



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

FIRST SECTION

CASE OF ILAYEVA AND OTHERS v. RUSSIA

(Application no. 27504/07)

JUDGMENT

STRASBOURG

10 July 2012

FINAL

19/11/2012

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

In the case of Ilayeva and Others v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 27504/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by nine Russian nationals, listed below (“the applicants”), on 14 June 2007.

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

3. Referring to Articles 2, 3, 5 and 13 of the Convention, the applicants alleged that four relatives of theirs had been abducted and deprived of their lives by State servicemen and that the authorities had failed to effectively investigate the matter.

4. On 27 August 2010 the Court decided to apply Rule 41 of the Rules of Court, to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- (1) Ms Yakhita Ilayeva, born in 1959;
- (2) Ms Larisa Ilayeva, born in 1987;
- (3) Ms Luiza Ilayeva, born in 1985;
- (4) Mr Dzhokhar (also spelled as Dzhakhar) Ilayev, born in 1995;
- (5) Ms Mariyam (also spelled as Maryam) Ibragimova, born in 1957;
- (6) Mr Adam Ilayev, born in 1994;
- (7) Ms Pyatimat Ibragimova, born in 1925;
- (8) Ms Elizaveta (also spelt as Liza) Batayeva, born in 1962; and
- (9) Ms Taus Islamova, born in 1936.

6. The first, second, third and fourth applicants live in Grozny, Chechnya; the fifth and sixth applicants live in Assinovskaya (also spelled as Assinovskoye), in the Sunzhenskiy district of Chechnya; the seventh applicant lives in Shalazhi, Chechnya; the eighth applicant lives in Ordzhenikidzevskaya, Ingushetia; and the ninth applicant lives in Nesterevskaya, Ingushetia.

7. The applicants represent four related families. The first applicant is the mother of Inver Ilayev, who was born in 1982. The second and third applicants are his sisters and the fourth applicant is his brother. The fifth applicant is the mother of Adlan Ilayev, who was born in 1987. The sixth applicant is his brother and the seventh applicant is his grandmother. The eighth applicant is the mother of Kazbek Batayev (also spelt Bataev), who was born in 1983. The ninth applicant is the mother of Rustam Ilayev, who was born in 1974.

A. Abduction of the applicants' relatives and subsequent events

1. Information submitted by the applicants

(a) Abduction of the applicant's relatives

8. At the material time, the village of Assinovskaya was under the total control of the Russian federal forces. Military checkpoints manned by Russian servicemen were located on the roads leading to and from the settlement. One of the checkpoints, called Kavkaz (*Кавказ*), was located on the way out of the village, at the intersection of the Assinovskoye-Sernovodskoye road and the Rostov-Baku motorway.

9. On 3 July 2004 the applicants and their relatives, including Inver Ilayev, Rustam Ilayev, Adlan Ilayev and Kazbek Batayev, painted and carried out repairs to the fifth applicant's house in Assinovskaya.

10. Inver Ilayev, Rustam Ilayev, Adlan Ilayev and Kazbek Batayev worked until late at night. After midnight, the young men went to the first

applicant's house to spend the night. A number of other relatives, including the second and third applicants, also slept that night at the house, which was located at 95 Fiftieth Anniversary of the October Revolution Street (*улица 50-летия Октября*) in Assinovskaya.

11. At about 4 a.m. on 4 July 2004 the first applicant woke up from the sound of someone walking in the house. A group of about ten armed masked men in camouflage uniforms broke into the room where Inver Ilayev, Rustam Ilayev, Adlan Ilayev and Kazbek Batayev were sleeping. Two of the intruders went into the first applicant's bedroom; several intruders remained in the yard. The first applicant and her relatives thought that these men were Russian military servicemen.

12. The officers, who spoke unaccented Russian, gathered all of the family members – except for Inver Ilayev, Rustam Ilayev, Adlan Ilayev and Kazbek Batayev – together in the corner of one room. They did not ask for any identity documents and did not provide any explanations for their actions.

13. The first applicant and her relatives could see from the adjacent room that the servicemen started swearing at Inver Ilayev, Rustam Ilayev, Adlan Ilayev and Kazbek Batayev and beating them. Then they ordered the applicants' relatives to get up and took them outside one by one. The officers did not let the other family members leave the room they were in.

