



Court finds violations of the Convention in further cases concerning the disappearance of 36 men in Russia's North Caucasus between 2000 and 2006

In today's Chamber judgment in the case of Pitsayeva and Others v. Russia (application nos. 53036/08 and others), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

violations of Article 2 (right to life) of the European Convention on Human Rights, both on account of the disappearance of the applicants' relatives who were to be presumed dead and on account of the inadequacy of the investigation into the abductions;

a violation of Article 3 (prohibition of inhuman or degrading treatment) in respect of the applicants on account of their relatives' disappearance and the authorities' response to their suffering;

a violation of Article 5 (right to liberty and security) on account of the unlawful detention of the applicants' relatives; and,

a violation of Article 13 (right to an effective remedy).

The case concerned the disappearances of 36 men after they were abducted in Chechnya by groups of armed men, in a manner resembling a security operation, between 2000 and 2006.

The Court has regularly found violations of the same rights in similar cases in more than 120 judgments, resulting from the disappearances that have occurred in the Northern Caucasus since 1999. It confirmed its conclusion in previous cases that the situation resulted from a systemic problem of non-investigation of such crimes, for which there was no effective remedy at national level.

Principal facts

The applicants are 90 Russian nationals. Four of them live in Belgium; one of the applicants lives in Norway; the remaining applicants live in various districts of the Chechen Republic (Russia).

The applicants are close relatives – wives, children, parents, sisters or brothers – of 36 men who disappeared in various districts of the Chechen Republic between 2000 and 2006 after being abducted, in twenty separate cases, from their homes, most of them at night during curfew hours, by groups of unidentified men. The applicants believe that the abductors were Russian federal servicemen since they were wearing camouflage uniforms and spoke unaccented Russian. Armed with machine guns, they broke into the applicants' homes, searched the premises, checked the identity documents of the applicants' relatives and took them away in military vehicles. None of the applicants have had any news of their missing relatives since.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

The Russian Government did not challenge the allegations as presented by the applicants. However, they stated that there was no evidence to prove beyond reasonable doubt that State officials had been involved in the abductions.

Criminal investigations were opened in all twenty cases. They were subsequently suspended on several occasions and remain pending without having established who was responsible for the abductions or where the applicants' missing relatives had gone. Their respective names, years of birth, places of their abduction and family relation to the applicant or applicants in the respective case are indicated below.

53036/08 Pitsayeva and Others: Mulat Barshigov, born 1948; abducted from his home in Samashki, Achkhoy-Martan District on 14 November 2002, at 2 a.m.; the applicants are his wife and three sons who live in Belgium, and his father who lives in Chechnya (five applicants);

61785/08 Salamova and Others: two brothers, Isa Eskiyeu, born 1970, and Usman Eskiyeu, born 1973; abducted from their home in Koshkeldy village, Gudermes District on 6 June 2003, at 2 a.m.; the applicants are their mother and sister, the wife and three daughters of Isa Eskiyeu, and the wife and daughter of Usman Eskiyeu (eight applicants);

8594/09 Yagayeva: Zayndi Ayubov born in 1971; abducted from his home in Grozny on 17 March 2006 at 11 p.m.; the applicant is his wife (one applicant);

24708/09 Debizova and Others: five men - Khamzan (also spelled as Khamzat) Debizov, born 1974, Akhmed Kasumov, born 1979, Magomed Kasumov, born 1976, Adam Eskirkhanov, born 1981, and Ismail Taisumov, born 1972; abducted from their family houses in Novye Atagi, Shali District on 5 November 2002 between 6 a.m. and 8 a.m.; the applicants are Khamzan Debizov's mother, two sisters, and daughter, Akhmed Kasumov's mother and three sisters, Magomed Kasumov's mother and brother, Adam Eskirkhanov's two sisters, Ismail Taisumov's wife, two sons, and sister (16 applicants);

30327/09 Adiyeva and Others: three men - Aslambek Adiyev born in 1977, Albert Midayev, born in 1972, and Magomed Elmurzayev, born in 1984; abducted from Albert Midayev's family house in Shali on 30 June 2002 at 2 p.m.; the applicants are Aslambek Adiyev's mother, sister, wife, daughter, and son, Albert Midayev's mother, father, sister, two daughters and two sons, Magomed Elmurzayev's mother and father, as well as the niece of the three missing persons (15 applicants);

