



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

FIRST SECTION

CASE OF GELAYEVY v. RUSSIA

(Application no. 20216/07)

JUDGMENT

STRASBOURG

15 July 2010

FINAL

22/11/2010

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

In the case of Gelayevy 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 24 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 20216/07) 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 six Russian nationals listed below (“the applicants”), on 24 April 2007.

2. The applicants were represented by lawyers of 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 Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 5 June 2009 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 § 1 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) Mr Vakhit Gelayev, born in 1949,
- (2) Ms Amint (also spelled as Aminat) Gelayeva, born in 1952,
- (3) Ms Zarema Gelayeva, born in 1983,
- (4) Ms Pakanat Gelayeva, born in 1928,
- (5) Mr Shakhit Gelayev, born in 1925 and
- (6) Mr Akhmat Gelayev, born in 1951.

6. The applicants live in Gikalo, Chechnya. The first and second applicants are the parents of Murad Gelayev (also known as Murat or Edik Gelayev), who was born in 1976. The third applicant is his sister, the fourth applicant is his grandmother, the fifth applicant is his grandfather and the sixth applicant is his uncle.

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

A. Abduction of Murad Gelayev and subsequent events

1. The applicants' account

(a) Events in Gikalo on 27 February 2000

8. At the material time the settlement of Gikalo in the Grozny district of Chechnya was under the full control of the Russian federal forces; checkpoints of the Russian military were located on the roads leading to and from the village. On 26-27 February 2000 the Russian federal forces conducted a special operation in the village. The operation was carried out with APCs (armoured personnel carriers) and Ural vehicles.

9. In the morning of 27 February 2000 Murad Gelayev and the second and third applicants were at home at 20, Mira Street, Gikalo. The fourth applicant lived nearby.

10. At about 7 a.m. the second applicant heard some noise and looked out of the window. She saw armed military servicemen jumping over the fence. Some of the men were wearing masks. When the second applicant went outside, one of the men ordered her to stand up against the wall and pointed his machine gun at her.

11. Then a large group of the servicemen broke into the house. The second applicant went back inside. There she saw her son, Murad, and her daughter, the third applicant, standing against the wall. The intruders, who

were of Slavic appearance and spoke unaccented Russian, demanded that the second applicant give them her son's passport; while she was looking for it, they kept hitting her in the back with rifle-butts and saying: "Hurry up, search faster". After the second applicant found the passport and handed it over to the men, one of them took it outside, to an APC which was parked next to the house. Shortly after that the man brought Murad Gelayev's passport back. The second applicant attempted to put clothing on Murad, but the servicemen started beating her, Murad Gelayev and his sister with rifle-butts.

12. After that the servicemen dragged Murad Gelayev outside. The second and third applicants asked the servicemen to release Murad saying that his identity documents had already been checked by them. The servicemen told the applicants that they would release him after a check; the applicants kept begging the men to release their relative and the servicemen beat them with rifle-butts. Then the third applicant ran to the neighbours screaming for help and the second applicant kept following the servicemen. One of them pressed his machine gun against her chest and ordered her to get out of the way.

13. Meanwhile the fourth applicant, who had been told by her neighbours that the servicemen were raiding her son's house, arrived at the yard and joined the second applicant in attempts to prevent the abduction of Murad Gelayev. A crowd of neighbours started gathering and the servicemen began shooting above the crowd's heads to disperse it. Continuing the beating of the second and fourth applicants in front of the neighbours, the servicemen put Murad Gelayev in a Ural vehicle which was parked next to the house; its registration numbers were covered with mud. A dog, which had arrived with the servicemen, jumped after Murad Gelayev into the body of the vehicle and sat next to him.

14. When the second applicant attempted to get into the Ural, one of the servicemen pushed her over and she fell to the ground and lost consciousness. As a result of the fall, the second applicant was hospitalised on the same day and stayed in the Gikalo hospital from 27 February to 17 March 2000; she was diagnosed with brain concussion and chest contusion. The fourth applicant was beaten with rifle-butts, dragged aside by two soldiers and shoved into a gap between a wall and a block of concrete.

15. According to a resident of Gikalo, Mr Sh.Ts., at around 7.20 a.m. on 27 February 2000 he was at home when an APC pulled over next to his house. About ten armed military servicemen, some of them in masks, rushed into his yard. They put him and his brother, Mr V.Ts., against the wall and ordered their female relatives to bring over their passports. After the documents were brought over, one of the men read out the passport information to someone via a portable radio set; a few minutes later Mr Sh.Ts. was told that the passports were in order. After that the witness

and his brother were taken in the APC to the village centre and transferred into an "Avtozak" vehicle (GAZ-53 lorry equipped for transportation of detainees). The Avtozak took the two brothers and a number of other male residents of Gikalo to the Oktyabrskiy district military commander's office in Grozny.

16. According to another resident of Gikalo, Ms Z.S., on the morning of 27 February 2000 she was woken up by the noise of vehicles and dogs' barking. She went outside and saw a group of armed men in camouflage uniforms. They spoke unaccented Russian and were searching the courtyard. Then the men took her brothers, Mr Sul.S. and Mr Sup.S., outside, searched them and put them in a large military vehicle. The servicemen told her that they would take her brothers for an identity check. After that they took the two brothers to the Oktyabrskiy temporary district department of the interior (the Oktyabrskiy VOVD).

17. According to another resident of Gikalo, Mr V.Ts., at about 7.20 a.m. on 27 February 2000 he arrived at his brother's house. There he saw a military vehicle with about fifteen armed servicemen in camouflage uniforms on it; some of them were wearing masks. The servicemen had specially trained German shepherd dogs with them. The majority of these men were of Slavic appearance, but two of them looked Asian. The servicemen checked the passports; after that one of them spoke with someone via a portable radio set. After that the witness and his brother were taken by the military vehicle to the village centre. There they were transferred to an Avtozak vehicle in which the witness found a number of his fellow villagers, including Murad Gelayev. From there the detainees were taken to the Khankala for one night and then to the Oktyabrskiy district military commander's office.

18. According to the applicants, as a result of the special operation fourteen residents of Gikalo were detained, and at some point all of them, except for Murad Gelayev and Mr Sul. S., returned home.

(b) Ill-treatment of Murad Gelayev following the abduction

19. Some time later one of Ms Z.S.'s. brothers, Mr Sup.S., returned home and told her that after the sweeping-up operation on 27 February 2000 they had been taken to the Oktyabrskiy VOVD. From there the group of detainees from Gikalo had been taken to Chernokozovo detention centre, and only Murad Gelayev and Mr Sul.S. had remained in the Oktyabrskiy VOVD. According to Mr Sup.S., Murad Gelayev and Mr Sul.S. had been subjected to torture by the investigators in the VOVD; during an interrogation one of the officers had cut off an ear from each of them.

