



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

FIRST SECTION

CASE OF DZHABRAILOVY v. RUSSIA

(Application no. 3678/06)

JUDGMENT

STRASBOURG

20 May 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 Dzhabrailovy v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 3678/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Russian nationals listed below (“the applicants”), on 19 January 2006.

2. The applicants were represented by lawyers from the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that the first applicant and their relative, Mr Valid Dzhabrailov, had been abducted by State servicemen in Chechnya in February 2003 and that those State servicemen had subsequently killed the latter. They complained under Articles 2, 3, 5 and 13.

4. On 30 April 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.

5. 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

6. The applicants are Mr Aslan (also known as Lukman) Dzhabrailov, who was born in 1979, Ms Umkusu Dzhabrailova, who was born in 1949 and Ms Larisa Dzhabrailova, who was born in 1977. They live in Grozny, Chechnya. The first applicant is the brother of Valid (also spelled as Volid and also known as Lecha) Dzhabrailov, who was born in 1973; the second applicant is his mother and the third applicant is his sister.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Abduction of Aslan and Valid Dzhabrailov

1. Events of 16-18 February 2003

a. Abduction of the first applicant and Valid Dzhabrailov

8. At the material time the applicants and Valid Dzhabrailov lived at 104 Sovetskaya Street in the settlement of Pervomayskiy, in the Grozny district, Chechnya. At about 7 a.m. on 16 February 2003 (in the submitted documents the date was also referred to as 15 February 2003) the applicants and Valid Dzhabrailov were at home, when a group of armed masked men in camouflage uniforms arrived at their gate. The men arrived in a white GAZ car (“Газель”), a blue VAZ-2121 car (“Нива”), a khaki-coloured military UAZ car (“таблетка”) and a UAZ car. The men broke into the house and dispersed into different rooms. The intruders, who spoke unaccented Russian, neither identified themselves nor produced any documents. The applicants thought that they were Russian servicemen.

9. The intruders woke up the second and third applicants, lined them up against a wall and threatened to shoot them if they moved. After that the servicemen went into the room where the first applicant and Valid Dzhabrailov were sleeping. They woke them up, forced the brothers to the floor, handcuffed them and blindfolded Valid Dzhabrailov with the hood of his sweater. Then they took Valid and Aslan Dzhabrailov's passports, beat them, dragged them outside and forced them to the ground. When the second applicant asked the intruders where they were taking her sons, the servicemen told her that they were taking them to a local department of the interior (“в отдел”) for an identity check. After that they forced Valid and Aslan Dzhabrailov, who were already bleeding, into the military UAZ car

and drove away to an unknown destination. While travelling in the car, the servicemen beat and kicked the brothers.

b. Detention of Valid and Aslan Dzhabrailov

10. Upon arrival at the point of destination, the servicemen took Valid Dzhabrailov and the first applicant out of the car, put plastic bags over their heads and bound the bags with adhesive tape. The brothers did not know where they had been taken, but they could hear the sound of military vehicles and helicopters. The first applicant thought that they had arrived at the main base of the Russian military forces in Khankala, Chechnya.

11. After that Valid and Aslan Dzhabrailov were forced to crawl on their hands and knees into a basement where they were thrown on to a cement floor. The brothers were cold and bleeding. Some time later the abductors came into the cell. Valid Dzhabrailov asked them why they had been abducted. In response one of the servicemen gave him several blows to the head and in the stomach with his rifle butt. Valid Dzhabrailov fell unconscious and was dragged outside. After that the brothers were separated and placed into different cells.

i. Detention and ill-treatment of the first applicant

12. The first applicant was taken into a small cell in a basement, measuring approximately 2 x 3 metres. The cell had an electric light, a bunk bed and no windows. From the cell he could hear his brother Valid Dzhabrailov being interrogated and screaming as a result of being beaten.

13. After a while two masked men in camouflage uniforms came into the applicant's cell. They asked him a number of questions, such as: whether he had ever laid any landmines and whether he had known any members of illegal armed groups in his village. They beat him with their fists, pistols and a heavy flashlight and kicked him with their heavy boots. The applicant was subjected to such interrogations and beatings several times. The men pressurised the applicant to confess to involvement in illegal armed groups. For two days of his detention in the basement the first applicant was not given any food or drink.

ii. Detention of Valid Dzhabrailov

14. It appears that Valid Dzhabrailov was detained in the same building as the first applicant. Between 16 and 18 February 2003 he was subjected to interrogations and beatings.

