



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

FIRST SECTION

**CASE OF ARZU AKHMADOVA AND OTHERS v. RUSSIA**

*(Application no. 13670/03)*

JUDGMENT

STRASBOURG

8 January 2009

**FINAL**

*14/09/2009*

*This judgment may be subject to editorial revision.*



**In the case of Arzu Akhmadova and Others v. Russia,**

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 13670/03) 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 eleven Russian nationals, listed below (“the applicants”), on 4 September 2002.

2. The applicants, who had been granted legal aid, 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 P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that their close relatives had disappeared after their abduction by State servicemen.

4. On 15 September 2005 the President of the Chamber decided to grant priority to the present application (Rule 41).

5. By a decision of 10 January 2008, the Court declared the application partly admissible.

6. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are:

1. Ms Arzu Abdulazimovna Akhmadova, born in 1949;
2. Ms Taisa Amadovna Kanayeva, born in 1962;
3. Mr Sharfudin Saydkhasanovich Sambiyev, born in 1955;
4. Mr Akhmat Khuseynovich Chagayev, born in 1952;
5. Ms Kiisa Ibragimovna Minazova, born in 1957;
6. Mr Salman Alaudinovich Magomadov, born in 1951;
7. Mr Khasan Izuyevich Isambayev, born in 1953;
8. Ms Zara Khabibullayevna Magomadova, born in 1979;
9. Ms Luiza Magomedovna Mugayeva, born in 1966;
10. Ms Ira Ilyinichna Dzuchkayeva, born in 1940;
11. Ms Razet Zakayeva, born in 1939.

8. They live in Stariye Atagi, the Chechen Republic.

#### A. Apprehension of the applicants' relatives

*1. The applicants' account*

**(a) Sweeping operation in Stariye Atagi**

9. According to the applicants, from 6 to 11 March 2002 federal military officers, acting under the command of General Borisov, conducted a sweeping operation (*зачистка*) involving around 10,000 servicemen, 50 armoured personnel carriers ("APCs") and several military helicopters in the village of Stariye Atagi. General Moltenskiy, the commander of the United Group Alignment (UGA) in the Northern Caucasus (*командующий Объединенной группой войск на Северном Кавказе*) visited the village twice during the operation.

10. Throughout the said period the military besieged Stariye Atagi and restricted freedom of movement in the village. They organised a filtering point at the poultry yard and the mill at the outskirts of Stariye Atagi where they held residents detained during the operation.

11. In total fifteen men residing in Stariye Atagi were apprehended between 6 and 11 March 2002. Whilst some of them were subsequently released, eleven residents disappeared. The applicants are relatives of nine of those who disappeared.

**(b) Detention of Mr Aslan Akhmadov and Mr Said-Selim Kanayev**

12. The first applicant is the mother of Mr Aslan Akhmadov, born in 1979, who was a student at Grozny University. They and other relatives lived at 261 Nuradilova Street and were neighbours of the second applicant, who resided with her nephew, Mr Said-Selim Kanayev, born in 1983, and other family members at 9 Polevaya Street.

13. On 6 March 2002, between 11 a.m. and 1 p.m., Mr Aslan Akhmadov, Mr Said-Selim Kanayev and several other residents of Stariye Atagi were standing in the street when a group of masked and armed federal servicemen arrived in three APCs, two UAZ cars and an Ural vehicle. The APCs' hull numbers were covered with mud and the vehicles' registration plates were wrapped in a rag. The servicemen started beating Mr Aslan Akhmadov and Mr Said-Selim Kanayev without any explanation. Several women, including Mr Aslan Akhmadov's seventy-five-year-old grandmother, attempted to intervene, but the military threw smoke bombs and fired in front of the women's feet and above their heads.

14. According to the first applicant, while she was at home she heard women and children screaming and rushed into the street. She saw her son and Mr Said-Selim Kanayev on their knees with their hands behind their heads. Both of them were bleeding.

15. Then the military escorted Mr Aslan Akhmadov and Mr Said-Selim Kanayev to their houses. Without introducing themselves or producing any documents to justify their actions, the servicemen searched the houses and the courtyards. The first applicant inquired about the charges against her son, whereupon one of the soldiers replied that they were servicemen of the 405<sup>th</sup> regiment stationed in the village of Khatuni and had an order "to take away everyone they met on their way".

16. According to the first and second applicants, the military promised to release Mr Aslan Akhmadov and Mr Said-Selim Kanayev in exchange for money. The Akhmadov family gave them 200 US dollars (USD), which Aslan Amkhadov's grandmother had been saving for her funeral. One of the servicemen took the money and said into his radio transmitter: "Plus I have their son and money". The Kanayev family gave them USD 300. Having received the money, the military nevertheless took Mr Aslan Akhmadov and Mr Said-Selim Kanayev away "for a computer check of their identities". The first two applicants had no news of their relatives thereafter.

17. The first and second applicants enclosed statements of eight witnesses to confirm their account of the events. Ms Kh. Kh., Ms Kh. Ch., Ms B. Ch., Ms R. S., Ms P. M. and Ms Kh. A., residents of Stariye Atagi, and Ms A. A., Mr Aslan Akhmadov's grandmother, stated that they had witnessed the apprehension of Mr Aslan Akhmadov and Mr Said-Selim Kanayev by servicemen in the circumstances described by the applicants. Ms L. Ya. stated that on the date in question she was selling bread in the village market. At about 12.30 p.m. military vehicles approached the

market. Five minutes later the first applicant had run up and said that her son had been out in one of those vehicles. Then the first applicant, Ms L. Ya. and other residents had asked the officer in charge to release him. The officer had replied that if Mr Aslan Akhmadov was innocent, they would let him go after checking the documents.

**(c) Detention of Mr Amir Pokayev**

18. The third applicant is the father of Mr Amir Pokayev, born in 1982. They lived with other family members at 91 Nuradilova Street.

19. On 6 March 2002, at around 12.30 p.m., three APCs, two UAZ cars and a UAZ armoured vehicle arrived at 91 Nuradilova Street. All the registration numbers were concealed. A group of about twenty servicemen entered the courtyard of the third applicant's house. They were wearing masks and khaki uniforms resembling those of the Main Intelligence Department (*Главное Разведывательное Управление*) and those of the Federal Security Service ("FSB", *Федеральная Служба Безопасности*) and its special units such as *Alfa*, *Don* and others. The servicemen had short Kedr machine-guns, Stechkin pistols, machine guns fastened to their legs and switchblade knives bearing the owners' initials.

20. The military forced all the men of the third applicant's family into the courtyard and checked their papers. The soldiers seized Mr Amir Pokayev's temporary identity document and took it to one of the UAZ cars. Then they said that they would take the third applicant's son with them so as to check his documents through a computer database. The military further stated that they would bring Mr Amir Pokayev back after the check, put him into the APC and left.

21. While his son was being apprehended, the third applicant talked to two officers. One of them introduced himself as Oleg and promised that Mr Amir Pokayev would be released as soon as the operation was over. According to the third applicant, he saw Oleg on TV on 9 and 12 March 2002 standing next to General Moltenskiy, who was giving an interview. The other officer's surname was Tolstykin. The third applicant also saw him on TV in the news report on the military operation in the village of Uluskert. The third applicant submitted that he was able and willing to identify those two officers.

22. On 12 March 2002 the third applicant talked to another resident of Stariye Atagi, Mr R. D., who had been detained on 10 March 2002 and then released. The latter told the third applicant that he had been kept in the basement of the mill and had seen a note scratched on the ceiling to the effect that Mr Amir Pokayev had been held there. On his release Mr R. D. asked a security guard about the detainees who had been held in the basement before him. The guard replied that on 9 March 2002, at around 12 noon, the military had taken them away, having told the guard that they would be releasing them.

23. The third applicant enclosed a statement by Ms V. S., a resident of Stariye Atagi, who had witnessed Mr Amir Pokayev being apprehended by servicemen.

**(d) Detention of Mr Islam Chagayev**

24. The fourth and fifth applicants are husband and wife and live at 97 Nuradilova Street. They are the parents of Mr Islam Chagayev, who was born in 1982 and developed a disability during childhood. At the material time he worked in Nazran, the capital of neighbouring Ingushetia. On 4 March 2002 he came to Stariye Atagi for several days to visit his family.

25. On 6 March 2002, at around 1.30 p.m., the same servicemen who had detained Mr Amir Pokayev entered the Chagayev family house. They requested all the men to go outside. Then the military took Mr Islam Chagayev's documents and escorted him into the street. The fourth applicant's sister attempted to obstruct the detention of Mr Islam Chagayev, but the soldiers explained to her that she should not be afraid and that if her nephew was innocent he would soon be released. The military officers then put Mr Islam Chagayev into an APC, which left in the direction of the mill.

26. Later that day the servicemen returned and searched the house. The next day, after throwing the Chagayev family's belongings around and breaking them, they conducted another search.

27. The fourth and fifth applicants submitted that one of the officers in charge of the operation was the acting commander Zdanovich. They enclosed statements of Ms L. Ch., Mr Islam Chagayev's aunt, and Ms Z. U., a resident of Stariye Atagi who had witnessed Mr Islam Chagayev being apprehended by servicemen and confirmed the applicants' account of the events. Ms V. S. (see paragraph 23 above) also submitted that she had seen Mr Islam Chagayev being taken away by servicemen in the above-described circumstances.

**(e) Detention of Mr Ibragim Magomadov**

28. The sixth applicant is the father of Mr Ibragim Magomadov, born in 1982, who was a student at the Economics and Management College.

29. On 8 March 2002, in the afternoon, a group of federal servicemen wearing camouflage uniforms forcibly entered the Magomadov family house at 19 Beregovaya Street. The sixth applicant, his wife and Mr Ibragim Magomadov were at home at the time.

30. The servicemen did not introduce themselves or present any documents authorising their actions and ordered the sixth applicant, his wife and Mr Ibragim Magomadov to raise their hands and step outside. Then they subjected each member of the Magomadov family to a body search and checked their identity documents.

31. One of the servicemen said into his radio transmitter that there were two men in the house, an old one and a young one. In reply he was ordered

to take away the young one. According to the sixth applicant, the officer was around 25–32 years old and of Slavic appearance. Then another serviceman escorted Mr Ibragim Magomadov, who was wearing black jeans, a jeans shirt, a sports vest and shoes with thick soles, into the street and put him into an APC. This soldier was of Ossetian origin and about 19 years old. The sixth applicant submitted that he was able and willing to identify those two servicemen.

32. The sixth applicant and his wife tried to obstruct the detention of their son, but the military officers threatened them with their firearms. One of the servicemen injured his wife, who had attempted to follow the servicemen and her son. Later that day the military returned to the sixth applicant's house. They were drunk and laughed in reply to the sixth applicant's questions about his son.

**(f) Detention of Mr Magomed Isambayev**

33. The seventh applicant is the father of Mr Magomed Isambayev, born in 1981.

34. On 9 March 2002, at 8.30 a.m., about ten servicemen wearing camouflage uniforms and armed with machine guns entered the house of the Isambayev family at 53 Ambulatornaya Street. The seventh applicant, his wife and their six children, including Mr Magomed Isambayev and the seventh applicant's brother, were inside at the time. Some of the servicemen were masked and none of them had shoulder stripes or any other marks of distinction. According to the seventh applicant, they spoke Russian without an accent.

35. The servicemen did not produce any documents justifying their actions or give any explanations. They woke Mr Magomed Isambayev up and ordered him to show them his identity documents. He explained that he had turned twenty last December and had not yet received the new passport that was due at that age. The servicemen then took the seventh applicant's son with them, having reassured the other members of the Isambayev family that they would release him as soon as they had found out whether he was a local resident.

36. The seventh applicant and his wife attempted to follow Mr Magomed Isambayev, but the military did not allow them to leave the courtyard. The seventh applicant's wife managed to see through the fence that the servicemen then visited three neighbouring houses and took her son to the courtyard of each of those houses. One of the neighbours, a police officer, told the servicemen that he had known Mr Magomed Isambayev since the latter's childhood and that he had never been involved in any offence. It appears that the soldiers ignored this statement.

37. Thereafter two armoured UAZ vehicles and a car resembling an ambulance arrived. Their registration plates were either painted over or



wrapped in a rag. The servicemen put the seventh applicant's son into one of the vehicles and left.

**(g) Detention of Mr Adlan Baysarov**

38. The eighth applicant is the wife of Mr Adlan Baysarov, born in 1972, and the mother of their two minor children. At the material time Mr Adlan Baysarov, a resident of Grozny and a student at the Economics and Management College, was living in Stariye Atagi as an internally displaced person. The Baysarov family lived with their relatives, including the ninth applicant, who was the wife of Mr Adlan Baysarov's cousin, in the premises of an abandoned hospital in Pochtovaya Street.

39. On 10 March 2002 the federal military officers arrived at Pochtovaya Street in three APCs and an UAZ car with tinted windows and entered the house in which Mr Adlan Baysarov and his relatives lived. The soldiers were wearing camouflage uniform and had helmets, portable radio transmitters and sawn-off machine guns. The ninth applicant believed that they represented special task forces.

