



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

FIRST SECTION

CASE OF ABAYEVA AND OTHERS v. RUSSIA

(Application no. 37542/05)

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 Abayeva and Others 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. 37542/05) 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 four Russian nationals listed below (“the applicants”), on 9 September 2005.

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

3. On 17 March 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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 are:

- 1) Ms Arua Abayeva, born in 1949,
- 2) Ms Raminat Zhansayeva, born in 1983,
- 3) Mr Siddyk Abayev, born in 2000 and
- 4) Ms Malika Shaipova, born in 1947.

The applicants are two distantly related families of Russian nationals who live in the town of Urus-Martan, Chechnya. The first applicant is the mother of Magomed-Ali Abayev, who was born in 1970. The second applicant is his wife and the third applicant is his son. The fourth applicant is the mother of Anvar Shaipov, who was born in 1976.

A. The disappearance of Magomed-Ali Abayev and Anvar Shaipov and subsequent events

1. The applicants' account

a. Abduction of Magomed-Ali Abayev and Anvar Shaipov

6. At the material time the town of Urus-Martan was under curfew. The first applicant lived there with Magomed-Ali Abayev and other relatives at 12 Lenin Street. Their house was in the town centre and less than a hundred metres from the nearest checkpoint of the Russian military forces. The checkpoint and its staff occupied two buildings; one was the building of the former Siluet clothing factory and the other was a nearby smaller building in Lenin Street.

7. At about 4 p.m. on 13 September 2000 Magomed-Ali Abayev and Anvar Shaipov left the first applicant's house. They were walking to the town centre when two Russian servicemen at the checkpoint stopped them. The servicemen took their passports and one of the soldiers went with them into the factory building. A few minutes later he came out, took Magomed-Ali Abayev and Anvar Shaipov into the building and returned to the checkpoint without them.

8. The applicants' neighbours Mr R.G. and Mr M.A. witnessed Magomed-Ali Abayev and Anvar Shaipov being taken into the factory building and did not see them come out. Several minutes later Mr R.G. asked the servicemen at the checkpoint why Magomed-Ali Abayev and Anvar Shaipov were still in the building; he did not receive any response. Meanwhile Mr M.A. went to the first applicant's house and informed her

and the second applicant about the arrest of Magomed-Ali Abayev and Anvar Shaipov at the checkpoint.

9. The first and the second applicants immediately went to the checkpoint and asked the soldiers why Magomed-Ali Abayev and Anvar Shaipov had been arrested. They were told that the two men had been taken into the building for an identity check and that they would be released shortly. The applicants decided to wait for the men at the entrance to the building. While they were waiting, a grey military UAZ vehicle with open windows drove up to the factory building. The soldiers opened the factory gates and let the car into the yard. Shortly after its arrival the car left with its windows closed.

10. After the car drove away the second applicant asked one of the soldiers about Magomed-Ali Abayev and Anvar Shaipov. The soldier spoke with someone on his portable radio set and told her that the two men had been released from the other side of the factory building.

11. At that time the father of Magomed-Ali Abayev, Mr V.A., arrived at the checkpoint and went to the other side of the building to meet his son and Anvar Shaipov. About five minutes later he returned and told the first and the second applicants that Magomed-Ali Abayev and Anvar Shaipov had not left the building. He further informed them that he had met an acquaintance who had been waiting for someone on the other side of the building for two hours and that this man had not seen Magomed-Ali Abayev and Anvar Shaipov leaving the factory building.

12. Then the second applicant went to the fourth applicant's house and told her Anvar Shaipov had been arrested. The second and the fourth applicants immediately went to the town centre, where they met the first applicant. In the late afternoon all of them managed to speak to the deputy head of the Urus-Martan district administration, Mr L.M., who told them that Magomed-Ali Abayev and Anvar Shaipov had been taken to the "West" group of the Russian federal forces (*группировка федеральных сил 'Запад'*) stationed in the village of Tangi-Chu in the Urus-Martan district, and that on 14 September 2000 the applicants' relatives would be brought back to Urus-Martan.

13. In support of their statements the applicants submitted the following: two accounts by the first applicant dated 19 March 2004 and 2 June 2005; an account by the second applicant dated 17 March 2004; an account by Mr R.G. dated 29 March 2004; an account by Mr M.A. dated 2 April 2004; an account by the fourth applicant dated 18 March 2004, on an account by Mr M.-E.A. dated 1 June 2005 and a hand-drawn map of the former clothing factory.

b. The subsequent events

14. On the morning of 14 September 2000 the deputy head of the administration, Mr L.M., told the applicants that he had not been able to

find out where Magomed-Ali Abayev and Anvar Shaipov had been taken. He suggested that they had been taken either to the main military base of the Russian federal forces in Khankala or to the detention centre of the Russian federal forces in the settlement of Chernokozovo.

15. On 14 September 2000 the two applicant families started a joint search for Magomed-Ali Abayev and Anvar Shaipov. For the first few days the applicants addressed State authorities primarily in person, hoping for an immediate release of their relatives.

