assessment

59. 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).

60. 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.

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

62. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities immediately after the abduction of Aslan and Aslanbek Tasatayev and that an investigation has been pending since 8 July 2001. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

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

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

A. The parties' arguments

64. The applicants maintained that it was beyond reasonable doubt that the men who had abducted Aslan and Aslanbek Tasatayev were State agents. In support of their complaint they referred to the following: at the material time Urus-Martan was under the total control of federal troops. There were Russian military checkpoints on the roads leading to and from the town. The area was under curfew. The abductors arrived as a large

group late at night, which indicated that they had been able to circulate freely past curfew. The men interacted by gesturing, had chain of command and acted in a manner similar to that of special forces carrying out an identity check. They were wearing specific camouflage uniforms, were well-armed, and had portable radios and a dog. The men had broken into the applicants' houses and the houses of the applicants' neighbours without fear of being heard by law enforcement agencies located in close proximity to the houses. All the information disclosed from the criminal investigation file supported their assertion as to the involvement of State agents in the abduction. Since the applicants' sons had been missing for a very lengthy period, they could be presumed dead. That presumption was further supported by the circumstances in which they had been arrested, which should be recognised as life-threatening.

65. The Government submitted that unidentified armed men had kidnapped Aslan and Aslanbek Tasatayev. They further contended that the investigation of the incident was pending, that there was no evidence that the men were State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relatives were dead. The Government raised a number of objections to the applicants' presentation of facts. The fact that the perpetrators of the abduction spoke unaccented Russian and were wearing camouflage uniforms did not mean that these men could not have been members of illegal armed groups. The Government further alleged that the applicants' description of the circumstances surrounding the abduction was inconsistent. In particular, the applicants had failed to inform the investigators that the abductors had used the UAZ vehicle and a dog, whereas they had submitted this information to the Court. In the Government's opinion these inconsistencies demonstrated that the applicants' allegations were unsubstantiated. In this connection they referred to the alleged discrepancies in the applicants' information provided to the Court and the applicants' witness statements given to the domestic investigation; however, the Government did not submit these witness statements to the Court. The Government asserted that the crime could have been attributable to illegal armed groups. They pointed out that groups of mercenaries of Slavic origin had committed crimes on the territory of the Chechen Republic and emphasised that the fact that the perpetrators had Slavic features and spoke Russian did not prove that they were attached to the Russian military. They also observed that a considerable number of armaments had been stolen from Russian arsenals by insurgents in the 1990s and that members of illegal armed groups could have possessed camouflage uniforms.

B. The Court's evaluation of the facts

66. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

67. The Court notes that despite its requests for a copy of the investigation file into the abduction of Aslan and Aslanbek Tasatayev, the Government produced none of the documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-VIII (extracts)).

68. 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' sons can be presumed dead and whether their deaths can be attributed to the authorities.

69. The applicants alleged that the persons who had taken Aslan and Aslanbek Tasatayev away on 31 May 2001 and then killed them had been State agents.

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

71. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. It finds that the fact that a large group of armed men in uniforms was able to move freely through military roadblocks during curfew hours and proceeded to check identity documents in several households and then took the applicants' sons away from their home strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their application to the authorities the applicants consistently maintained that Aslan and Aslanbek Tasatayev had been detained by unknown

servicemen and requested the investigation to look into that possibility (see paragraphs 24, 27, 34 and 55 above).

72. The Government questioned the credibility of the applicants' statements in view of their alleged failure to inform the domestic investigators about the UAZ vehicle and the dog used by the abductors. However, as it can be seen from the town court's decision (see paragraph 55 above), the applicants did inform the investigators about these elements. The Court further notes in this respect that no other elements underlying the applicants' submissions of facts have been disputed by the Government.

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

74. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were abducted by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of the special forces in the kidnapping or their general reference to the possibility of illegal insurgents' involvement in the crime is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the applicants, and drawing inferences from the Government's failure to submit any of the documents which were in their exclusive possession or to provide any plausible explanation for the events in question, the Court finds that Aslan and Aslanbek Tasatayev were arrested on 1 June 2001 by State servicemen during an unacknowledged security operation.

75. There has been no reliable news of Aslan and Aslanbek Tasatayev since the date of their abduction. Their names have not been found in any official detention facility records. Finally, the Government have not submitted any explanation as to what happened to them after their arrest.

76. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be

regarded as life-threatening. The absence of Aslan and Aslanbek Tasatayev or of any news of them for more than eight years supports this assumption.

77. Accordingly, the Court finds that the evidence available permits it to establish that Aslan and Aslanbek Tasatayev must be presumed dead following their unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

78. 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

79. The Government contended that the domestic investigation had obtained no evidence to the effect that Aslan and Aslanbek Tasatayev were dead or that any servicemen of the federal law-enforcement agencies had been involved in their kidnapping or alleged killing. They 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. The Government also noted that the decisions to suspend and resume the proceedings did not demonstrate their ineffectiveness, but showed that the authorities in charge were continuing to take steps to solve the crime.