40. The servicemen searched the house and forced Mr Adlan Baysarov to go outside for a check of his identity documents. The ninth applicant saw two or three servicemen talking to Mr Adlan Baysarov. They intimidated and threatened him, swearing at him. Then they put Mr Adlan Baysarov into an APC, which left an hour and a half later.

41. The ninth applicant submitted that she was able and ready to identify two officers who had apprehended Mr Adlan Baysarov. One of them had a moustache. She also submitted that on 11 March 2002 Mr G., the head of the administration of Stariye Atagi (*председатель сельсовета*), who, according to the ninth applicant, had witnessed the events, had stated that the surname of one of those officers was Suvorov.

**(h) Detention of Mr Timur Khadzhayev**

42. The tenth applicant is the mother of Mr Timur Khadzhayev, born in 1976.

43. On 10 March 2002, in the morning, a group of armed federal servicemen entered the courtyard of the tenth applicant's house at 16 Shkolnaya Street. The tenth applicant, her other son, his wife and their three children, the tenth applicant's daughter and Mr Timur Khadzhayev were in the house.

44. The military officers refused to introduce themselves and ordered the Khadzhayev men to step out into the courtyard for an identity check. The latter complied and produced their documents. The tenth applicant also furnished the military officers with a medical certificate confirming that Mr Timur Khadzhayev had a disability dating from his childhood which consisted in an impaired ability to move his left arm. The servicemen took the certificate as well as the Khadzhayev brothers' identity documents.

According to the tenth applicant, some of the servicemen were masked and they were mostly young, apart from the officer who checked the documents, who was middle-aged.

45. After the check the military escorted the tenth applicant's sons to the courtyard of one of the neighbouring houses and ordered them to get undressed. The soldiers searched the Khadzhayev brothers and beat them. The tenth applicant screamed, asking the military why they were beating her sons. In reply, the servicemen ordered her to keep quiet, threatening to blow up her house. Thereafter they took the tenth applicant's sons and two men who lived in the neighbouring house away. The tenth applicant referred to the account given by her neighbours, who stated that the Khadzhayev brothers were put into an APC. Some time later that day the tenth applicant's other son returned home. He had been beaten. Mr Timur Khadzhayev has been missing since that day.

46. During the detention of her sons the tenth applicant managed to talk to an officer who introduced himself as "Zhigan" and told her that he could be found in the military commander's office (*военная комендатура*). After the sweeping operation was over, the tenth applicant visited the military commander's office and inquired after "Zhigan". She was told that he had already left and that he was a FSB officer.

47. The tenth applicant's account of the events is supported by statements of Ms B. E. and Ms L. M., residents of Stariye Atagi, who had witnessed Mr Timur Khadzhayev being beaten and apprehended by servicemen.

**(i) Detention of Mr Abdul-Naser Zakayev**

48. The eleventh applicant is the mother of Mr Abdul-Naser Zakayev, born in 1965. They both lived at 14 Uchitelskaya Street.

49. On 10 March 2002, at around 3 p.m., Mr Abdul-Naser Zakayev was standing in the street when federal servicemen arrived in two APCs and an UAZ vehicle with tinted windows. The APCs hull numbers were smudged and the UAZ car had no registration plates.

50. When the eleventh applicant's son saw the military approaching, he entered the courtyard of one of the neighbouring houses. The servicemen followed him. They were wearing camouflage uniforms of the armed forces of Russia and had firearms. They spoke Russian. Some of the military had portable radio transmitters. Without introducing themselves or producing any documents to justify their actions, the servicemen threatened to use their firearms and ordered Mr Abdul-Naser Zakayev and two other men who lived in that house to raise their hands and stand against the wall. The soldiers subjected the three men to a body search and checked their passports. Then they took Mr Abdul-Naser Zakayev away "for a computer check of his identity".

51. The eleventh applicant enclosed a statement by Mr R. M., one of the two men whose documents had been checked together with Mr Abdul-Naser Zakayev's, to support her account of the events.

**(j) Other incidents in Stariye Atagi during the sweeping operation of 6-10 March 2002**

52. On 6 March 2002 federal servicemen also detained two other residents of Stariye Atagi – Mr Ismail Dzhamayev, born in 1981 (see *Dzhamayeva and Others v. Russia*, no. 43170/04) and Mr Imran Kuntayev, born in 1976 – who subsequently disappeared. The disappearance of these two people does not form part of the present application.

53. On 7 March 2002 the residents of Stariye Atagi found five bodies in an abandoned house at 81 Nagornaya Street, on the outskirts of the village. According to the eyewitness statements, the house was burnt but there were no bullet holes or shell marks on the walls. The bodies were severely burnt, and only one of them was identified – as Mr Imran Kuntayev. It was impossible to identify the other corpses.

54. According to the ninth applicant, on 9 March 2002 federal military officers seized a red VAZ 21099 car belonging to a resident of Stariye Atagi. The servicemen hitched the car, which was parked in the vicinity of the poultry yard, to an APC and towed it away.

55. The next day the villagers found the vehicle outside Stariye Atagi. It was burnt and flattened. There were three bodies inside. They had been burnt to a degree that made it impossible to identify them. The applicants submitted photographs of the destroyed car with the burnt bodies in it.

56. Before the operation was over, the federal military officers forced the council of elders and the head of administration of Stariye Atagi to sign a declaration to the effect that there had been no incidents during the operation.

57. On 13 March 2002, when the restrictions were lifted, the villagers brought all the unidentified corpses to Grozny. It appears that they did not manage to contact the authorities, and later that day they returned the bodies to Stariye Atagi.

58. On 14 or 15 March 2002 officers of the Grozny district office of the Interior (*РОВД Грозненского района*) took the corpses to the village of Tolstoy-Yurt intending to send them on to Mozdok for a forensic examination.

59. On 1 April 2002 D., an investigator from the Prosecutor's Office of the Chechen Republic, delivered the bodies back to Stariye Atagi. The corpses were wrapped in bags and were decomposed. They remained unidentified. D. explained to the villagers that the prosecutor's office had insufficient funds to conduct the forensic examination of the corpses and that the refrigerators in the forensic examination department in which they had been kept had been out of order.

60. On 3 April 2002 the residents of Stariye Atagi buried the unidentified bodies.

*2. The Government's account*

61. The Government confirmed that a sweeping operation had been conducted in the village of Stariye Atagi from 6 to 13 March 2002. The aim of the operation had been to find and arrest members of illegal armed groups who had abducted and killed four servicemen of the FSB on 12 February 2002.

62. On 7 March 2002, at around 2 p.m., a fight broke out between members of the illegal armed groups and federal servicemen in a house at 81 Nagornaya Street. As a result of the use of small arms and grenade dispensers, four members of the illegal armed group were killed. As the house was set on fire, bodies were severely burnt; after an inspection by law-enforcement officers they were handed over to the local administration for burial.

63. On 9 March 2002 a group of servicemen was fired at from a car that was driving along the road between Grozny and Shatoy within three kilometres of Stariye Atagi. The servicemen fired back. The car was set on fire and the three members of illegal armed groups in it were killed. Their bodies were also severely burnt and handed over to the local administration for burial.

64. After the operation had been completed, village residents lodged applications concerning the apprehension and subsequent disappearance of eleven residents of Stariye Atagi, including nine relatives of the present applicants.

**B. The applicants' search for their relatives**

65. Immediately after their family members had been apprehended, the applicants started searching for them. Before the end of the sweeping operation, the search was mostly conducted by women since it was dangerous for men to be seen in the village.

66. Between 6 and 11 March 2002 the mothers and other women from the families of the apprehended persons repeatedly went to the poultry yard and the mill and inquired after their relatives. One of the servicemen confirmed that all the detained persons were being kept in the mill.

67. On 9 March 2002, in reply to a query by Said-Selim Kanyaev's relatives, an officer of the rank of general, who introduced himself as Nikolay Artemovich (in the applicants' opinion, General N.A. Kolbaskin), stated that he had delivered all the detainees to the police and the FSB.

68. On 11 March 2002 a representative of the federal military stated, in the presence of Mr G., the head of the village administration, that all the detainees had been taken to the village of Tolstoy-Yurt.

69. The applicants lodged numerous separate and joint applications with prosecutors of various levels, public bodies, including the President of Russia, regional administrative authorities, including a deputy of the State Duma, the Director of the FSB, the Head of the General Headquarters of the Armed Forces of Russia (*начальник Генерального штаба Вооруженных сил РФ*), and the Special Envoy of the Russian President in the Chechen Republic for Rights and Freedoms (*Специальный представитель Президента РФ по обеспечению прав и свобод человека и гражданина в Чеченской Республике*). They also visited a number of State bodies. The applicants were supported in their efforts by various human rights NGOs such as the SRJI, Memorial and Human Rights Watch. In their letters to the authorities the applicants and the NGOs referred to the facts of the disappearance of the applicants' relatives, provided a description of them, asked for assistance in searching for them, requested that the applicants be granted victim status and complained of the absence of any developments in the investigation and the lack of information on its progress. The applicants mainly received formal responses informing them that their requests had been forwarded to various prosecutor's offices for examination.

### **C. The official investigation into the disappearance of the applicants' relatives**

70. On 13 March 2002 the Prosecutor's Office of the Grozny District (*прокуратура Грозненского района*) instituted a criminal investigation under Article 105 § 2 (a) of the Russian Criminal Code (murder of two or more persons) into the disappearance of 13 residents of Stariye Atagi, including the applicants' relatives and Mr Ismail Dzhamayev, Mr Imran Kuntayev, Mr V. D. and Mr R. D., between 6 and 11 March 2002. The file was assigned the number 56031.

71. By decision of 13 March 2002 the Government of the Chechen Republic set up a commission for the investigation of the allegations of disappearance of residents of Stariye Atagi during passport checks.

72. On 15 March 2002 the Grozny Prosecutor's Office granted victim status to Mr A. Kh., a brother of Mr Timur Khadzhayev and to Mr S. K., the father of Mr Said-Selim Kanayev, who were questioned on the same date.

73. Mr A. Kh. submitted:

"...[Mr] Timur Khadzhayev was my brother. He was disabled ... He was not a member of any illegal armed group. He had no job. He lived in Nazran as a refugee. He came [to Stariye Atagi to visit his family] on 4 March 2002...

On 10 March 2002, at around 10 a.m., armed men wearing camouflage and helmets rushed into our house through the orchard. One of them was wearing a black sports cap and a black uniform... At that time my mother, my sister, my brother Timur and my wife with the children were in the yard. This man in black uniform took me and Timur outside the gates and checked our passports after which he took us to house

no. 22... There [in the yard] they stood us with our face against the wall and made us stand with our legs apart. They put [Mr R. D.] and [Mr V. D.] alongside us. For an hour and a half they beat us all over our bodies. They did not ask any questions while they did this...

Then one of them, using a portable radio transmitter, asked for our personal details and, after he received a reply, said that everything was fine. They let the three of us go, but took my brother Timur. We still do not know anything about his fate. On the same day they took ... [Mr R. D.] and [Mr V. D.]. Then they let [Mr R. D.] go... and, according to rumour, [Mr V. D.] is being held in Chernokozovo. [Mr R. D.] says he does not know anything about my brother's fate. I don't remember whether [the armed men] called each other by their names. One of them, who was wearing a camouflage uniform and a helmet, had ... a scar across his nose. I could recognise him and the other one who was wearing a black uniform..."

74. Mr S. K. submitted:

"[Mr] Said-Selim Kanayev... is my son.

On 6 March 2002, at around 1 p.m., my son and [Mr] Aslan Akhmadov were taken away when they were in the yard of house no. 19 in Polevaya Street.

[Later] my son was escorted home and [the servicemen] searched our house but did not find anything. I was not at home during the search. When I learnt that my son had been apprehended, I went to the head of the village administration. When I returned home I learnt that... my wife had paid USD 300. It was Said-Selim who had asked for money in the amount of 10,000 roubles to be given to them. [H]e had said that he would then be released. His mother had given him the money. Then one of [the servicemen] had permitted my son to talk to his relatives. He had assured everybody that he would be released after the documents had been checked. Nevertheless, they beat him and took him to the APC and [then] took him away with them. Since then I have not had any news of my son and I still do not know where he is.

On that day there were three APCs and other military vehicles in our street, including an Ural and a UAZ, in which, according to the residents, there was a general who was in charge of the operation in our village.

According to the eyewitnesses, ... the vehicles' registration plates were deliberately covered with mud.

On 11 March, when the military convoy was leaving the village after the operation, the mother of [Mr] Aslan Akhmadov and some other women were standing on a bridge as the convoy passed by. They recognised several people in an APC as the ones who had taken my son Said-Selim and [Mr] Aslan Akhmadov away. They could remember the registration plates of two APCs: no. 225 and no. 207. Some of the servicemen who had apprehended my son and [Mr] Aslan Akhmadov were in those very APCs. One of them, who was the head of the group that had entered our house, I could identify by his height and features. My son was not a member of any illegal armed group... He helped me at home..."

75. On 16 March 2002 victim status was granted to the first applicant, who was questioned on the same date. She submitted:

“...[Mr] Aslan Akhmadov is my son. He was a fourth-year student at the oil college. Throughout the whole year he studied full time and did not skip lectures. He came home two days before the “sweeping” operation and stayed at home. When he left home, he did not go far and always let me or his father know where he was going.