16. In the end of September 2000 (in the submitted documents the date was also stated as October 2001) a young Chechen man came to the fourth applicant's house. He did not introduce himself. He told her that he had seen Anvar Shaipov at the headquarters of infantry regiment no. 245 of the West group of the Russian federal forces. Anvar Shaipov had been chopping firewood. He had told the man that he had been arrested by Russian military servicemen and asked him to inform his relatives that he had been detained at the headquarters of infantry regiment no. 245 of the West group. The young man said he had never heard of Magomed-Ali Abayev.

17. Since the end of September 2000 the applicants have had no news of their disappeared relatives.

2. Information submitted by the Government

18. The Government did not challenge most of the facts as presented by the applicants. According to their submission, "...on 15 August 2002 M.A. Shaipova complained to the Urus-Martan district prosecutor's office that between 4 p.m. and 5 p.m. on 13 September 2000 her son Anvar Shaipov was abducted by identified men in civilian clothing next to the former Siluet clothing factory in Lenin Street, Urus-Martan... on 15 December 2000 a similar complaint was received by the Urus-Martan district prosecutor's office from A. Abayeva...".

B. The search for Magomed-Ali Abayev and Anvar Shaipov and the investigation

1. Information submitted by the applicants

19. From 13 September 2000 onwards the applicants repeatedly applied in person and in writing to various public bodies. They have been supported in their efforts by the Memorial NGO. In their letters to the authorities the applicants referred to their relatives' arrest and asked for assistance and details of the investigation. Mostly these enquiries have remained unanswered, or purely formal replies have been given in which the applicants' requests have been forwarded to various prosecutors' offices.

The applicants submitted some of their letters and the authorities' replies to the Court; these documents are summarised below.

20. On 26 and 29 September 2000 the fourth applicant complained to the Urus-Martan district prosecutor's office (the district prosecutor's office) about her son's abduction. She described the circumstances of his arrest and requested assistance in searching for him. She also stated that her son had been seen in the village of Tangi-Chu, on the premises of infantry regiment no. 245 of the West group of federal forces.

21. On 1 October 2000 the district prosecutor's office forwarded the fourth applicant's complaint to the Urus-Martan district department of the interior (the ROVD) and requested them to open an operational-search file to establish the whereabouts of Anvar Shaipov.

22. On 19 November 2000 the district prosecutor's office informed the first applicant that Magomed-Ali Abayev and Anvar Shaipov had not been detained at the headquarters of infantry regiment no. 245.

23. On 27 November 2000 the fourth applicant wrote to the ROVD. She described the circumstances of her son's arrest and stated that he had been seen in the village of Tangi-Chu, at the headquarters of infantry regiment no. 245 of the West group of Russian federal forces.

24. On 21 August 2001 the Prosecutor General's office informed the first applicant that her request for assistance in the search for her son had been forwarded to the Chechnya prosecutor's office.

25. On 21 September 2001 the district prosecutor's office forwarded the first applicant's complaint to the ROVD.

26. On 1 October 2001 the first applicant complained to the district prosecutor's office. She stated that in spite of all the information she had provided to the authorities they had failed to instigate an investigation into her son's disappearance. The applicant further provided the names and the addresses of the witnesses to the abduction and requested that the authorities instigate an investigation into the abduction of Magomed-Ali Abayev. She requested the authorities to question the servicemen who had been manning the checkpoint on 13 September 2000.

27. On 19 August 2002 the Chechnya department of the interior forwarded the fourth applicant's complaint to the ROVD, seeking a search for Anvar Shaipov to be set up.

28. On 28 August 2002 the district prosecutor's office summoned the first applicant for questioning.

29. On 22 January 2003 the fourth applicant complained to the Urus-Martan district military commander's office (the district military commander's office). She described in detail the circumstances of her son's abduction and requested assistance in the search for Anvar Shaipov.

30. On 6 February 2003 the district prosecutor's office forwarded a letter to the first applicant stating that on the same date they had instituted an investigation into the disappearance of Magomed-Ali Abayev and Anvar

Shaipov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file had been given the number 34013. According to the applicants, they were informed about this decision only on 11 March 2004 (see paragraph 51 below).

31. On 18 February 2003 the district prosecutor's office granted the fourth applicant victim status in the criminal case.

32. On 9 March 2004 the first applicant complained to the district prosecutor's office. She stated that Magomed-Ali Abayev and Anvar Shaipov had been arrested by Russian servicemen; that their removal had been witnessed by a number of her neighbours and relatives; and that, in spite of her numerous complaints to the district prosecutor's office, the latter had failed to establish the whereabouts of the disappeared men. The applicant requested the authorities to take the following measures: to initiate an investigation into the abduction of Magomed-Ali Abayev and Anvar Shaipov, to grant her victim status in the criminal proceedings and conduct an effective investigation into the disappearance.

33. On 11 March 2004 the district prosecutor's office informed the first applicant that on 6 February 2003 they had instituted an investigation into the disappearance of Magomed-Ali Abayev and Anvar Shaipov and that on 7 April 2003 the investigation in the criminal case had been suspended for failure to establish the identities of the perpetrators.

