



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

1959 · 50 · 2009

FIRST SECTION

CASE OF BASAYEVA AND OTHERS v. RUSSIA

(Applications nos. 15441/05 and 20731/04)

JUDGMENT

STRASBOURG

28 May 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Basayeva and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 7 May 2009,

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

PROCEDURE

1. The case originated in two applications (no. 20731/04 and no. 15441/05) against the Russian Federation lodged with the Court on 30 April 2004 and 9 April 2005 respectively under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by eleven Russian nationals listed below. The second applicant died on 7 December 2005.

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

3. On 1 September 2005 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to both applications.

4. On 2 April 2007 and 7 March 2008 the Court decided to give notice of the applications to the Government.

5. Under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of the applications at the same time as their admissibility.

6. The Government objected to the joint examination of the admissibility and merits of the applications. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants in case no. 15441/05 are:

1) Ms Malayka (also spelled as Malika) Adamovna Basayeva, born in 1956,

2) Ms Nura Basayeva, born in 1937,

3) Ms Limon Lechayevna Basayeva, born in 1979,

4) Ms Kheda Lechayevna Basayeva, born in 1990,

5) Mr Khasan Khavazhovich Basayev, born in 2002,

6) Mr Khoza Salmanovich Basayev, born in 1960,

The applicants in case no. 20731/04 are:

7) Ms Tatyana Aliyevna Dikayeva, born in 1969,

8) Mr Ali Dautovich Dikayev, born in 1932,

9) Ms Dagman Osmanovna Dautmirzayeva (also known as Dikayeva), born in 1977,

10) Ms Makka Dikayeva, born in 1997, and

11) Ms Madina Dikayeva, born in 1999.

8. The applicants live in Martan-Chu, in Urus-Martan district, Chechnya. Prior to her death in December 2005 the second applicant also lived there. Applicants one to six are relatives of Mr Lecha Basayev, who was born in 1955. The first applicant is his wife; the second applicant was his mother; the third and the fourth applicants are his daughters; the fifth applicant is his grandson and the sixth applicant is his brother. The applicants from seven to eleven are the relatives of Mr Lema Dikayev, who was born in 1965. The seventh applicant is his sister; the eighth applicant is his father; the ninth applicant is his wife; the tenth and eleventh applicants are his daughters. At the material time Lema Dikayev had a second-degree disability; he had sutures in his abdominal area which had been put in 1996.

9. At the material time Martan-Chu was under the full control of the Russian federal forces and the area was under a curfew. Russian military checkpoints were located on the roads leading to and from the settlement.

A. Disappearance of the applicants' relatives

1. The applicants' account

a) Abduction of Lecha Basayev and subsequent events

10. On the night of 5-6 July 2002 the applicants, their relatives and Lecha Basayev were sleeping in their house in Bazarnaya Street in the

village of Martan-Chu, Urus-Martan district, Chechnya. The applicants' house had several interconnected bedrooms. The fifth applicant, who was just a few months old at the time, was sleeping in one room; the first and the fourth applicants were sleeping in the second bedroom and Lecha Basayev was sleeping in the third bedroom. It rained that night.

11. At about 1.30 a.m. the first applicant woke up and heard someone banging on the door. When she approached the door, a group of about ten armed masked men with flashlights and in camouflage uniforms broke into the house and asked in Russian: "Where is Lecha Basayev?" The intruders dispersed into different rooms. They ordered the first applicant to lie down on the bed. The men pointed their machine guns at the first and the fourth applicants.

12. The men neither introduced themselves nor produced any documents. They spoke unaccented Russian. The applicants thought that they were Russian military servicemen. The servicemen ransacked the house. When the first applicant tried to ask for explanations, she was ordered to shut up. During the search one of the servicemen asked the first applicant: "Did you go to visit anyone by car two or three days ago?" She answered that they had not been anywhere. Then he told her: "We know that. We know everything".

13. About five minutes later the servicemen took Lecha Basayev outside. They walked through the first and the fourth applicants' bedroom. The first applicant saw that her husband had his clothes on. A few minutes later the first and the fourth applicants heard the sound of adhesive tape.

14. Having spent eight or ten minutes in the applicants' house, prior to leaving, the servicemen ordered the applicants to stay inside: "We will be watching the house, so if you dare to go outside, we will shoot you". After that the servicemen left with Lecha Basayev.

15. As soon as the servicemen left, the first applicant went outside. She did not see anyone in the yard. Approximately 50 metres from the house she saw a big group of military servicemen walking in the direction of the village centre.

16. At about 2 a.m. the first applicant returned to the house. A few minutes later she informed the sixth applicant, who lived nearby, about the abduction of his brother, Lecha Basayev. The sixth applicant asked her to stay at home until the end of the curfew.

17. Early in the morning on 6 July 2002 the first applicant followed the footprints left by the servicemen's boots. They were clearly visible on the wet ground. The traces ended on the paved road which led to the village centre. The first applicants assumed that if the military servicemen had come to their house on foot, they must have walked from the local military commander's office.

18. After that, early in the same morning, the sixth applicant and the first applicant's son went to the head of the village administration. He told them

that he would go to Urus-Martan and would find out who had taken Lecha Basayev away.

19. Next, at about 7 a.m. on the same morning, the sixth applicant and the first applicant's son went to the house of Mr M., the head of the Urus-Martan district department of the interior (the ROVD). There they met the seventh and eighth applicants, who informed them that on the very same night Russian military servicemen had beaten and taken away their relative, Lema Dikayev. According to the seventh applicant, the military servicemen had arrived at their house in two APCs (armoured personnel carriers) and a military URAL lorry which had been parked next to the building of the village administration. The seventh and eighth applicants told the sixth applicant that the head of the ROVD was still sleeping, so the sixth applicant and his relative returned home.

20. Later on the same morning the second applicant went to the head of the ROVD. The latter promised to her that he would find out who had apprehended Lecha Basayev.

21. Before noon on 6 July 2002 the first applicant went to the ROVD, where in front of the building she met the seventh and eighth applicants and other villagers whose relatives had been detained in Martan-Chu the night before.

22. Some time later the applicants' fellow villager, who worked at the material time for the local police and whose name the applicants did not disclose, told the applicants that in the morning of 6 July 2002 he had seen Lecha Basayev and Lema Dikayev in the building of the ROVD. According to the witness, Lecha Basayev and Lema Dikayev had been sitting in the corridor with their hands tied behind their backs; their eyes and mouths had been taped over with adhesive tape. Four other residents of the village had also been detained at the ROVD: three members of Mr Az.'s family and Mr B. These four men had been released on the afternoon of 6 July 2002.