On 6 March, at around 11 a.m. or 12 noon, my son and [Mr] Said-Selim Kanayev were apprehended by servicemen of the Russian federal authorities in the yard of no. 19 Polevaya Street. The people who took them away were accompanied by three APCs, an Ural vehicle, a light grey four-wheel drive UAZ vehicle and a blue UAZ car. The vehicles’ registration plates were deliberately covered with mud...

I was at home and when I heard that my son and [Mr] Said-Selim Kanayev had been apprehended, I went to the street and saw [them] standing at the western side of the neighbours’ mosque with their hands against the wall. One of us was allowed to approach our sons. After a while five or six people surrounded my son Aslan and brought him to our home. Then Aslan told me that they wanted money in the amount of 10,000 roubles and that he knew that we did have this money. My mother-in-law entered the house and came out with USD 200 in two notes. She gave this money to the senior officer. She told him that she had saved this money for her funeral... The officer took the money and promised to let my son go after the documents had been checked. I could recognise this officer; he was around forty years old, about 1.90 metres tall, big and fat, and was wearing sunglasses and a black headscarf; he had a long thin nose. He did not give his name.

They put Aslan in an APC and took him away. In the evening [somebody] brought me his college record book that some women had found in Ambulatoynaya Street. When Aslan was apprehended, he had the record book in his pocket together with his passport.

Since the day of Aslan’s apprehension, I and some other women have stayed [everyday] until evening ... near the filtration point. On 9 [March] I and some other women saw a red VAZ 21099 car being removed from the territory of the filtration point. [I]t was hitched to an APC and taken down the road in the direction of the town. After the sweeping operation this car was found six or seven kilometres away from the village, 500 metres from the road. It was burnt and burnt bodies were in it. To date I have no information about my son and his fate. He was not a member of any illegal armed group...”

76. On 18 March 2002 victim status was granted to the seventh applicant, to Ms R. P., the mother of Mr Amir Pokayev, to Ms L. K., a sister of Mr Imran Kuntayev, and to Ms Kh. D., a relative of Mr V. D.

77. The seventh applicant submitted:

“...On 6 March 2002 a “sweeping” operation started in Stariye Atagi. On 9 March, at 8.30 a.m., the servicemen who conducted the “sweeping” operation took my son, Magomed, away... I still do not know anything about his fate. When he was apprehended he had a birth certificate... with him. He was taken away in two grey UAZ four-wheel-drive vehicles and a green UAZ-469 car. The people who took my son had firearms and were not wearing masks. I could recognise them. They did not find anything at our home. They asked for his personal details using a portable radio transmitter and said that he had to be apprehended... They treated us in a polite manner. They promised that they would check the houses and then let him go. Apart

from him, nobody was taken from this street. We were not let in to the filtration point and I do not know whether he was taken there at all...”

78. Ms R. P. submitted:

“[Mr] Amir Pokayev was my son. On 6 March 2002 a “sweeping” operation started in our village. That day I was in Grozny and came back only in the evening. When I came home, I learnt that at around 1.30 p.m. servicemen had arrived in armoured vehicles with registration plates covered with mud, including three APCs, a green UAZ-469 car and a grey four-wheel-drive UAZ vehicle. They had checked the passports of all the men. They had kept my son Amir’s passport and when my husband had asked what they needed it for, they had explained that they had a computer in the car. There they would check [the passport] and then let [Amir] go. At the same time [Mr I. S.], my husband’s nephew, had been taken from his house and they had both been taken to the filtration point. According to [Mr I. S.], when they had reached [the filtration point], they had been placed in different APCs, following which [Mr I. S.] had been taken to [the filtration point]. He did not know anything about my son’s fate. According to my husband, the name of the person who had taken our son away was Oleg. [O]n 9 March at 6 p.m. “Oleg” was shown in the TV programme *Vesti* next to the UGA commander Moltenskiy. [My husband said] that [Oleg] was wearing a moustache and that he recognised him at once, as well as some other people. All the servicemen who had taken my son away were armed with Stechkin guns, machine guns with short barrels and other weapons; some of them had armoured shields.

On 10 [March] [Mr R. D.], who lived at Shkolnaya Street, was also apprehended and held at the mill. In the pit [he was held in] he saw an inscription “[M.] and Amir were here]”.

My son had nothing to do with members of illegal armed groups; he was repairing his car together with his father and was helping me at home. When they took him away he was wearing a black polo-neck, blue jeans, a beige sweater and dark blue trainers...”

79. On 5 April 2002 the local administration of Stariye Atagi (*местная администрация села Старые Атаги*) issued the applicants with a certificate confirming that their nine relatives and Mr Ismail Dzhamayev had been apprehended and taken away by federal military officers between 6 and 11 March 2002 and had then disappeared. The certificate was signed by the acting head of administration of Stariye Atagi and bore an official stamp of the administration. It read as follows:

“[The present] certificate is issued by the local administration of the village Stariye Atagi in respect of written applications by the village’s residents, whose children were apprehended and taken for passport check in the period between 6 and 10 March 2002 during the special operation conducted by the federal troops.

The local administration thereby confirms that:

1. The following residents of Stariye Atagi were apprehended by the federal troops and taken to an unknown destination:

on 6 March 2002 – Akhmadov Aslan Pavlovichm born in 1982;



– Kanayev Said-Selim Saidovich, born in 1983,

– Dzhamayev Ismail Issayevich, born in 1981,

– Chagayev Islam Akhmadovich, born in 1982,

– Pokayev Amir Sharfudinovich, born in 1982,

on 8 March 2002 – Magomadov Ibragim Salmanovich, born in 1982,

on 9 March 2002 – Isambayev Magomed Khasanovich, born in 1981,

on 10 March 2002 – Zakayev Abdul-Naser Mustapayevich, born in 1965,

– Baysarov Adlan Sharputdinovich, born in 1972,

– Khadzhayev Timur Sultanovich, born in 1976.

2. On 13 March 2002 the Grozny Military Prosecutor's Office instituted criminal proceedings no. 56031 in respect of the disappearance of the above-named persons following their relatives' applications; the investigation is under way.

3. A governmental commission headed by the deputy chairman of the Government of the Chechen Republic, Magomadov Nasrudin Nozhayevich, was created (by governmental decree no. 188-rp of 13 March 2002) [to investigate] the events."

80. On 7 April 2002 the Prosecutor's Office of the Chechen Republic answered a request received from Memorial, stating that on 13 March 2002 a criminal investigation had been instituted under Article 105 § 2 (a) of the Russian Criminal Code into the disappearance of 13 residents of Stariye Atagi, including the applicants' relatives, between 6 and 11 March 2002. The letter also stated that:

"On 9 March 2002, at around 1 p.m., four burnt corpses of unknown persons had been found in the mosque of Stariye Atagi. An ensuing investigation established that on 7 March 2002, at around 1 p.m., fighting had broken out between servicemen and members of illegal armed groups in the courtyard of the house at 81 Nagornaya Street. Both parties opened heavy fire using various kinds of firearm, missile, grenade and grenade launcher with the result that the house was burnt down. On the same day, at around 6 p.m., ... the local residents found and apparently took to the mosque four corpses of unknown persons bearing signs of a violent death. The identification of those persons is being conducted in the context of the criminal proceedings in case no. 56028 instituted by the Prosecutor's Office of the Grozny District under Articles 317, 30, 105 § 2 (a) and (e) of the Russian Criminal Code.

On 9 March 2002, at around 3 p.m., a VAZ 21099 vehicle approached a checkpoint of military unit 3179 situated about 4 km away from the outskirts of Stariye Atagi on the road between Chechen-Aul and Stariye Atagi. In response to [the servicemen's] order to stop the car and produce identity papers, shots were fired from the car. During the shoot-out four passengers were killed and the car was burnt. During the examination of the vehicle the remains of a AKM machine gun, a hand grenade launcher and RGD-5 grenades without fuses were found and seized. In this

connection, on 12 March 2002 the Prosecutor's Office of the Grozny District initiated criminal proceedings in case no. 56030 under Article 317 of the Russian Criminal Code. The identities of the persons killed in the car have not yet been established."

81. The applicants alleged that the VAZ 21099 car referred to in the letter was the one seized by the federal military on 9 March 2002.

82. On 13 May 2002 the Prosecutor's Office of the Grozny District suspended the criminal proceedings in case no. 56031 on account of the failure to establish the identity of the culprits.

83. On 26 June 2002 the Prosecutor's Office of the Chechen Republic quashed the decision to suspend the investigation. On 17 July 2002 the case was taken up again by the Prosecutor's Office of the Grozny District.

84. In letters of 18 July 2002 the Prosecutor's Office of the Chechen Republic notified the first and ninth applicants and Mr Said-Selim Kanayev's mother that on 13 March 2002 criminal proceedings in case no. 56031 had been brought in connection with the disappearance of their relatives and that the preliminary investigation had been resumed on 22 June 2002 and was now in progress.

85. On 25 July 2002 the Prosecutor's Office of the Grozny District informed the military prosecutor of military unit no. 20102 that the preliminary investigation in criminal case no. 56031 had established, *inter alia*, that the servicemen who had detained Mr Said-Selim Kanayev had travelled in APCs with hull numbers 225, 207 and 313, and requested, in this connection, to verify to what detachment and military unit those APCs belonged, the person or persons who had been in charge of the operation and the persons who had formed the crew of the said vehicles.

86. On 21 August 2002 the military prosecutor of military unit no. 20102 informed the applicants that their allegations that their relatives had disappeared during the sweeping operation in Stariye Atagi had been investigated and that criminal proceedings in criminal cases nos. 14/33/0184-02 and 14/33/0185-02 had been instituted in connection with the combat between the servicemen and the members of the illegal armed groups and as regards the discovery of four bodies bearing signs of a violent death in a burnt car on the road from Chechen-Aul to Stariye Atagi. The letter continued as follows:

"The preliminary investigation established that on 9 March 2002, during the special operation in the village of Stariye Atagi, the servicemen of military unit no. 3228 under the command of Senior Lieutenant Z. were checking vehicles going out of the village of Stariye Atagi, since, in accordance with intelligence received, members of illegal armed groups stationed in Stariye Atagi were planning an attack on this road.

At around 3 p.m. a VAZ 21099 car approached the servicemen of military unit no. 3228 under the command of Z. In reply to the servicemen's order to stop, machine-gun fire was opened from the car. The servicemen opened return fire with the result that the car started burning. Subsequently three burnt corpses of unidentified persons were found in it.

On 18 May 2002 the criminal proceedings brought in connection with the servicemen's use of firearms were discontinued...

The preliminary investigation in case no. 14/33/0185-02 established that on 7 March 2002, at around 1 p.m., in the courtyard of the house at 81 Nagornaya Street, in the course of the operation to locate and detain members of illegal armed groups, fighting had broken out between the servicemen of military unit no. 3228 under the command of Major V. and rebel fighters (*boyevik*), the latter having hidden in the house and opened machine-gun fire. The servicemen inflicted fire damage, using, *inter alia*, RPG-26 weapons with the result that the house caught fire. During the ensuing examination of the house four burnt bodies were found, one of whom was identified by [Ms K.] as her brother, [Mr] Imran Kuntayev.

On 10 May 2002 the criminal proceedings brought in connection with the servicemen's use of firearms were discontinued...

Accordingly, no involvement on the part of the servicemen in the abduction of [the applicants' relatives] has ever been established ..."

87. On 9 October 2002 the Prosecutor's Office of the Grozny District sent the case file to the military prosecutor of military unit no. 20102 for investigation. The case file was given the number 34/33/0657-02.

88. By a letter of 14 October 2002 the military prosecutor of military unit no. 20102 replied to a query of the SRJI concerning the search for Mr Said-Selim Kanayev. It stated that, upon the termination of the special operation in the village of Stariye Atagi, the head of the administration, Mr G., signed a statement to the effect that he had no complaints in respect of the servicemen, but lacked information as regards six residents of Stariye Atagi, including Mr Said-Selim Kanayev. The letter went on to say that the investigating authorities had inspected the scene of the crime and questioned the relatives of the missing persons on several occasions so as to verify the version that residents of the village, including Mr Kanayev, had been among the members of the illegal armed groups killed during the combat. However, the identities of the persons killed during the combat had not yet been established. The letter further stated that the allegations to the effect that the servicemen who had detained Mr Said-Selim Kanayev had claimed money for his release were unfounded, and that – according to the information provided by the Chechen Department of the FSB (*Управление ФСБ РФ по Чеченской Республике*) – Mr Said-Selim Kanayev had been a member of an illegal armed group. Finally, the letter re-stated the events of 7 and 9 March 2002 concerning the combat between the federal servicemen and the alleged rebel fighters as this had been described in the letter of the military prosecutor of military unit no. 20102 dated 21 August 2002.

89. On 25 October 2002 the military prosecutor of military unit no. 20102 replied in a similar vein to a query by the NGO Human Rights Watch relating to the identification of the remains found in Stariye Atagi during the sweeping operation of 6 – 11 March 2002. The letter stated, in

particular, that there was no evidence to confirm that the federal military had detained the six residents of Stariye Atagi listed in the statement of the head of administration and that, according to the Chechen Department of the FSB of Russia, Mr Said-Selim Kanayev and Mr Aslan Akhmadov had participated in the activities of illegal armed groups.