34. On 12 April 2004 the first applicant requested the investigators to inform her about the progress of the investigation and take meaningful measures to establish the whereabouts of Magomed-Ali Abayev and Anvar Shaipov.

35. On 6 October 2004 the first applicant requested the investigators to provide her with access to the investigation file and to resume the investigation in the criminal case.

36. On 11 October 2004 the investigators informed the first applicant that under Article 42 of the Criminal Procedure Code she was entitled to familiarise herself with the investigation file only upon completion of the investigation. The letter also stated that the investigation had been suspended for failure to establish the identities of the perpetrators.

37. On 12 June 2008 the investigators informed the applicants that on the same date they had suspended the investigation in the criminal case for failure to establish the identities of the perpetrators.

2. Information submitted by the Government

38. Referring to several witness statements, which are summarised below, and copies of some documents from the investigation file, the Government submitted the following.

39. On 15 December 2002 the first applicant complained to the authorities about the abduction on 13 September 2000 of Magomed-Ali Abayev and Anvar Shaipov by representatives of a law-enforcement agency

stationed in the former clothing factory. She stated that the two men had been taken onto the factory premises by the servicemen and that afterwards they had not returned home. She further stated that she had complained about the abduction to the district prosecutor's office, but the interim district prosecutor, Mr L.I., had refused to open a criminal investigation. The applicant also provided the names and addresses of two witnesses to the abduction and requested the authorities to open a criminal case and to question the representatives of the law-enforcement agency who had been stationed in the factory building at the material time.

40. On 14 February 2003 the investigators questioned the first applicant's daughter, Ms L.A., who stated that at about 6 p.m. on 13 September 2000 her brother Magomed-Ali Abayev had left home with Anvar Shaipov. About five minutes later their neighbour Mr M.A. had arrived at the first applicant's home and informed the relatives that Magomed-Ali Abayev and Anvar Shaipov had been arrested by representatives of a law-enforcement agency and had been taken to the premises of the former clothing factory. The witness and the first applicant had gone immediately to the checkpoint located in the factory building. While they were there a grey UAZ vehicle without registration numbers had driven away from the factory's yard.

41. On 14 February 2003 the ROVD informed the investigators that Anvar Shaipov had not been detained by their officers, that he had not been placed in their detention centre and that his corpse had not been found.

42. On 14 February 2003 the investigators questioned the first applicant who stated that at about 4 p.m. on 13 September 2000 her son Magomed-Ali Abayev had left home with Anvar Shaipov. A few minutes later their neighbour Mr M.A. had arrived at her house and informed the family that the two men had been arrested by representatives of a law-enforcement agency stationed in the former clothing factory. Immediately afterwards, the applicant with her daughter and Ms R. Sh. had gone to the checkpoint located in the building and asked the guards to release the arrested men. While the women had been talking to the guards, a grey UAZ vehicle with darkened windows and without registration numbers had driven away from the factory's yard. The women's attempts to obtain information about the arrested men had not produced any results.

43. On 17 February 2003 the investigators questioned Anvar Shaipov's sister, Ms L.Sh., who stated that on 13 September 2000 she had been at home when Mr A.Zh. had arrived there and informed the family about the arrest of Magomed-Ali Abayev and Anvar Shaipov by military servicemen stationed at the former clothing factory. The witness and her relatives had immediately gone to the authorities and informed them about the incident. On 18 February 2005 the witness was questioned again and stated that her family had learnt from an acquaintance that in 2000 her brother Anvar Shaipov had been seen at a military unit in Tangi-Chu, Chechnya.

44. On 18 and 22 February 2003 the Urus-Martan district department of the Federal Security Service (the FSB) and the Chechnya FSB informed the investigators that they had not arrested or detained Magomed-Ali Abayev and Anvar Shaipov and had not opened criminal proceedings against them.

45. On 24 February 2003 the investigators conducted a crime scene examination in the building of the former clothing factory. Nothing was collected from the scene.

46. In February 2003 the Achkhoy-Martan district prosecutor's office, the Kurchaloy district prosecutor's office, the Shali district prosecutor's office and the Nadterechniy district prosecutor's office informed the investigators that they had not opened criminal proceedings against Magomed-Ali Abayev and Anvar Shaipov; that they had not arrested or detained them and that their corpses had not been found in their districts.

47. On various dates in 2003 the Main Department of the Ministry of the Interior in the Southern Federal Circuit, the Argun ROVD, the Sharoy ROVD, the Itum-Kali ROVD, the Naurskiy ROVD, the Kurchloy ROVD, the Shatoy ROVD, the Itum-Kali ROVD and the Zavodskoy ROVD of Grozny informed the investigators that they had no information concerning the arrest or detention of Magomed-Ali Abayev and Anvar Shaipov.

48. According to the information received from the above-mentioned law-enforcement agencies, military unit no. 6779 had not been stationed at the headquarters of the former clothing factory in Urus-Martan.

49. On 5 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.

50. On 10 March 2004 the first applicant complained to the district prosecutor's office about the abduction of her son and requested that the authorities open a criminal investigation into the incident.