2. Events of 18 February 2003

a. Attempt to kill the first applicant

15. On 18 February 2003 two officers took the first applicant out of the basement, put a plastic bag over his head, bound it and his hands with adhesive tape and pushed him into a military UAZ car. In the vehicle the first applicant felt someone's heavy, cold body on the floor. He realised that this was the body of his brother, Valid Dzhabrailov.

16. The two servicemen took the first applicant and the body of Valid Dzhabrailov to an abandoned building of a former chemical plant in the Zavodskoy district of Grozny. One of them shot the first applicant in the head; the applicant was not killed, but wounded, and he was able to pretend to be dead.

17. The servicemen carried the first applicant and Valid Dzhabrailov's body into a pit and placed them under a piece of a construction block. Then they laid explosives on the first applicant and placed Valid Dzhabrailov's body on top of them. After that they lit the fuse. Having done that, they got back in the car and drove away.

18. The first applicant managed to set himself free and extinguish the burning fuse. He threw the explosives away before they exploded. He ran out into the street and stopped the driver of a passing car who drove him home.

19. Upon returning home the first applicant did not immediately seek medical help; that came at a later stage. The first applicant obtained the following medical statements and submitted them to the Court:

1) Medical statement issued by a neuropathologist at the 3rd Grozny town hospital, dated 8 December 2003. The document stated that, as a result of a splinter wound to the head, Aslan Dzhabrailov was suffering from cephalgia (pain in the skull), asthenia and neurosis.

2) Medical statement issued by a neuropathologist at the 3rd Grozny town hospital, dated 31 August 2004. The document stated that, as a result of a tangential wound to the head received in 2003, Aslan Dzhabrailov was suffering from asthenia and neurosis.

3) Medical statement issued by a surgeon at the 3rd Grozny town hospital, dated 31 August 2004. The document stated that the applicant had undergone a medical examination of the tangential wound inflicted to his head in 2003.

b. Discovery of Valid Dzhabrailov's body

20. On 18 February 2003 (in the submitted documents the date was also referred to as 17 February 2003) the applicants, their relatives and neighbours went to the Zavodskoy district of Grozny. They found Valid Dzhabrailov's body where it had been left by the first applicant and took it

home. According to the witnesses, Ms L.M. and Ms A.M., the body showed traces of torture: it was black from the beatings; the wrists and ankles had been cut to the bone from the wearing of handcuffs and shackles; the palms and feet had been crushed and the head was hardly recognisable. They found a piece of metal wire on the neck but there was no trace of firearm wounds on the body.

21. Valid Dzhabrailov was buried soon afterwards before anyone had contacted medical institutions or law enforcement authorities. Two certificates were issued in connection with his death: the medical statement confirming Valid Dzhabrailov's death, dated 17 April 2003 and Valid Dzhabrailov's death certificate, stating that his death had occurred on 17 February 2003.

22. In support of their statements, the applicants submitted: an account by Ms L.M., dated 29 September 2003; an account by Ms A.M., dated 29 September 2003; an account by the first applicant, dated 29 October 2003; an account by the second applicant, dated 29 October 2003; an account by the third applicant, undated, and the three medical certificates, one dated 8 December 2003 and two dated 31 August 2004.

23. The Government did not challenge the facts as presented by the applicants. However, they pointed out that the investigation file contained neither a mention of the first applicant's beating in the car following the abduction nor his assertion that he had heard Valid Dzhabrailov screaming from being beaten while in detention.

B. The investigation into the abduction and the killing

24. Since 16 February 2003 the applicants have repeatedly applied in person and in writing to various public bodies, including the district department of the Ministry of the Interior (the ROVD) and prosecutors at various levels. They have been supported in their efforts by the NGO, SRJI. In their letters to the authorities the applicants referred to the events of 16-18 February 2003 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 to the Court some of the letters sent to the authorities and their replies. These documents, as well as the documents submitted by the Government, are summarised below.

25. On 16 February 2003 the Grozny district prosecutor's office inspected the crime scene at the applicants' house. Nothing was collected from the scene.

26. On 17 February 2003 an officer of the Zavodskoy ROVD informed his superiors that at about 6 p.m. on that date the ROVD had received information about the discovery of Valid Dzhabrailov's body in an

abandoned building on the premises of a chemical plant and of the first applicant with a gunshot wound in his head. The latter stated that he and his brother, Valid, had been abducted from their house at about 6 a.m. on 15 February 2003 by unidentified armed men in camouflage uniforms; that they had been detained in an unidentified place and then taken by the abductors to the chemical factory in a UAZ vehicle.