20. According to Mr V.Ts., after being detained he and his fellow villagers from Gikalo, including Murad Gelayev, were taken in the Avtozak vehicle to Grozny. At about 9 a.m. on 27 February 2000 the men were taken to a building with a basement. There the witness and his fellow villagers

were subjected to continued beatings by their abductors, who used shovels and iron pipes. At some point he fainted; he regained consciousness when two military servicemen were dragging him into a basement. In the basement he and all the other detainees from Gikalo, including Murad Gelayev, were stripped naked and subjected to another round of beatings with iron pipes and steel rods, and dogs were set on them. After that the villagers were allowed to put their clothes back on and were taken to Khankala in a Ural vehicle. There the detainees spent the night in the vehicle, handcuffed to a bar and being beaten by military servicemen. In the morning the detainees were taken to the Oktyabrskiy military commander's office, but Murad Gelayev and another detainee were not there as they had probably stayed behind.

21. According to the sixth applicant, early in the morning of 27 February 2000 he was at home when a large group of military servicemen in masks and camouflage uniforms rushed into his yard. The servicemen dispersed throughout the applicant's household and searched his house, barn and shed. The servicemen forced the applicant into an APC and took him to the outskirts of Gikalo, where he was transferred to an Avtozak vehicle. In the Avtozak the sixth applicant saw thirteen other men from the village, including his nephew Murad Gelayev. The vehicle took the detainees to the Oktyabrskiy VOVD, where the men were forced to stand against the wall and were subjected to beatings by shovels, bludgeons and steel rods. At about 12 p.m. a senior officer arrived at the site and personally kicked each detainee between the legs. After a short break a serviceman with a dog arrived and set the dog on the detainees. Then the detainees were ordered to run to the basement. In the basement they were ordered to take off their clothes; meanwhile Murad Gelayev and Mr Sul.S. were seated at a table and questioned. The applicant heard one of the guards ordering Murad Gelayev to put his hands on the table and hitting Murad's fingers with a truncheon. Next the officer asked the other servicemen if they had a knife. He could not find one in the basement and went outside. Having found a knife, which looked like that of a hunter, he cut off Murad Gelayev's ear, wrapped it in a bandage and put it in his pocket saying: "It's a souvenir for me". After that he cut Mr Sul.S.'s ear off and gave it to another officer saying: "And here is a souvenir for you". The latter also put it in his pocket. According to the applicant, after continued beatings he and other detainees were taken to Khankala whereas Murad Gelayev and Mr Sul.S. remained in the Oktyabrskiy VOVD.

22. The applicants further submitted that at the beginning of May 2000, Mr R.Ya., the head of the criminal search division of the Oktyabrskiy VOVD, had suggested to their fellow villager, Mr Sh.Kha., that he could show him Murad Gelayev who was detained in the building of the VOVD. In addition, around 25 June 2000, a woman who lived in the Lutch neighbourhood in the Oktyabrskiy district of Grozny had visited the

Chernokozovo detention centre and had seen two young men being brought there in APCs. One of these men had been Murad Gelayev.

23. At the material time the Oktyabrskiy VOVD was staffed by officers from the Khanty-Mansiysk Autonomous Region of Russia. From the documents submitted it follows that the Oktyabrskiy VOVD and the district military commander's office were located either in the same building or around the same yard.

24. In support of their statements, the applicants submitted the following documents: a statement by the second applicant (the date is illegible); a statement by the third applicant dated 23 August 2006; a statement by the sixth applicant (undated); a statement by the fourth applicant (undated); a statement by Mr Sh.Ts. dated 21 September 2006; a statement by Ms Z.S. dated 23 August 2006; a statement by Mr V.Ts. dated 14 August 2006; a statement by Mr U.V. dated 14 August 2006; a copy of the medical certificate issued by the Grozny district hospital confirming the second applicant's hospitalisation from 27 February to 17 March 2000 in the Gikalo hospital dated 14 August 2006, and copies of documents received from the authorities.

2. Information submitted by the Government

25. The Government did not dispute the facts as presented by the applicants. At the same time they stated that no special operation had been carried out in Gikalo on 27 February 2000 and that the federal forces had not been involved in the abduction of the applicants' relative.

B. The search for Murad Gelayev and the official investigation

1. The applicants' account

26. According to the applicants, they complained about Murad Gelayev's abduction to the authorities immediately after the events. However, no reply to their complaints was received.

27. On 28 August 2001 the Grozny district department of the interior (the Grozny ROVD) refused to open a criminal investigation into the abduction of Murad Gelayev for the lack of *corpus delicti*.

28. On the same date, 28 August 2001, the Grozny ROVD opened search file no. 39/01 in connection with the disappearance of Murad Gelayev.

29. In November 2001 the first applicant spoke with the deputy Chairman of the Representative of the Russian President in the Southern Federal Circuit, Mr V.B., and the latter informed him that his son was alive and detained somewhere in Central Russia.

30. On 15 June 2001 the Chechnya Ministry of the Interior (the Chechnya MVD) forwarded the fifth applicant's complaint about his grandson's abduction to the Oktyabrskiy VOVD for examination.

31. On 29 March 2002 the Department of Lawfulness, Law and Order of the Chechnya Administration requested that detention centre IZ-61/1 in Rostov-on-Don inform them whether Murad Gelayev, who had been taken away from his home by a group of federal servicemen, was listed among their detainees. In April 2002 the detention centre replied in the negative.

32. On 3 April 2002 the first applicant complained to the Chechnya prosecutor about his son's abduction. He stated that Murad Gelayev had been abducted with thirteen other residents of Gikalo during a special operation conducted by a group of federal servicemen in military armoured vehicles; that the servicemen had beaten the detainees and their relatives with rifle-butts; that shortly after the abduction the applicant had found out that his son had been detained in the basement of the Oktyabrskiy VOVD where, in the presence of many witnesses, one ear had been cut off as a souvenir from both Murad Gelayev and Mr Sul.S.; that the men had subsequently been thrown into different pits and beaten in the presence of the head of the Oktyabrskiy VOVD, Major R.E.; that, according to eyewitnesses, on 8-9 May 2000 Murad Gelayev had still been detained in the basement and that in June or July 2000 he had been taken to the Chernokozovo detention centre. The applicant requested the authorities to assist him in the search for his son and to prosecute the perpetrators.

33. On 4 April 2002 the Grozny prosecutor's office forwarded the first applicant's complaint about his son's abduction to the Oktyabrskiy VOVD for examination.

34. On 11 April 2002 the Chechnya prosecutor's office forwarded the first applicant's complaint about his son's abduction by federal servicemen during a special operation on 27 February 2000 to the Grozny prosecutor's office for examination.

35. On 12 July 2002 an investigator from the Gikalo department of the Grozny ROVD questioned the first applicant, who stated that on 27 February 2000 a group of Russian military servicemen had arrested fourteen residents of Gikalo, including Murad Gelayev. According to the witness, Murad Gelayev had been taken to the Oktyabrskiy VOVD, where his ear had been cut off as a souvenir and he had been beaten in the presence of the head of the Oktyabrskiy VOVD, officer R.E; that in July 2000 Murad Gelayev had been taken to the Chernokozovo detention centre and that the applicant had visited a number of detention centres in Chechnya but could not find his son.