51. On 11 March 2004 the investigators informed the first applicant that in connection with the abduction they had already opened a criminal case, on 5 February 2003.

52. On 11 October 2004 the first applicant requested that the district prosecutor's office provided her with full access to the investigation file. The investigators replied that she was entitled to access only upon completion of the criminal investigation.

53. On 20 January 2006 the investigators again questioned the first applicant, who stated that on 13 September 2000 her son Magomed-Ali Abayev and her relative Anvar Shaipov had been arrested at the checkpoint situated in Lenin Street in Urus-Martan and taken into the former clothing factory. Referring to the information received by her from the witness to the incident, Mr M.A., Magomed-Ali Abayev and Anvar Shaipov had been stopped by the servicemen who had manned the checkpoint. At first the officers had taken the two men's documents and taken them into the building; a few minutes later Magomed-Ali Abayev and Anvar Shaipov had

been taken into the factory. Immediately afterwards Mr M.A. had arrived at the applicant's house and told her that Magomed-Ali Abayev and Anvar Shaipov had been detained at the checkpoint. The applicant had gone immediately to the checkpoint and asked the servicemen about Magomed-Ali Abayev and Anvar Shaipov. The officers told her that the two men were "being checked" and that they would be released soon. The applicant decided to wait for Magomed-Ali Abayev and Anvar Shaipov at the checkpoint. While she was waiting, a grey UAZ vehicle without registration numbers and with darkened windows drove into the factory's yard. About five minutes later the car left the factory and drove in the direction of the town centre. Then the soldiers at the checkpoint told the applicant that they had released Magomed-Ali Abayev and Anvar Shaipov through the gates located on the other side of the building, in Krasnoarmeyskaya Street. According to the witness, at the time the checkpoint was being manned by officers of law-enforcement agencies from Yaroslavl and the Yaroslavl Region. The applicant further stated that at some point later Mr M.A. had moved abroad and that her husband, Mr V.A., had died in June 2003.

54. On 24 January 2006 the investigators conducted a crime scene examination at the former clothing factory. Nothing was collected from the scene. According to the transcript, on the date of the examination, a special task force unit of the police (the OMON) from the Kostroma Region was stationed in the factory building.

55. In January 2007 the investigators forwarded a number of information requests to various detention centres in Northern Caucasus and the nearby regions. According to the replies from the detention centres in the Kalmyk Republic, the Volgograd region, the Republic of Adigey, the Astrakhan region, the Republic of Dagestan, the Republic of Kabardino-Balkaria, the Krasnodar region, the Rostov region and the Stavropol region Magomed-Ali Abayev and Anvar Shaipov were not detained on their premises.

56. On 25 January 2007 the investigators questioned officer Z. who stated that since September 2006 he had been working in Urus-Martan, in the police station located in the building of the former clothing factory. He had previously worked there from November 2003 to April 2004 and during this period of his service Magomed-Ali Abayev and Anvar Shaipov had not been arrested or detained on the factory premises. At the time a two-storey security post guarding the factory premises had been set up by Russian federal forces in front of the building. The only entrance to the security post had been through the factory building. The witness further stated that he did not know which law-enforcement agency had been stationed in the factory building in 2000.

57. On 31 January 2007 the investigators questioned the first applicant's neighbour, Ms Kh. Kh., who stated that at about 5 p.m. on 13 September 2000 she had been at home when she had seen Magomed-Ali Abayev and

Anvar Shaipov walking by her house. She had gone into the street and seen the two men next to the checkpoint situated in the former clothing factory. According to the witness, at the time servicemen of a law-enforcement agency were manning the checkpoint. The witness had walked to the checkpoint and seen Magomed-Ali Abayev and Anvar Shaipov going into the checkpoint building. Then a UAZ car had passed by her, pulled into the factory's yard and driven away shortly afterwards. After she had arrived at the checkpoint, she had seen relatives of Magomed-Ali Abayev and Anvar Shaipov who had been waiting for the two men. The servicemen on duty had told them that they had already released Magomed-Ali Abayev and Anvar Shaipov and that the two men were waiting for their relatives on the other side of the checkpoint, in Krasnoarmeyskaya Street. The witness also stated that her son Mr M.A. had witnessed all the events and that he had moved abroad at some point later.

58. On 7 February 2007 the Department of the Execution of Punishment of the Republic of Karachay-Cherkessia informed the investigators that they had not detained the applicants' relatives.

59. On 7 February 2007 the investigators questioned the applicants' relative Mr A. Zh., who stated that at about 5 p.m. on 13 September 2000 he had gone to the town centre of Urus-Martan to buy cigarettes. On the way there, next to the checkpoint situated in the former clothing factory, he had seen a crowd of local residents, who had told him that the servicemen at the checkpoint had arrested Magomed-Ali Abayev and Anvar Shaipov; that the two men had been taken into the factory yard; that a few minutes later a UAZ car had driven into the yard and that the two men had been taken away in this car. Then he had gone to the fourth applicant's house and told her about the arrest.