14. Next the servicemen quickly searched the house but did not find anything of interest to them. After that, they walked off down the street with Inver Ilayev, Rustam Ilayev, Adlan Ilayev and Kazbek Batayev. Several of the servicemen remained in the yard of the first applicant's house to stop the relatives from following the detainees.

15. After all the servicemen were gone, the first applicant and her relatives went outside. Their neighbours informed them that the abductors had arrived in three APCs (armoured personnel carriers) and a UAZ vehicle without registration numbers, which they had parked about two blocks away. A number of local residents, including Ms M.Ch. and Ms. T.E., had seen the abductors forcing the applicants' relatives into the APCs and driving away in the direction of the Kavkaz checkpoint.

16. According to local residents, during their passage through the checkpoint, the abductors in the APCs had stopped and spoken with the servicemen who had been manning the roadblock that night.

(b) The subsequent events

17. Immediately after the abduction the first applicant and her relatives went to the head of the local administration, the Sunzhenskiy District Department of the Interior ("the ROVD"), the Achkhoy-Martan Inter-District Prosecutor's Office ("the prosecutor's office") and reported the abduction of their four relatives by military servicemen. On 5 July 2004 the applicants reiterated their reports to the authorities in writing.

18. Early in the morning of 4 July 2004 the fifth applicant went to the prosecutor's office. She informed him of the abduction of her relatives and pointed out that Adlan Ilayev was only 16 years old. In the applicant's presence, the prosecutor called someone by phone and asked the person "to keep in mind" that a young boy was among the detainees.

19. In the morning of 4 July 2004 a district police officer from the ROVD and investigators from the prosecutor's office arrived at the first applicant's house. The officers conducted a crime scene examination and took photographs and blood samples.

20. On 5 or 6 July 2004 the applicants and other residents of Assinovskaya organised a meeting and blocked the traffic on the motorway heading to the Kavkaz checkpoint, demanding that the authorities provide information about their abducted relatives. The district prosecutor arrived at the meeting with a representative of the local administration and assured those present that in a couple of days the applicants would be provided with information about the place of detention of their missing relatives.

21. On 12 July 2004 the first, fifth, sixth and seventh applicants visited the Chechen Minister of the Interior. The Minister told them that the authorities had information about the abductors, mentioning the name of a Russian military unit which, in his opinion, was most probably responsible for the abduction.

22. Sometime later the applicants learned from undisclosed sources that their abducted relatives were detained on the premises of a special military unit stationed in the field next to Achkhoy-Martan. The applicants informed the Achkhoy-Martan District Prosecutor of this, but the prosecutor told them that only a military prosecutor's office had the right to access those premises. At some point later the applicants' abducted relatives were transferred from the military unit to Khankala, the main Russian military base in Chechnya.

23. According to the applicants, about two months after the abduction the same group of Russian servicemen again arrived at the first applicant's house late at night in two APCs. They quickly searched the house and left. The first applicant informed the prosecutor's office of the raid.

24. In support of their application the applicants enclosed the following documents: a statement by Ms M.Ch. dated 11 July 2004; a statement by Ms. T.E. dated 4 July 2004; a statement by the fifth applicant dated 21 February 2005; a statement by the first applicant dated 3 February 2006; and copies of documents received from the authorities.

2. Information submitted by the Government

25. The Government did not challenge the matter as presented by the applicants. At the same time, they stated that there was no evidence that the applicants' relatives were dead or that State agents had been involved in their alleged abduction and/or subsequent killing.

B. The official investigation into the abduction

1. Information submitted by the applicants

26. On 22 July 2004 the prosecutor's office instituted an investigation into the abduction of the applicants' relatives under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 49002 (in the documents submitted the case is also referred to under no. 490002). The text of the decision included the following observations:

“... at about 4 a.m. on 4 July 2004 a group of about ten unidentified armed men in camouflage uniforms and masks arrived at the crime scene in the village of Assinovskaya. The group arrived in a UAZ-462 vehicle and an APC and unlawfully detained Inver Ilayev, who was born in 1983, Rustam Ilayev [and] Adlan Ilayev, who were born in 1987, and Kazbek Batayev, who was born in 1983 ...”