36. On 16 August 2002 the Prosecutor General's office in the Southern Federal Circuit forwarded the first applicant's complaint about the abduction to the Chechnya prosecutor's office. On 4 September 2002 the latter forwarded this complaint to the Grozny prosecutor's office for examination.

37. On 13 July 2005 the Grozny district prosecutor's office (the district prosecutor's office) instituted an investigation into the abduction of Murad Gelayev under Article 105 § 1 of the Criminal Code (murder). The case file was given number 44065. The decision stated, *inter alia*, as follows:

“...on 27 February 2000 a group of unidentified armed men in camouflage uniforms in APCs and a UAZ vehicle took Murad Gelayev away to Grozny; after that he disappeared...”

In this connection, on 28 August 2001 the Grozny ROVD refused to institute a criminal investigation owing to the lack of *corpus delicti*....

This decision was unlawful as Murad Gelayev has not returned home and, therefore, there are sufficient grounds to presume that he was killed...”

38. On 30 July 2005 the first applicant was granted victim status in the criminal case.

39. On 21 September 2006 the applicants' representatives wrote to the district prosecutor's office and requested to be informed about the investigative measures taken by the authorities and their results. They also requested to be provided with access to the investigation file. On 31 October 2006 the district prosecutor's office replied they were taking operational-search measures to establish the whereabouts of Murad Gelayev.

2. Information submitted by the Government

40. On 21 June 2001 the sixth applicant complained to the Oktyabrskiy VOVD about the disappearance of Murad Gelayev from Gikalo on 27 February 2000.

41. To verify the applicant's complaint, the VOVD conducted an inquiry into the allegations and in that context the following steps were taken (see paragraphs 42-45 below).

42. On 30 July 2001 police officers questioned the sixth applicant, who stated that on the morning of 27 February 2000 he had been taken away from home by a group of armed men in camouflage uniforms. The men had put him into an APC and taken him to the outskirts of Gikalo, where he had been transferred into another vehicle in which he had found fourteen of his fellow villagers including Murad Gelayev. The detainees had been taken first to the VOVD and then to Khankala, Murad Gelayev had not been among those transferred to Khankala. From Khankala the sixth applicant had been taken to the village of Chervlyenaya, then to Chernokozovo, Chechnya, and subsequently, along with three other residents of Gikalo, Mr A.G., Mr L.G. and Mr M.V., to the town of Pyatigorsk in the Stavropol Region. The applicant had been released six weeks after the arrest.

43. On an unspecified date the police investigators also questioned the second applicant, who stated that she did not know the whereabouts of her son since 27 February 2000.

44. The police investigators obtained a report of a police officer dated 24 June 2001 according to which Murad Gelayev had not been listed as a detainee in the Oktyabrskiy VOVD in 2000.

45. On 28 August 2001 the VOVD opened operational-search file no. 39/01-BP and took other measures to establish the whereabouts of Murad Gelayev.

46. On 28 August 2001 the VOVD refused to initiate a criminal investigation into the matter stating that “as a result of the inquiry it was not established that a crime had been committed against Murad Gelayev”.

47. On 13 July 2005 the above refusal was overruled by the supervising prosecutor and criminal case no. 44065 was opened under Article 105 § 1 (murder).

48. On 29 July 2005 the investigators questioned Mr S.B., who at the material time worked as the district police officer. He stated that in February 2000 Murad Gelayev had been taken away by armed men in camouflage uniforms who had driven around in APCs. Thirteen other residents of Gikalo had been taken away on the same morning. All of them save for Murad Gelayev and Mr Sul.S. had returned home at some point later.

49. On 30 and 31 July 2005 the investigators granted the first applicant victim status in the criminal case and questioned him. He stated that on the morning of 27 February 2000 a group of armed masked men had broken into his house and taken away his son Murad Gelayev. He further stated that his son had been abducted with thirteen or fourteen other residents of Gikalo, including the sixth applicant, who at some point later had been released from a detention centre in Pyatigorsk. According to the witness, the abductors had taken Murad and other detainees to the Oktyabrskiy VOVD, where the guards, Mr A. nicknamed “Uzbek”, Mr G., Mr D., Mr V. and Mr I., together with a UAZ driver Mr R., had ill-treated Murad Gelayev and the other detainees. The witness further stated that the sixth applicant had been taken from the Oktyabrskiy VOVD to Khankala and then, on 28 or 29 February 2000, had been brought back to the VOVD where he had seen Murad Gelayev for the last time. The witness provided investigators with all the names and ranks of the senior officers of the Oktyabrskiy VOVD who had served there at the material time and with a phone number of one of them.

50. On 5 August 2005 the investigators requested the Chechnya FSB to inform them whether any special operations had been carried out by them on 27 February 2000 in Gikalo. The Chechnya FSB replied that no such operations had been conducted and that they had not arrested Murad Gelayev.

51. On 11 August 2005 the investigators questioned Mr Sh.Ts., who stated that on the morning of 27 February 2000 a group of armed men in camouflage uniforms had broken into his house. The intruders had taken him and his brother Mr V. Ts. and had put them in a vehicle with Murad Gelayev and Mr Sul.S. in it. After that, the detainees had been taken in the direction of Grozny to a building which looked like a gym. There they had been questioned by unidentified men; in the evening of the same day, the witness had noticed that Murad Gelayev and Mr Sul.S. had not been among the rest of the detainees.

52. On 11 August and 13 August 2005 the investigators questioned Mr V.Ts. and Mr U.V., whose statements about the events were similar to that given by Mr Sh.Ts. The investigators questioned Mr U.V. again on 11 August 2009 and he stated that he had been abducted from home by armed men in camouflage uniforms and masks, who had searched his house and taken him and his brother to the VOVD where they had been subjected to beatings and questionings. He also stated that in his presence one of the abductors had cut off an ear from Murad Gelayev and Mr Sul.S. and that on the same day all the detainees from Gikalo, except for Murad Gelayev and Mr Sul.S., had been transferred to Khankala.

53. On 12 August 2005 the investigators questioned Mr Sup.S. who stated that on 27 February 2000 he and fourteen other residents of Gikalo had been taken to the Oktyabrskiy district military commander's office, then to Khankala, then to the SIZO (the detention centre) in Chernokozovo where he had been detained until 19 May 2000. According to the witness, his brother Mr Sul.S. and Murad Gelayev had not been taken to these detention places as they had remained in the basement of the district military commander's office.

54. On 13 September 2005 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators.

55. On 21 June 2006 the above decision was overruled by the supervising prosecutor and the investigation was resumed.

56. On 14 August 2006 the investigators questioned the sixth applicant, who stated that on the morning of 27 February 2000 he had been at home when he had seen a group of armed men in camouflage uniforms surrounding his house. He had heard them communicating with someone via a portable radio and then someone's order to "take one Gelayev and get out as the locals have started gathering around". After that the intruders had put him in an APC and taken him to the outskirts of Gikalo, where he had been transferred to another vehicle with fourteen other residents of the village already inside, including Murad Gelayev. Then all the detainees had been taken to the Oktyabrskiy VOVD; Murad Gelayev had been taken out of the vehicle first and had been immediately subjected to beating. After that all the detainees had been taken to a room where they had been beaten with bludgeons and steel rods; as a result the applicant's ribs had been

broken. Then the applicant had been taken to a basement, where he had found Murad Gelayev and Mr Sul.S. The intruders had forced the detainees to put their hands on the table and had hit them with bludgeons. After that the applicant had been taken to Khankala, whereas Murad Gelayev and Mr Sul.S. had stayed behind. From Khankala the applicant had been taken to Chervlyenaya, then to Chernokozovo, then to Pyatigorsk in the Stavropol Region. In the remand prison in Pyatigorsk the applicant had met his fellow villagers Mr A.G., Mr L.G. and Mr M.V., who had been taken away from Gikalo on the same date, then two weeks later the applicant had been released.