36965/09 Petimat Magomadova: Buvaysar Magomadov, born in 1973; abducted on 27 October 2002 at 6 a.m. from his sister's house in Mesker-Yurt, the Shali district; the applicant is his sister (one applicant);

61258/09 Adiyeva: Said Adiyev, born in 1982; abducted from his mother's house in Chernorechye settlement, Zavodskoy district of Grozny on 8 September 2004 at 8 a.m., the applicant is his mother (one applicant);

63608/09 Saraliyeva: three men - Aydrus Saraliyev, born in 1980, Artur Yesiyev, born in 1981, and Bislan (Beslan) Chadakhanov, born in 1981; abducted from a friend's house in Urus-Martan on 14 February 2002 at around 5 a.m.; the applicants are their mothers (three applicants);

67322/09 Aliyeva and Dombayev: Apti Dombayev, born in 1976; abducted from his home in Mesker-Yurt, Shali District on 4 November 2002 at 6 a.m.; the applicants are his wife and son (two applicants);

4334/10 Inalova: Gilani Aliyev, born in 1971; abducted from his mother's house in Alkhazurovo, Urus-Martan district on 11 August 2003 at around 3 a.m.; the applicant is his sister (one applicant);

4345/10 Amirova and Others: Mikhail Borchashvili born in 1957; abducted from his home in Grozny on 9 March 2006 at 9 p.m.; the applicants are his wife, three daughters, two sons, and sister (seven applicants);

11873/10 Viskhadzhiyev and Others: four men - Aslanbek Viskhadzhiyev, born in 1976, Yasin Viskhadzhiyev, born in 1980, Yusup Biysultanov, born in 1981, and Sultan Viskhadzhiyev, born in 1979; abducted from their homes in Ishkhoy-Yurt, Gudermes district on 28 October 2002 at 3 a.m.; the applicants are Aslanbek Viskhadzhiyev's father, Yasin Viskhadzhiyev's father, Yusup Biysultanov's father, and Sultan Viskhadzhiyev's wife (four applicants);

25515/10 Ismailova: Anzor Ismailov, born in 1980; abducted from his home in Goyty, Urus-Martan district on 4 November 2001 at 5 a.m.; the applicant is his mother (one applicant);

30592/10 Ibragimova: Masud Khakimov, born in 1964, abducted from a Red Cross refugee camp in the settlement of Novye Atagi, Shali district on 24 April 2001; the applicant is his wife (one applicant);

32797/10 Murdalova and Others: three men - Syal-Mirza Murdalov, born in 1965, Ayndi Islamov, born in 1960, and Umar Islamov, born in 1976; abducted from the homes of Ayndi Islamov and Umar Islamov's mother, Ayndi Islamov's son and Umar Islamov's nephew, Ayndi Islamov's daughter and Umar Islamov's niece, and Ayndi Islamov and Umar Islamov's sister in the settlement of Chervlennaya, Shelkovskiy district, on 9 July 2001 at around 3 a.m.; the applicants are Syal-Mirza Murdalov's wife, daughter, and three sons, Ayndi Islamov and Umar Islamov's mother, Ayndi Islamov's son and Umar Islamov's nephew, Ayndi Islamov's daughter and Umar Islamov's niece, and Ayndi Islamov and Umar Islamov's sister (nine applicants);

33944/10 Yusupov: Aslan Yusupov, born in 1974; abducted from his parents' house in Tangi-Chu, Urus-Martan district on 15 June 2002 at 2 p.m.; the applicants are his parents (two applicants; father died, mother maintains the application in the father's stead);

36141/10 Merluyev: Musa Merluyev, born in 1959; abducted from his brother's house in Goyty, the Urus-Martan district on 04 November 2001 at around 5 a.m.; the applicant is his brother (one applicant);

52446/10 Abdulvakhidova: Adam Abdulvakhidov, born in 1977; abducted from his home in Shali on 26 May 2001 at around 4 a.m.; the applicant is his sister (one applicant);

62244/10 Elbuzdukayeva: Suliman (also referred to as Suleyman) Yunusov, born in 1971; abducted from a friend's house in Grozny on 25 February 2004 at 7 a.m.; the applicant is his mother (one applicant);

66420/10 Basnukayeva and Others: three men - Mausyr Basnukayev, born in 1956, Vakha Alisultanov, born in 1947, and Shamsudi Alisultanov, born in 1962; abducted from the applicants' homes in the settlement of Chechen-Aul, Grozny district on 16 April 2000 at around 3 a.m.; the applicants are Mausyr Basnukayev's wife, son, and three daughters, Vakha Alisultanov's wife and two sons, and Shamsudi Alisultanov's wife and son (ten applicants).