27. On an unspecified date in July 2004 the first applicant was granted victim status in criminal case no. 49002. On 24 and 30 July 2004 the fifth and the eighth applicants, respectively, were also granted victim status in the criminal proceedings.

28. On 22 July 2004 (it appears that the date is incorrect) the prosecutor's office informed the applicants that on 22 November 2004 they had suspended the investigation for failure to establish the identities of the perpetrators. The text of the relevant decision included the following:

“... the preliminary investigation of the criminal case established ... that the perpetrators of the abduction had arrived at the crime scene in three APCs. In connection with this, a number of requests were forwarded [by the investigators] to law-enforcement agencies in Chechnya and Ingushetia to identify the power structure to which these vehicles had belonged ...”

29. On 3 August 2004 the investigators informed the applicants that they were taking action, including operational-search measures, to identify the perpetrators of their relatives' abduction.

30. The applicants did not receive any other information about the progress of the investigation into the abduction. The investigation of case no. 49002 has not been completed to date.

2. Information submitted by the Government

31. According to the Government's observations on the admissibility and merits of 21 December 2010, the applicants reported the abduction on 14 July 2004. However, from the copy of the contents of the investigation file furnished to the Court it can be seen that the applicants lodged their written report of the abduction on 8 July 2004.

32. On 8 July (in the documents submitted the date was also referred to as 11 July) 2004 the investigators examined the crime scene. No evidence was collected.

33. On 11 July 2004 the investigators questioned the first applicant, who described the circumstances of the abduction.

34. On 11 and 12 July 2004 the investigators questioned the applicants' neighbours, Mr Z.G., Ms R.M. and Mr A.I., all of whom stated that they had not witnessed the abduction, but that they had seen traces of blood at the crime scene the next morning.

35. On 12 or 17 July 2004 the investigators questioned the applicants' neighbour, Mr D.G., who stated that at about 4 a.m. on 4 July 2004 he had seen a group of about twenty armed men in camouflage uniforms who had been taking away four of his male neighbours and that down the street there had been several military vehicles awaiting them with engines running.

36. On 14 July 2004 the investigators asked the district military commander's office to inform them whether they had conducted any special operations in respect of the applicants' relatives. No reply was given to this query.

37. On 22 July 2004 the district prosecutor's office opened criminal case no. 49002 and the supervising prosecutor ordered the investigators to take a number of steps, including the following: an urgent in-depth crime scene examination; an expert evaluation of the evidence; making a plan of the investigative actions to be undertaken; questioning of the applicants, their relatives and neighbours about the circumstances of the abduction; forwarding requests for information about the abducted men to various law-enforcement and military agencies; verification of whether any special operations had been conducted in the area between 3 and 4 July 2004; verification of whether military servicemen from military unit no. 20102 had been involved in the incident; an examination of the registration logs of the checkpoints in the area including the Kavkaz checkpoint to find out whether the abductors' UAZ-469 car and an APC had passed through them on the night of the abduction.

38. On 23 July 2004 the investigators granted the fifth applicant victim status in the criminal case and questioned her. The applicant described the circumstances of the abduction and stated that the abduction had been perpetrated by unidentified military servicemen in camouflage uniforms and masks, who had arrived in three APCs.

39. On 24 July 2004 the investigators granted the eighth applicant victim status in the criminal case and questioned her. The applicant stated that she had not witnessed the events but had found out from the other applicants that the abduction had been perpetrated by unidentified Russian-speaking men in camouflage uniforms and masks, who had arrived in three APCs.

40. On 24 July 2004 the investigators granted the ninth applicant victim status in the criminal case and questioned her. The applicant stated that she had not witnessed the events but had found out from the other applicants that the abduction had been perpetrated by unidentified Russian-speaking men in camouflage uniforms and masks, who had arrived in three APCs.

41. On 28 and 30 July 2004 the investigators granted the first applicant victim status in the criminal case and questioned her. The applicant stated

that the abduction had been perpetrated by unidentified Russian-speaking men in camouflage uniforms and masks, who had arrived in three APCs.

42. On various dates in July and August 2004 the investigators forwarded numerous information requests to various prosecutors' offices, military commanders' offices, the departments of the Federal Security Service ("the FSB") and departments of the interior in Chechnya, asking whether the abducted men had been detained in their districts or whether their bodies had been found in the area. Replies in the negative were received.