57. On 14 August 2006 the investigators again questioned Mr V.Ts., who stated that on 27 February 2000 he had been taken from home by military servicemen who had arrived in an APC. The witness and his neighbour Mr Sh.Ts. had been transferred from the vehicle to an Avtozak lorry, in which they had met a number of their fellow villagers, including Murad Gelayev. The Avtozak had taken the detainees to the Oktyabrskiy VOVD, where they had been subjected to beatings and put into a basement. There the men had been stripped naked and subjected to further beatings by abductors who had kept taking turns to beat the detainees. On the second day of the detention the men had been taken to the military commander's office where they had been made to sign documents by a woman of Asian appearance, with a short haircut, called Tanya. She had taken samples of the detainees' nails and hair, put them in envelopes and sent them for expert evaluation. After that the detainees had been taken in a Ural vehicle to the Avtozak and then to Chervlyenaya, where all the men, except for Murad Gelayev and Mr Sul.S., had been detained until 20 March 2000. On the latter date the detainees had been transferred to the Chernokozovo detention centre from which the twelve residents of Gikalo had been released on 18 May 2000.

58. On 14 August 2006 the investigators again questioned another resident of Gikalo who had been detained on 27 February 2000, Mr U.V., who stated that he could not recall the details of his detention because as a result of the beatings to which he had been subjected in Chernokozovo and other detention centres he suffered from memory problems. On 5 November 2006 the investigators again questioned the witness, but the Government did not furnish a copy of this statement to the Court.

59. On 15 August 2006 the investigators requested the MVD of Russia to provide information about the officers from the Khanty-Mansiysk Region who had served on 27 February 2000 in the Oktyabrskiy VOVD.

60. On 15 August 2006 the investigators requested information from various detention centres in the Northern Caucasus concerning the detention of seven residents of Gikalo, including Murad Gelayev and the sixth applicant, who had been apprehended on 27 February 2000. The investigators also requested various prosecutors' offices in Chechnya to

inform them whether they had initiated a criminal investigation against any of these residents of Gikalo. On 6 September 2006 the Chechnya Department of the Execution of Punishment replied that the six applicants and four other residents of Gikalo had been detained in detention centre IZ-20/2 in Chernokozovo between 20 March and 18 May 2000 and that they had been released as a result of an amnesty. Murad Gelayev had not been detained in this prison. From the replies received from the prosecutors' offices, no criminal proceedings were pending against any of these men.

61. On 20 August 2006 the investigators questioned the applicants' neighbour Mr A.A., who stated that on the morning of 27 February 2000 a special operation had been carried out in Gikalo; as a result his neighbour Murad Gelayev and thirteen other village residents had been taken away. All of them except for Murad Gelayev and Mr Sul.S. had subsequently been released.

62. On 20 August 2006 the investigators questioned the applicants' neighbour Ms A.A., who stated that on 27 February 2000 a special operation had been conducted in their settlement, as a result of which Russian-speaking federal servicemen had arrested and taken away Murad Gelayev along with thirteen other residents of Gikalo. The witness stated that the second applicant had tried to prevent the soldiers taking away her son and that the servicemen had subjected her to a beating, as a result of which she had lost consciousness.

63. On 20 August 2006, and subsequently on 10 August 2009, the investigators questioned Mr Sh.Ts., who stated that on the morning of 27 February 2000 a group of about twelve to nineteen armed Russian military servicemen had arrived at this house on an APC. The soldiers had run an identity check and verified the passport information by calling someone via portable radio. Then they had taken him and his brother Mr V.Ts. in the APC to the Avtozak. In the vehicle he had found several of his fellow villagers, including Murad Gelayev. Then the detainees had been taken to the Oktyabrskiy VOVD. After their arrival at the police station the fourteen detainees had been taken from the vehicle one by one and beaten; then they had been taken to a basement and questioned. After that all the detainees save for Murad Gelayev and Mr Sul.S. had been taken to Khankala. The rest of the witness statement was identical to that given by Mr V.Ts. (see paragraph 57 above).

64. On 23 August 2006 the investigators questioned Ms Z.S., who stated that her brothers Mr Sa.S. and Mr Sul.S. had been abducted by Russian military servicemen on 27 February 2000 during a 'sweeping-up' operation. She further stated that her brothers had been detained for some time and that one of them, Mr Sa.S., had managed to return home at some point later. He had told her that after the abduction the brothers had been taken to the Oktyabrskiy VOVD, where Mr Sul.S. and Murad Gelayev had been subjected to torture, and that their ears had been cut off by the abductors.

65. On 23 August 2006 the investigators questioned the third applicant, whose statement about the events of 27 February 2000 and the subsequent development was similar to that given by Ms Z.S. In addition, the applicant stated that during the abduction the intruders had subjected her and the second applicant to insults and beatings and that as a result of it the second applicant had lost consciousness. She stated that she had not sought medical help after the events of 27 February 2000, but that her mother, the second applicant, had spent some time in hospital in Gikalo.

66. On 4 November 2006 the investigators questioned Mr S.-S.S., who stated that he had been taken away from home on 26 February 2000 by Russian federal servicemen who had been conducting a special operation in his village of Ulus-Kert, and that according to the information received by him from the residents of Gikalo, a similar special operation had been conducted in Gikalo on 27 February 2000 as a result of which two Gikalo residents had disappeared.

67. On 4 November 2006 the investigators questioned Mr L.G., who stated that on the morning of 27 February 2000 he had been taken away from home by servicemen from the OMON (the special police task force). He had been brought with other detained residents of Gikalo to the Oktyabrskiy VOVD where they had been beaten. According to the witness, at the VOVD he had been questioned by unidentified persons, one of whom had the rank of Major and had been of Asian appearance. The witness and other detainees, except for two young men from Gikalo, had been taken to Khankala. A day or two later they had been returned to the Oktyabrskiy VOVD, but the young men had not been there. The rest of the witness statement concerning his further detention is similar to those given by Mr V.Ts. and Mr Sh.Ts. (see paragraphs 57 and 63 above).