90. On 26 October 2002 the military prosecutor of military unit no. 20102 suspended the investigation on account of the failure to establish the identity of the culprits. The decision read, in particular:

“During the period from 6 to 10 March 2002, in the course of a special operation in the village of Stariye Atagi, unidentified servicemen abducted thirteen residents of the village: A. P. Akhmadov, S.-S. Kanayev, I. Dzhamayev, I. Kuntayev, I. A. Chagayev, A. Sh. Pokayev, I. S. Magomadov, M. Kh. Isambayev, A. Baysarov, T. S. Khadzhayev, [V. D.], [R. D.], N. Zakayev.

Upon the completion of the operation on 13 March 2002 [V. D.] and [R. D.] were released. The whereabouts of the other residents of Stariye Atagi who were apprehended has not been established...

In the course of the investigative actions ... person(s) who had committed the offence were not identified...”

91. Relatives of the disappeared persons were notified of the decision to suspend the investigation.

92. In a letter of 11 November 2002 the Prosecutor’s Office of the Chechen Republic informed the OSCE assistance group (*Группа содействия ОБСЕ в Чечне*) that criminal proceedings had been initiated on 13 March 2002 in connection with the disappearance of the applicants’ relatives and an investigation was currently under way.

93. On 14 December 2002 the Military Prosecutor’s Office of the UGA quashed the decision to suspend the investigation for the following reasons:

“The decision was unfounded since in the course of the preliminary investigation not all the investigative measures aimed at identifying persons involved in the disappearance of the named residents of Stariye Atagi were taken. [In particular,] the military units that had conducted the special operation in the village were not identified, the commanders of these units were not questioned, the persons who had conducted a check and apprehended the [disappeared residents] were not identified. Therefore, the preliminary investigation should be reopened.”

94. On 23 December 2002 the case was taken up again by the military prosecutor of military unit no. 20102. Relatives of the disappeared persons were notified of the reopening of the investigation.

95. On 23 January 2003 the military prosecutor of military unit no. 20102 suspended the investigation on account of the failure to identify persons to be charged with the offence. Relatives of the disappeared persons were notified of the decision to suspend the investigation.

96. By letter of 18 March 2003 the military prosecutor of military unit no. 20102 replied to the query lodged by the SRJI on the applicants’ behalf

and stated that in the file of criminal case no. 56031 opened in relation to the abduction of the applicants' relatives there was no indication that the federal servicemen had been involved in the alleged offence.

97. On 2 April 2003 the military prosecutor of military unit no. 20102 notified the SRJI that the case file of the investigation instituted in connection with the disappearance of the applicants' relatives had been returned to the Prosecutor's Office of the Chechen Republic, as the military prosecutor had no competence over the case in the absence of evidence of the military personnel's involvement in the alleged offence.

98. On 24 April 2003 the SRJI requested the Prosecutor's Office of the Chechen Republic to grant the applicants victim status and inform them of the latest developments in the case.

99. On 26 June 2003 the military prosecutor of military unit no. 20102 quashed the decision of 23 January 2003 and reopened the investigation. Relatives of the disappeared persons were notified of the reopening.

100. On 27 July 2003 the military prosecutor of military unit no. 20102 suspended the investigation on account of the failure to identify persons to be charged with the offence. Relatives of the disappeared persons were notified of the decision.

101. On 7 August 2003 the SRJI sent a request to the Military Prosecutor's Office of the UGA. The request read as follows:

"From 6 to 11 March 2002 a special operation of the federal forces was conducted in the village of Stariye Atagi. In the course of the operation representatives of the federal forces apprehended and took to an unknown destination the following residents of Stariye Atagi: A. P. Akhmadov, S.-S. Kanayev, A. Sh. Pokayev, I. A. Chagayev, I. S. Magomadov, M. Kh. Isambayev, A. Baysarov, T. S. Khadzhayev, A. N. Zakayev...

Upon the completion of the operation six unidentified bodies were found in Stariye Atagi. On 14 or 15 March 2002 officers of the Grozny District Office of the Interior took the unidentified bodies away. On 1 April 2002 investigator [U. D.] of the Prosecutor's Office of the Chechen Republic brought the decomposed bodies back to Stariye Atagi. He told the residents of the village that the bodies had been brought from Mozdok where they had allegedly had to be identified by means of a forensic medical examination. However, no examination had taken place because, according to [U. D.], the refrigerators in the bureau of forensic examination had not been working and, furthermore, the prosecutor's office had not had sufficient funds for the examination. After that the residents of Stariye Atagi buried the bodies in a common grave.

...[w]e ask you:

- to grant victim status to [the close relatives] of the disappeared persons and to provide them with copies of the [relevant] decision;

- to provide us with an update of the investigation;

- to inform us whether relatives of the persons apprehended during the special operation in Stariye Atagi between 6 and 11 March 2002 and other eyewitnesses were questioned;

- to order exhumation of the remains of the unidentified bodies buried by the residents of Stariye Atagi in a common grave and refer them to a forensic examination in order to identify them.”

102. On 29 October 2003 the Military Prosecutor’s Office of the UGA quashed the decision of 27 July 2003 to suspend the investigation on the ground that the whereabouts of unspecified witnesses had been established which required further investigative actions. Relatives of the disappeared persons were notified of the reopening.

103. On 1 December 2003 the Military Prosecutor’s Office of the UGA informed the second applicant that the involvement of servicemen in the abduction of the missing persons had not been established. It was also stated that all questions concerning the investigation should be addressed to the Grozny District Prosecutor’s Office.

104. On 9 December 2003 the FSB Department in the Chechen Republic informed the first, second and tenth applicants that it had no information about the whereabouts of A. P. Akhmadov, S.-S. Kanayev, I. Dzhamayev, I. A. Chagayev, A. Sh. Pokayev, I. S. Magomadov, M. Kh. Isambayev, A. Baysarov, T. S. Khadzhayev or A. N. Zakayev. They had neither been placed on a wanted list nor suspected of unlawful activity. They had not been detained by FSB officers either.

105. On 17 January 2004 the Military Prosecutor’s Office of the UGA granted victim status to the tenth applicant.

106. On 16 February 2002 the Ministry of the Interior informed the second applicant that since March 2002 its officers had not conducted any special operations in Stariye Atagi and had not detained any of the village’s residents.

107. On 19 March 2004 the Military Prosecutor’s Office of the UGA suspended the investigation. The decision read:

“During the period from 6 to 13 March 2002 servicemen from the internal troops of the Ministry of the Interior and the Ministry of the Defence, officials of the Ministry of the Interior and the FSB conducted a special operation in the village of Stariye Atagi... aimed at the identification, arrest and extermination of members of an illegal armed group and the search for four servicemen of the FSB who had gone missing.

The special operation was headed by the Deputy Commander of the UGA Major-General G. S. Borisov.

At around 2 p.m. on 7 March 2002 fighting broke out with members of illegal armed groups in Nagornaya Street. Servicemen of the units Alpha and 1 pSpN (1 пСпН) were involved in the fight. The scene of the fighting was blocked by servicemen of the unit 48 PON (48 ПОН). As a result of the fighting six members of the illegal armed group who had resisted with arms were killed. [Their] bodies were severely burnt [and were not] identified.

On 8 March 2002 in Stariye Atagi servicemen of the units 1 pSpN, 348 and 349 OBON (348 и 349 ОБОН) killed two members of an illegal armed group, E. B. and Z. S., who had resisted them with arms.

At around 4 p.m. on 9 March 2002 in Stariye Atagi servicemen of the unit 1 pSpN killed three members of the illegal armed group who were in a car and resisted with arms. [Their] bodies were severely damaged and burnt [and were not] identified.

During the period when the special operation was being conducted unidentified persons in camouflage uniform accompanied by cars and armoured vehicles abducted [the following] residents of Stariye Atagi: A. P. Akhmadov, S.-S. Kanayev, I. Dzhamayev, I. Kuntayev, I. A. Chagayev, A. Sh. Pokayev, I. S. Magomadov, M. Kh. Isambayev, A. Baysarov, T. S. Khadzhayev, A. N. Zakayev.

Taking into account that the term of the preliminary investigation has expired and that the investigative measures that could be taken in the absence of a suspect have been completed, [the investigation should be suspended].”

108. Relatives of the disappeared persons were notified of the decision to suspend the investigation.

109. On 22 May 2004 the Military Prosecutor’s Office of the UGA quashed the decision and reopened the investigation. Relatives of the disappeared persons were informed accordingly.

110. On 24 May 2004 the Military Prosecutor’s Office of the UGA ordered a forensic molecular-genetic expert examination of six unidentified bodies out of the seven bodies buried at the village cemetery.

111. On 17 June 2004 a forensic report was drawn up according to which the remains of the six bodies found at the cemetery were those of Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev, Mr Ibragim Magomadov and Mr Ismail Dzhamayev.

112. On 22 June 2004 the Military Prosecutor’s Office of the UGA again suspended the investigation. The decision read:

“During the period from 6 to 13 March 2002 servicemen from the internal troops of the Ministry of the Interior and the Ministry of the Defence, officials of the Ministry of the Interior and the FSB conducted a special operation in the village of Stariye Atagi... aimed at the identification, arrest and extermination of members of an illegal armed group and the search for four servicemen of the FSB who had gone missing.

According to the materials from the case file, at around 2 p.m. on 7 March 2002 fighting broke out with members of illegal armed groups in Nagornaya Street. Servicemen of the FSB and the military unit 3179 were involved in the fighting. The scene of the fighting was blocked by servicemen of military unit 3656. In the course of the fight six members of the illegal armed group were killed. [Their] bodies were severely burnt. No measures were taken to identify them.

On 8 March 2002 in the same village servicemen of military units 3179, 6779 and 6780 killed two members of the illegal armed group, E. B. and Z. S., who had resisted them with arms.

At around 4 p.m. on 9 March 2002 in Stariye Atagi servicemen of military unit 3179 killed three members of the illegal armed group who were in a car. [Their] bodies were severely damaged and burnt. No measures were taken to identify them.

At the same time, according to applications and statements by residents of Stariye Atagi, during the period when the special operation was being conducted unidentified persons in camouflage uniform accompanied by cars and armoured vehicles abducted A. P. Akhmadov, S.-S. Kanayev, I. Dzhamayev, I. Kuntayev, I. A. Chagayev, A. Sh. Pokayev, I. S. Magomadov, M. Kh. Isambayev, A. Baysarov, T. S. Khadzhayev, A. N. Zakayev.

In the course of the investigation the bodies of the members of the illegal armed groups buried in the cemetery of Stariye Atagi were exhumed and body tissue taken from them; blood samples were taken from relatives of the abducted persons. According to the medical opinion no. 52/2004, the forensic (molecular-genetic) expert examination showed that the remains found at the cemetery were those of I. A. Chagayev, A. Sh. Pokayev, S.-S. Kanayev, I. Dzhamayev, A. P. Akhmadov and I. S. Magomadov...

Taking into account that the term of the preliminary investigation has expired and that the investigative measures that could be taken in the absence of a suspect have been completed, [the investigation should be suspended].”

113. Relatives of the disappeared persons were notified of the decision to suspend the investigation. It appears, however, that they were not provided with copies of the expert reports. On 8 October 2004 the Military Prosecutor’s Office of the UGA invited relatives of Mr Islam Chagayev, Mr Magomed Isambayev and Mr Timur Khadzhayev to study the expert report at the investigation department in Khankala. However, on 12 October 2004 it wrote to relatives of the ten disappeared persons telling them that the investigator’s refusal to provide them with copies of the expert report had been lawful since they could only study the case file upon the completion of the preliminary investigation.

114. On 6 November 2004 the Military Prosecutor’s Office of the UGA quashed the decision and reopened the investigation. Relatives of the disappeared persons were informed accordingly.

115. On 6 December 2004 the Military Prosecutor’s Office of the UGA suspended the investigation again. Apart from restating the facts set out in the decision of 22 June 2004, the decision also contained the following information:

“According to the FSB, Akhmadov and Zakayev were members of an illegal armed group, and the sister of [Mr] Kuntayev, a resident of Stariye Atagi, ... had been trained for a terrorist suicide attack and in the beginning of October 2003 had left for an unknown destination in order to commit an act of terrorism as a “kamikaze”.”

116. Relatives of the disappeared persons were notified of the decision.

117. On 31 December 2005 the Military Prosecutor’s Office of the UGA wrote to the SRJI stating, in particular, that while the seventh and tenth applicants had been granted victim status, the eighth and eleventh applicants



would be granted victim status if it were established that there were grounds for such a decision.

118. According to the Government, on an unspecified date the sixth applicant was granted victim status.

119. On 10 January 2006 the Military Prosecutor's Office of the UGA quashed the decision of 6 December 2004 and reopened the investigation on the following grounds:

“In the course of the investigation significant discrepancies between statements by residents of Stariye Atagi and servicemen concerning the detention of the [disappeared] persons and their possible death as a result of the fighting on 7 and 9 March 2002 ... were not resolved. Witness statements in this regard were not duly verified and recorded.