23. In support of their statements, the applicants of Lecha Basayev's family submitted the following accounts: an account by the first applicant dated 5 February 2004; an account by the seventh applicant dated 9 February 2002; an account by the sixth applicant dated 9 February 2004; an account by Mrs Kh. D. dated 9 February 2002 and an account by the fourth applicant dated 12 February 2004.

b) Abduction of Lema Dikayev and subsequent events

24. On the night of 5-6 July 2002 the applicants, Lema Dikayev and his mother, Mrs Dikayeva, were sleeping in their family house at 24 Pionerskaya Street, Martan-Chu. At about 2.00 a.m. on 6 July 2002 twelve armed men in camouflage uniforms and masks broke into the house. The men did not identify themselves. The applicants thought that they were Russian military servicemen as they spoke unaccented Russian. The

servicemen pointed their guns at the Dikayevs and ordered them to stay in their beds. They searched the house without producing any warrant.

25. After the search the servicemen took Lema Dikayev out of his bedroom to the corridor, kicked him and beat him with rifle butts. The applicants were kept in their bedrooms, but through the open doors they could see and hear the servicemen beating their relative. The ninth applicant saw the intruders beating her husband and ordering him to open his mouth. The applicants saw him bleeding. They concluded that it was the result of the abdominal sutures' splitting open. When the seventh applicant asked the servicemen where they intended to take Lema, one of them replied to her in Russian that they would see him the next day in the ROVD.

26. The servicemen blindfolded Lema Dikayev and taped his mouth with adhesive tape. They put clothing and shoes on him and tied his arms behind his back. After that they locked the applicants and Mrs Dikayeva in the bedrooms and took Lema Dikayev outside. After Lema Dikayev's beating spots of blood were left on the floor of the corridor.

27. The seventh applicant managed to go outside and followed the servicemen. She noticed APCs and a URAL lorry parked about 200 metres from the house. The servicemen wiped the blood from Lema Dikayev, loaded him into one of the APCs and drove away. The applicant returned home and let her relatives out.

28. In the afternoon of 6 July 2002 the servicemen returned to the Dikayevs' house and searched it. They did not produce any search warrant.

29. On 6 July 2002 the applicants and their relatives went to the ROVD to obtain information about Lema Dikayev. One of the police officers told them that he had seen Lema in the ROVD building sitting on the floor in the hallway with his arms tied behind his back and his mouth taped over with adhesive tape. The seventh applicant and Mr T.Sh. visited Mr M., the head of the ROVD, and told him that Lema Dikayev had been seen on the ROVD premises. The officer promised to help and invited the seventh applicant to make complaints to the prosecutor's office and the ROVD.

30. On the same date the seventh applicant contacted, both in person and in writing, the district prosecutor's office, the ROVD, the Urus-Martan district military commander's office (the district military commander's office) and the local administration, complaining that her brother had been abducted.

31. On the evening of 6 July 2002 the officers from the ROVD told the applicants that Lema Dikayev was not detained in the ROVD building.

32. On 8 July 2002 Russian servicemen again visited the Dikayevs, told them that they were searching for weapons and carried out another search. Then they threatened to set the house on fire. The seventh applicant ran to the head of the ROVD, Mr M., and asked him to help her. Mr M. contacted someone on a portable radio and ordered the servicemen not to set the house on fire. The servicemen obeyed. When they were leaving the house, one of

the officers, who introduced himself as Georgiy, told the eighth applicant that the servicemen had acted under the orders of Mr G., the Urus-Martán district military commander.

33. On same date, 8 July 2002, an official of the local administration told the seventh applicant that her brother was being detained on the premises of the district military commander's office. After that the seventh applicant visited the military commander, Mr G., who confirmed that Lema Dikayev was detained in their office. Mr G. also told the applicant that her brother had been implicated in the murder of Mr Kh.T., an officer of a law-enforcement agency. The seventh applicant suggested that if that was the case then Lema Dikayev should have been committed to trial. Mr G. replied that it was useless to try Chechens.

34. On an unspecified date in August 2003 the seventh applicant visited the head of the ROVD, Mr M., who told her that if she was patient for at least a year her brother would return home. When the applicant asked Mr M. whether he had any information concerning Lema Dikayev's fate, he said that he risked being killed if he replied.

35. The applicants continued their search for Lema Dikayev and contacted the Federal Security Service ("the FSB"), prosecutors' offices at different levels, the Chechnya administration and the Russian President.

36. In support of their statements the applicants of Lema Dikayev's family submitted the following accounts: a statement by the ninth applicant dated 28 March 2003; two statements by the seventh applicant dated 29 March 2003 and 9 February 2004 and a hand-drawn map of the applicants' house.

2. Information submitted by the Government

37. The Government did not challenge most of the facts as presented by the applicants. According to their submission, "at about 2 a.m. on 6 July 2002 unidentified armed persons in camouflage uniforms and masks kidnapped from their houses situated in Bazarnaya Street in Martán-Chu in the Urus-Martán district of Chechnya Mr Lecha Salmanovich Basayev and Mr Lema Aliyevich Dikayev and took them away to an unknown destination".

B. The official investigation into the abduction

1. Information provided by the applicants

38. On 9 July 2002 the first applicant complained to the Urus-Martán district prosecutor's office (the district prosecutor's office) about the abduction of Lecha Basayev. The applicant did not retain a copy of her complaint.

39. On 1 August 2002 the eighth applicant wrote to the district military commander's office and the district prosecutor's office describing in detail the circumstances of Lema Dikayev's abduction and asking for assistance in establishing his whereabouts.

40. On 2 August 2002 the first applicant complained again to the district prosecutor's office that Lecha Basayev had been abducted. In her letter she stated that he had been abducted by a group of approximately twenty unidentified masked armed men and pointed out that her complaints about it to a number of State authorities had produced no results.

41. At some point in August 2002 a district police officer visited Lecha Basayev's house and obtained a statement from the fourth applicant concerning the circumstances of Lecha Basayev's abduction.

42. On 23 August 2002 the Urus-Martan district prosecutor's office (the district prosecutor's office) initiated an investigation into the abduction of Lecha Basayev and Lema Dikayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was assigned number 61117. In the submitted documents it is also referred to under no. 6117.

43. On 24 August 2002 the first and seventh applicants were granted victim status in the criminal case.

44. On 12 October 2002 the military prosecutor's office of the United Group Alignment (the UGA) forwarded the eighth applicant's complaint to the military prosecutor's office of military unit no. 20102.

45. On 23 October 2002 the district prosecutor's office suspended the investigation in the criminal case for failure to identify the perpetrators.

46. On 20 December 2002 the seventh applicant wrote to the Chechnya prosecutor's office stating that her brother had been taken away by representatives of federal forces and asking for his whereabouts to be established.

47. On 5 February and 3 April 2003 the Chechnya prosecutor's office informed the first applicant that on 23 October 2002 the investigation in the criminal case had been suspended.

48. On 20 February, 22 March, 5 April and 25 June 2003 the prosecutors' offices forwarded the applicants' complaints about their relatives' abduction to the prosecutors' offices of lower levels for examination.

49. On 21 April 2003 the seventh applicant requested the district prosecutor's office to inform her about the progress of the investigation in the criminal case.