68. On 6 November 2006 the investigators questioned Mr Sh.Kha., who stated that in April 2000 he had been searching for his brother, who had been arrested in the Oktyabrskiy VOVD on 17 April 2000 and had subsequently disappeared. A few days after his brother's disappearance, the witness had had a conversation with the head of the criminal police department of the Oktyabrskiy VOVD, Mr R.Ya., who told him that "...I have got the right hand of Gelayev [a leader of illegal armed groups]" and suggested to the witness to have a look at the detainee. The witness had refused. He further stated that the police officers who had served in the Oktyabrskiy VOVD at the material time had been there on mission from the police department of the Khanty-Mansiysk Region. He submitted that currently [at the time of the questioning] the police officers who had been in charge of the Oktyabrskiy VOVD in February-April 2000 were working in various Russian cities and provided the investigators with information concerning their current ranks and positions, as well as their places of work.

69. On 25 November and 2 December 2007 the investigators questioned Mr Sa.S. and Ms L.Z., who stated that on the morning of 27 February 2000

two of their male relatives had been taken away from home by armed men in camouflage uniforms. The intruders had conducted an identity check, then put their two relatives in a lorry and taken them away to an unknown destination. Three months later one of them had returned home, whereas another one, Mr Sul.S., had disappeared.

70. On 2 December 2007 the investigators questioned Mr B.D., whose statement about the events was similar to those given by Mr Sa.S. and Ms L.Z.

71. On 3, 4 and 8 December 2007 the investigators questioned Mr R.G., Mr M.A., Ms Z.E., Ms L.D. and Mr I.E., all of whom provided similar statements to the effect that on the morning of 27 February 2000 Murad Gelayev and Mr Sul.S. had been abducted from their homes by armed masked men in camouflage uniforms, who had arrived in armoured military vehicles and conducted an identity check.

72. On 12 December 2007 the investigators conducted the crime scene examination at the household from which Murad Gelayev had been abducted on 27 February 2000. In that connection no evidence was collected from the scene.

73. On 5 September 2008 the investigators questioned Mr A.S., who stated that in March 2000 he had been abducted and taken to the Oktyabrskiy VOVD where he had been detained for 81 days and subjected to regular beatings. During his detention in the VOVD he had not seen Murad Gelayev.

74. On 17 September 2008 the investigators questioned Ms Kh.S., who stated that on 27 February 2000 her neighbour Murad Gelayev had been abducted by officers of law-enforcement agencies. According to the witness, the abductors had been armed and wearing camouflage uniforms; one of them had been of Slavic appearance, had two golden teeth and a short grey moustache. She and the second applicant had tried to stop the officers taking Murad away, but the abductors had started beating the women with rifle-butts. After that the officers had put Murad Gelayev in a military vehicle and taken him away. About fifteen other residents of Gikalo had been abducted around the same date; some of them had later returned home.

75. On 19, 25 February and 11 April 2009 the investigators questioned two operational-search officers of the Grozny ROVD, Mr M.L. and Mr K.M., and the head of the criminal search division of the Grozny ROVD, Mr V.K. All of the officers stated that according to the information received during the investigation of Murad Gelayev's abduction it had been established that in February 2000 local law-enforcement agencies had been taking steps to identify members of illegal armed groups and that after the abduction Murad Gelayev had been taken to the Oktyabrskiy VOVD.

76. On 11 March 2009 the Department of the Ministry of the Interior (the UVD) in the Khanty-Mansiysk Region replied to the investigators stating the following:

“... According to order ... no. 750, any information disclosing personal data of the police officers who are participating or participated in the carrying out of counterterrorist or special operations is a secret. Therefore, it is impossible to provide you with lists and photographs of the officers of the UVD of the Khanty-Mansiysk Region who were on service mission in Chechnya in February 2000.”

77. Between 21 May and 3 June 2009 the investigators questioned 22 former and acting officers of the UVD of the Khanty-Mansiysk Region who had been on mission in Chechnya in 2000 and had been serving in the Oktyabrskiy VOVD at the material time. All of the witnesses stated that they did not recall the details of their service in the Oktyabrskiy VOVD, that they had not participated in special operations and that they had not detained Murad Gelayev.

78. On 10 August 2009 the investigators questioned Mr Sh.Ts., who confirmed his previous statements (see paragraph 63 above) and added that after the abduction, in the basement of the Oktyabrskiy VOVD, he had seen Murad Gelayev and that his face had been covered in blood.

79. The Government submitted that the investigating authorities had sent a number of queries to various State bodies between 2005 and 2009 concerning the possible whereabouts of Murad Gelayev, his criminal record, discovery of his body, his detention in custodial institutions, medical treatment in hospitals and any criminal proceedings against him. As a result, a number of negative replies had been received and the whereabouts of the applicants' relative had not been established. The law enforcement authorities had never arrested or detained Murad Gelayev on criminal or administrative charges and had not carried out a criminal investigation concerning him. No special operations had been carried out against the applicants' relative.

80. According to the documents submitted by the Government, the investigation was suspended on eight occasions: on 13 September 2005, 28 September and 6 November 2006, 23 December 2007, 3 October 2008, 16 March, 6 May and 28 August 2009. Each decision to suspend the investigation was subsequently overruled by the supervising prosecutors as unlawful and premature. The prosecutors criticised the investigation and ordered that a number of necessary steps be taken. For example, such orders were given to the investigators on eight occasions: on 21 July and 6 October 2006, 23 November 2007, 3 September 2008, 16 February, 2 April, 28 July and 31 August 2009.

81. The Government further stated that even though the investigation had failed to establish the whereabouts of Murad Gelayev, it was still in progress and all measures envisaged under domestic law were being taken

to solve the crime. The investigation had found no evidence to support the involvement of State servicemen in the abduction of Murad Gelayev.

82. Despite specific requests by the Court, the Government did not disclose the entire contents of the investigation file in criminal case no. 44065, providing only copies of “the main documents” from the file of up to 370 pages.

C. Proceedings relating to the applicants' ill-treatment by the abductors

1. Information submitted by the applicants

83. The applicants complained to the investigators about the ill-treatment to which the second and fourth applicant had been subjected by the abductors (see paragraphs 32 and 65 above).

2. Information submitted by the Government

84. On 24 August 2006 the investigators decided to conduct a forensic medical examination of the second applicant. The text of the decision included the following:

“...The investigators questioned the mother of the disappeared Murad Gelayev-Amint Gelayeva [the second applicant], who stated that ... she had tried to stop the abductors from taking away her son, but she could not stop them as she had been hit several times on the head by a rifle-butt and as a result she had lost consciousness. Subsequently she had been treated at the outpatient department of the Gikalo hospital...

... [it is necessary] to put the following questions to the experts:

- Are there any injuries on the head and the body of A. Gelayeva and if so, how they could have been received, and what is their location, mechanism and the time of their origin?

-What is the degree of the injuries suffered [by the applicant]?

- How could these injuries have been caused?

- Was it possible for the injuries to be received under the above circumstances?”

85. On 10 October 2006 the investigators refused to initiate a criminal investigation into the applicants' complaints of ill-treatment by the abductors. The text of the decision included the following:

“... the investigators questioned Aminat Gelayeva [the second applicant], who stated that ... when she had attempted to prevent the abductors from taking away her son, the abductors had beaten her and her daughter Zarema [the third applicant], and had hit them several times with rifle butts, as a result of which she had lost consciousness. Subsequently she had been treated at the Gikalo hospital.