27. On 18 February 2003, under Article 126 § 2 of the Criminal Code (aggravated kidnapping), the Grozny district prosecutor's office instituted an investigation into the abduction of Valid and Aslan Dzhabrailov. The case file was given the number 42024 (in the submitted documents the number was also referred to as 42042 and 41026).

28. On 18 February 2003 the investigators examined the crime scene at the place where Valid Dzhabrailov's body had been discovered. The investigators inspected the body on the spot and drafted a report to this effect. As a result, it was established that Valid Dzhabrailov's skull, face, ribs and upper and lower limbs seemed intact; no metal wire was found on his neck. Nothing was collected from the scene.

29. On 18 February 2003 the Grozny town prosecutor's office instituted an investigation into the murder of Valid Dzhabrailov and the case file was given the number 30034.

30. On 19 February 2003 the first and third applicants were granted victim status in the criminal case concerning the abduction and were questioned.

31. During questioning on 19 February 2003 the third applicant stated that at about 7 a.m. on 16 February 2003 a group of military servicemen had arrived at their house in several vehicles and had broken in. They had been armed with automatic guns; their faces had been covered with masks. The intruders had woken up the first applicant and Valid Dzhabrailov, taken their passports and told the third applicant in Russian that they would check her brothers' identities and release them. After that the servicemen had pushed the brothers into a grey UAZ car and taken them away. On 18 February 2003 a woman had arrived at the applicants' house and told them that the first applicant and Valid Dzhabrailov had been in the Zavodskoy ROVD. The applicants had immediately informed the district police officer about it who had gone to Grozny and returned with the body of Valid Dzhabrailov and the first applicant. The body had had numerous injuries and the first applicant had received a gunshot wound to the head. The witness further stated that she had learnt from the first applicant that the brothers had been handcuffed and taken to a basement made of concrete box units. At some point later they had been separated and the first applicant had not seen Valid Dzhabrailov for about twenty-four hours. In the morning of 18 February 2003 a Russian-speaking man in a camouflage uniform had removed the handcuffs from the first applicant, bound his hands, put a sack over his head and bound it with adhesive tape. He had pushed the applicant

into a UAZ vehicle beside a cold corpse; the first applicant had thought that it must have been the body of his brother, Valid. The car had been driven for about fifty minutes; then it had stopped and the first applicant had been taken out. He had been dragged about 10-15 metres away from the road; then he had been forced to the ground and shot in the head; he had pretended to be dead. After that they had put Valid Dzhabrailov's body on top of the applicant; then they had placed three pieces of trotyl between the brothers' bodies and lit them. One of the abductors had suggested to the other in Russian: "Lets wait until it explodes" but the other one had said that they'd better leave quickly. After that they had got back into the car and driven away. The first applicant had managed to extinguish the explosive device and made it to the road, where he had stopped a car which had taken him to the Zavodskoy ROVD. On 20 February 2004 the investigators again questioned the third applicant who provided a statement similar to the one given on 19 February 2003. She added that the abductors had told her that they had been taking Aslan and Valid Dzhabrailov to the Staropromyslovskiy ROVD for an identity check; that the abductors had been a group of about thirty men, five of whom had broken into their house.

32. During questioning on 19 February 2003 the first applicant stated that at about 7 a.m. on 16 February 2003 he and his brother, Valid, had been abducted from their home by a group of five armed military servicemen who had arrived in three grey UAZ vehicles, a white four-door "*Niva*" car and a white "*Gazel*" minivan. The abductors had blindfolded the brothers and pushed them into a UAZ vehicle. After that the abductors had driven for about fifty minutes and taken the brothers to a windowless basement, which measured approximately 5 x 7 metres and was divided into smaller cells. The first applicant had been taken to a cell with a wooden door where he had been kept for about thirty-six hours. In the evening of 17 February 2003 he had been taken outside by two armed servicemen in uniform, who had put a sack over his head and bound it with adhesive tape. Then they had pushed the applicant into a UAZ car, inside which was a cold corpse. The abductors had driven for about forty to fifty minutes. Then they had stopped, dragged the applicant out of the car and forced him to his knees against a wall. The corpse had been placed next to the applicant. After that the abductors had shot the applicant in the head; he had felt the pain but managed to pretend to be dead. Then the servicemen had placed an object between the applicant and the corpse and set it on fire, discussing whether it would be better to wait for the explosion or not. Next, the abductors had got back into the car and driven away. The applicant had pulled the sack off his head and seen that a pack of trotyl had been placed between him and the corpse of his brother, Valid. He had managed to extinguish the explosive device and throw it away. He had looked around and noticed that he had been taken to an abandoned building on the premises of a former chemical plant in Grozny. He had walked to the road, stopped a car and been driven

to the Zavodskoy ROVD where he had informed the authorities about the events.