60. On 11 February 2007 the investigators questioned the fourth applicant's daughter, Ms L.Sh., who stated that at about 5 p.m. on 13 September 2000 their relative Mr A. Zh. had arrived at their house and told her about the arrest of Anvar Shaipov. She had immediately informed her relatives about it. The fourth applicant and other relatives had gone to the checkpoint, while the witness stayed at home. The witness further stated that Mr R.G. had witnessed how the two men had been taken into the factory by the servicemen, and provided the investigators with his address. She also stated that her relatives had complained about the abduction to various state authorities in 2000, but that the latter had failed to take measures to establish the whereabouts of the disappeared men. In connection with this she offered to provide the investigators with copies of letters from the district prosecutor's office of 10 October 2000 and 28 February 2002 and from another law-enforcement agency of 19 August 2002, which confirmed the fact that her relatives had then informed the authorities about the abduction, but no tangible measures had been taken.

61. On 14 February 2007 the investigators questioned the fourth applicant, who stated that at about 5 p.m. on 13 September 2000 she had learnt from Ms R.Zh. that Magomed-Ali Abayev and Anvar Shaipov had been arrested by servicemen at the checkpoint located in Lenin Street, in the former clothing factory. The witness had immediately gone there with her relatives. At the checkpoint she had met relatives of Magomed-Ali Abayev. She had learnt from the first applicant that at about 4 p.m. Magomed-Ali Abayev and Anvar Shaipov had been stopped at the checkpoint for an identity check and then taken to the factory; after that a UAZ vehicle had driven into the factory yard and Magomed-Ali Abayev and Anvar Shaipov had been taken away in this car. According to the witness, after she had spoken with the first applicant, the servicemen at the checkpoint had informed them that Magomed-Ali Abayev and Anvar Shaipov had been released from the checkpoint through the other gates, in Krasnoarmeyskaya Street. After that incident her son had disappeared. The witness further stated that in October 2001 a man of average height, who must have been twenty-six or twenty-seven years old, had arrived at her house and told her that two days ago he had been leaving the headquarters of the 245th regiment of the federal forces under the command of General Shamanov and that he had seen Anvar Shaipov there. The latter asked him to inform his family that he was there. The witness had not seen the young man again. In 2002 a woman had arrived at the applicant's house and told her that her son Anvar Shaipov had been detained in the Chernokozovo detention centre in Chechnya. After that the applicant had twice visited the detention centre where he had been told that her son had not been detained there. She did not hear any news about her disappeared son ever since. On 8 June 2007 the investigators again questioned the fourth applicant, who confirmed her previous statement.

62. On 16 February 2007 the investigators questioned the first applicant's neighbour, Mr R.G., who stated that at the material time he had lived across the street from the first applicant's house. A federal forces checkpoint was next to the former clothing factory; the servicemen manning the checkpoint lived in the factory building. On 13 September 2000 he had been repairing the house gates. Magomed-Ali Abayev and Anvar Shaipov had greeted him and walked by in the direction of the town centre. Then he had seen that the two men had been stopped at the checkpoint and that the servicemen had asked for their identity documents. After Magomed-Ali Abayev and Anvar Shaipov had provided their documents, one of the servicemen had taken them into the building. Meanwhile he approached Magomed-Ali Abayev and Anvar Shaipov and asked them what was happening. Magomed-Ali Abayev explained to him that the servicemen frequently stopped pedestrians for identity checks and that there was nothing to worry about. After that the servicemen asked Magomed-Ali Abayev and Anvar Shaipov to go into the building and the two men went

inside. About ten minutes later he asked one of the officers what was taking so long and why Magomed-Ali Abayev and Anvar Shaipov had not come back. The servicemen called someone on the phone and told him that the two men would be released shortly. Then he went to the applicants and informed them about their relatives' arrest. As the relatives of Magomed-Ali Abayev were approaching the checkpoint, a military UAZ-469 vehicle without a registration number was driving away from the factory premises. The witness said he did not see any passengers in the car, just the driver. When the relatives of Magomed-Ali Abayev arrived at the checkpoint, the servicemen on duty told them that the two men had been released from the factory building at the other gates, in Krasnoarmeyskaya Street. Nonetheless, when the witness expressed disbelief and asked one of the officers: "You saw the two men being taken into the factory?" and the latter replied: "there is no need to involve me in this, those who arrested the two men, they are from another agency" and added that the men who had arrested the applicants' relatives were from military intelligence. The witness further stated that on 13 September 2000 servicemen wearing a particular kind of camouflage uniform called "desert storm" (*'буря в пустыне'*), had been present at the checkpoint along with its regular staff and that these men had arrested Magomed-Ali Abayev and Anvar Shaipov.

63. On 21 June 2007 the investigators questioned Magomed-Ali Abayev's brother, Mr M.A., who stated that at about 4.30 p.m. on 13 September 2000 his family had been informed about the arrest of Magomed-Ali Abayev and Anvar Shaipov by men in military uniform at the checkpoint located next to the former clothing factory. According to the witness, the guard at the checkpoint had explained to him that those who had arrested the applicants' relatives had shown military intelligence identity documents and taken Magomed-Ali Abayev and Anvar Shaipov into the factory. After that a UAZ car with darkened windows had arrived at the building, Magomed-Ali Abayev and Anvar Shaipov had been taken outside, placed in the vehicle and taken to an unknown destination.