50. On 22 May 2003 the military prosecutor's office of military unit no. 20102 informed the applicants that as a result of their query it had been established that the military servicemen had not been implicated in the disappearance of Lecha Basayev and Lema Dikayev.

51. On 17 June 2003 the seventh applicant wrote to the Chechnya prosecutor's office complaining about her brother's abduction and the

unauthorised search of their family house. She described in detail the circumstances of Lema Dikayev's abduction and stated that the abductors had beaten him up in the presence of his family members. She requested the authorities to resume the investigation in the criminal case, to establish her brother's whereabouts and to take necessary measures to identify the culprits.

52. On 9 July 2003 the Chechnya prosecutor's office forwarded the seventh applicant's complaint to the investigator and ordered that the investigation in the criminal case be resumed due to its incompleteness.

53. On 21 August 2003 the district prosecutor's office informed the applicants that the investigation in the criminal case had been resumed.

54. On 23 January 2004 the district prosecutor's office again resumed the investigation in the criminal case.

55. On 30 January 2004 the Chechnya prosecutor's office informed the seventh applicant about the decision of 23 January 2004 and noted that investigative measures were being taken to solve the crime.

56. On 31 January 2004 the Chechnya department of the FSB informed the seventh applicant that the FSB did not have any information concerning her brother's whereabouts and fate.

57. On 14 April 2004 the seventh applicant wrote to the district military commander's office requesting assistance in the search for her brother. She described in detail the circumstances of Lema Dikayev's abduction and stated that the abductors had beaten him in the presence of his family members.

58. On 4 September 2004 the first applicant again complained to a number of State authorities, including the district prosecutor's office, the ROVD and the Urus-Martan district department of the FSB, about Lecha Basayev's abduction. She stated that her husband had been abducted by a group of servicemen of the Russian federal forces; that she had complained about it to various law enforcement agencies and that none of them had accepted responsibility for the abduction.

59. On 21 November 2004 the first applicant complained to the district prosecutor's office. In her letter she described the circumstances of her husband's abduction. She expressed her concerns in connection with the absence of any information about Lecha Basayev's whereabouts for more than two years and stated that the authorities had been procrastinating with the investigation. The applicant asked the prosecutor's office to take the following measures: informing her about the progress and the results of the investigation; reopening of the investigation and conducting it in a thorough and effective manner; establishing and questioning of the employees of the local military commander's office; establishing who had used APCs and URAL vehicles in the area on the night of 6 July 2002; questioning of the vehicles' drivers and of the relevant military personnel; collection of documentation reflecting the use of the vehicles; questioning of the military

servicemen who had manned the checkpoint in Martan-Chu on the night of 6 July 2002; and transfer of the criminal case, if necessary, to the military prosecutor's office for investigation.

60. On 21 November 2004 the seventh applicant complained to the district prosecutor's office and stated that her brother Lema Dikayev had been abducted by representatives of law-enforcement agencies who had subjected him to beatings. She further stated that on 6 July 2002 Mr G. G., the district military commander, had informed her that her brother had been detained at the district military commander's office; that after her brother's abduction, unidentified men had twice arrived at their house in the same military vehicles as the ones used during her brother's abduction. The seventh applicant requested the district prosecutor's office to inform her about the progress in the investigation, to resume the proceedings and take basic investigative measures.

61. On 21 December 2004 the SRJI reiterated the request, describing the circumstances of Lema Dikayev's abduction and stating that he had been subjected to beatings by the abductors. No response was given to either of the requests.

62. On 10 October and 20 December 2005 and on 19 June 2006 the eighth applicant requested the district prosecutor's office to resume the investigation in the criminal case and provide him with access to the investigation file. No response was given to these requests.

63. The applicants received no other information relating to the investigation into the abduction of their relatives.

2. Information submitted by the Government

64. On 1 August 2002 the first and the seventh applicants complained about the abduction of Lecha Basayev and Lema Dikayev to the district prosecutor's office and requested assistance in establishing their whereabouts.

65. On 23 August 2002 the district prosecutor's office instituted an investigation into the abduction of Lecha Basayev and Lema Dikayev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 61117.

66. On 24 August 2002 the first and the seventh applicants were granted victim status in the criminal case. The seventh applicant was questioned and stated that on 6 July 2002 she and her relatives were sleeping at home; at about 2 a.m. a group of unidentified armed men in camouflage uniforms and masks had broken into the house. They had gone to the room of her brother Lema Dikayev and taken him outside. Lema Dikayev's father (the eighth applicant) had asked the men where they were taking his son; in response he had been told that Lema Dikayev could be exchanged for a machine gun. According to the applicant, she had followed the intruders and had seen her brother being put into an APC.

67. On 23 October 2002 the investigators suspended the investigation in the criminal case for failure to establish the perpetrators.

68. On 21 August 2003 the investigation in the criminal case was resumed because not all necessary measures had been taken. The applicants were informed about this decision.

69. On 21 September 2003 the investigators suspended the investigation in the criminal case for failure to establish the perpetrators. The applicants were informed about this decision.

70. On 23 January 2004 the investigation in the criminal case was resumed owing to "incompleteness of the conducted investigation". The applicants were informed about this decision.

71. On 23 February 2004 the investigators suspended the investigation in the criminal case for failure to establish the perpetrators. The applicants were informed about this decision.

72. On 8 November 2005 the investigation in the criminal case was resumed. The applicants were informed about this decision.

73. On 9 November 2005 the investigators suspended the investigation in the criminal case owing to the failure to establish the identity of the perpetrators. The applicants were informed about this decision.

74. On 20 June 2006 the investigation in the criminal case was resumed. The applicants were informed about this decision.

75. On 21 June 2006 the investigators suspended the investigation in the criminal case for failure to establish the perpetrators. The applicants were informed about this decision.

76. On 7 June 2007 the investigation in the criminal case was resumed. The applicants were informed about this decision.

77. On an unspecified date the investigators questioned the ninth applicant, who stated that at about 2 a.m. on 6 July 2002 a group of unidentified armed men in camouflage uniforms and masks had broken into her family house, pushed her husband Lema Dikayev off the bed; kicked him and beat him with rifle butts. After that the men had searched the house for about half an hour; then they had taped over Lema Dikayev's mouth, bound his hands and taken him away to an unknown destination.

78. On an unspecified date the investigators conducted a crime scene examination in Lecha Basayev's house. Nothing was collected from the scene.

79. On an unspecified date the investigators requested that the ROVD provide them with character references for Lecha Basayev. According to their response, although Lecha Basayev was given good references by his neighbours, on 23 May 2002 he had been sentenced to three years' probation for illegal purchase and storage of explosives and drugs.

80. On unspecified dates the investigators requested that the ROVD, the Chechnya Department of the FSB, various departments of the Ministry of the Interior in Chechnya, military units and military commanders' offices

inform the investigation whether they had arrested Lecha Basayev and Lema Dikayev or had brought any criminal charges against them. According to the responses, these agencies did not have any information concerning either a special operation conducted on 6 July 2002 or the whereabouts of the missing men. The prosecutors' offices of various levels in Chechnya informed the investigators that the missing men had not been detained by law enforcement agencies; criminal or administrative charges had not been brought against them; neither of the missing men had applied for medical assistance and their corpses had not been found.