33. At a later date, on 3 March 2004 the investigators again questioned the first applicant whose second statement about the events of 16-18 February 2003 was similar to the one given on 19 February 2003. In addition, he provided a more detailed description of the place of his detention and stated that the abductors had interrogated him and demanded that he confess to laying landmines; that they had beaten him with flashlights and rifle butts; that they had all been wearing uniforms and masks and had been armed with firearms and that one of them had been armed with a military “*Makarov*” pistol; that one of the abductors had addressed one of the men present during the interrogations in the basement as “Colonel” and that the latter had been wearing a specific reddish camouflage uniform with a peculiar blotted pattern and had been armed with a special sub-machine gun with a silencer; that the two men who had conducted the last interrogation of the applicant had not been wearing masks; that one of them was a large-built, fair-haired man with glasses, of about forty to forty-five years of age, whereas the other one had an Asian appearance, was about the same age and had a similar build to the first one; that these two men had taken the applicant to the premises of the former chemical plant where they had shot him in the head with a sub-machine gun, but the bullet had just grazed his head and he had managed to pretend to be dead; that the men had tried to blow up him and his brother's body; that after the abductors had left he had managed to stop an MAZ vehicle in which there had been two men who had driven him to a security lodge located in a yard with many garages; that three armed men in camouflage uniforms who had been present there had called the Zavodskoy ROVD via a portable radio and that about half an hour later a UAZ car had arrived and taken the applicant to the Zavodskoy ROVD.

34. On 19 February 2003 the investigators questioned the applicants' relative, Mr N.R., whose statement concerning the events of 16-18 February 2003 was similar to the ones given by the first and third applicants.

35. On 14 March 2003 the Grozny district prosecutor's office wrote to the Grozny district department of the Federal Security Service (the FSB) requesting information about the involvement of the first applicant in illegal armed groups. On 15 March 2003 the FSB replied that they had no such information.

36. On 14 March 2003 the Grozny town prosecutor's office joined the investigation in the criminal cases concerning the abduction and the killing. The joint criminal case was given the number 30034.

37. On 18 April 2003 the investigators informed the applicants that the investigation in the criminal case had been suspended for failure to identify the perpetrators.

38. On 3 February 2004 the Chechnya prosecutor's office informed the second applicant that her complaint about the killing of Valid Dzhabrailov had been examined and that on 3 February 2004 the investigation had been resumed.

39. On 2-3 March 2004 the Chechnya Bureau of Forensic Expert Evaluations conducted an expert evaluation of Valid Dzhabrailov's body based on the crime scene examination report of 17 February 2003. According to the expert's conclusions:

“...Based on the crime scene examination report and the circumstances of the case I conclude the following:

The following injuries were found on Valid Dzhabrailov's body:

- numerous extensive bruises of the body and the extremities;
- circular abrasions on the wrist and ankle joints;

2. The injuries could have been caused by a number of impacts by a dull firm object (objects) two or three days prior to the death;

3. The corpse of V. Dzhabrailov was not examined; therefore, it is not possible to make further conclusions...”

40. On 6 March 2004 the Zavodskoy district prosecutor's office suspended the investigation in the criminal case for failure to identify the perpetrators and informed the applicants about it on 15 or 29 March 2004.

41. On 10 October 2004 the first applicant complained to the Zavodskoy district prosecutor's office that the investigation into Valid Dzhabrailov's murder had been ineffective, that there had been a lack of information about the progress of the investigation and that its suspension had been unjustified.

42. On 11 May 2005 the applicants' representatives wrote to the Grozny district prosecutor's office and the Grozny town prosecutor's office. They described in detail the circumstances of Valid and Aslan Dzhabrailov's abduction and their subsequent detention. In particular, they described the beatings and the ill-treatment to which the brothers had been subjected by the abductors and the abductors' attempt to kill the first applicant. They further complained that the investigations into the abduction and the murder had been ineffective and that there had been a lack of information about the progress of the proceedings, and asked to be provided with copies of a number of procedural decisions.