The investigators questioned Zarema Gelayeva [the third applicant], who stated that... she and her mother [the second applicant] had attempted to stop the abductors, but they had been subjected to beatings as a result of which her mother [the second applicant] had lost consciousness.

...According to the medical statement provided by the Gikalo hospital, on 27 February 2000 medical assistance had been provided to A. Gelayeva [the second applicant] as no [other] treatment had been possible at the time owing to the military actions...

... According to the forensic medical examination report no. 1086 of 4 October 2006... no bodily injuries or spots on the head or neck of A. Gelayeva [the second applicant] were found...

Thus, the investigation did not establish that A. Gelayeva had received bodily injuries..."

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

87. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Murad Gelayev had not yet been completed. They further argued that it had been open to the applicants to lodge complaints with the courts about any acts or omissions of the investigating authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil claims but that they had failed to do so.

88. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. With reference to the Court's case-law, they argued that they were not obliged to claim civil damages in order to exhaust domestic remedies.

B. The Court's assessment

89. 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).

90. 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.

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

92. As regards criminal law remedies, the Court observes that the applicants complained to the law-enforcement authorities after the kidnapping of Murad Gelayev and that an investigation has been pending since 13 July 2005. The applicants and the Government dispute the effectiveness of the investigation into the kidnapping.

93. 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. It therefore 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

94. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Murad Gelayev had been State agents. In support of their complaint they referred to the following facts. At the material time Gikalo had been under the total control of federal troops. The armed men who had abducted Murad Gelayev had worn camouflage uniforms; the majority of them had been masked; they had been equipped with portable radios and had arrived as a large group. They had arrived in military vehicles, including APCs, early in the morning, which indicated that they had been able to circulate freely in the area without being afraid

that they would be seen by the local law-enforcement agencies. The men acted in a manner similar to that of special forces carrying out identity checks. The men had abducted thirteen other residents of Gikalo along with Murad Gelayev. The local police officers had acknowledged that Murad Gelayev had been abducted by federal servicemen and taken to the Oktyabrskiy VOVD (see paragraph 75 above) and the district prosecutor's office had been aware that the perpetrators had used APCs during the abduction (see paragraphs 37 and 48 above). The applicants pointed out that at the material time only the federal servicemen could have deployed APCs and used them for special operations. All the information disclosed from the criminal investigation file supported their assertion as to the involvement of State agents in the abduction. In particular, the numerous witness statements (see paragraphs 49, 52, 53, 56, 57, 62-70, 73-75 and 78 above) and other documents from the investigation file had confirmed the involvement of State agents in the abduction. Since Murad Gelayev had been missing for more than ten years, he could be presumed dead. That presumption was further supported by the circumstances in which he had been arrested, which should be recognised as life-threatening. Finally, the applicants referred to a number of cases examined by the Court in which it had been established that other Chechen men had disappeared in 2000 after they had been taken by their abductors to the same VOVD (see *Magomadov v. Russia*, no. 68004/01, §§ 96-97, 12 July 2007, and *Yusupova and Zaurbekov v. Russia*, no. 22057/02, §§ 62-63, 9 October 2008).

95. The Government submitted that unidentified armed men had kidnapped Murad Gelayev. They further contended that the investigation into the incident was pending, that there was no evidence that the men had been 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' relative was dead.

B. The Court's assessment of the facts

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

97. The Court notes that despite its requests for a copy of the investigation file concerning the abduction of Murad Gelayev, the Government produced only a selection of documents from the case file, but

not its entire contents. In view of this failure 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' relative can be presumed dead and whether his death can be attributed to the authorities.

98. The applicants alleged that the persons who had taken Murad Gelayev away on 27 February 2000, and had then killed him, had been State agents. The Government did not dispute any of the factual elements underlying the application and stated that the abductors had not been State agents. However, they did not provide any other version of the events in question. The Court would stress in this regard that the assessment 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 evidential value of the documents submitted to it (see *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

99. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. It finds that the fact that a large group of armed men in uniform and equipped with military vehicles was able to move freely in broad daylight and proceeded to check identity documents and apprehended a number of persons at their homes strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their application to the authorities the applicants consistently maintained that Murad Gelayev had been detained by unknown servicemen and requested the investigation to look into that possibility. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies were involved in the kidnapping (see paragraphs 44, 50, 59, 60 and 77 above), but it does not appear that any serious or timely steps had been taken in that direction.

100. The Court observes that where 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).

101. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case for the abduction of their relative Murad Gelayev by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement

of State agents in the kidnapping is insufficient to release 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 and to provide another plausible explanation for the events in question, the Court finds that Murad Gelayev was arrested on 27 February 2000 by State servicemen during an unacknowledged security operation.

102. There has been no reliable news of Murad Gelayev since the date of the kidnapping. His name has not been found in any official detention facility records. Finally, the Government have not submitted any explanation as to what happened to him after his arrest.

103. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII. (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that 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 Murad Gelayev or of any news of him for more than ten years supports this assumption.

104. Accordingly, the Court finds that the evidence available permits it to establish that Murad Gelayev must be presumed dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

105. The applicants complained under Article 2 of the Convention that their relative had been deprived of his life 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 parties' submissions

106. The Government contended that the domestic investigation had obtained no evidence to the effect that Murad Gelayev was dead or that any servicemen of the federal law-enforcement agencies had been involved in his kidnapping or alleged killing. The Government claimed that the investigation into his kidnapping met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible. The Government also noted that the applicants themselves had lengthened the investigation by complaining about the abduction more than a year after the events.

107. The applicants argued that Murad Gelayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for more than ten years. They also argued that the investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law. They pointed out that the authorities had initially refused to initiate a criminal investigation, and that when they had finally decided to open a criminal case several years had already elapsed since the applicants' complaints about the abduction. They further stressed that the servicemen who had served at the Oktyabrskiy VOVD in 2000 had been questioned by the investigators only in 2009, that is nine years after the events, and that even then the questioning had been conducted formally and superficially, without any follow-up questions, with the result that all the witnesses had given short identical replies. The applicants pointed out that the investigators had failed to take such basic investigative steps as questioning a number of villagers who had been detained with Murad Gelayev and had been subsequently released, as well as questioning of the officers in charge of the Oktyabrskiy VOVD at the material time. These steps had not been taken in spite of the fact that the witnesses had provided the investigators with the necessary information pertaining to the officers' current positions and ranks. The investigators had also failed to identify and question the officers who had guarded Murad Gelayev and the other detainees in the Oktyabrskiy VOVD. The applicants also pointed out that the investigation had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and that the relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any known results was further proof of its ineffectiveness. The applicants also invited the Court to draw conclusions from the Government's unjustified failure to submit a copy of the entire contents of the investigation file to them or to the Court. In particular, they stressed that the Government had failed to furnish the Court with copies of at least nine witness statements given by the applicants and other residents

of Gikalo in 2001, 2006 and 2009, as well as copies of the prosecutors' orders criticising the investigators and ordering them to take certain steps.