81. On an unspecified date the investigators questioned Lecha Basayev's son, Mr Kh.B., who stated that at about 2 a.m. on 6 July 2002 he and his family had been sleeping at home when a group of unidentified armed men in camouflage uniforms had broken into their house. The men had requested his passport. Having checked his passport, the men had asked about the whereabouts of Lecha Basayev, who was sleeping in another room. Some time later the witness had seen that the armed men had taken his father outside. When the witness had gone outside, the armed men had already left. As it had rained that night, the witness was able to see tyre imprints of armoured vehicles on the ground next to the house. The imprints had led in the direction of Urus-Martan. In the morning the witness had found out from his fellow villagers that another resident of Martan-Chu, Lema Dikayev, had also been abducted on the same night.

82. On an unspecified date the investigators again questioned the first applicant who stated that at about 2 a.m. on 6 July 2002 a group of unidentified armed men had broken into their house. The men, who spoke unaccented Russian, had been wearing camouflage uniforms and masks. They had told her to go to another room and started searching the house. Upon completion of the search the men had told her not to follow them. Sometime later the applicant had gone outside and had seen that the armed men were walking with her husband Lecha Basayev towards the centre of Martan-Chu. The applicant had attempted to run after them, but the armed men had told her that they would open fire if she followed them. The men had not used physical force against Lecha Basayev. They had not told the applicant where they were taking her husband, but had promised to release him at some point later.

83. On an unspecified date the investigators questioned Lecha Basayev's relative, Mrs Kh.D. who stated that at about 2 a.m. on 6 July 2002 a group of ten to fifteen armed masked men in camouflage uniforms had broken into their house. The witness had got scared and started screaming. The men, who spoke unaccented Russian, had told her to be quiet and stay in her room. She had heard Lecha Basayev's voice in the corridor; then she had heard the sound of adhesive tape. After the armed men had left the house she had gone out of her room. The second applicant had told her that the intruders had taken Lecha Basayev away.

84. It appears that on an unspecified date the investigators again questioned the seventh applicant, who stated that at about 2 a.m. on 6 July 2002 a group of armed men in camouflage uniforms and masks had broken into their house. The men had immediately proceeded to the room of Lema Dikayev. When the eighth applicant had asked the men where they were taking Lema Dikayev, they replied that if he wanted to see his son he would need to exchange him for a machine gun. After that they had taken Lema outside, put him in an APC and had driven away in an unknown direction. According to the witness, on 8 July 2002 she had spoken to the district military commander who had told her that her brother Lema Dikayev had been detained at the request of the head of the ROVD and the head of the local administration, as they suspected that Lema Dikayev had been involved in the murder of Mr Kh.T.

85. On an unspecified date the investigators questioned the ninth applicant, who stated that at about 2 a.m. on 6 July 2002 a group of armed men in camouflage uniforms had broken into their house. The men had immediately gone to the room where she and her husband had been sleeping. The men had started beating Lema Dikayev with rifle butts. After that they had ordered the witness to bring her husband's passport. However, then they had stopped her and told her that they would take the documents themselves. After that they had searched the house for about half an hour. Having finished the search the men had covered her husband's eyes and mouth with adhesive tape and bound his hands. They had told the witness that they would release her husband after receiving answers to some questions. The intruders, who spoke unaccented Russian, had ordered the family members to stay in the house, threatening to throw a grenade inside if the applicants disobeyed. According to the witness, she had heard the sounds of armoured vehicles parked next to the house.

86. On 7 June 2007 the district prosecutor's office together with the ROVD and other law enforcement agencies drew up a plan of investigative measures to be taken in criminal case no. 61117. However, the investigators failed to obtain any relevant information with this plan .

87. On 8 June 2007 the investigators requested that detention centres in various regions of the Northern Caucasus inform them whether Lecha Basayev and Lema Dikayev were detained on their premises. According to the responses, the missing men had never been detained in any of the detention centres.

88. On 11 June 2007 the investigators questioned Mr A.Sh., Lema Dikayev's neighbour, who stated that on the night of the abduction at about 2 a.m. he had heard a car engine. He had gone to his gate when an armed masked man in camouflage uniform had appeared in front of him. The man had pointed his machine gun at him and ordered to get inside. According to the witness, at that moment he had seen a group of five to six armed men in masks and camouflage uniforms walk by his house in the direction of

Pochtovaya Street. The witness had got scared and gone inside where he stayed until the morning. Early in the morning he had found out from Mrs S.D., Lema Dikayev's relative, that Lema Dikayev and another resident of Martan-Chu, Lecha Basayev, had been abducted that night.

89. Between 14 and 28 June 2007 the investigators questioned five other residents of Martan-Chu, Mr S.A., Mr A.E., Mr A.Sh., Mr A.A. and Mr B.Sh., each of whom stated that they had found out about the abduction on the morning of 6 July 2002.

90. On 28 June 2007 the investigators questioned Mr M., who had been the head of the ROVD at the material time. According to the witness, in July 2002 he had been informed that a group of unidentified armed men had abducted two residents of Martan-Chu, Lecha Basayev and Lema Dikayev. He did not remember that on 6 July 2002 the seventh applicant had told him that on 6 July 2002 her brother Lema Dikayev had been seen detained in the ROVD and that on 8 July 2002 she had requested assistance in the search for her brother. According to the witness, he had not told the applicant that if she was patient for a year, then her brother Lema Dikayev would return home.

91. On 2 July 2007 the investigators again questioned the seventh applicant, who stated that at about 4 p.m. on 6 July 2002 she had seen a UAZ vehicle and a VAZ-2107 car leaving the premises of the district military commander's office. Some time later that day she had been told that unidentified persons had arrived at her house. When the seventh applicant had returned home, her father, the eighth applicant, informed her that unidentified men in similar vehicles had searched their house looking for weapons. The applicant had concluded that the unidentified men had arrived in the vehicles she had seen at the military commander's office. According to the applicant, next to the building of the local administration she had seen the APCs in which the abductors had taken away her brother. The applicant further stated that on 8 July 2002 she had been in Urus-Martan when someone had informed her that unidentified persons had arrived at her house and were going to set it on fire; one of them had told the eighth applicant that they were acting in accordance with the order issued by the military commander, Mr G. The applicant and her relative Mr V.Sh. had gone to Mr M., the head of the ROVD, and requested him to stop them. The head of the ROVD had contacted someone on a portable radio and after that he had told the applicant that her house would not be burned down.

92. On an unspecified date the investigators questioned Mr A.K., the head of the local administration, who stated that on the dates specified by the seventh applicant no APCs had been parked next to the administration building.