The investigating authorities did not take comprehensive measures in order to establish the specific places where the bodies of A. P. Akhmadov, S.-S. Kanayev, I. Dzhamayev, I. A. Chagayev, A. Sh. Pokayev, and I. S. Magomadov, who, according to their relatives, had been apprehended together with the other residents of the village, had been found.

Up until now the whereabouts and the fate of other residents of Stariye Atagi who have been missing since the operation was conducted in March 2002 have not been established.

In such circumstances the decision to suspend the preliminary investigation should be quashed and the investigation resumed.”

120. On 7 July 2006 the Military Prosecutor's Office of the UGA ordered a forensic molecular-genetic expert examination in order to establish whether the bodies of Mr Timur Khadzhayev, Mr Magomed Isambayev, Mr Abdul-Naser Zakayev and Mr Shamsudi Baysarov could have been among the unidentified bodies transferred to the 16<sup>th</sup> State Centre of Forensic Expert Examination of the North-Caucasia Military District (*16 ГЦ CM u KЭ CKBO*) after 13 March 2002. The conclusions of the forensic report were negative.

121. On 9 September 2006 the Military Prosecutor's Office of the UGA ordered another forensic molecular-genetic expert examination. The order read, in particular:

“During the period from 6 to 13 March 2002 servicemen from the internal troops of the Ministry of the Interior and the Ministry of the Defence, officials of the Ministry of the Interior, the Ministry of Justice and the FSB conducted a special operation in the village of Stariye Atagi... aimed at the identification, arrest and extermination of members of illegal armed groups. During the operation unidentified persons in camouflage uniform accompanied by cars and armoured vehicles abducted A. P. Akhmadov, S.-S. Kanayev, I. I. Dzhamayev, I. A. Chagayev, A. Sh. Pokayev, I. S. Magomadov, M. Kh. Isambayev, A. Sh. Baysarov, T. S. Khadzhayev, A. N. Zakayev.

In the course of the operation a house situated in Nagornaya Street was shelled and blown up, a red VAZ 21099 car with members of an illegal armed group in it was burned and crushed by an APC.

On 7 March 2002 four burnt bodies were found in the house in Nagornaya Street. On 10 March 2002 three other burnt bodies were found in a car on the outskirts of Stariye Atagi...

Hitherto the whereabouts of A. N. Zakayev, M. Kh. Isambayev, A. Sh. Baysarov and T. S. Khadzhayev have not been established.

On 17 March 2004 two unidentified bodies were found in Stariye Atagi; their hair fascicles were seized."

The experts had to establish whether the hair fascicles could belong to Mr Timur Khadzhayev, Mr Magomed Isambayev, Mr Abdul-Naser Zakayev or Mr Shamsudi Baysarov. The conclusions of the forensic report were negative.

122. In their submissions made prior to the decision as to admissibility of the present application, the applicants submitted that they had no information about any results of the investigation. The tenth applicant also submitted that her requests for a confrontation with the representatives of the federal armed forces had remained unanswered and that the investigating authorities had never questioned her son and daughter who had witnessed the apprehension of Mr Timur Khadzhayev. Together with their submissions made after the decision as to admissibility the applicant enclosed copies of the three reports of forensic molecular-genetic expert examinations.

123. In their submissions made prior to the decision as to admissibility, the Government stated that the case was being investigated by the military prosecuting authorities and that the case file had been given no. 34/00/0014-03. They further noted that the case file contained conflicting statements by the residents of Stariye Atagi and federal servicemen who had participated in the special operation and in the fighting with the members of illegal armed groups. At the same time some of the residents living next to 81 Nagornaya Street confirmed that there had been fighting with members of illegal armed groups who had resisted the servicemen.

124. In their submissions made after the decision as to admissibility, the Government informed the Court that the investigation in case no. 34/00/0014-03 had been discontinued on 26 March 2007 on account of the absence of any indication of a crime allegedly committed by servicemen.

#### **D. Alleged harassment of the first applicant**

125. On 3 June 2005 the SRJI notified the Court that on 31 May 2005 a large group of federal servicemen had arrived in ten UAZ cars and several armoured UAZ vehicles at the first applicant's house in Stariye Atagi. According to eyewitness statements, about 100 military officers surrounded and then searched the first applicant's house and seven neighbouring ones, producing no search warrants. The military had camouflage uniforms and spoke Russian.

126. Having entered the first applicant's house, the military ordered the first applicant's husband, Mr Pavel Akhmadov, to lie down and pointed their rifles at him. The first applicant's youngest son, Mr Rustam Akhmadov, was forced to stand against the wall. The first applicant and other residents attempted to find out the reasons for the servicemen's actions, but the latter ignored their questions.

127. The servicemen had photographs of the first applicant's third son, Mr Magomed Akhmadov, a student at Grozny University, who was away at that time, and seized some more from the applicant's house. They compared the photographs and repeatedly asked the local residents about Mr Magomed Akhmadov's distinguishing marks. After the search the military left. The whole operation lasted for three hours and was well organised.

128. On the same day the military stopped and searched a student shuttle bus running between Stariye Atagi and Grozny. According to the statements of the students who were in the bus at that time, the servicemen inquired after Mr Magomed Akhmadov and asked where he could be found. Following those events, the first applicant's son, Mr Magomed Akhmadov, had to leave his home in Stariye Atagi and was unable to go to Grozny University to take his final exams in June 2005, fearing for his safety.

129. In view of the seriousness of the allegations, on 3 June 2005 the Court invited the Russian Government to submit comments on the SRJI's letter.

130. On 24 June 2005 the Government submitted a reply prepared by the Prosecutor General's Office stating that on 31 May 2005 the federal servicemen had conducted a search for members of the illegal armed groups who had participated in a clash that had taken place in Stariye Atagi on 18 May 2005. During the search the servicemen came to the first applicant's house and inquired where the other members of her family were and whether any members of the illegal armed groups were hiding at her house. According to the Government, the first applicant herself decided to show a photograph of her son to the servicemen and suggested that she bring him to the local police station upon his return from Grozny, but the servicemen insisted that he was not the person they were looking for. They were polite and did not ask any questions concerning the Court.

131. On 19 July 2005 the SRJI furnished the Court with the first applicant's comments and a number of witness statements, including those of the first applicant's daughter. The first applicant stated that on 10 June 2005 a group of servicemen and officers of a district prosecutor's office arrived at her house and interrogated her about the events of 31 May 2005. According to the first applicant, in the group there were several servicemen who had raided her house on 31 May 2005. They asked her why she had complained to higher instances, why she had indicated that there had been persons of Russian origin and whether anybody had been beaten or anything had been stolen from her. According to the first applicant's daughter, Mr Magomed Akhmadov managed to take his final exam on 11 June 2005.

132. On 30 May 2006 the Grozny District Office of the Interior (ROVD) replied in writing to the Chairman of the Bar of the Urus-Martan District. The reply read:

“[We hereby] inform you that Magomed Pavlovich Akhmadov born in 1981 residing in Stariye Atagi ... is not on the wanted list of [the Grozny ROVD]. He is not charged in connection with criminal proceedings conducted by [the Grozny ROVD] or the Grozny District Prosecutor's Office. However, [the Grozny ROVD] has information that Magomed Pavlovich Akhmadov is an active member of an illegal armed group which formed part of a gang under the command of emir Timur Alviyevich Maayev, killed on 9 May 2006. At present Magomed Pavlovich Akhmadov is hiding from the authorities.”

133. On 12 February 2008 the first applicant wrote to the SRJI and said that on 1 February 2008 she and her husband and on 9 February 2008 she and her daughter had been questioned in respect of her son, Mr Magomed Akhmadov. They had been asked, in particular, about his whereabouts and when they had last talked to him.

#### **E. The Court's request for the case file**

134. Despite specific requests made by the Court on several occasions, the Government did not submit a copy of the file in criminal case no. 56031 (at present no. 34/00/0014-03), having provided only copies of decisions to suspend and resume the investigation and to grant victim status and of the records of the interviews held in March 2002. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings. At the same time the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted, with the exception of “the documents

[disclosing military information and personal data of the witnesses], and without the right to make copies of the case file and transmit it to others”.

## II. RELEVANT DOMESTIC LAW

### *1. The Code of Criminal Procedure*

135. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR (Russian Soviet Federative Socialist Republic). On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation.

136. Article 125 of the new CCP lays down a judicial procedure for the consideration of complaints. Orders of an investigator or prosecutor refusing to institute criminal proceedings or terminate a case, and other orders and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede a citizen's access to justice may be appealed against to a local district court, which is empowered to check the lawfulness and grounds of the impugned decisions.

137. Article 161 of the new CCP prohibits the disclosure of information from the preliminary investigation file. Under part 3 of the Article, information from the investigation file may be divulged only with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the parties to the criminal proceedings or prejudice the investigation. Divulging information about the private lives of parties to criminal proceedings without their permission is prohibited.

### *2. The Law on the Suppression of Terrorism*

138. Federal Law no. 130-FZ of 25 July 1998 on the Suppression of Terrorism (*Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом»*) provides as follows:

#### **Section 3. Basic Concepts**

“For the purposes of the present Federal Law the following basic concepts shall be applied:

... ‘suppression of terrorism’ shall refer to activities aimed at the prevention, detection, suppression and minimisation of the consequences of terrorist activities;

‘counter-terrorist operation’ shall refer to special activities aimed at the prevention of terrorist acts, ensuring the security of individuals, neutralising terrorists and minimising the consequences of terrorist acts;

‘zone of a counter-terrorist operation’ shall refer to an individual terrain or water surface, means of transport, building, structure or premises with adjacent territory where a counter-terrorist operation is conducted; ...”

### **Section 13. Legal regime in the zone of an anti-terrorist operation**

“1. In the zone of an anti-terrorist operation, the persons conducting the operation shall be entitled:

... (2) to check the identity documents of private persons and officials and, where they have no identity documents, to detain them for identification;

(3) to detain persons who have committed or are committing offences or other acts in defiance of the lawful demands of persons engaged in an anti-terrorist operation, including acts of unauthorised entry or attempted entry to the zone of the anti-terrorist operation, and to convey such persons to the local bodies of the Ministry of the Interior of the Russian Federation;

(4) to enter private residential or other premises ... and means of transport while suppressing a terrorist act or pursuing persons suspected of committing such an act, when a delay may jeopardise human life or health;

(5) to search persons, their belongings and vehicles entering or exiting the zone of an anti-terrorist operation, including with the use of technical means; ...”

### **Section 15. Informing the public about terrorist acts**

“...2. Information that cannot be released to the public includes:

(1) information disclosing the special methods, techniques and tactics of an anti-terrorist operation; ...

(4) information on members of special units, officers of the operational centre managing an anti-terrorist operation and persons assisting in carrying out such operation.

### **Section 21. Exemption from liability for damage**

In accordance with the legislation and within the limits established by it, damage may be caused to the life, health and property of terrorists, as well as to other legally-protected interests, in the course of conducting an anti-terrorist operation. However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from liability for such damage, in accordance with the legislation of the Russian Federation.”

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

#### A. The parties' submissions

139. In their submissions made prior to the decision as to admissibility of the present application, the Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies, since the applicants had failed to challenge either before a higher prosecutor or a court any actions or omissions of the investigating authorities during the investigation, as provided by Chapter 16 of the Code of Criminal Procedure. They also pointed out that the applicants had not lodged a claim for compensation for non-pecuniary damage under Articles 1067-69 of the Civil Code. In their submissions made after the decision as to admissibility, the Government stated that the applicants had not appealed against the decision of 26 March 2007 to discontinue the investigation.

140. The applicants disputed that objection. They maintained that they had exhausted all domestic remedies which could be adequate and effective. The applicants submitted that the criminal-law remedies invoked by the Government were not effective in the Chechen Republic. They pointed out that applicants in other cases raising similar issues had lodged complaints under Article 125 of the Code on Criminal procedure, but that these had been to no avail. The applicants further argued that the civil-law remedies relied on by the Government could not be considered effective since their outcome would depend on the results of the criminal investigation.

#### B. The Court's assessment

141. The Court refers to its the decision as to admissibility of 10 January 2008 in which it dismissed the Government's objection in the part related to civil-law remedies. However, at the admissibility stage the Court took no decision about the exhaustion of domestic criminal-law remedies, having found that this question was too closely linked to the merits. It will now proceed to 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).

142. The Court observes that the applicants complained to the law-enforcement authorities immediately after the disappearance of their family members and that an investigation has been pending since 13 March 2002.

The applicants and the Government disputed the effectiveness of this investigation.

143. The Court will examine these matters below under the substantive provisions of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

144. The applicants complained under Article 2 of the Convention that some of their family members had disappeared and some had been killed after having been detained by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

### **A. The alleged violation of the right to life of Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov**

#### *1. Arguments of the parties*

145. The applicants reiterated their allegations that their family members had been unlawfully apprehended by representatives of the State and then killed. They alleged that the federal troops had staged a fight at the house in Nagornaya Street and set the VAZ 21099 car on fire to justify the unlawful killing of their relatives.