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicants complained that their relatives had disappeared after having been detained by Russian servicemen and that the authorities' ensuing investigations were ineffective. The applicants further complained of a violation of Article 3 (prohibition of inhuman or degrading treatment) and Article 5 (right to liberty and security), on account of the mental suffering caused to them by the disappearance and unlawful detention of their relatives. Lastly, the applicants complained that they did not have any effective remedy at national level in respect of their complaints, in breach of Article 13 (right to an effective remedy).

The twenty separate applications were lodged with the European Court of Human Rights between October 2008 and October 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle Berro-Lefèvre (Monaco), *President*,
Elisabeth Steiner (Austria),
Khanlar Hajiyev (Azerbaijan),
Julia Laffranque (Estonia),
Linos-Alexandre Sicilianos (Greece),
Ksenija Turković (Croatia),
Dmitry Dedov (Russia),

and also Søren Nielsen, *Section Registrar*.

Decision of the Court

As to the facts, the Court found that the applicants in all twenty cases had presented a *prima facie* case that their respective relative(s) had been abducted by State servicemen. The burden of proof had thus been shifted to the Russian Government. The Government had not provided the Court with a satisfactory and convincing alternative explanation for the events. The Court therefore concluded that, in view of their detention in life-threatening circumstances and the long periods without any news of them, the applicants' relatives should be presumed dead.

Article 2

In view of the finding that the applicants' 36 relatives were to be presumed dead, following their unacknowledged detention by State servicemen, and given that the Government had not given any justification for the situation, the Court found that the relatives' deaths were to be attributed to the State. There had accordingly been a violation of Article 2 on account of their death.

The Court had already found previously (in the case of *Aslakhanova and Others v. Russia*²) that a criminal investigation did not constitute an effective remedy in respect of disappearances which had occurred in Russia's Northern Caucasus between 1999 and 2006, and that this situation constituted a systemic problem. In the applicants' case, as in many previous similar cases examined by the Court, the investigations had been pending for many years without any significant result. Each set of criminal proceedings had been plagued by a combination of the same defects that the Court had previously identified in many other cases concerning disappearances in Chechnya and Ingushetia in this period, in particular: delays in the opening of the proceedings and in the taking of essential steps; lengthy periods of inactivity; failure to take vital investigative steps, especially those aimed at the identification and questioning of the military and security officers who could have witnessed or participated in the abduction.

The Court therefore found that the authorities had failed to carry out effective criminal investigations into the circumstances of the disappearance and death of the applicants' relatives. There had accordingly been a violation of Article 2 in this respect as well.

Articles 3, 5 and 13

The Court found that there had been a violation of the prohibition of inhuman or degrading treatment under Article 3, on account of the distress the applicants suffered as a result of their inability to find out about the fate of their close family members and on account of the manner in which their complaints had been dealt with.

² *Aslakhanova and Others v. Russia* (nos. 2944/06, 8300/07, 42509/10, 50184/07 and 332/08), Chamber judgment of 18 December 2012.

Given its finding that the applicants' relatives had been detained by State officials, unacknowledged and without legal ground, the Court found that there had been a particularly grave violation of the right to liberty and security under Article 5.

Furthermore, the applicants did not have an effective remedy at national level in respect of their complaints under Articles 2 and 3, in breach of Article 13.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicants amounts between 23,000 euros (EUR) and EUR 300,000 per application (to the applicant family or the individual applicant, respectively) in respect of non-pecuniary damage and between EUR 2,500 and EUR 7,000 per application in respect of costs and expenses.

The total amount awarded in the twenty applications in respect of non-pecuniary damage is EUR 1,928,000. The detailed awards can be found in an appendix to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.