43. On 14 June 2005 the Zavodskoy district prosecutor's office informed the applicants that on an unspecified date the investigation into the abduction had been joined with the investigation into the murder and the joint criminal case had been given the number 30034.

44. On 21 July 2005 the applicants' representatives wrote to the Zavodskoy district prosecutor's office complaining that the investigation in the joint criminal case had been ineffective and that there had been a lack of information about the steps taken by the investigators. In particular, they pointed out that they had received no information as to whether an expert evaluation of the evidence discovered at the crime scene or a forensic examination of Valid Dzhabrailov's body had been carried out. They further asked that the first applicant be provided with access to the investigation file.

45. On 27 October 2005 and 25 June 2008 the decisions to suspend the investigation were overruled by the supervisory prosecutors for failure to take necessary investigative steps and the proceedings were resumed.

46. The applicants submitted that the authorities had failed to provide them with information concerning the investigation into the abduction and the subsequent killing of their close relative.

47. The Government submitted that the investigation in criminal case no. 30034 was still in progress. The perpetrators of the abduction and the killing had not been identified, but the domestic authorities were taking steps to have the crime resolved. The applicants had been duly informed of all decisions taken during the investigation.

48. Despite specific requests by the Court, the Government did not disclose most of the contents of criminal case no. 30034. They submitted copies of several documents and 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 because the file contained personal data concerning the witnesses or other participants in the criminal proceedings.

C. Proceedings against law-enforcement officials

49. On 23 September 2005 (in the submitted documents the date was also referred to as 23 September 2003 and 11 October 2005) the first applicant complained to the Zavodskoy district court of Grozny. He described in detail the events of 16-18 February 2003, including the beatings to which he had been subjected by the abductors, and complained that the investigation in criminal case no. 30034 had been ineffective and that its suspension had been unjustified. The applicant sought a ruling obliging the authorities to resume the investigation and provide him with access to the investigation file.

50. On 28 October 2005 the Zavodskoy district court rejected the complaint stating that the investigation in the criminal case had been resumed on 27 October 2005.

II. RELEVANT DOMESTIC LAW

51. For a summary of relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

52. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the abduction and the subsequent killing of Valid Dzhabrailov had not yet been completed. The Government further argued that it had been open to the applicants to challenge in court any actions or omissions of the investigating authorities and that it was open to them to pursue civil remedies but they had failed to do so.

53. The applicants contested that objection. With reference to the Court's practice, they argued that they had not been obliged to lodge civil claims in order to exhaust domestic remedies. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect, including their complaint to the district court, had been futile.

B. The Court's assessment

54. 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.

55. 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. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, 60272/00, § 77, 12 January 2007). In the light of the

above, the Court confirms that the applicants were not obliged to pursue civil remedies. The preliminary objection in this regard is thus dismissed.

56. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities immediately after the abduction of the first applicant and Valid Dzhabrailov and that an investigation has been pending since 18 February 2003. The applicants and the Government dispute the effectiveness of this investigation.

57. The Court considers that this limb of the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicants' complaints. Thus, it considers that these matters fall to be examined below under the substantive provisions of the Convention.

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

A. The parties' arguments

58. The applicants maintained that it was beyond reasonable doubt that the men who had broken into their home and taken away the first applicant and Valid Dzhabrailov had been State agents. In support of their complaint they referred to the following evidence which was not challenged by the Government: the abductors had been armed and were wearing camouflage uniforms, they had arrived in several vehicles, spoken unaccented Russian and told the applicants that they would check the brothers' identity at the ROVD and release them afterwards; the Dzhabrailov brothers had been taken to a military base where they could hear the sound of military vehicles and helicopters; Valid Dzhabrailov had been killed by the abductors and the first applicant had been questioned by the abductors about his possible involvement in the terrorist activities of illegal armed groups.

59. The Government denied the involvement of State representatives in the abduction of the first applicant and Valid Dzhabrailov and the subsequent killing of the latter. In particular, they contended that the place of the discovery of Valid Dzhabrailov's body could not in any way indicate the involvement of the military in the incident; that the abductors' camouflage uniforms and the sound of military vehicles and helicopters heard by the first applicant did not mean that the Dzhabrailov brothers had been detained on a military base; that the first applicant's medical documents certifying the injuries received as a result of the abduction had been obtained by him some time after the events and therefore cannot corroborate his allegations of ill-treatment. At the same time the Government neither submitted their version of the events of 16-18 February

2003 nor the possible reasons for the abduction of the Dzhabrailov brothers and the subsequent killing of Valid Dzhabrailov.