64. On 14 June 2007 the investigators questioned the first applicant's neighbour, Mr Z.M., who stated that on 13 September 2000 his relatives had informed him about the arrest of Magomed-Ali Abayev and Anvar Shaipov at about 5 p.m. at the checkpoint situated next to the former clothing factory. According to the witness, Anvar Shaipov had not participated in activities of illegal armed groups.

65. On 1 July 2007 the investigators questioned the fourth applicant's relative Ms T. Sh., whose statement was similar to the one given by Mr Z.M.

66. According to the Government's submission, the investigation failed to establish the whereabouts of Magomed-Ali Abayev and Anvar Shaipov. However, it found no evidence to support the involvement of Russian federal forces in the disappearance. The law enforcement authorities of

Chechnya and the neighbouring regions had never arrested or detained Magomed-Ali Abayev and Anvar Shaipov on criminal or administrative charges and had not carried out a criminal investigation in respect of them. No special operations had been carried out against the applicants' relatives.

67. According to the documents submitted by the Government, the investigation in the criminal case was suspended and resumed on several occasions, and has so far failed to identify those responsible for the abduction of Magomed-Ali Abayev and Anvar Shaipov.

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

69. Despite specific requests by the Court the Government did not disclose most of the contents of criminal case no. 34013, but mainly provided copies of the information requests forwarded to various law-enforcement agencies and their replies, and copies of several witness statements, summarised above. The Government stated that the investigation was in progress and that disclosure of other documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained personal data concerning witnesses or other participants in the criminal proceedings.

C. Proceedings against law-enforcement officials

70. On 23 October 2004 the first applicant complained to the Urus-Martan town court. She sought a ruling obliging the investigators to provide her with access to the investigation file, to resume the investigation and to conduct it thoroughly and effectively. In her complaint she referred to the Constitution and the case-law of the European Court of Human Rights. On 22 November 2004 the town court rejected her claim. The applicant appealed.

On 8 February 2005 the Supreme Court of the Chechen Republic upheld the town court's ruling. The text of the Supreme Court decision stated, *inter alia*, the following:

“...it follows from the contents of the investigation file that on 13 September 2000 representatives of Russian power structures had arrested M.-A. Abayev along with other persons and that in connection with this the criminal case was opened under Article 126 of the Criminal Code...

II. RELEVANT DOMESTIC LAW

71. 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. PRELIMINARY ISSUES

A. The second applicant's complaints

72. The Court notes that in their submission of 1 September 2008 the applicants' representatives informed it that the second applicant (Ms Raminat Zhansayeva) did not intend to pursue the application before the Court. The other applicants did not express their wish to pursue the application on her behalf.

73. Article 37 § 1 of the Convention, in its relevant part, reads:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that...

(c) ... it is no longer justified to continue the examination of the application...”

The Court reiterates that it has been its practice to strike applications out of the list of cases in the absence of a close relative who has expressed a wish to pursue the application (see *Scherer v. Switzerland*, 25 March 1994, § 31, Series A no. 287; *Karner v. Austria*, no. 40016/98, § 23, ECHR 2003-IX; and *Thevenon v. France* (dec.), no. 2476/02, ECHR 2006-III).

74. The Court finds no special circumstances relating to respect for human rights as defined in the Convention and its Protocols which require it to continue the examination of the application in respect of the second applicant. Accordingly, the application should be struck out of the Court's list of cases in so far as it relates to this applicant.

B. The Government's objection regarding non-exhaustion of domestic remedies

1. *The parties' submissions*

75. 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 Magomed-Ali Abayev and Anvar Shaipov had not yet been completed; that the applicants could challenge in court any acts or omissions on the part of the investigating authorities, and that they had already availed themselves of that remedy. The Government

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

76. The applicants contested that objection. They stated that the only effective remedy in their case - criminal investigation - had proved to be ineffective and that their complaints to that effect, including their application to the domestic courts, had been futile.

2. The Court's assessment

77. 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).

78. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

79. As regards a civil action to obtain redress for damage sustained through 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.

80. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities after the kidnapping of Magomed-Ali Abayev and Anvar Shaipov and that an investigation has been pending since 6 February 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

81. 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

82. The applicants maintained that it was beyond reasonable doubt that on 13 September 2000 their relatives Magomed-Ali Abayev and Anvar Shaipov had been arrested by State agents at the checkpoint of Russian military forces and that they had been missing ever since. In support of their complaint they referred to a number of witness statements confirming that their relatives had been stopped for an identity check at the checkpoint located at the former clothing factory, that after that they had been taken inside the factory building and had not come out. The applicants stated that all the information disclosed from the criminal investigation file supported their assertion as to the involvement of State agents in the abduction. In connection with this they referred to the decision of the Chechnya Supreme Court (see paragraph 70 above), which confirmed in its text that Magomed Ali Abayev and Anvar Shaipov had been arrested at the checkpoint. They further contended that since their relatives 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.