146. The Government referred to the results of the forensic examination according to which the remains of Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov had been found at the cemetery where the bodies of the illegal armed groups’ members killed on 7 and 9 March 2002 had been buried. They submitted that the above persons had been members of paramilitary groups and had resisted the representatives of federal forces with arms and



that the latter had had to apply force in response which had led to the killing of those persons. The Government stated that the special operation conducted in Stariye Atagi between 6 and 13 March 2002 had been properly planned and carried out by competent State bodies in compliance with the applicable legislation, in particular, with Federal Law no. 130-FZ of 25 July 1998 on the Suppression of Terrorism. They further submitted that the force applied had been “absolutely necessary” within the meaning of Article 2 of the Convention and, therefore, there had been no breach of the above provision.

## 2. The Court’s assessment

### (a) General principles

147. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

148. The situations where deprivation of life may be justified are exhaustive and must be narrowly interpreted. The use of force which may result in the deprivation of life must be no more than “absolutely necessary” for the achievement of one of the purposes set out in Article 2 § 2 (a), (b) and (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. In assessing the proportionality of the force used the Court must take into consideration not only the actions of State agents who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-50, Series A no. 324; *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of*

*Judgments and Decisions* 1997-VI; and *Oğur v. Turkey* [GC], no. 21594/93, § 78, ECHR 1999-III).

**(b) Establishment of the facts**

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

150. The applicants alleged that on 6 March 2002 Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev and Mr Islam Chagayev and on 8 March 2002 Mr Ibragim Magomadov had been apprehended by Russian servicemen and then disappeared. The first, second, third, fourth, fifth and sixth applicants were themselves eyewitnesses to their family members' apprehension. They supported their allegations with statements by other residents of Stariye Atagi who had witnessed the events. The applicants and witnesses provided a coherent account of the special operation conducted in the village on those dates and of the circumstances in which the applicants' relatives had been apprehended. In particular, seven persons confirmed that they had witnessed Mr Aslan Akhmadov and Mr Said-Selim Kanayev being apprehended by federal servicemen. Another resident of Stariye Atagi submitted that she had witnessed Mr Amir Pokayev and Mr Islam Chagayev being apprehended by the servicemen involved in the operation.

151. The Government confirmed that a special operation had been conducted in Stariye Atagi between 6 and 13 March 2002. However, they submitted that servicemen had not apprehended the persons in question. At the same time the Government stated that they were killed by servicemen in fight at a house in Nagornaya Street and in a car from which fire had been opened at servicemen near the road between Grozny and Shatoy. In support of their submissions they referred to the conclusions of the forensic report according to which remains of persons allegedly killed in the above circumstances were those of Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov.

152. The Court notes that despite its repeated requests for a copy of the investigation file in respect of the abduction of the applicants' family members, the Government refused to submit the materials requested having produced copies of decisions to suspend and resume the investigation and to grant victim status and of the records of interviews held in March 2002. They relied on Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-...

(extracts)). In view of this and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect.

153. The Court notes, firstly, that it is common ground between the parties that a special operation was conducted in Stariye Atagi between 6 and 13 March 2002. It further notes that, according to the applicants, Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov were apprehended by servicemen during the operation and taken to an unknown destination. Their account of the events is confirmed by statements of numerous eyewitnesses. Moreover, less than a month after the completion of the operation the administration of Stariye Atagi issued the applicants with a certificate, confirming that their relatives had been apprehended by servicemen during the special operation.

154. The Court notes that the Government, in their observations, repeatedly stated that the applicants' family members had been killed by servicemen in two different fights. However, they barely addressed the applicants' allegations that their relatives had been apprehended by servicemen in the first place. In this respect the Government merely noted that the applicants' version of the events was not confirmed by the findings of the investigation. The Court observes, however, that at the early stages of the investigation the applicants' allegation that their relatives had been apprehended by servicemen was accepted by the investigating authorities. It refers, in particular, to the decision to suspend the investigation of 26 October 2002 (see paragraph 90 above). At the later stages, in particular in the decision to suspend the investigation of 19 March 2004 and the order to conduct a forensic examination of 9 September 2006 (see paragraphs 107 and 121 above) the investigating authorities did not state expressly that the applicants' family members had been apprehended by servicemen, but referred to "unidentified persons in camouflage uniform accompanied by cars and armoured vehicles". However, the investigation failed to identify those persons.

155. The Court observes that the Government thus did not deny that the applicants' relatives had been abducted by armed men and, at the same time, confirmed that a special operation had been conducted in the village on the dates of their abduction. The fact that a large group of armed men in uniform, equipped with military vehicles which could not have been available to paramilitary groups, proceeded during a large-scale special operation conducted in the village by the State's forces in broad daylight to apprehend several persons with a view to checking their identity documents, strongly supports the applicants' allegation that these were State servicemen. It further notes that after six years the domestic investigation has produced no tangible results.

156. The Court reiterates that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of the necessary documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, 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).

157. Taking into account the above elements, the Court is satisfied that the applicants have made out a *prima facie* case that their family members were apprehended by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide a plausible explanation of the events in question, the Court finds it established that Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev were apprehended on 6 March 2002 and Mr Ibragim Magomadov on 8 March 2002 by State servicemen during a security operation in Stariye Atagi.

158. The Court further notes that their burnt bodies, which had been identified more than two years later, had been found at two different locations on 7 and 10 March 2002. According to the Government, they were killed by servicemen during fights which took place on 7 and 9 March 2002 at those locations. The Government, however, presented no documents, such as military reports, which could enable the Court to establish the exact circumstances of the fight the events that took place between the apprehension of the applicants' family members and their death. Furthermore, on the basis of the materials available it appears impossible to establish who precisely was killed on which date and at which location, except that it is clear that Mr Ibragim Magomadov, apprehended on 8 March 2002, could not have been killed on 7 March 2002. However, the Court finds it more appropriate to address this issue below when assessing the State's compliance with Article 2 of the Convention. For the purpose of establishing the facts the Court accepts that Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov were killed by servicemen on 7 and 9 March 2002.

159. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev and Mr Islam Chagayev were apprehended by State servicemen on 6 March 2002 and Mr Ibragim

Magomadov on 8 March 2002 and that they were killed by the servicemen on 7 and 9 March 2002.

**(c) The State's compliance with the substantive obligation under Article 2**

160. The Court reiterates that in addition to setting out the circumstances when deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the relevant international standards (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-XI, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 96, ECHR 2005-VII). Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident (see *Makaratzis*, cited above, § 58). In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *Nachova and Others*, cited above, § 97).

161. In the present case, it has been acknowledged by the Government that Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov were killed by State agents as a result of the intentional use of lethal force against them. The State's responsibility is therefore engaged, and it is for the State to account for the deaths of the applicants' relatives. It is notably for the State to demonstrate that the force used against them by the federal servicemen could be said to have been absolutely necessary and therefore strictly proportionate to the achievement of one of the aims set out in paragraph 2 of Article 2.

162. The Court notes that it is faced with conflicting accounts of the events which led to the killing of the applicants' relatives. According to the applicants, after their family members had been apprehended by the State servicemen on 6 and 8 March 2002, the latter had unlawfully killed them and had staged the fights on 7 and 9 March 2002 so as to justify the killing. According to the Government, the fights on 7 and 9 March 2002 had indeed taken place and the applicants' relatives had been killed as a result of the use of force which was no more than "absolutely necessary". The Court will address these conflicting accounts below.

163. The Court notes firstly that it is aware of the difficult situation in the Chechen Republic at the material time, which called for exceptional measures on the part of the State to suppress the illegal armed insurgency (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 178, 24 February 2005, or *Khatsiyeva and Others v. Russia*, no. 5108/02,

§ 134, 17 January 2008). It also does not overlook the fact that an armed conflict, such as that in Chechnya, may entail developments to which State agents are called upon to react without prior preparation. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the obligation to protect the right to life must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see, *mutatis mutandis*, *Makaratzis*, cited above, § 69, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 86, ECHR 2000-III).

164. Turning to the facts of the present case, the Court notes the Government's contention that the special operation conducted in Stariye Atagi between 6 and 13 March 2002 had been properly planned and carried out in compliance with the applicable legislation, in particular with Federal Law no. 130-FZ of 25 July 1998 on the Suppression of Terrorism. The Court leaves open the question whether the law in question constituted an appropriate legal framework for the use of force and contained clear and sufficient safeguards to prevent arbitrary deprivation of life since, in any event, the Government failed to demonstrate that the circumstances in which the applicants' relatives had been killed rendered the use of lethal force against them inevitable.

165. The Court notes that in their observations on the admissibility and merits of the present application of 13 January 2006 the Government provided a concise description of the fights on 7 and 9 March 2002 reproduced in paragraphs 62-63 above. The circumstances of the fights were also outlined in certain decisions and letters by the prosecuting authorities but not in much more detail. However, no documents pertaining to the conduct of the special operation as a whole and these two fights in particular have been submitted to the Court. In particular, no military reports on the conduct of the fights with a detailed description of circumstances which warranted the use of lethal force, orders made in this respect and actions of the servicemen have been made available to the Court. No records of questioning of servicemen who took part in the fights, if such questioning ever took place, have been presented either. Such scarce information on the circumstances in which, according to the Government, the applicants' relatives were killed clearly could not constitute sufficient justification for the use of lethal force.

166. In particular, as regards the events of 7 March 2002 in a house at 81 Nagornaya Street, the Government submitted that "a fight broke out" between members of the illegal armed groups and federal servicemen. As a result of the use of small arms and grenade dispensers, four members of the illegal armed group were killed and the house was set on fire. In the letter of the Prosecutor's Office of the Chechen Republic of 7 April 2002 it was stated that "both parties opened heavy fire using various kinds of firearm,

missile, grenade and grenade launcher with the result that the house was burnt down”. The letter of the military prosecutor of military unit no. 20102 of 21 August 2002 stated that the fighting had broken out between the servicemen of military unit no. 3228 and rebel fighters, the latter having hidden in the house and opened machine-gun fire. The servicemen had inflicted fire damage, using, *inter alia*, RPG-26 weapons with the result that the house caught fire. During the ensuing examination four burnt bodies had been found in the house. According to the decision of the Military Prosecutor’s Office of the UGA to suspend the investigation of 19 March 2004, the scene of the fighting at 81 Nagornaya Street had been blocked by servicemen of the unit 48 PON (48 ПОН) and servicemen of the units Alpha and 1 pSpN (1 пСпН) had been involved in the combat. As a result of the fighting six members of the illegal armed group who had resisted with arms had been killed. According to another decision to suspend the investigation of the Military Prosecutor’s Office of the UGA, issued on 22 June 2004, the scene of the fighting had been blocked by servicemen of military unit 3656 and servicemen of the FSB and military unit 3179 had been involved in the combat, as a result of which six members of the illegal armed group had been killed. In the decision of the Military Prosecutor’s Office of the UGA of 9 September 2006 to conduct a forensic examination it was stated, *inter alia*, that in the course of the special operation conducted in Stariye Atagi a house situated in Nagornaya Street had been shelled and blown up and four burnt bodies were then found in it.

167. The Court notes, firstly, that the Government’s submissions and the letters and decisions of the prosecuting authorities contain conflicting information on the number of persons killed in the fight of 7 March 2002, on the military units involved in it as well as on the matter of whether the house was set on fire or blown up. Apart from this, the Court observes that the information provided does not permit it to establish conclusively who started the fight and which party used which particular weapons, the intensity of fire opened from either side, the exact number of persons involved in the combat on each side or the duration and development of the combat. In the absence of these key elements it is impossible to conclude that the situation required the use of lethal force that led to the applicants’ relatives’ killing. Accordingly, even assuming that they were killed in the circumstances described by the Government, the latter failed to justify that the use of force was no more than “absolutely necessary”.

168. As regards the events of 9 March 2002, according to the Government a group of servicemen was fired at from a car that was driving along the road between Grozny and Shatoy within three kilometres of Stariye Atagi. As the servicemen fired back, the car was set on fire and the three members of illegal armed groups in it were killed. The letter of the Prosecutor’s Office of the Chechen Republic of 7 April 2002 stated in this

connection that on 9 March 2002 a VAZ 21099 car had approached a checkpoint of military unit no. 3179 situated about 4 km away from the outskirts of Stariye Atagi on the road between Chechen-Aul and Stariye Atagi. In response to the order to stop the car and produce identity papers, shots had been fired from the car. During the shoot-out four passengers had been killed and the car had been burnt. In the course of the subsequent examination of the car the remains of an AKM machine gun, a hand grenade launcher and RGD-5 grenades without fuses had been found and seized. According to the letter of the military prosecutor of military unit no. 20102 of 21 August 2002, at around 3 p.m. on the date in question a VAZ 21099 car had approached the servicemen of military unit no. 3228. In reply to their order to stop, machine-gun fire had been opened from the car. The servicemen had opened return fire which had set the car on fire. Subsequently three burnt corpses of unidentified persons had been found in it. The decision of the Military Prosecutor's Office of the UGA to suspend the investigation of 19 March 2004 stated, *inter alia*, that at around 4 p.m. on 9 March 2002 in Stariye Atagi servicemen of the unit 1 pSpN had killed three members of the illegal armed group who had been in a car and resisted with arms. In the decision of the Military Prosecutor's Office of the UGA of 9 September 2006 to conduct a forensic examination it was noted that in the course of the special operation conducted in Stariye Atagi a red VAZ 21099 car with members of an illegal armed group in it had been burnt and crushed by an APC.