B. The Court's evaluation of the facts

60. The Court observes that it has developed a number of general principles relating to the establishment of facts in a dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). It also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 5310/71 § 161, 18 January 1978). 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 abduction of the first applicant and Valid Dzhabrailov and the subsequent death of the latter can be attributed to the authorities.

61. The applicants alleged that the persons who had abducted the first applicant and Valid Dzhabrailov on 16 February 2003 and then killed the latter had been State agents. The Government did not dispute the main factual elements underlying the application and did not provide any explanation of the events.

62. The Court notes that the applicants' version of the events is supported by the witness statements collected by the applicants and by the investigation. The applicants stated that the perpetrators had acted in a manner similar to that of a security operation – they had checked the identity documents, they had spoken Russian among themselves and to the residents. In their applications and statements to the authorities the applicants consistently maintained that the abduction and the subsequent killing had been perpetrated by military servicemen and asked the investigation to look into that possibility (see paragraphs 31-33 above).

63. The Court finds that the fact that a large group of armed men in uniform equipped with a number of vehicles proceeded to check identity documents and arrest the Dzhabrailov brothers at their home in a town area strongly supports the applicants' allegation that these were State servicemen. The domestic investigation also accepted factual assumptions as presented by the applicants, but it does not appear that any steps have been taken to verify the involvement of State servicemen in the abduction and the subsequent killing.

64. The Court reiterates that the evidentiary standard required for the purposes of the Convention is proof “beyond reasonable doubt”, and that such proof may follow from the coexistence of sufficiently strong, clear and

concordant inferences or of similar unrebutted presumptions of fact. The Court has also noted the difficulty for the applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such 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).

65. Taking into account the above-mentioned elements, the Court is satisfied that the applicants have made a *prima facie* case that the first applicant and Valid Dzhabrailov were detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of State representatives in the abduction and the subsequent killing is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide any explanation of the events in question, the Court considers that the first applicant and Valid Dzhabrailov were arrested on 16 February 2003 at their home by State servicemen during an unacknowledged security operation and that Valid Dzhabrailov was subsequently killed by State servicemen.

66. The Court has already noted above that it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose most of the documents from the investigation file. Nevertheless, it is clear that the investigation did not identify the perpetrators of the abduction and the subsequent killing. As it follows from the documents and information submitted by the Government, as late as January 2009, almost six years after the crime had occurred and the investigation had been opened, the most basic investigative steps had still not been taken (see paragraphs 40 and 45 above).

67. Furthermore, in a case involving abduction and a subsequent killing, the Court finds it particularly regrettable that there should have been no thorough investigation of the relevant facts by the domestic prosecutors or courts. The few documents submitted by the Government from the investigation file opened by the prosecutor's office do not suggest any progress in six years and, if anything, show the incomplete and inadequate nature of those proceedings. Moreover, the stance of the prosecutor's office and the other law-enforcement authorities after the circumstances of the

abduction had been communicated to them by the applicants, contributed significantly to the subsequent killing, because no necessary steps were taken in the crucial first hours and days after the arrest. The authorities' behaviour in the face of the applicants' well-substantiated complaints gives rise to a strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation.

68. Accordingly, the Court finds that the evidence available permits it to establish that the first applicant and Valid Dzhabrailov were abducted by State servicemen and that Valid Dzhabrailov was subsequently killed by them.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

69. The applicants complained under Article 2 of the Convention that Valid Dzhabrailov had been abducted and subsequently killed by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation into 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 alleged violation of the right to life of Valid Dzhabrailov

70. The applicants maintained their complaint and argued that their relative had been detained and subsequently killed by State servicemen.

71. The Government stated that the investigation had found no evidence to the effect that State servicemen had been involved in the abduction and killing.

72. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but

also all the surrounding circumstances (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

73. The Court has already found that the applicants' relative was killed following unacknowledged arrest by State servicemen. In the absence of any justification put forward by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of Article 2 in respect of Valid Dzhabrailov.

B. The alleged inadequacy of the investigation into the abduction and the subsequent killing

74. The applicants argued that the investigation had not met the requirements to be effective and adequate, as required by the Court's case-law on Article 2. They noted that it had been suspended and reopened a number of times and thus the taking of the most basic steps had been protracted, and that the applicants had not been informed properly of the most important investigative steps. They argued that the fact that the investigation had been pending for six years without producing any known results had been further proof of its ineffectiveness. The applicants invited the Court to draw its own conclusions from the Government's unjustified failure to submit the documents from the investigation file to them or to the Court.