B. The Court's assessment

1. Admissibility

108. 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 93 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of Murad Gelayev's right to life

109. The Court has already found that the applicants' relative must be presumed dead following unacknowledged detention by State servicemen. In the absence of any justification 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 Murad Gelayev.

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

110. 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).

111. In the present case, the kidnapping of Murad Gelayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

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

113. The Court notes that the authorities were made aware of the abduction by the applicants' submissions on 21 June 2001. From the documents submitted it is clear that in spite of the information obtained

during the preliminary inquiry in 2001 to the effect that Murad Gelayev had been abducted (see paragraphs 42 and 45 above), and the fact that the Oktyabrskiy VOVD had opened a search file in respect of him, the very same Oktyabrskiy VOVD had refused to initiate a criminal investigation into the matter (see paragraph 46 above). No steps had been taken by the law-enforcement agencies from 28 August 2001 to 13 July 2005 when, owing to the applicants' consistent complaints, with a delay of almost four years the prosecutor's office decided to open the investigation into the disappearance of Murad Gelayev. From the documents submitted it transpires that subsequently a number of essential steps were either significantly delayed or not taken at all. For example, the crime scene examination had been conducted more than two years after the opening of the investigation (see paragraph 72 above) and a number of important witnesses, such as the police officers serving at the Oktyabrskiy VOVD at the material time, had not been questioned until more than four years after the beginning of the proceedings (see paragraph 77 above). Further, it is clear that the investigators had not taken such basic steps as the identification of the military vehicles, including the APCs, which had been involved in the abduction; the questioning of their drivers; or the identification and questioning of the officers who had been in charge of the Oktyabrskiy VOVD in February 2000 or the officers who had guarded Murad Gelayev and other detainees on the premises of the police station following the abduction. Moreover, the investigators had failed to question all those residents of Gikalo who had been abducted with Murad Gelayev and taken with him to the Oktyabrskiy VOVD. From the copies of the interrogation transcripts submitted it is clear that the officers from the Khanty-Mansiysk Region who had served at the Oktyabrskiy VOVD in 2000 had been questioned in a superficial manner, thus preventing the investigators from obtaining any meaningful information about the events in question. It is obvious that the above investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

114. The Court also notes that even though the first applicant was granted victim status in the investigation concerning the abduction of his son, he and the other applicants were only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

115. Finally, the Court notes that the investigation was suspended and resumed eight times and that there were lengthy periods of inactivity on the part of the prosecutor's office when no proceedings were pending. The supervising prosecutors criticised deficiencies in the proceedings and ordered remedial measures. It appears that their instructions were not complied with.

116. The Government argued that the applicants could have sought judicial review of the decisions of the investigating authorities in the context of the 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 acts or omissions of investigating authorities before a court. Furthermore, the Court emphasises in this respect that while the suspension or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the suspension decisions were taken without the necessary investigative steps, leading to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection that the applicants failed to exhaust domestic remedies within the context of the criminal investigation.

117. 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 Murad Gelayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

118. The applicants relied on Article 3 of the Convention, submitting that during the abduction of Murad Gelayev, the second and fourth applicants were subjected to ill-treatment contrary to Article 3 of the Convention. They further contended that Murad Gelayev was subjected to torture contrary to Article 3 of the Convention following the abduction, while at the hands of State agents. They further complained that the Russian authorities failed to comply with the procedural obligations arising from Article 3 to investigate these alleged instances of ill-treatment and torture. Article 3 reads:

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

A. Alleged violation of Article 3 in respect of Murad Gelayev

1. The parties' submissions

119. The Government disagreed with these allegations and argued that the investigation had not established that Murad Gelayev had been subjected to any treatment prohibited by Article 3 of the Convention.

120. The applicants maintained their submission.

2. The Court's assessment

(a) Admissibility

121. The Court notes that 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

122. In so far as the applicants complained of the alleged torture of Murad Gelayev following his abduction, 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).

123. 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).

(i) The alleged ill-treatment

124. In so far as the complaint concerns the torture to which Murad Gelayev was allegedly subjected by the abductors, the Court has already found that he was detained on 27 February 2000 by State agents. It has also established that, in view of all the known circumstances, he can be presumed dead and that the responsibility for his death lies with the State authorities (see paragraph 109 above). The Court further notes that the applicants' allegation that Murad Gelayev was tortured while in detention is

supported by a number of detailed statements given to the official investigation, including those in which it was stated that Murad Gelayev's ear had been cut off by the abductors (see paragraphs 32, 35, 52, 56, 57, 63, 64 and 78 above). From the very beginning of the investigation and throughout the proceedings the applicants were consistent in their allegations of their relative's torture by the abductors. The Court observes that a number of witnesses, including the sixth applicant, had informed the investigators about the torture of Murad Gelayev, but the authorities had failed to examine or follow up on their statements. According to the Government's submission, the domestic investigation had not established that Murad Gelayev had been subjected to inhuman or degrading treatment. The Court further notes that despite its repeated requests the Government refused to provide all of the documents from the investigation file and finds that it can draw inferences from the Government's conduct in this respect.

125. The Court has already found that Murad Gelayev was abducted on 27 February 2000 by State agents. It further considers that the applicants have made a *prima facie* case showing that he was tortured by the servicemen following his abduction. The burden of proof is thus shifted to the Government to refute this allegation (see paragraph 100 above). The Government's statement that the investigation had not established that Murad Gelayev had been subjected to treatment prohibited by Article 3 is insufficient to release them from the above-mentioned burden of proof (see for a similar situation *Basayeva and Others v. Russia*, nos. 15441/05 and 20731/04, §§ 145-155, 28 May 2009).

126. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Tekin v. Turkey*, 9 June 1998, § 52, *Reports of Judgments and Decisions* 1998-IV).

127. The evidence submitted is consistent in describing that after the abduction on 27 February 2000 the servicemen, who had taken Murad Gelayev away, subjected him to beatings with bludgeons and steel rods and cut off his ear. The Court considers that this treatment reached the threshold of "torture" since not only must it have caused him physical pain, it must also have made him feel humiliated and caused fear and anguish as to what might happen to him.

128. Having regard to the Government's failure to plausibly refute the applicants' allegations, the Court finds that there has therefore been a violation of Article 3 of the Convention in respect of Murad Gelayev.

(ii) Effective investigation

129. The Court notes that the applicants complained to the investigators that Murad Gelayev had been ill-treated after his abduction (see paragraphs 32, 35, 52, 56, 57, 63, 64 and 78 above). However, it does not appear that these allegations were properly examined by the investigating authorities.

130. For the reasons stated above in paragraphs 110 and 113 in relation to the procedural obligation under Article 2 of the Convention, the Court concludes that the Government have failed to conduct an effective investigation into the ill-treatment of Murad Gelayev.

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

B. The complaint concerning the ill-treatment of the second and fourth applicants on 27 February 2000

1. The parties' submissions

132. The Government disagreed with these allegations and argued that the investigation had not established that the second and fourth applicants had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. They pointed out that the second applicant's allegations of ill-treatment had been examined and rejected by the investigators as unsubstantiated.