169. The Court notes the discrepancies contained in the Government's submissions and the letters and decisions of the prosecuting authorities concerning the number of persons killed in the car on 9 March 2002. It further observes that, as can be seen from the information submitted, the fire was opened from the car which disregarded the servicemen's order to stop and present identity papers. The Court accepts that the opened fire must have posed a danger to the lives of the servicemen at the checkpoint and might have warranted the use of arms in response. However, the information available does not permit it to establish conclusively which weapons were used by the servicemen and which particular actions led to the death of the applicants' relatives, thus precluding the Court from finding that the use of lethal force was in compliance with Article 2 of the Convention. It notes, in particular, that it follows from the decision of the Military Prosecutor's Office of the UGA of 9 September 2006 that the car with several persons in it, which had already been shot at and set on fire, was crushed by an APC, which is further supported by photographs of the car submitted by the applicants. No explanation has been provided to the Court as to why an action as drastic as this was necessary in the circumstances. Accordingly, with regard to this incident as well, the Court considers that even assuming that the applicant's family members were killed in the circumstances described by the Government, the latter have not



justified their submission that the use of force was no more than “absolutely necessary”.

170. The Court observes that the applicants contested the Government’s account of the events and claimed that the servicemen had staged both fights so as to justify the unlawful killing of their relatives. In particular, they claimed that the red VAZ 21099 car from which, according to the Government, fire had been opened at the checkpoint on 9 March 2002 had been seized from a resident of Stariye Atagi on that date by the servicemen themselves. The also maintained that there had been no bullet holes or shell marks on the walls of the house at 81 Nagornaya Street when the burnt bodies had been found there. However, the Court does not find it necessary to examine specifically these allegations since it has established above that, even assuming the Government’s version of the events to be correct, they have failed to justify that the lethal force was used in compliance with Article 2 of the Convention. Nevertheless, it cannot but be perplexed, in view of its finding in paragraph 157 above that the applicants’ family members were apprehended by State servicemen and in the absence of any information provided by the Government on their subsequent release or escape, by the submission that – despite being in detention – they somehow managed to procure firearms and a car and engage, in fights with federal forces. No explanation has been provided by the Government in this respect.

171. The Court finds that in the absence of information on the crucial elements mentioned in paragraphs 165-170 above the Government cannot be regarded as having accounted for the use of lethal force in the circumstances of the present case. It is therefore not persuaded that the killing of Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov constituted a use of force which was no more than absolutely necessary in pursuit of the aims provided for in paragraph 2 of Article 2 of the Convention.

172. There has accordingly been a violation of Article 2 of the Convention in this respect.

**B. The alleged violation of the right to life of Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev**

*1. Arguments of the parties*

173. The applicants maintained their complaint that their family members had been apprehended by State servicemen during the security operation and should be presumed dead in the absence of any reliable news of them for several years.

174. The Government argued that the complaint was unfounded. They referred to the fact that the investigation had obtained no evidence to the

effect that these persons were dead, or that representatives of the federal forces had been involved in their abduction or alleged killing. They submitted at the same time that in the course of the investigation it had been established that the above persons had been members of illegal armed groups.

## *2. The Court's assessment*

### **(a) General principles**

175. The general principles are cited in paragraphs 147-149 above.

### **(b) Establishment of the facts**

176. The applicants alleged that on 9 March 2002 Mr Magomed Isambayev and on 10 March 2002 Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev had been apprehended by Russian servicemen and then disappeared. The seventh, ninth and tenth applicants were eyewitnesses to their family members' apprehension. The applicants supported their allegations with statements by other residents of Stariye Atagi who had witnessed the events. The applicants and witnesses provided a coherent account of the special operation conducted in the village on those dates and of the circumstances in which the applicants' relatives had been apprehended. In particular, two persons confirmed that they had witnessed Mr Timur Khadzhayev being apprehended by the servicemen involved in the operation, and his brother, who had also been apprehended by the servicemen but released soon thereafter, supported their submissions. Another resident of Stariye Atagi, whose documents had been checked together with Mr Abdul-Naser Zakayev's, confirmed the eleventh applicant's account of the latter's apprehension by the servicemen.

177. The Government confirmed that a special operation had been conducted in Stariye Atagi between 6 and 13 March 2002. Furthermore, they did not deny that the applicants' relatives had been abducted by unknown armed men on the dates indicated by the applicants. However, the Government referred to the absence of conclusions from the pending investigation and denied that the State was responsible for the disappearance of the applicants' family members.

178. The Court has already noted in paragraph 152 above that despite its repeated requests the Government have refused to provide a full copy of the investigation file into the abduction of the applicants' family members and it has found the explanation provided for the refusal insufficient. It has also found that it can draw inferences from the Government's conduct in this respect.

179. The Court reiterates that it is common ground between the parties that a special operation was conducted in Stariye Atagi between 6 and

13 March 2002. It further notes that, according to the applicants, Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev were apprehended by servicemen during the operation and taken to an unknown destination. Their account of the events is confirmed by statements of eyewitnesses and by a certificate issued by the administration of Stariye Atagi less than a month after the completion of the operation.

180. The Court observes that the Government thus did not deny that the applicants' relatives had been abducted by armed men and, at the same time, confirmed that a special operation had been conducted in the village on the dates of their abduction. Similarly to its findings in paragraph 155 above, the Court considers that the fact that a large group of armed men in uniform, equipped with military vehicles, during a special operation conducted in the village by the State's forces, proceeded in broad daylight to apprehend several persons with a view to checking their identity documents, strongly supports the applicants' allegation that these were State servicemen. It further notes that after six years the domestic investigation has produced no tangible results.

181. The Court is thus satisfied that the applicants have made out a *prima facie* case that their family members were apprehended by State servicemen. Having regard to the principle cited in paragraph 156 above, it considers that the burden of proof should therefore be shifted to the Government. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide a plausible explanation of the events in question, the Court finds it established that Mr Magomed Isambayev was apprehended on 9 March 2002 and Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev on 10 March 2002 by State servicemen during a security operation in Stariye Atagi.

182. The Court further notes that there has been no reliable news of the applicants' family members since March 2002. Their names have not been found in any official detention facilities' records. Lastly, the Government have not submitted any explanation as to what had happened to them after their apprehension.

183. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts)), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of the applicants' relatives

or any news of them for over six years corroborates this assumption. Furthermore, the Government have failed to provide any explanation for their disappearance, and the official investigation into their abduction, which has gone on for several years, has produced no tangible results.

184. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Mr Magomed Isambayev was apprehended by State servicemen on 9 March 2002 and Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev on 10 March 2002 and that they must be presumed dead following their unacknowledged detention.

**(c) The State's compliance with the substantive obligation under Article 2**

185. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

186. The Court has already found it established that the applicants' family members must be presumed dead following their unacknowledged apprehension by State servicemen. Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, it follows that liability for their presumed death is attributable to the respondent Government.

187. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev.

**C. The alleged inadequacy of the investigation**

*1. Arguments of the parties*

188. The applicants claimed that the authorities had failed in their obligation to carry out an effective investigation into the circumstances of the disappearance of the applicants' family members. In particular, it had been pending for several years without any tangible results so far, having been repeatedly suspended and reopened. They further noted that those applicants who had not been granted victim status in the proceedings had not even had a formal opportunity to have access to the information

concerning the investigation. The applicants argued that their right to be informed of the progress of the investigation had been violated, in particular, by the State's refusal to submit the investigation file to the Court. They further submitted that they had no information about the investigating measures that had been taken by the authorities, in particular, whether all witnesses to the unlawful detention of their relatives, including servicemen, had been identified and questioned.

189. The Government submitted that a criminal investigation into the disappearance of the residents of Stariye Atagi had been opened promptly on 13 March 2002 and complied with Article 2 of the Convention. The investigating authorities had carried out a large amount of work. The investigation was complicated by the need to eliminate discrepancies between the witnesses' statements concerning the underlying events, especially since some of them resided in different regions, and by the complexity of expert examinations and tests.

## *2. The Court's assessment*

### **(a) General principles**

190. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [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 (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

### **(b) The State's compliance with the procedural obligation under Article 2**

191. The Court notes at the outset that the documents from the investigation file were not disclosed by the Government, apart from several

procedural decisions and records of questioning. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress submitted by the Government.

192. Turning to the facts of the case, the Court notes that the applicants' relatives were apprehended on 6, 8, 9 and 10 March 2002 during a special operation conducted in Stariye Atagi between 6 and 13 March 2002. The investigation was opened on 13 March 2002. The Court is therefore satisfied that the authorities' reaction was sufficiently prompt.

193. The Court further notes that between 15 and 18 March 2002 the investigating authorities granted victim status to several applicants and to other relatives of the disappeared persons. They also questioned the first and seventh applicants, the father of Mr Said-Selim Kanayev, the brother of Mr Timur Khadzhayev who had been apprehended with him but then released and the mother of Mr Amir Pokayev. However, it appears that after that a number of crucial steps were either delayed or not taken at all.

194. The Court observes firstly that the bodies of the applicants' relatives which were severely burnt were not identified until more than two years after the events which led to their death. Not only did not the authorities take any steps to identify the bodies of their own motion, but even after the identification was requested by the applicants, it was refused (see paragraphs 57-59 above) and the bodies remained unidentified until 17 June 2004. The authorities' failure to identify the bodies for over two years not only protracted the investigation but made it impossible even to establish the exact date of death in respect of each of the applicants' relatives concerned.

195. From the materials available to the Court it appears that a number of essential steps were never taken. Most notably, it appears that apart from the first and seventh, no other applicants were questioned. No witnesses, including those whose statements were enclosed by the applicants with the present application, were questioned either. No information, let alone any documents, have been provided to the Court as to which servicemen, if any, were questioned in relation to the incident at 81 Nagornaya Street on 7 March 2002 and the incident with the car at the checkpoint on 9 March 2002. Apart from these incidents, it appears that no servicemen were questioned with regard to the applicants' allegations that their relatives had been abducted in the course of the special operation in Stariye Atagi, including those whose names or descriptions were provided by the applicants. Likewise, there is no evidence that the applicants' homes or the places where Mr Aslan Akhmadov, Mr Said-Selim Kanayev and Mr Abdul-Naser Zakayev were apprehended were ever examined. It appears that the filtering point at the poultry yard and the mill on the outskirts of the village were not examined either. Furthermore, it appears that the officials of the local administration which provided the applicants with a certificate

confirming that their relatives had been apprehended by servicemen during the special operation were never questioned. The Court further notes that on 25 July 2002 the Prosecutor's Office of the Grozny District asked the military prosecutor of military unit no. 20102 to verify to what detachment and military unit belonged the APCs with hull numbers 225, 207 and 313 in which, according to the interim results of the investigation, had travelled the servicemen who had detained Mr Said-Selim Kanayev. The Court has no information that any investigative steps were taken in this respect. Lastly, it notes that two forensic molecular-genetic expert examinations that were intended to establish whether the bodies of Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev could have been among the unidentified bodies transferred to the 16<sup>th</sup> State Centre of Forensic Expert Examination or whether the two unidentified bodies found in Stariye Atagi on 17 March 2004 could have been theirs were ordered and carried out only in 2006, that is, four years after their disappearance and two years after the two unidentified bodies had been found.

196. The Court observes that in the present case the investigating authorities not only did not comply with the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II), but failed to take the most elementary investigative measures.

197. The Court further notes that, according to the information available, only the first, sixth, seventh and tenth applicants were granted victim status. It also notes that the father of Mr Said-Selim Kanayev and the mother of Mr Amir Pokayev were granted victim status as well. However, even those applicants who were granted victim status were not informed of significant developments in the investigation apart from several decisions to suspend and resume it and other applicants were not granted victim status at all. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny and to safeguard the interests of the next of kin in the proceedings.

198. Lastly, the Court notes that the investigation was adjourned and resumed several times. Such a manner of proceeding was conducive neither to ensuring the accountability of the servicemen involved in the incidents of 7 and 9 March 2002 nor requiring those responsible for the abduction of the applicants' relatives to establish the fate of those among them whose bodies have not been found.

199. Having regard to the Government's preliminary objection that was joined to the merits of the complaint, 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 the actions or omissions of the investigating authorities before a court.

Furthermore, the investigation was resumed by the prosecuting authorities themselves a number of times due to the need to take additional investigative measures (see, in particular, paragraphs 93 and 119). However, they still failed to investigate the applicants' allegations properly. Moreover, owing to the time that had elapsed since the events complained of, certain investigative steps 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, including the possibility to appeal against the decision of 26 March 2007 to discontinue the investigation, would have had any prospects of success. Therefore, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection in this respect.

200. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the abduction and subsequent death of Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov and the disappearance of Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev, in breach of Article 2 under its procedural head. Accordingly, there has been a violation of Article 2 on this account also.