93. On 3 July 2007 the investigators questioned the applicants' relative Mr V.Sh., who stated that around 8 July 2002 the seventh applicant had asked him to speak to Mr M., the head of the ROVD, as unidentified

persons had arrived at her house and were conducting a search. The seventh applicant had not been present during the conversation as she was waiting in the hallway. The head of the ROVD had not contacted anyone by portable radio, but he had promised to help resolve the situation.

94. It appears that on an unspecified date the investigators again questioned Mr M., the head of the ROVD, who provided a statement similar to the one given by Mr V.Sh.

95. According to the Government, the investigation in criminal case no. 61117 was suspended and resumed on several occasions. For instance, the investigation was suspended on 7 July 2007 for failure to establish the identity of the perpetrators and resumed on 15 August 2007 for additional investigative measures to be taken; then it was suspended on 15 September 2007 and resumed on 4 May 2008 for the same reasons.

96. On 16 August 2007 the investigators questioned the eighth applicant, who stated that on the night of 6 July 2002 his son Lema Dikayev had been abducted by a group of men in camouflage uniforms and masks who were armed with automatic weapons. That night the witness had not heard any military vehicles. On the morning of 6 July 2002 he had been told that another resident of Martan-Chu, Lecha Basayev, had also been abducted on the same night. In the afternoon of 6 July 2002, a group of armed servicemen without masks had arrived at his house. One of them had told the witness that according to some information in their possession, a machine gun, an automatic rifle and two grenades had been hidden in the household. After that they had searched the roof and found what they were looking for. The same group of men had returned to the house at some point later and had again searched the household. The witness had spoken to one of the servicemen; however, the witness did not remember that this serviceman had told him that the group was acting under the orders of the military commander, Mr G.

97. On 16 August 2007 the investigators also questioned a resident of Martan-Chu, Mr Yu.I., who stated that at the material time he had been the deputy head of the Martan-Chu village administration. On the morning of 6 July 2002 he had been told that during the night, at about 2 a.m., unidentified armed men in camouflage uniforms and masks had abducted Lecha Basayev and Lema Dikayev. One of their relatives had complained about it to the Martan-Chu village administration. According to the witness, he had called the head of the ROVD, Mr M., and requested information about the circumstances of the abduction. The latter had told him that he had not heard about the search of the Dikayevs' house. According to the witness, he had not seen military vehicles on 6 July 2002 and he had not issued any orders to the military commander Mr G. concerning the detention of Lecha Basayev and Lema Dikayev.

98. On 6 September 2007 the investigation of the criminal case was transferred from the Urus-Martan district prosecutor's office to the Achkhoy-Martan district prosecutor's office.

99. On 11 September 2007 the investigators questioned the applicants' neighbour, Mr S.A., who stated that he had found out from his fellow villagers that during the night of 6 July 2002 unidentified armed men had abducted Lecha Basayev and Lema Dikayev. According to the witness, he had not heard any noise which could have been caused by armoured vehicles.

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

101. In response to requests by the Court the Government disclosed several documents from criminal case no. 61117 stating that the investigation was in progress and therefore disclosure of other documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained personal data concerning witnesses or other participants in the criminal proceedings. The Government submitted copies of the following documents:

1) a procedural decision to institute an investigation into the abduction dated 23 August 2002;

2) two decisions to grant victim status in the criminal case to the first and the seventh applicants dated 24 August 2002;

3) decisions to suspend the criminal investigation dated 23 October 2002, 21 September 2003, 23 February 2004, 9 November 2005, and 21 June 2006;

4) decisions to resume the investigation in the criminal case dated 21 August 2003, 21 January 2004, 8 November 2005, 20 June 2006, and 7 June 2007;

5) the investigators' decisions to take up the criminal case;

6) letters informing the applicants about the suspensions and the resumptions of the investigation in the criminal case.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. JOINDER OF THE APPLICATIONS

103. In view of the similarity of the cases in terms of both fact and law, the Court finds it appropriate to join and examine them together.

II. THE GOVERNMENT'S OBJECTION AS TO ABUSE OF THE RIGHT OF PETITION

104. The Government submitted that the applications had not been lodged in order to restore the allegedly violated rights of the applicants. The actual object and purpose of the applications was to “incriminate the Russian Federation of allegedly adopting a policy of violating human rights in the Chechen Republic” and “to place responsibility for the death of [their relatives] on the authorities of the Russian Federation and receive monetary compensation for non-pecuniary damage caused by alleged violations of the applicants' rights”. They argued that the applications should be dismissed pursuant to Article 35 § 3 of the Convention.

105. The Court considers that the Government may be understood to be suggesting that there was an abuse of the right of petition on the part of the applicants. It observes in this respect connection that the complaints the applicants brought to its attention concerned genuine grievances. Nothing in the case files reveals any appearance of abuse of their right of individual petition. Accordingly, the Government's objection must be dismissed.

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

A. The parties' submissions

106. The Government contended that the applications should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Lecha Basayev and Lema Dikayev had not yet been completed. They further argued that it had been open to the applicants to challenge in court any actions or omissions of the investigating or other law enforcement authorities. In addition, the applicants could have applied to domestic courts with requests to declare their relatives as deceased or missing persons. According to the Government, the applicants' failure to pursue this remedy demonstrates that they did not believe that their relatives were dead.

107. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. Referring to the other cases concerning such crimes reviewed by the Court, they also alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in Chechnya rendered any potentially effective remedies inadequate and illusory in their case.

B. The Court's assessment

108. The Court reiterates that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

109. As regards the Government's argument that the applicants had failed to apply to the courts to have their relatives declared missing or dead, the Court notes that they provided no information as to how such proceedings could have provided the applicants with adequate redress. Accordingly, the Court finds that the Government did not substantiate that the remedy the applicants had allegedly failed to make use of was an effective one (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004, and *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003). It therefore dismisses the Government's objection in this part.

110. As regards criminal law remedies raised by the Government in the present case, the Court observes that the applicants complained to the law enforcement authorities immediately after the abduction of Lecha Basayev and Lema Dikayev and that an investigation has been pending since 23 August 2002. The applicants and the Government dispute the effectiveness of the investigation.

111. The Court further considers that the Government's objection concerning the applicants' failure to exhaust criminal domestic remedies raises issues relating to the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints under Article 2. Thus, it decides to join this objection to the merits and considers that these matters fall to be examined below under the relevant substantive provisions of the Convention.

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

A. The parties' arguments

112. The applicants maintained that it was beyond reasonable doubt that the men who had abducted Lecha Basayev and Lema Dikayev had been State agents. In support of their complaint they referred to the following facts. At the material time Martan-Chu had been under the total control of the federal troops. The village and its premises were under curfew. The district military commander's office was located in the village. There had been Russian military checkpoints on the roads leading to and from the settlement. The armed men who had abducted Lecha Basayev and Lema Dikayev had spoken Russian without an accent, had been well-organised and acted in a manner similar to that of special forces carrying out an identity check. The men, who had used military vehicles, had arrived late at night, during the curfew, which indicated that they had been able to move freely in Martan-Chu and pass through the military checkpoint located in the village. On 6 July 2002 an employee of the ROVD had confirmed that he had seen Lecha Basayev and Lema Dikayev in the corridor of the ROVD. Four other residents of Martan-Chu, who had been apprehended on the same night, had been released from the ROVD in the afternoon of 6 July 2002. The district military commander had informed the seventh applicant that her brother had been detained for involvement in the murder of an officer of a law enforcement agency.