75. The Government claimed that the investigation into the abduction and killing of Valid Dzhabrailov met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

76. 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).

77. In the present case, an investigation into the abduction and the killing was carried out. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

78. The Court notes at the outset that most of the documents from the investigation file 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.

79. Turning to the facts of the case, it has already been established that no proper investigation has taken place into the abduction and subsequent

killing of Valid Dzhabrailov. The Court notes that the authorities were immediately made aware of the incident through the applicants' submissions. The investigation was opened on 18 February 2003, that is, two days after the abduction occurred. This delay in itself was liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action has to be taken in the first hours or days after the event. In spite of the fact that within the first two days of the investigation the crime was inspected and the first and third applicants were questioned, after that a number of crucial steps were not taken at all, even in order to verify the detailed information obtained as a result of questioning.

80. In particular, the Court notes that the investigators did not make any attempts whatsoever to establish the owners of the vehicles used by the abductors; they did not question representatives of local military structures about their possible involvement in the abduction and subsequent killing; they did not verify whether any military bases with helicopters were located in the area within an hour's drive of the applicants' house; they did not seek to retrieve the bullet shot by the abductors in their attempt to kill the first applicant; they did not question the two men who had given the first applicant a lift from the premises of the former chemical plant; they did not conduct a forensic examination of Valid Dzhabrailov's body or the first applicant's head after his submission concerning the gunshot wound inflicted on him by the abductors.

81. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the crime had been reported to the authorities, and as soon as the investigation had commenced. These 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).

82. The Court also notes that, even though the first and third applicants were granted victim status, they were only informed of the suspension and reopening 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.

83. Finally, the Court notes that the investigation was suspended and resumed a number of times and that on several occasions the supervising prosecutors overruled the decisions to suspend the proceedings and ordered basic investigative steps to be taken, but it appears that these instructions were not complied with.

84. The Government raised the possibility for the applicants to make use of the judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the

applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions of investigating authorities before a court. Furthermore, the investigation has been resumed by the prosecuting authorities themselves a number of times owing to the need to take additional investigative steps. However, they still failed to properly investigate the applicants' allegations. Moreover, owing to the time that had elapsed since the events complained of took place, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

85. In the light of the foregoing, the Court dismisses the Government's preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation, and holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the abduction and the death of Valid Dzhabrailov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

86. The applicants further relied on Article 3 of the Convention, submitting that the first applicant had been tortured after his abduction, but that no effective investigation had been carried out on that account. The applicants also claimed that, as a result of Valid Dzhabrailov's death 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

87. The applicants maintained their submissions.

88. The Government disagreed with their allegations and argued that the investigation had not established that the applicants had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. They further contended that the first applicant's allegations had been unsubstantiated because the medical documents confirming his injuries had been obtained by him at a much later date.

B. The Court's assessment

1. Ill-treatment of the first applicant

Admissibility

89. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161 *in fine*).

90. The Court has already found that the first applicant was abducted on 16 February 2003 by State representatives (see paragraph 68 above). However, the Court notes that his allegations of ill-treatment were substantiated only by his own submissions and his references to the medical statements obtained by him in December 2003 and August 2004, that is, accordingly, ten and eighteen months after the events in question (see paragraph 19 above). In these circumstances the evidence as it stands does not enable the Court to find beyond all reasonable doubt that the first applicant was ill-treated in detention. It thus finds that this part of the complaint has not been substantiated.

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

2. Alleged ineffectiveness of the investigation into the ill-treatment

Merits

92. The Court reiterates that “where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention, requires by implication that there should be an effective official investigation” (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

93. The Court notes that the first applicant raised in detail his complaints about the ill-treatment with the investigating authorities (see paragraphs 33 and 49 above). However, it does not appear that they were properly examined by the prosecutor's office.

94. For the reasons stated above in paragraphs 78-85 in relation to the procedural obligation under Article 2 of the Convention, the Court

concludes that the Government has failed to conduct an effective investigation into the first applicant's allegations of ill-treatment.

95. Accordingly, there has been a violation of Article 3 in this respect.

3. *The complaint concerning the applicants' mental suffering*

a. **Admissibility**

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

b. **Merits**

97. The Court considers that in the present case no separate issues arise beyond those already examined under Articles 2 and 13 (see paragraphs 107-110 below).