83. The Government submitted that unidentified armed men, possibly criminals or members of illegal armed groups, had kidnapped Magomed-Ali Abayev and Anvar Shaipov. 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 and pointed out that the applicants had complained to the authorities about the abduction only in 2002, that is two years after the incident. The Government further alleged that the applicants' description of the circumstances surrounding the abduction was inconsistent. In particular, the applicants were inconsistent in their description of the colour of the UAZ vehicle which had arrived at the checkpoint; that according to Mr R.G. the car had driven away without any passengers, whereas Ms Kh. Kh. had stated that it had taken away Magomed-Ali Abayev and Anvar Shaipov; the fourth applicant had stated that Magomed-Ali Abayev and Anvar Shaipov had been arrested by men in civilian clothing, whereas in their complaints to the authorities the applicants described the abductors as men in military uniforms.

B. The Court's evaluation of the facts

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

85. The Court notes that despite its requests for a copy of the investigation file into the abduction of Magomed-Ali Abayev and Anvar Shaipov, the Government produced only some 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)).

86. 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.

87. The applicants alleged that the persons who had arrested Magomed-Ali Abayev and Anvar Shaipov on 13 September 2000 and then killed had been State agents.

88. The Government suggested in their submissions that the abductors of Magomed-Ali Abayev and Anvar Shaipov may have been criminals or 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).

89. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. It also notes that it is common ground between the parties that the applicants' relatives had been arrested at the checkpoint on 13 September 2000 and that afterwards they had disappeared. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies or military units had been involved in the disappearance of Magomed-Ali Abayev and Anvar Shaipov (see

paragraphs 22, 44, 46-48, 55 and 58 above), but it does not appear that any serious steps were taken in that direction.

90. The Government questioned the credibility of the applicants' statements in view of certain discrepancies relating to the exact circumstances of the incident. The Court notes in this respect that no other elements underlying the applicants' submissions of facts have been disputed by the Government. In the Court's view, the fact that over a period of several years the applicants' recollection of an extremely traumatic and stressful event differed in rather insignificant details does not in itself suffice to cast doubt on the overall veracity of their statements.

91. 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).

92. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were arrested by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of the federal forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Magomed-Ali Abayev and Anvar Shaipov were arrested on 13 September 2000 by State servicemen at the checkpoint located on Lenin Street in Urus-Martan.

93. There has been no reliable news of Magomed-Ali Abayev and Anvar Shaipov since the date of the kidnapping. 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.

94. 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-VIII (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 Magomed-Ali Abayev and Anvar Shaipov or of any news of them for more than nine years supports this assumption.

95. Accordingly, the Court finds that the evidence available permits it to establish that Magomed-Ali Abayev and Anvar Shaipov must be presumed dead following their unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

96. 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

97. The Government contended that the domestic investigation had obtained no evidence to the effect that Magomed-Ali Abayev and Anvar Shaipov were dead or that any servicemen of the federal law-enforcement agencies had been involved in their kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants' relatives met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible. They further alleged that the applicants and the witnesses had impeded the investigation of the abduction by belatedly informing the investigators about the special uniform of the officers who had allegedly taken away Magomed-Ali Abayev and Anvar Shaipov and about the young men and the woman who had informed the fourth applicant about her son's alleged whereabouts.

98. The applicants argued that Magomed-Ali Abayev and Anvar Shaipov 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. For instance, the criminal investigation into the abduction had been opened more than two years after the incident; the investigators had failed to take such crucial investigative steps, as identification and questioning of officers who had been stationed in the building of the former clothing factory and establishing which military units manned the checkpoint at the time. The applicants further argued that the investigation of the abduction had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and that they had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any known results was further proof of its ineffectiveness. They also invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

99. 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 81 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 Magomed-Ali Abayev and Anvar Shaipov

100. 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 their deaths can be attributed to the State and that there has been a violation of Article 2 in respect of Magomed-Ali Abayev and Anvar Shaipov.

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

101. 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).

102. In the present case, the kidnapping of Magomed-Ali Abayev and Anvar Shaipov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

103. 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.

104. The Court notes that the authorities were made aware of the crime by the applicants' submissions by 1 October 2000 as on the latter date the district prosecutor's office forwarded the fourth applicant's complaint to the ROVD and requested them to open an operational-search file to establish the whereabouts of Anvar Shaipov (see paragraphs 20-22 above). The investigation in case no. 34013 was instituted on 6 February 2003, that is more than two years and four months after Magomed-Ali Abayev and Anvar Shaipov'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 not taken at all. For instance, the investigators had failed to establish which military units had been stationed at the former clothing factory in Urus-Martan at the material time; they had not identified and questioned the servicemen who had been manning the checkpoint on 13 September 2000. Furthermore, it does not appear that the investigators had attempted to identify and question the owners of the UAZ vehicle which had driven on the checkpoint's premises at the time of the incident. The Court also notes that the investigators questioned the fourth applicant only in February 2007 (see paragraph 61 above); they had questioned the majority of witnesses to the abduction (see paragraphs 53, 57, 59, 60-64 above) only in 2006 and 2007 that is more than three years after the opening of the criminal investigation. Even then, having obtained the fourth applicant's statement concerning the possible detention of her son at the Chernokozovo detention centre in 2002 (see paragraph 61 above), the investigators failed to check this submission and request information from the centre. 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, as soon as the investigation commenced and the relevant information was obtained. 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).