133. The applicants maintained their submission.

2. The Court's assessment

(a) Admissibility

(i) The complaint in respect of the fourth applicant

134. The Court observes that the documents before it indicate in broad terms that the fourth applicant had been hit by the abductors. However, the description of the beating was not specific or detailed enough to draw conclusions concerning the degree of the alleged ill-treatment. In addition, it does not appear that this complaint has ever been raised before the domestic authorities. The Court is therefore unable to establish, to the necessary standard of proof, that the fourth applicant was ill-treated by Russian servicemen, and finds that this complaint has not been substantiated (see, for a similar situation, *Dangayeva and Taramova v. Russia*, no. 1896/04, §§ 103-104, 8 January 2009, *Gaziyeveva and Others v. Russia*, no. 15439/05, §§ 92-93, 9 April 2009 and *Dokayev and Others v. Russia*, no. 16629/05, § 101, 9 April 2009).

135. 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.

(ii) The complaint in respect of the second applicant

136. The Court observes that the complaint under Article 3 of the Convention in respect of the second applicant 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

(i) The alleged ill-treatment

137. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Tekin v. Turkey*, 9 June 1998, § 52, *Reports* 1998-IV).

138. The evidence submitted shows that during the abduction on 27 February 2000 the servicemen who had taken the second applicant's son away subjected her to beatings (see paragraphs 62, 65 and 74 above), as a result of which she applied for medical assistance (see paragraphs 14 and 85 above). The Government contended that the investigators had examined her complaints about the alleged ill-treatment and found them unsubstantiated. In this connection the Court would point out that the documents furnished by the Government demonstrated that the second applicant had indeed applied for medical help on 27 February 2000 and that a number of witnesses had consistently stated to the investigators that she had been ill-treated by the abductors. However, from the documents submitted it is clear that the forensic examination of the second applicant was carried out more than six years after the alleged ill-treatment, in spite of the fact that the authorities had been informed about it at a much earlier stage of the proceedings. In such circumstances, the Court considers that the second applicant's allegation is supported by appropriate evidence and finds that she was subjected to ill-treatment by the abductors on 27 February 2000. The Court further considers that this treatment reached the threshold of "torture" since not only must it have caused her physical pain, it must also have made her feel humiliated and caused fear and anguish as to what might happen to her and her son.

139. Having regard to the Government's failure to plausibly refute these allegations, the Court finds that there has therefore been a violation of Article 3 of the Convention in respect of the second applicant.

(ii) Effective investigation

140. The Court notes that the applicants and their neighbours complained to the investigators that the second applicant had been ill-treated during the abduction of her son (see paragraphs 32 and 62 above). However, it does not appear that these allegations were properly examined by the investigating authorities.

141. For the reasons stated above in paragraphs 110 and 113 in relation to the procedural obligation under Article 2 of the Convention, the Court concludes that the Government have failed to conduct an effective investigation into the ill-treatment of the second applicant.

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

C. The complaint concerning the applicants' mental suffering

1. The parties' submissions

143. The applicants alleged that as a result of their relative's disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention.

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

2. The Court's assessment

(a) Admissibility

145. The Court notes that 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

146. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain

information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that 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. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

147. In the present case the Court notes that the applicants are close relatives of the disappeared person and were present during his abduction or were actively involved in the search for him. For more than ten years they have not had any news of Murad Gelayev. During this period the applicants have applied to various official bodies with enquiries about their family member, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of their relative following his kidnapping. The responses received by the applicants mostly denied that the State was responsible for his arrest or simply informed them that an investigation was ongoing. The Court's findings under the procedural head of Article 2 are also of direct relevance here.

148. In view of the above, the Court finds that the applicants suffered distress and anguish as a result of the disappearance of their family member and their inability to find out what happened to him. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

149. 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

150. The applicants further stated that Murad Gelayev 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

151. The Government asserted that no evidence had been obtained by the investigators to confirm that Murad Gelayev had been deprived of his liberty. He was not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had any information about his detention.

152. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

153. 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

154. 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).

155. The Court has found that Murad Gelayev was apprehended by State servicemen on 27 February 2000 and has not been seen since. His detention was not acknowledged or logged in any custody records and there is no official trace of his subsequent whereabouts or fate. In accordance with the

Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

156. 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 relative had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, to the conduct of the investigation, leave no doubt that the authorities failed to take prompt and effective measures to protect him against the risk of disappearance.

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

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

158. 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

159. 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 could also claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

160. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

161. 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

162. 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, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

164. 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 these provisions (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

165. 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

166. The first and second applicants claimed damages in respect of the loss of earnings by their son after his arrest and subsequent disappearance. The first applicant claimed an amount of 397,746 Russian roubles (RUB), approximately 9,900 euros (EUR), and the second applicant claimed an amount of RUB 428,871 (EUR 10,700) under this head. The total amount claimed by the applicants under this head was EUR 20,600.

167. The first and second applicants claimed that although at the time of his abduction Murad Gelayev worked as a tractor driver, they were unable to obtain payslips for him, and that the calculation should therefore be made on the basis of the subsistence level established by national law. They

calculated his earnings for the period taking into account an average inflation rate of 13.63%. Their calculations were also based on 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").

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

169. 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 elderly parents and that it is reasonable to assume that Murad Gelayev would eventually have had some earnings from which the first and second applicants would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to its conclusions above, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' son and the loss by the two applicants of the financial support which he could have provided. Having regard to the applicants' submissions, the Court awards EUR 18,000 to the applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

170. The applicants claimed a total of EUR 100,000 jointly in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relative Murad Gelayev. In addition, the second and fourth applicants claimed EUR 10,000 each for the ill-treatment to which they had been subjected on 27 February 2000 during the abduction.

171. The Government found the claims exaggerated.

172. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. In addition, it has been established that on 27 February 2000 the second applicant was subjected to ill-treatment prohibited by Article 3. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards EUR 78,000 to the applicants jointly and EUR 10,000 to the second applicant as claimed, plus any tax that may be chargeable thereon.

C. Costs and expenses

173. The applicants were represented by the 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 for the work in the area of exhausting domestic remedies and EUR 150 per hour for the drafting of submissions to the Court. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 6,236.

174. The Government did not dispute the reasonableness of, or justification for, the amounts claimed under this head.

175. 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 v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

176. Having regard to the details of the information and legal representation contracts submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

177. 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 at the same time, that owing to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives.

178. Having regard to the details of the claims 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, with the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

179. 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 join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;

2. *Declares* the complaints under Articles 2, 3 (in respect of the torture of Murad Gelayev following abduction, the second applicant's ill-treatment during the abduction and the applicants' mental suffering), 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Murad Gelayev;
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 Murad Gelayev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of Murad Gelayev;
6. *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 torture of Murad Gelayev;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the second applicant;
8. *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 second applicant's ill-treatment;
9. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;
10. *Holds* that there has been a violation of Article 5 of the Convention in respect of Murad Gelayev;
11. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
12. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
13. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian

roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:

- (i) EUR 18,000 (eighteen thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the first and second applicants jointly;
- (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the second applicant;
- (iii) EUR 78,000 (seventy-eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
- (iv) 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;

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

Done in English, and notified in writing on 15 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President