98. In these circumstances, while the Court does not doubt that the death of Valid Dzhabrailov caused the applicants profound suffering, it nevertheless finds no basis for finding a violation of Article 3 in this context (see *Tangiyeva v. Russia*, no. 57935/00, §§ 104-105, 29 November 2007, and *Dangayeva and Taramova v. Russia*, no. 1896/04, § 107, 8 January 2009).

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

99. The applicants further stated that the first applicant and Valid Dzhabrailov had been detained in violation of the guarantees of 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.”

100. In the Government's opinion, no evidence was obtained by the investigators to confirm that the first applicant and Valid Dzhabrailov were detained in breach of the guarantees set out in Article 5 of the Convention. They were not listed among the persons kept in detention centres.

101. 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*, 69480/01, § 122, 9 November 2006).

102. The Court has already established that the first applicant and Valid Dzhabrailov were detained by State servicemen on 16 February 2003. Their detention was not acknowledged, it was not logged in any custody records and there exists no official trace of it. In accordance with the Court's practice, this fact in itself must be considered a most serious failing because 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*, 25656/94, § 371, 6 November 2002).

103. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation into 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 the lives of the first applicant and Valid Dzhabrailov.

104. Consequently, the Court finds that the first applicant and Valid Dzhabrailov 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 as enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

105. 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.”

106. 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 the applicants from using them. They referred to Article 125 of the Code of Criminal Procedure, which allowed participants in criminal proceedings to complain to a court about measures taken during an investigation. This was an effective remedy to ensure the observation of their rights. The applicants should have made more use of that possibility which required the initiative of the participants in criminal proceedings, and thus the absence of court action could not constitute a violation of Article 13.

107. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

108. It follows that, in circumstances where, as here, the criminal investigation into the abduction and the violent death was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

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

110. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issues arise in respect of Article 13 in conjunction with Articles 3 and 5 of

the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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

112. The second applicant claimed damages in respect of the lost wages of her son Valid Dzhabrailov. She claimed a total of 156,540 Russian roubles (RUB) under this head (3,820 euros (EUR)). Her calculations were based on the provisions of the Russian Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 (“Ogden tables”).

113. The Government regarded these claims as unsubstantiated.

114. 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. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of Valid Dzhabrailov and the loss by the second applicant of the financial support which he could have provided. Having regard to the applicants' submissions and the fact that Valid Dzhabrailov was not employed on a regular basis at the time of his apprehension, the Court awards EUR 3,500 to the second applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

115. The applicants claimed a total of EUR 140,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member and the indifference shown by the authorities towards them. The first applicant also claimed that he had endured moral suffering because of his detention, ill-treatment and the subsequent attempt to kill him, and the authorities' failure to properly investigate the matter. He claimed EUR 80,000 under this head; the second applicant as the mother of the first applicant and Valid Dzhabrailov claimed EUR 40,000 and the third applicant as their sister claimed EUR 20,000.

116. The Government found the amounts claimed excessive.

117. The Court has found a violation of Articles 5 and 3 of the Convention on account of the unacknowledged detention of the first applicant and the authorities failure to investigate his allegations of ill-treatment. The Court has also found a violation of Articles 2, 5 and 13 on account of Valid Dzhabrailov's unacknowledged detention and subsequent killing. The Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the first applicant EUR 41,200, to the second applicant EUR 40,000 and the third applicant EUR 10,000 plus any tax that may be chargeable thereon.

C. Costs and expenses

118. The applicants were represented by SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,785.

119. The Government did not dispute the details of the calculations submitted by the applicants, but contended that the amount claimed was excessive.

120. 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).

121. Having regard to the details of the contract and the submitted documents, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

122. As to whether the costs and expenses were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes, however, that the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that research was necessary to the extent claimed by the representatives.

123. Having regard to the details of the claim submitted by the applicants, the Court awards them the amount of EUR 5,500 together with any value-added tax that may be chargeable to the applicants, the award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

124. 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 (in respect of the authorities' failure to investigate the alleged ill-treatment), 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 substantive violation of Article 2 of the Convention in respect of Valid Dzhabrailov;
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 Valid Dzhabrailov was abducted and killed;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the first applicant's allegations of ill-treatment;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of the first applicant and Valid Dzhabrailov;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *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 rate applicable on the date of settlement, save in the case of the payment in respect of costs and expenses:

- (i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage to the second applicant;
- (ii) EUR 41,200 (forty one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first applicant;
- (iii) EUR 40,000 (forty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the second applicant;
- (iv) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the third applicant;
- (v) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President