105. The Court also notes that even though the first and fourth applicants were granted victim status in the criminal case concerning the abduction of their relatives, they were only informed of the suspensions and resumptions 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.

106. Finally, the Court notes that the investigation was suspended and resumed on numerous occasions and that there were lengthy periods of inactivity on the part of the prosecutor's office when no proceedings were pending.

107. 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 results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection.

108. 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 Magomed-Ali Abayev and Anvar Shaipov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

109. 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

110. The Government disagreed with these allegations and argued that the authorities' responses to the applicants' complaints could not be regarded as inhuman and degrading treatment. They further stated that the applicants had failed to specify in what way the authorities' responses had caused their mental suffering.

111. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

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

2. Merits

113. 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).

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

115. 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

116. The applicants further stated that Magomed-Ali Abayev and Anvar Shaipov 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

117. The Government asserted that no evidence had been obtained by the investigators to confirm that Magomed-Ali Abayev and Anvar Shaipov 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.

118. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

119. 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

120. 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).

121. The Court has found that Magomed-Ali Abayev and Anvar Shaipov were abducted by State servicemen on 13 September 2000 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

122. 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 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.

123. In view of the foregoing, the Court finds that Magomed-Ali Abayev and Anvar Shaipov 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

124. 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...”

125. 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).

126. 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

127. 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

128. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the acts or omissions of the investigating authorities in court and had availed themselves of it. They added that participants in criminal proceedings could also claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

129. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

130. 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

131. 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).

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

133. 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. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

134. The applicants complained that they had been discriminated against in the enjoyment of their Convention rights, because the violations of which they complained had taken place because of them being residents in Chechnya and their ethnic background as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

“The enjoyment of the right and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

135. The Court observes that no evidence has been submitted to it that suggests that the applicants were treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated.

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

137. 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

138. The first and the third applicants claimed damages in respect of loss of earnings by their relative Magomed-Ali Abayev after his arrest and subsequent disappearance. The first applicant, as his mother, claimed 5,400 euros (EUR) and the third applicant, as his son, claimed EUR 6,900 under this heading.

139. They claimed that Magomed-Ali Abayev had been unemployed at the time of his arrest, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. They calculated his earnings for the period, taking into account the subsistence

level in Chechnya which existed at the time their just satisfaction claim was lodged with the Court.

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

141. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. The Court further finds that the loss of earnings applies to dependent children and, in some instances, to elderly parents and that it is reasonable to assume that Magomed-Ali Abayev would eventually have had some earnings from which the applicants would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relative and the loss by the first and the third applicants of the financial support which he could have provided. Having regard to the applicants' submissions and the fact that Magomed-Ali Abayev was not employed at the time of his abduction, the Court awards EUR 12,000 to the applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

142. The applicants stated that they had lost their close relatives and endured stress, frustration and helplessness in relation to their 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.

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

144. 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 EUR 60,000 to the first and the third applicants jointly, and EUR 60,000 to the fourth applicant, plus any tax that may be chargeable thereon.

C. Costs and expenses

145. The applicants were represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted

to EUR 2,115 or 1,511 pounds sterling (GBP). They submitted the following breakdown of costs:

- (a) EUR 1,260 (GBP 900) for nine hours of research and drafting legal documents submitted to the Court at a rate of GBP 100 per hour;
- (b) EUR 855 (GBP 611) for administrative, postal and translation costs.

146. The Government did not dispute the details of the calculations submitted by the applicants.

147. The Court has to establish first whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary (see *McCann and Others*, cited above, § 220).

148. Having regard to the details of the information in its possession, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

149. As to whether the costs and expenses were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. The Court also notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicants' representatives' accounts (see, for example, *Toýcu*, cited above, § 158; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; and *Imakayeva*, cited above).

150. In these circumstances, and having regard to the details of the claims submitted by the applicants, the Court awards EUR 2,115 plus any tax that may be chargeable on that amount to be paid into the representatives' bank account in the United Kingdom, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike out the application in so far as it concerns the complaints of the second applicant (Ms Raminat Zhansayeva);
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;

3. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
4. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Magomed-Ali Abayev and Anvar Shaipov;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Magomed-Ali Abayev and Anvar Shaipov disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Magomed-Ali Abayev and Anvar Shaipov;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Article 3 and 5;
10. *Holds*
 - (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the first and third applicants jointly;
 - (ii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first and the third applicants jointly;
 - (iii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the fourth applicant;
 - (iv) EUR 2,115 (two thousand one hundred and fifteen euros), plus any tax that may be chargeable to the applicants, to be converted into British pounds sterling, at the rate applicable at the date of settlement in respect of costs and expenses, to be paid into the representatives' bank account in the UK;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

11. *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