113. The Government submitted that unidentified armed men had kidnapped Lecha Basayev and Lema Dikayev. They further contended that an investigation of the incident was pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They also pointed out that although the abductors had worn camouflage uniforms similar to that of Russian military and that they had been armed with machine guns, these factors did not indicate that the abductors of the applicants' relatives belonged to State authorities. They further argued that there was no convincing evidence that the applicants' relatives were dead. The Government further stated that the crime could have been committed by criminals who had acted with mercenary motives or by members of paramilitary groups. Finally, the Government alleged that the applicants' description of the circumstances surrounding the abduction of their relatives was inconsistent. In particular, the applicants had failed to inform the investigators that there had been four other residents of Martan-Chu who had been abducted on the same night and released from the ROVD on the afternoon of 6 July 2002; that Lecha Basayev and Lema Dikayev had been

friends; that the seventh applicant had followed the abductors and that she had asked the abductors where they were taking her brother; and that the applicants had received information about their relatives in the morning of 6 July 2002 from the district military commander.

B. The Court's evaluation of the facts

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

115. The Court notes that despite its requests for a copy of the investigation file into the abduction of Lecha Basayev and Lema Dikayev, the Government produced just a few documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

116. In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relatives can be presumed dead and whether their deaths can be attributed to the authorities.

117. The applicants alleged that the persons who had abducted Lecha Basayev and Lema Dikayev on 6 July 2002 and then killed them were State agents.

118. The Government suggested in their submission that the persons who had detained Lecha Basayev and Lema Dikayev could have been criminals who had acted for mercenary motives or members of paramilitary groups. However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

119. The Court notes that the applicants' allegation is supported by the witness statements collected by them and by the investigation. It finds that the fact that a large group of armed men in uniform was able to move freely

during curfew hours in military vehicles through military checkpoints, proceeded to check identity documents and abducted several persons from their homes strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their application to the authorities the applicants had pointed out that Lecha Basayev and Lema Dikayev had been detained by federal servicemen and requested the investigation to look into that possibility (see paragraphs 46, 58 and 60 above).

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

121. The Government seemed to question the credibility of the applicants' statements concerning the factual circumstances of their relatives' abduction (see paragraph 113 above). The Court notes in this respect that no other elements underlying the applicants' submissions of facts have been disputed by the Government. The Court finds that the inconsistency pointed out by the Government is so insignificant that it cannot cast doubt on the overall credibility of the applicants' submissions. Furthermore, the witness statements referred to by the Government have not been made available to the Court.

122. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were abducted by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the kidnapping 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 another plausible explanation of the events in question, the Court considers that Lecha Basayev and Lema Dikayev were detained on 6 July 2002 by State servicemen during an unacknowledged security operation.

123. There has been no reliable news of Lecha Basayev or Lema Dikayev since the date of their abduction. Their names have not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to them after their arrest.

124. Having regard to the previous cases concerning disappearances in Chechnya which have come before the Court (see, among others,

Bazorkina, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Lecha Basayev and Lema Dikayev or of any news of them for several years supports this assumption.

125. The Court further notes that, regrettably, it has been unable to benefit from the results of the domestic investigation owing to the Government's failure to disclose most of the documents from the file (see paragraph 101 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

126. Accordingly, the Court finds that the evidence available permits it to establish that Lecha Basayev and Lema Dikayev must be presumed dead following their unacknowledged detention by State servicemen.

V. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

127. The applicants complained under Article 2 of the Convention that their relatives had disappeared 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 parties' submissions

128. The Government contended that the domestic investigation had obtained no evidence to the effect that Lecha Basayev and Lema Dikayev were dead or that any servicemen of the federal law enforcement agencies had been involved in their kidnapping or alleged killing. The Government

claimed that the investigation into the abduction of the applicants' relatives met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

129. The applicants argued that Lecha Basayev and Lema Dikayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court's case-law on Article 2. The applicants pointed out that the district prosecutor's office had not taken some crucial investigative steps, such as questioning of the employees of the district military commander's office who had worked there at the material time. They further stressed that the investigation into their relatives' disappearance should have been transferred to the military prosecutors' office, but the investigators had failed to do so. Furthermore, the investigation into the kidnapping had been opened more than six weeks after the events and then it had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and that the applicants had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for more than six years without producing any tangible results had been further proof of its ineffectiveness. The applicants invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

130. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 111 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Lecha Basayev and Lema Dikayev

131. The Court reiterates that 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, from

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*, judgment of 27 September 1995, Series A no. 324, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

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

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

133. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

134. In the present case, the kidnapping of Lecha Basayev and Lema Dikayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

135. The Court notes at the outset that just a few documents from the investigation case file were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

136. The Court notes that the authorities were made aware of the crime by the applicants' submissions. The investigation in criminal case no. 61117 was instituted on 23 August 2002, that is one month and twenty-one days after the abduction of Lech Basayev and Lema Dikayev. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were delayed (see paragraphs 59, 86, 90 above) and were taken either several years later or not at all. For instance, the investigators had failed to establish and question the employees of the military commander's office who might have participated in the apprehension of the applicants' relatives and the employees of the ROVD who could have seen Lecha Basayev and Lema Dikayev in the corridor on 6 July 2002; they had failed to establish and question four other residents of Martan-Chu who, according to the

applicants, had been abducted on the night of 6 July 2002 and released on the following day; the investigators had failed to establish the identity of the owners of the APCs used on the night of the abduction or to question their drivers; they had failed to identify or question the servicemen who were manning the checkpoints in Martan-Chu on the night in question or to check the registration logs of the passage through the roadblocks during the curfew. It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays and omissions, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

137. The Court also notes that even though the first and seventh applicants were granted victim status in case no. 61117, they were only informed about the suspensions and resumptions of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

138. Finally, the Court notes that the investigation in the criminal case was suspended and resumed several times and that there were lengthy periods of inactivity of the district prosecutor's office when no proceedings were pending.

139. Having regard to the limb of the Government's objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for several years with no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

140. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Lecha Basayev and Lema Dikayev in breach of Article 2 in its procedural aspect.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

141. The applicants relied on Article 3 of the Convention, submitting that Lema Dikayev had been subjected to ill-treatment at the hands of State agents. They also alleged that as a result of their relatives' disappearance

and the State's failure to investigate it properly they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

A. Alleged violation of Article 3 in respect of Lema Dikayev

1. The parties' submissions

142. The applicants of Lema Dikayev's family alleged that their relative Lema Dikayev had been ill-treated by State agents when he was taken away and subsequently detained. His beating had been witnessed by several applicants and they had informed the investigation about it but the authorities had failed to investigate these allegations. In support of their allegations the applicants referred to their witness statements and a number of other cases relating to disappearances in Chechnya and examined by the Court.