80. The applicants argued that Aslan and Aslanbek Tasatayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. They also argued that the investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law. The applicants pointed out that the prosecutor's office had not taken some crucial investigative steps. The

investigation into Aslan and Aslanbek Tasatayev's kidnapping had been opened several weeks after the events and then had been suspended and resumed a number of times, thus delaying the taking of the most basic steps, and that the relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any tangible 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

81. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 63 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Aslan and Aslanbek Tasatayev

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

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

83. 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).

84. In the present case, the kidnapping of Aslan and Aslanbek Tasatayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

85. The Court notes at the outset that none of the documents from the investigation were disclosed by the Government. It therefore has to assess its effectiveness on the basis of the few documents submitted by the applicants and the information about its progress presented by the Government.

86. The Court notes that the authorities were immediately made aware of the abduction by the applicants' submissions. The investigation in criminal case no. 25088 was instituted on 8 July 2001, which is one month and six days after Aslan and Aslanbek Tasatayev's abduction. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were delayed or not taken at all. For instance, as can be seen from the decision of the domestic court of 14 May 2005, by that date the investigators had not identified or questioned any of the local residents who had stood watch at the guard posts on the night of the abduction and had been threatened by the abductors; they had not established the identity of the owner of the UAZ vehicle which had been moving around Urus-Martan that night; they had not identified and questioned the witnesses who had seen the abductors' vehicle driving into the yard of the military commander's office after the abduction and they had not questioned any of the servicemen who had been on duty in the military commander's office and the ROVD about their possible involvement in the abduction or subsequent detention of the applicants' sons (see paragraph 55 above). It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

87. The Court also notes that even though the second applicant was granted victim status in the investigation concerning the abduction of her relatives, she was only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

88. Finally, the Court notes that the investigation was suspended and resumed on numerous occasions and that there were lengthy periods of inactivity of the district prosecutor's office when no proceedings were pending. The town court criticised deficiencies in the proceedings and

ordered remedial measures (see paragraph 55 above). It appears that its instructions were not complied with.

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

90. 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 Aslan and Aslanbek Tasatayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

92. 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

93. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

94. 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*

95. 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).

96. In the present case the Court notes that the applicants are mothers of the disappeared persons who witnessed their abduction. For more than eight years they have not had any news of the missing men. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing sons. 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 sons' arrest or simply informed them that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

98. The applicants further stated that Aslan and Aslanbek Tasatayev 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

99. The Government asserted that no evidence had been obtained by the investigators to confirm that Aslan and Aslanbek Tasatayev had been deprived of their liberty. They were not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about their detention.

100. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

101. 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

102. 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).

103. The Court has found that Aslan and Aslanbek Tasatayev were abducted by State servicemen on 1 June 2001 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be

seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

104. 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 sons 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 them against the risk of disappearance.

105. In view of the foregoing, the Court finds that Aslan and Aslanbek Tasatayev 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 6 OF THE CONVENTION

106. The applicants complained that the proceedings brought by them against the investigators were unfair. They relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

107. The Court finds that Article 6 § 1 of the Convention is, in principle, inapplicable to the proceedings in question, as they clearly have not involved the determination of the applicants' civil rights or obligations or a criminal charge against them, within the meaning of the Convention (see *Akhmadov and Others v. Russia* (dec.), no. 21586/02, 3 May 2007).

108. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

109. 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

110. 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. The Government further added that participants in criminal proceedings could also claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

111. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

112. 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

113. 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).

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

115. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction with Articles 3 and 5 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. Article 41 of the Convention provides:

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

A. Damage

117. The applicants did not submit any claims for pecuniary damage. As regards non-pecuniary damage, the applicants stated that they had lost their sons and endured stress, frustration and helplessness in relation to their sons' abduction, aggravated by the authorities' inactivity in the investigation of their kidnapping for several years. They left the determination of the amount of compensation to the Court.

118. The Government submitted that finding a violation of the Convention would be adequate just satisfaction in the applicants' case.

119. 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' sons. 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 each of the applicants 60,000 euros (EUR), plus any tax that may be chargeable thereon.

B. Costs and expenses

120. The applicants were represented by Mr D. Itsleyev, a lawyer practising in Nazran. The applicants submitted a contract with their representative and an itemised schedule of costs and expenses that included legal research and drafting, as well as administrative and translation expenses. The overall claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 5,217. The applicants submitted the following breakdown of costs:

(a) EUR 4,544 for 28.85 hours of interviews and drafting of legal documents submitted to the Court and the domestic authorities, at the rate of EUR 150 per hour;

(b) EUR 145 of administrative expenses;

(c) EUR 528 in translation fees based on the rate of EUR 80 per 1000 words.

121. The Government did not dispute the reasonableness of the amounts claimed.

122. The Court has to establish first whether the costs and expenses indicated by the applicant 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)

123. Having regard to the details of the information submitted by the applicant, the Court is satisfied that these rates are reasonable. It notes that this case was rather complex and required the amount of research and preparation claimed by the applicants.

124. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 5,000 together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representative's bank account, as identified by the applicants.

C. Default interest

125. 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 admissible and the remainder of the application inadmissible;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Aslan and Aslanbek Tasatayev;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Aslan and Aslanbek Tasatayev had disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Aslan and Aslanbek Tasatayev;

7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Articles 3 and 5;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, 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 each of the applicants;
 - (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representative's 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;
10. *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