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

201. The applicants further complained that, as a result of their relatives' abduction and the State's failure to investigate those events properly, they had endured mental suffering in breach of Article 3 of the Convention, which reads:

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

202. The applicants maintained their complaint.

203. The Government accepted that the applicants must have suffered as a result of their relatives' death and disappearance. However, since the involvement of State agents in the abduction of Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev had not been established and the force used against Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov had been no more than “absolutely necessary”, the State could not be held responsible for their suffering.

204. 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 applicant 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*, cited above, § 358, and *Imakayeva*, cited above, § 164).

205. The Court notes that the first, third, fourth, fifth and sixth applicants are parents of Mr Aslan Akhmadov, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov and the second applicant is an aunt of Mr Said-Selim Kanayev. Most of them were eyewitnesses to their family members’ apprehension. After unidentified bodies had been found in Stariye Atagi following the incidents on 7 and 9 March 2002, the applicants themselves tried to secure their identification. However, despite their efforts not only did the authorities refuse to conduct a forensic examination, but on 1 April 2002 returned the severely decomposed bodies wrapped in bags to the applicants on the ground that the refrigerators in the forensic examination department had been out of order. The applicants had to bury the bodies themselves. Over two years later, after the forensic examination had eventually been conducted, they learned that those were the disfigured remains of their family members. In the Court’s view, such conduct of the authorities demonstrated an astonishing lack of care and respect for both the persons killed and their relatives and amounted to inhuman and degrading treatment contrary to Article 3.

206. The Court further notes that the seventh, eighth, ninth, tenth and eleventh applicants are close relatives of Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev. Most of them were eyewitnesses to their family members’ apprehension. For more than six years they have not had any news of them. During this period the applicants have applied to various official bodies with enquiries about their relatives, both in writing and in person. Despite their attempts, they have never received any plausible explanation or information as to what became of their family members following their detention. The responses received by the applicants mostly denied that the State was responsible for their relatives’ detention or simply informed them that an investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

207. In view of the above, the Court finds that the applicants suffered, and continue to suffer, distress and anguish as a result of the disappearance

of their family members and their inability to find out what happened to them. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman and degrading treatment contrary to Article 3.

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

#### IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

209. The applicants further stated that their family members had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

210. The applicants contended that their relatives’ detention did not fall under any of the exceptions provided for by Article 5 § 1 of the Convention. Moreover, although they had been detained by State agents, the applicants had never been provided with any information about their whereabouts and, therefore, their detention should be regarded as unacknowledged.

211. In their submissions made prior to the decision as to admissibility, the Government stated that in the circumstances of the case and in view of discrepancies between the witnesses’ statements it was not possible to make any final conclusions as regards the alleged breach of Article 5 of the

Convention. In their submissions made after the decision as to admissibility, the Government submitted that, inasmuch as the complaint concerned Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov, the domestic investigation had not established that they had been detained. According to the findings of the investigation, they had been killed in combats with servicemen. Accordingly, no issue arose under Article 5 of the Convention in this respect. Inasmuch as the complaint concerned Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev, it appeared impossible to establish their whereabouts. They were not held in either remand or administrative or correctional detention facilities.

212. 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).

213. The Court has found it established that State servicemen apprehended Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev and Mr Islam Chagayev on 6 March 2002, Mr Ibragim Magomadov on 8 March 2002, Mr Magomed Isambayev on 9 March 2002, Mr Adlan Baysarov, Mr Timur Khadzhayev, and Mr Abdul-Naser Zakayev on 10 March 2002. Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev and Mr Ibragim Magomadov were killed by servicemen on 7 and 9 March 2002, and no information has been provided by the State concerning their possible release and escape between the dates of their apprehension and the dates of their death. Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of the whereabouts of the five first-mentioned persons between their apprehension and killing; nor is there any information about the subsequent whereabouts or fate of the four last-mentioned persons. 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 and 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).

214. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relatives had been apprehended and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev against the risk of disappearance.

215. Consequently, the Court finds that Mr Aslan Akhmadov, Mr Said-Selim Kanayev, Mr Amir Pokayev, Mr Islam Chagayev, Mr Ibragim Magomadov, Mr Magomed Isambayev, Mr Adlan Baysarov, Mr Timur Khadzhayev and Mr Abdul-Naser Zakayev were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

#### V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

216. 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.”

217. The applicants argued that in their case the State had failed to conduct an adequate investigation into the disappearance of their family members, which undermined the effectiveness of other possible remedies.

218. The Government submitted that four of the applicants had been granted victim status and could actively participate in the investigation and appeal against actions or omissions of the investigating authorities in court, which they had failed to do. Furthermore, they could have filed claims in respect of non-pecuniary damage, which they had not done either. The Government argued that the applicants thus had effective domestic remedies in respect of their complaints. They referred, in particular, to several decisions by courts of the Chechen Republic delivered in other cases upholding complaints concerning certain actions of investigating authorities or awarding non-pecuniary damages.

219. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment

of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

220. In view of the Court's above findings with regard to Article 2, this complaint is clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

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

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

223. As regards the applicants' reference to Article 3 of the Convention, the Court notes that it has found a violation of the above provision on account of the applicants' mental suffering as a result of, on the one hand, the authorities' failure to identify the bodies of the family members of the first, second, third, fourth, fifth and sixth applicants for over two years and their conduct in this respect and, on the other hand, the disappearance of relatives of the seventh, eighth, ninth, tenth and eleventh applicants, their inability to find out what had happened to them and the way the authorities handled their complaints. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in conjunction with Article 3 of the Convention.

224. As regards the applicants' reference to Article 5 of the Convention, the Court notes that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a violation of Article 5 of the Convention by unacknowledged detention, the

Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

## VI. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

225. Having regard to the incidents which allegedly took place in 2005-2008, the first applicant complained that the respondent Government had failed to comply with their obligations under Article 34 of the Convention, the relevant parts of which provide as follows:

“The Court may receive applications from any person ... claiming to be the victim of a violation ... of the rights set forth in the Convention ... The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

226. The first applicant maintained that the her questioning and that of her husband and daughter had been caused by her numerous applications to State bodies in connection with the abduction of her son, Mr Aslan Akhmadov.

227. The Government submitted that there was no connection between the questioning concerning the first applicant’s son, Mr Magomed Akhmadov, and her application before the Court concerning her other son, Mr Aslan Akhmadov. Furthermore, even her own description of the questioning in 2008 does not disclose any indication of intimidation towards her. In the Government’s view, the complaint is unsubstantiated.

228. In its decision of 10 January 2008 as to the admissibility of the present application the Court decided to adjourn the examination of this complaint until the examination of the merits of the application.

229. The Court observes that from the first applicant’s own account of the events in 2005-2008 it appears that the servicemen and officers of law-enforcement agencies enquired only about her son Mr Magomed Akhmadov. There is no evidence that she was ever questioned in relation to the present application which concerns her other son, Mr Aslan Akhmadov, or that any pressure was put on her in this regard. Therefore, the Court finds the complaint unsubstantiated.

230. Accordingly, there has been no failure to comply with the respondent State’s obligations under Article 34 of the Convention.

## VII. ALLEGED VIOLATION OF ARTICLE 38 § 1 (a) OF THE CONVENTION

231. The applicants argued that the Government’s failure to submit the documents requested by the Court at the communication stage disclosed a failure to comply with their obligations under Article 38 § 1 (a) of the Convention, which provides, in so far as relevant:

“1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

...”

232. The applicants invited the Court to conclude that the Government’s refusal to submit a copy of the entire investigation file in response to the Court’s requests was incompatible with their obligations under Article 38 of the Convention.

233. The Government reiterated that the submission of the case file would be contrary to Article 161 of the Code of Criminal Procedure. They also pointed out that it had been suggested that a Court delegation have access to the file at the place in the place where the preliminary investigation was being conducted.

234. The Court reiterates that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications.

235. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting those allegations. A failure on a Government’s part to submit such information which is in their possession without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant’s allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention. In a case where the application raises issues as to the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court’s proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrıkul v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

236. The Court notes that despite its repeated requests for a copy of the investigation file opened into the disappearance and killing of the applicants’ relatives, the Government refused to produce such a copy, having produced very few documents from the case file. They invoked

Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this reference insufficient to justify refusal (see, among other authorities, *Imakayeva*, cited above, § 123).

237. Referring to the importance of a respondent Government's cooperation in Convention proceedings, and mindful of the difficulties associated with the establishment of facts in cases of such a nature, the Court finds that the Government fell short of their obligations under Article 38 § 1 of the Convention because of their failure to submit copies of the documents requested in respect of the disappearance and killing of the applicants' relatives.

## VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

238. 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

239. The eighth applicant claimed that she had sustained damage in respect of the loss of her husband's earnings and the tenth and eleventh applicants in respect of the loss of their son's earnings following their apprehension and subsequent disappearance. The eighth applicant claimed a total of 425,427.74 roubles (RUR) under this head (approximately 11,963 euros (EUR)). The tenth applicant claimed a total of RUR 359,399.37 (approximately EUR 10,102) and the eleventh applicant claimed a total of RUR 311,194.40 (approximately EUR 8,745).

240. The applicants claimed that their relatives had been temporarily unemployed due to the situation in Chechnya. Having regard to the provisions of the Civil Code on calculations of lost earnings, they claimed that the amount of an unemployed person's earnings should be equal to the average remuneration of a person with similar qualifications and could not be based on an amount lower than the subsistence level determined by federal laws. They submitted that the eighth applicant was dependent on her husband and the tenth and eleventh applicants on their sons. Each of them would have benefited from their financial support in the amount indicated above, that is, 30% of their earnings. The applicants' calculations were based on the relevant provisions of the Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("the Ogden tables").



241. The Government argued that no compensation for pecuniary damage should be awarded to the applicants since it was not established that their family members were dead. The Government also objected to the applicants having based their claims on the Ogden tables.

242. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. The Court finds that there is indeed a direct causal link between the violation of Article 2 in respect of the applicants’ family members and the loss by the applicants of the financial support which they could have provided for them. It further notes that the applicants’ family members were unemployed. Nevertheless, the Court finds it reasonable to assume that they would eventually have had some earnings and that the applicants would have benefited from them. Having regard to the applicants’ submissions, the Court awards the eighth, tenth and eleventh applicants EUR 5,000 each in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

### **B. Non-pecuniary damage**

243. The applicants claimed the following amounts in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members and the indifference shown by the authorities towards them:

1. the first applicant claimed EUR 80,000;
2. the second applicant claimed EUR 80,000;
3. the third applicant claimed EUR 250,000;
4. the fifth applicant claimed EUR 80,000;
5. the sixth applicant claimed EUR 80,000;
6. the seventh applicant claimed EUR 80,000;
7. the eighth applicant claimed EUR 80,000;
8. the tenth applicant claimed EUR 80,000;
9. the eleventh applicant claimed EUR 80,000.

244. The Government found the amounts claimed exaggerated. They also pointed out in respect of the claims by the first, second, third, fifth and sixth applicants, that their relatives had been members of illegal armed groups and had been killed as a result of the use of force that had been no more than “absolutely necessary”. As regards the claims by the seventh, eighth, tenth and eleventh applicants, it was not established that the authorities had been involved into their relatives’ disappearance.

245. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and killing of the

first, second, third, fifth and sixth applicants' family members and the disappearance of the seventh, eighth, tenth and eleventh applicants' relatives. The applicants themselves have been found to have been the victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the first, second, third, fifth, sixth, seventh, eighth, tenth and eleventh applicants EUR 35,000 each, plus any tax that may be chargeable thereon.

### C. Costs and expenses

246. 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, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. They also claimed postal expenses in the amount of EUR 314.76, translation expenses in the amount of EUR 622.40, as certified by invoices, and administrative expenses in the amount of EUR 1,106. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 17,843.16.

247. The Government did not dispute the details of the calculations submitted by the applicants, but pointed out that they should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had been actually incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They objected, however, to the applicants' representatives' claim in the part related to the work of lawyers other than those whose names were on the power of attorney.

248. The Court has to establish first whether the costs and expenses indicated by the applicants were actually incurred and, second, whether they were necessary and reasonable (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

249. Having regard to the details of the information available, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation. Accordingly, it accepts that the expenses incurred were necessary.

250. As regards the Government's objection, the Court notes that the applicants were represented by the SRJI. It is satisfied that the lawyers indicated in their claim formed part of the SRJI staff. Accordingly, the objection must be dismissed.

251. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them the amount of EUR 17,843.16, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

#### **D. Default interest**

252. 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 reject the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the applicants' family members;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the killing and disappearance of the applicants' family members;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;
5. *Holds* that there has been a violation of Article 5 of the Convention in respect of the applicants' family members;
6. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
7. *Holds* that no separate issues arise under Article 13 of the Convention as regards the alleged violations of Articles 3 and 5;
8. *Holds* that there has been no failure to comply with the State's obligation under Article 34 of the Convention in respect of the alleged intimidation of the first applicant;

9. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
10. *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:
    - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to each of the eighth, tenth and eleventh applicants, to be converted into Russian roubles at the rate applicable at the date of settlement;
    - (ii) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to each of the first, second, third, fifth, sixth, seventh, eighth, tenth and eleventh applicants, to be converted into Russian roubles at the rate applicable at the date of settlement;
    - (iii) EUR 16,993.16 (sixteen thousand nine hundred and ninety-three euros and sixteen cents), 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;
11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President