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

2. The Court's assessment

(a) Admissibility

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

(b) Merits

145. In so far as the applicants complained of alleged ill-treatment of Lema Dikayev upon and after his apprehension, the Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161).

146. The Court reiterates that “where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in

conjunction with the State's general duty under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention', requires by implication that there should be an effective official investigation" (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

i. The alleged ill-treatment

147. In so far as the complaint concerns the ill-treatment Lema Dikayev was allegedly subjected to during his detention, the Court notes that it has found that he was detained on 6 July 2002 by State agents. It has also found that, in view of all the known circumstances, he can be presumed dead and that the responsibility for his death lies with the State authorities (see paragraph 132 above). However, the exact way in which he died has not been established. The Court note that the applicants' allegation of Lema Dikayev's ill-treatment in detention is not supported by appropriate evidence. The applicants' reference to other cases in which abducted persons were ill-treated during the detention does not allow the Court to establish beyond all reasonable doubt that the applicant's relative was subjected to treatment contrary to Article 3 of the Convention.

148. In so far as the complaint concerns the ill-treatment Lema Dikayev was allegedly subjected to during his abduction, the Court observes that the members of his family witnessed the abduction and saw the servicemen kicking him and beating him with rifle butts (see paragraph 25). It notes the Government's submission that the domestic investigation had not established that Lema Dikayev had been subjected to inhuman or degrading treatment contrary to the applicants' consistent complaints about it (see paragraphs 51, 57, 60, 61, 77, 85). The Court observes that according to the ninth applicant she had informed the investigators about the ill-treatment, but they had failed to examine her statement. The Government themselves stated in their submission that the applicant had indeed informed the authorities about her husband's ill-treatment by the abductors (see paragraph 77 above). The Court also notes that, that despite its repeated requests the Government refused to provide most of the documents from the investigation file, having failed to adduce sufficient reasons for the refusal (see paragraph 101 above), and finds that it can draw inferences from the Government's conduct in this respect.

149. The Court has already established that Lema Dikayev was abducted on 6 July 2002 by State agents. It further considers that the applicants have made a *prima facie* showing that he was ill-treated by the servicemen during his abduction. The burden of proof is thus shifted to the Government to refute this allegation (see paragraph 120 above). The Government's statement that the investigation had not established that Lema Dikayev had been subjected to inhuman or degrading treatment is insufficient to discharge them from the above-mentioned burden of proof.

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

151. The evidence submitted shows that during the night of 6 July 2002 the servicemen, who intruded into Lema Dikayev's home, kicked him and beat him with rifle butts. The Court considers that this treatment reached the threshold of "inhuman and degrading" since not only it must have caused Lema Dikayev physical pain, taking into account his physical condition as a person with a second-degree disability and abdominal sutures, but must have made him feel humiliated and caused fear and anguish as to what might happen to him.

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

ii. Effective investigation

153. The Court notes that the applicants had complained to the investigators that Lema Dikayev had been ill-treated during his abduction (see paragraphs 51, 57, 60, 61, 77 above). However, it does not appear that these allegations were properly examined by the investigating authorities.

154. For the reasons stated above in paragraphs 133 and 140 in relation to the procedural obligation under Article 2 of the Convention, the Court concludes that the Government has failed to conduct an effective investigation into the ill-treatment of Lema Dikayev.

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

B. Alleged violation of Article 3 in respect of the applicants

1. The parties' submissions

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

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

2. *The Court's assessment*

(a) Admissibility

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

(b) Merits

159. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

160. In the present case the Court notes that the applicants are close relatives of the disappeared persons who were present during their abduction or were actively involved in their search. For more than six years they have not had any news of Lecha Basayev and Lema Dikayev. During this period the applicants have applied to various official bodies with enquiries about their family members, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of their family members following their kidnapping. The responses received by the applicants mostly denied that the State was responsible for their arrest 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.

161. In view of the above, the Court finds that the applicants suffered 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 treatment contrary to Article 3.

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

VII. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

163. The applicants stated that Lecha Basayev and Lema Dikayev 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.”

A. The parties' submissions

164. In the Government's opinion, no evidence was obtained by the investigators to confirm that Lecha Basayev and Lema Dikayev had been deprived of their liberty in breach of the guarantees set out in Article 5 of the Convention.

165. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

167. 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).

168. The Court has found that Lecha Basayev and Lema Dikayev were abducted by State servicemen on 6 July 2002 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

169. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relatives had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard them against the risk of disappearance.

170. In view of the foregoing, the Court finds that Lecha Basayev and Lema Dikayev 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.

VIII. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

171. The applicants alleged that the searches carried out in their houses during and after the abduction of their relatives were unlawful and constituted a violation of their right to respect for home. They further complained that the disappearance of their close relatives after their detention by the State authorities caused them distress and anguish which had amounted to a violation of their right to family life. They referred to Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

“2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

(a) The right to respect for home

i. Alleged violation of the right to respect for home by the applicants of Lecha Basayev's family

172. The Court reiterates that while, in accordance with Article 35 § 1 of the Convention, those seeking to bring their case against the State before the Court are required to use first the remedies provided by the national legal system, there is no obligation under the said provision to have recourse to remedies which are inadequate or ineffective. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/000 et seq., 10 January 2002). There is no evidence that the applicants properly raised before the domestic authorities their complaints alleging a breach of their right to respect for home. But even assuming that in the circumstances of the present case no remedies were available to the applicants, the events complained of took place on 6 July 2002, whereas their application was lodged on 19 April 2005. The Court thus concludes that this part of their application was lodged outside the six-month limit (see *Musayeva and Others v. Russia* (dec.), no. 74239/01, 1 June 2006; and *Ruslan Umarov v. Russia* (dec.), no. 12712/02, 8 February 2007).

173. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

ii. Alleged violation of the right to respect for home by the applicants of Lema Dikayev's family

174. In their observations on admissibility and merits applicants seven to eleven stated that they no longer wished their complaints under Articles 8 of the Convention to be examined.

175. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character affecting respect for human rights as defined in the Convention which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

176. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

(b) The right to respect for family life

177. The applicants' complaint concerning their inability to enjoy family life with Lecha Basayev and Lema Dikayev concerns the same facts as those examined above under Articles 2 and 3 of the Convention. Having regard to its above findings under these provisions, the Court considers that this complaint should be declared admissible. However, it finds that no separate issue arises under Article 8 of the Convention in this respect (see, *mutatis mutandis*, *Ruianu v. Romania*, no. 34647/97, § 66, 17 June 2003; *Laino v. Italy* [GC], no. 33158/96, § 25, ECHR 1999-I; and *Canea Catholic Church v. Greece*, judgment of 16 December 1997, § 50, *Reports* 1997-VIII).

IX. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

178. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties' submissions

179. The Government contended that the applicants had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities did not prevent them from using them. The applicants

had an opportunity to lodge a civil claim for compensation and challenge the actions or omissions of the investigating authorities in court. In sum, the Government submitted that there had been no violation of Article 13.

180. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

182. 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. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, judgment of 25 June 1997, § 64, *Reports* 1997-III.).

183. As regards the complaint of lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, 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 *Angelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

184. 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.

185. It follows that in circumstances where, as here, the criminal investigation into the disappearance has been ineffective and the effectiveness of any other remedy that may have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

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

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

X. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

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

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

(a) The alleged violation of Article 14 in respect of the applicants of Lecha Basayev's family

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

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

(b) The alleged violation of Article 14 in respect of the applicants of Lema Dikayev's family

191. In their observations on admissibility and merits of the application the applicants stated that they no longer wished their complaints under Articles 14 of the Convention to be examined.

192. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character affecting respect for human rights as defined in the Convention which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, among other authorities, *Stamatios Karagiannis*, cited above).

193. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

XI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

194. 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. The Government's objection

195. The Government submitted that the document containing the applicants' claims for just satisfaction had been signed by Mr O. Solvang and Mr R. Lemaitre while, in the Government's opinion, the applicants had been represented by Ms E. Ezhova, Ms A. Maltseva, Mr A. Sakalov and Mr A. Nikolayev. They insisted therefore that the applicants' claims for just satisfaction were invalid.

196. The Court points out that the applicants issued powers of attorney in the name of the SRJI, an NGO that collaborates with a number of lawyers. Since the SRJI lists Mr O. Solvang and Mr R. Lemaitre as staff members and members of its governing board, the Court has no doubts that they were duly authorised to sign the claims for just satisfaction on behalf of the applicants. The Government's objection must therefore be dismissed.

B. Pecuniary damage

197. The first and fourth applicants claimed damages in respect of the lost wages of their abducted relative Lecha Basayev. They submitted that they were financially dependent on him and would have benefited from his

financial support in the following amounts. The first applicant, as the wife of Lecha Basayev, claimed the amount of 117,039 Russian roubles (RUB) (3,344 euros (EUR)) and the fourth applicant, as his daughter, claimed the amount of RUB 42,882 (EUR 1,225). By their letter of 7 April 2009 the applicants informed the Court that they no longer sought the examination of the claims for damages made in respect of the second applicant.

198. The ninth, tenth and eleventh applicants claimed damages in respect of the lost wages of their abducted relative Lema Dikayev. They submitted that they were financially dependent on him and would have benefited from his financial support in the following amounts. The ninth applicant, as the wife of Lema Dikayev, claimed the amount of RUB 165,536 (EUR 4,730); the tenth and eleventh applicants as his daughters claimed the amount of RUB 31,430 (EUR 900) and RUB 36,966 (EUR 1,056) accordingly.

199. The applicants' calculations were based on the provisions of the Russian Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("Ogden tables").

200. The Government regarded these claims as unsubstantiated.

201. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relatives and the loss by the applicants of the financial support which they could have provided. Having regard to the applicants' submissions and the absence of documentation certifying earnings of Lecha Basayev and Lema Dikayev's at the time of abduction, the Court awards EUR 3,000 to the first applicant, EUR 1,000 to the fourth applicant, EUR 3,500 to the ninth applicant; EUR 900 to the tenth applicant as claimed and EUR 1,000 to the eleventh applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

C. Non-pecuniary damage

202. The applicants claimed compensation for non-pecuniary damage they suffered as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of Lecha Basayev and Lema Dikayev. The applicants of Lecha Basayev's family, that is applicants one to six, claimed a total of EUR 70,000 under this heading, while the applicants of Lema Dikayev family, that is applicants seven to eleven, claimed a total of EUR 80,000.

203. The Government found the amounts claimed exaggerated.

204. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relatives. The applicants have been found to have been victims of a violation of Article 3 the Convention. The Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicants of Lecha Basayev's family, that is the first, third, fourth, fifth and sixth applicants jointly EUR 35,000 plus any tax that may be chargeable thereon. It awards the applicants of Lema Dikayev's family, that is the seventh, eighth, ninth, tenth and eleventh applicants jointly EUR 35,000 plus any tax that may be chargeable thereon.

D. Costs and expenses

205. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Chechnya 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 and experts. The aggregate claim in respect of costs and expenses related to the legal representation of the applicants of Lecha Basayev's family amounted to EUR 7,913, while the amount of these costs and expenses amounted to EUR 8,623 in respect of Lema Dikayev's family.

206. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. They pointed out that the applicants had not enclosed any documents supporting the amount claimed under postal costs.

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

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

209. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that these two cases were rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of Article 29 § 3 in the present cases, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives. In addition, the cases involved little documentary evidence, in view of the Government's refusal to submit most

of the documents from the case file. Therefore, the Court doubts that research was necessary to the extent claimed by the representatives.

210. 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 12,000 together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

E. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Decides* to strike the applications out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as they concern the complaints of the seventh to eleventh applicants lodged under Articles 8 and 14 of the Convention;
3. *Decides* to join to the merits the Government's objection concerning the non-exhaustion of domestic remedies and rejects it;
4. *Declares* the complaints under Articles 2, 3, 5, 8 (in respect of the complaint concerning the right to respect for family life) and 13 admissible and the remainder of the applications inadmissible;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of Lecha Basayev and Lema Dikayev;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Lecha Basayev and Lema Dikayev had disappeared;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of Lema Dikayev;

8. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the ill-treatment of Lema Dikayev;
9. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
10. *Holds* that there has been a violation of Article 5 of the Convention in respect of Lecha Basayev and Lema Dikayev;
11. *Holds* that no separate issues arise under Article 8 of the Convention in respect of the applicants' complaint concerning the right to respect for family life and under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
12. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
13. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save for the payment in respect of costs and expenses:
 - (i) EUR 3,000 (three thousand euros) plus any tax that may be chargeable thereon, in respect of pecuniary damage to the first applicant;
 - (ii) EUR 1,000 (one thousand euros) plus any tax that may be chargeable thereon, in respect of pecuniary damage to the fourth applicant;
 - (iii) EUR 3,500 (three thousand five hundred euros) plus any tax that may be chargeable thereon, in respect of pecuniary damage to the ninth applicant;
 - (iv) EUR 900 (nine hundred euros) plus any tax that may be chargeable thereon, in respect of pecuniary damage to the tenth applicant;
 - (v) EUR 1,000 (one thousand euros) plus any tax that may be chargeable thereon, in respect of pecuniary damage to the eleventh applicant;
 - (vi) EUR 35,000 (thirty five thousand euros) plus any tax that may be chargeable thereon, in respect of non-pecuniary damage to the first, third, fourth, fifth and sixth applicants jointly;

- (vii) EUR 35,000 (thirty five thousand euros) plus any tax that may be chargeable thereon, in respect of non-pecuniary damage to the seventh, eighth, ninth, tenth and eleventh applicants jointly;
- (viii) EUR 12,000 (twelve thousand euros) plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 28 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President