43. On 30 July, 2 and 3 August 2004 the investigators questioned twenty-two of the applicants' neighbours, including Ms A.G., Ms A.M., Ms B.V., Ms T.I., Mr Kh.M. Ms T.M., Mr Kh.G., Mr T.K., Mr M.A., Ms V.V., Ms E.B., Ms A.B., Ms B.S., Mr B.K., Ms Kh.Sh., Ms Kh.G., Ms Z.B., Ms M.I., Ms L.G, Ms M.Ch., Ms M.M. and Ms Kh.M., all of whom stated that they had not witnessed the abduction directly, but had found out about it from the applicants. Some of the witnesses stated that they had either seen or heard APCs in their street on the night of the abduction and that they had been woken up from the noise caused by the perpetrators during the abduction when the latter had broken the applicants' furniture and beaten the abducted men.

44. On 14 October 2004 the investigators made a report to the supervising prosecutor about the progress of the investigation of criminal case no. 49002, stating, amongst other things, the following:

"[...] the investigation has established that ... the abductors arrived in three APCs ...
[...] [A]s a result of the operational-search measures, the investigation received operational information from law-enforcement agencies about the involvement of the [abducted] men in illegal armed groups and terrorist activities in Chechnya ..."

45. On various dates between August and November 2004 the investigators questioned several residents of Assinovskaya, asking them to attest to the abducted men's character and their possible involvement in illegal armed groups. Positive portrayals of the men were given, and no information pertaining to either the involvement of the abducted men in illegal activities or the circumstances of their abduction was received.

46. On 22 November 2004 the investigation was suspended for failure to identify the perpetrators.

47. It appears that on an unspecified date in July 2005 the investigation of the abduction was resumed as a result of the need to take certain investigative steps.

48. On 23 July 2005 the investigators questioned a resident of Assinovskaya, Mr Kh.M., who stated that he did not know anything about the abduction other than that it had taken place in July 2004.

49. On an unspecified date in 2005 the investigation was again suspended for failure to identify the perpetrators.

50. On 10 June 2008 the supervising prosecutor criticised the investigation, stating that it was incomplete. In particular, he pointed out

that the investigators had failed to take any steps to identify the armoured vehicles used by the abductors or to verify the theory of the possible involvement of State servicemen in the abduction. On the same date the investigation was resumed.

51. On various dates in June 2008 the investigators again forwarded numerous information requests to various prosecutors' offices, military commanders' offices, the departments of the FSB, detention centres and departments of the interior in Chechnya and the other regions of the Russian Federation, asking whether the abducted men had been detained on their premises, whether their bodies had been found in the areas under their authority and whether the agencies had any information concerning their possible whereabouts and involvement in illegal armed groups. Replies in the negative were received.

52. On 10 June 2008 the investigators asked the Achkhoy-Martan ROVD to take measures to identify the owners of the APCs used by the abductors and the registration numbers of the abductors' vehicles. The outcome of this request is unknown.

53. On 10 July 2008 the investigation was again suspended for failure to identify the perpetrators and the applicants were informed thereof.

54. According to the Government, no special operations were conducted in respect of the applicants' abducted relatives. They were neither arrested nor detained on criminal or administrative charges. They did not seek medical assistance; their corpses have not been found.

55. Upon a specific request by the Court, the Government submitted that they had enclosed the contents of criminal case file no. 49002, which was 676 pages long. However, they had in fact furnished the Court with 566 pages from criminal case file no. 49002 and enclosed copies of the contents of another criminal case file, amounting to 110 pages, which was irrelevant to the present case.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ISSUE CONCERNING THE EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

57. The Government submitted that the investigation into the disappearance of the applicants' relatives had not yet been completed. They further argued, in relation to the complaint under Article 13 of the Convention, that it had been open to the applicants to lodge an action in court complaining about any acts or omissions on the part of the investigating authorities. In addition, they could have applied for civil damages.

58. The applicants contested the Government's submissions. They stated that the only effective remedy, the criminal investigation, had proved to be ineffective.

B. The Court's assessment

59. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73 and 74, 12 October 2006).

60. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

61. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

62. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement authorities shortly after the abduction and that an investigation has been pending since 22 July 2004. The applicants and the Government dispute the effectiveness of the investigation of the incident.

63. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints. Thus, it decides to join this

objection to the merits of the case and considers that the issue falls to be examined below.

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

A. The parties' arguments

64. The applicants maintained that it was beyond reasonable doubt that the men who had abducted their relatives had been State agents. In support of their complaint, they referred to the fact that the Government had not disputed their account of the matter and that the documents from the investigation file had confirmed their theory that the perpetrators of the abduction had been federal servicemen (see paragraphs 28, 35, 38, 44 and 50 above). In particular, they stressed that the abductors had used APCs, which were exclusively used by the Russian federal forces, that having detained the four men the abductors had been able to obtain unhindered passage through a checkpoint, that the abductors had been a large group of armed men in camouflage uniforms who had driven around in military vehicles without any fear of being seen or heard by law-enforcement agencies and that the authorities had had a motive for the arrest of the applicants' four relatives, as they had formed the suspicion that the four missing men were members of illegal armed groups. They further stated that their relatives had been missing for more than seven years and that they could therefore be presumed dead. That presumption was further supported by the circumstances in which they had been arrested, which should be recognised as life-threatening.

65. The Government submitted that unidentified armed men had abducted the applicants' relatives. They further contended that the investigation of the incident was pending, that there was no evidence that the abductors had been State agents and that there was no convincing evidence that the applicants' relatives were dead, as their bodies had not been found. The Government further submitted that military uniforms and firearms could have been obtained by any criminal and that the applicants' descriptions of the abductors' appearance had not been sufficiently precise.

B. The Court's evaluation of the facts

66. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of matters 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, §§ 103-09, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained

has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

67. The applicants alleged that the persons who had taken their relatives away on 4 July 2004 and then killed them had been State servicemen. The Government did not dispute any of the factual elements underlying the application and did not provide any other explanation of the events other than stating that the abductors had not been State agents.

68. The Court notes that the applicants' allegations are supported by the witness statements given to the investigators (see paragraphs 38-41 above). The domestic investigation, upon the orders of the supervising prosecutor, took steps to check whether State servicemen were involved in the abduction by sending information requests to various State agencies (see paragraphs 36, 42 and 51 above), but it does not appear that any serious steps were taken to that end.

69. The Court observes that where the applicant makes out a prima facie case, it is for the Government 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 (extracts)).

70. 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 investigators had not found any evidence to support the involvement of State agents in the incident is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to provide a plausible explanation for the events in question, the Court finds that the applicants' relatives were arrested on 4 July 2004 by State servicemen during an unacknowledged security operation.

71. There has been no reliable news of the applicants' relatives since the date of the abduction. Their names have not been found in any official detention facility records. The Government have not submitted any explanation as to what happened to them after their arrest.

72. Having regard to previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-XIII (extracts); *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Chechen 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 the applicants' relatives or of any news of them for more than seven years supports this assumption.

73. Accordingly, the Court finds that the evidence available permits it to establish that the applicants' relatives must be presumed dead following their unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

74. The applicants complained under Article 2 of the Convention that their relatives had been deprived of their lives by State 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

75. The Government contended that the domestic investigation had obtained no evidence to the effect that the applicants' relatives were dead or that any State servicemen had been involved in their abduction or alleged killing. The investigation into the incident had met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify the perpetrators.

76. The applicants argued that their relatives had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for more than seven years. The applicants also alleged that the investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law. They pointed out that the investigation had been initiated with an inexplicable delay, that the investigators had not taken some crucial investigative steps, such as collecting evidence from the crime scene, identifying and questioning of the military servicemen who had manned the checkpoint on the night of the abduction, questioning of the commanding officers of the relevant State agencies concerning the possible involvement of their staff in the incident, identifying and questioning of APC drivers assigned to those agencies and timely questioning of the residents of Assinovskaya about the passage of the abductors' convoy

through the settlement. The applicants further stated that the investigation of the abduction had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and that they had not been properly informed of the most important investigative measures taken. The fact that the investigation had been pending for more than seven years without producing any tangible results was further proof of its ineffectiveness.

B. The Court's assessment

1. Admissibility

77. 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 issue of the effectiveness of the investigation should be joined to the merits of the complaint (see paragraph 63 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 Inver Ilayev, Adlan Ilayev, Kazbek Batayev and Rustam Ilayev

78. 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 the applicants' relatives.

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

79. 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 in order for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-19).

80. In the present case, the abduction of the applicants' relatives was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

81. The Court notes that from the documents submitted it follows that the applicants lodged a written report of the abduction on 8 July 2004 (see paragraph 31 above). The investigation into the incident only commenced on 22 July 2004 – that is, fourteen days after the receipt of the applicants' complaint. From the contents of the investigation file furnished by the

Government it transpires that the crime scene was inspected four days after the abduction, but no evidence was collected in spite of the witnesses' submissions about the traces of blood left behind by the perpetrators (see paragraphs 32 and 34 above). No fingerprints or imprints of the vehicles' tires were collected; none of the applicants who had witnessed the events was questioned immediately after the receipt of their report of the abduction. From the very beginning of the investigation the applicants and their neighbours stated that the abduction had been perpetrated either by State servicemen (see paragraph 38 above) or that the abductors had arrived in armoured military vehicles (see paragraphs 35 and 39-41 above). In spite of this unequivocal information, the investigators did not take any prompt steps to question the servicemen who had manned the Kavkaz checkpoint on the night of the abduction or identify the owners of the abductors' APCs. The investigators made an attempt to take the latter step in June 2008 (see paragraph 52 above), almost four years after the abduction, but it does not appear that they made any further efforts to obtain the relevant information.

82. The investigators did not question any of the commanding officers of the local power structures about possible involvement of their servicemen in the applicants' relatives' abduction. From the orders of the supervising prosecutor (see paragraphs 37 and 50 above), it is evident that the investigators were given instructions to take steps in order to verify the involvement of State servicemen in the abduction, but those essential orders were not carried out by the investigators. In addition, from the contents of the interview transcripts submitted to the Court it follows that the witnesses were questioned superficially, that they gave very similar and short statements concerning the events, most of which boiled down to the fact that they had no pertinent information for the investigators. Such failures on the part of the investigation along with its inexplicable delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious matter (see *Öneriyıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

83. The Court also notes that even though the first, fifth, eighth and ninth applicants were granted victim status in the criminal case concerning the abduction of their sons, they were informed of the suspension and resumption of the proceedings sporadically, and were not informed 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.

84. Finally, the Court notes that the investigation – which has been ongoing for more than seven years – was suspended and resumed on three occasions and that there were lengthy periods of inactivity on the part of the investigators when the proceedings were suspended.

85. The Government alleged that the applicants could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged the acts or omissions of the investigating authorities before a court. Furthermore, the Court emphasises in this respect that while the suspension or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to suspend were made without the necessary investigative steps being taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that should have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that this remedy was ineffective in the circumstances and dismisses the preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

86. 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 the applicants' relatives, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

87. The applicants relied on Article 3 of the Convention, submitting 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. The parties' submissions

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

89. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

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

2. Merits

91. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. 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 (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

92. In the present case the Court notes that the applicants are close relatives of the four disappeared men. For more than seven years they have not had any news of them. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing relatives. Despite their attempts, they have never received any plausible explanation for their relatives’ arrest or information about what became of their relatives following their detention. The responses they received denied State responsibility for their relatives’ arrest or simply informed them that the investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

94. The applicants further stated that their abducted relatives had been detained in violation of the guarantees contained in Article 5 of the Convention, which reads, in so far as relevant:

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

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

...

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

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

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

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

A. The parties' submissions

95. The Government asserted that no evidence had been obtained by the investigators to confirm that the applicants' relatives had been deprived of their liberty. They were not listed among the persons kept in detention centres and none of law-enforcement agencies had information about their detention.

96. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

98. The Court has previously noted the fundamental importance of the guarantees contained in Article 5, which 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).

99. The Court has found that the applicants' relatives were detained by State servicemen on 4 July 2004 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and no official trace of their subsequent whereabouts or fate exists. 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).

100. The Court further considers that the authorities should have been more alert to the need for a thorough investigation of the applicants' complaints that their relatives had been abducted 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 effective measures to safeguard the applicants' relatives against the risk of disappearance.

101. In view of the foregoing, the Court finds that the applicants' relatives 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.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

102. 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

103. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using those remedies. The applicants had had the opportunity to challenge the acts or omissions of the investigating authorities in court, as well as to claim damages in civil proceedings.

104. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

106. The Court reiterates that in circumstances where, as here, a criminal investigation into a disappearance has been ineffective and the effectiveness of any other remedy that might 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 (see *Khashiyev and Akayeva*, cited above, § 183).

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

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

110. The first, fifth, eighth and ninth applicants claimed damages in respect of loss of earnings by their sons after their arrest and subsequent disappearance. The first applicant, as the mother of Inver Ilayev, claimed a total of 558,710 Russian roubles (RUB) under this heading (equivalent to 14,455 euros (EUR)); the fifth applicant, as the mother of Adlan Ilayev, claimed a total of RUB 598,893 under this heading (EUR 15,500); the eighth applicant, as the mother of Kazbek Batayev, claimed a total of RUB 574,461 under this heading (EUR 14,860); and the ninth applicant, as the mother of Rustam Ilayev, claimed a total of RUB 283,497 under this heading (EUR 7,330).

111. They claimed that their sons had been temporarily unemployed at the time of the abduction and that they were therefore unable to obtain salary statements for them and submitted that in such cases the calculation should be made on the basis of the subsistence level established by national law. They calculated their earnings for the period, taking into account an average inflation rate of 12.57%. Their calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 (“the Ogden tables”).

112. The Government regarded these claims as based on supposition and unfounded, submitting that there was no evidence that the abducted men had been the family breadwinners or that their mothers had been financially dependent on them. At the same time, they pointed to the existence of domestic statutory machinery for the provision of a pension for the loss of the family breadwinner.

113. The Court reiterates that there must be a clear causal connection between the damage claimed by an applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. The Court further finds that the notion of loss of earnings also applies to elderly parents and that it is reasonable to assume that the applicants' sons would eventually have had some earnings from which the applicants would have benefited as their mothers (see, among other authorities, *Imakayeva*, cited above, § 213). 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' sons and the loss by the applicants of the financial support which they could have provided. Having regard to the applicants' submissions, the Court awards in respect of pecuniary damage EUR 11,500 to the first applicant, EUR 12,400 to the fifth applicant, EUR 11,900 to the eighth applicant and EUR 5,900 to the ninth applicant, plus any tax that may be chargeable to the applicants on that amount.

B. Non-pecuniary damage

114. The applicants jointly claimed EUR 400,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their close relatives, the indifference shown by the authorities towards them and the State's failure to provide any information about the fate of their family members.

115. The Government found the amounts claimed excessive and stated that finding a violation of the Convention would be adequate just satisfaction in the applicants' case.

116. 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 themselves have been found to have been the victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the first, second, third and fourth applicants EUR 60,000 jointly; the fifth, sixth and seventh applicants EUR 60,000 jointly and the eighth and ninth applicants EUR 60,000 each, plus any tax that may be chargeable thereon.

C. Costs and expenses

117. 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. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 6,252.

118. The Government disputed the justification for the amounts claimed under this heading, stating that the bills were not sufficiently itemised and that the claims were unsubstantiated.

119. The Court has to establish, first, whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

120. Having regard to the details of the information and legal representation contracts submitted by the applicants, the Court is satisfied that these rates are reasonable. As to whether they were necessary and actually incurred, the Court notes, that even though this case required a certain amount of research and preparation and involved a substantial volume of the documentation, due to the similar nature of the observations on the admissibility and merits of this application to a number of other applications submitted in similar cases, the legal research claimed by the applicants' representatives was not necessary to the extent declared.

121. Having regard to the details of the claims submitted by the applicant, the Court awards them the amount of EUR 3,000 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.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the objection as to exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;

3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of the applicants' relatives;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which the applicants' relatives disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of the applicants' relatives;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5 of the Convention;
9. *Holds*
 - (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles on the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 11,500 (eleven thousand and five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage to the first applicant;
 - (ii) EUR 12,400 (twelve thousand and four hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage to the fifth applicant;
 - (iii) EUR 11,900 (eleven thousand and nine hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage to the eighth applicant;
 - (iv) EUR 5,900 (five thousand and nine hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage to the ninth applicant;
 - (v) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first, second, third and fourth applicants jointly;
 - (vi) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the fifth, sixth and seventh applicants jointly;

- (vii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the eighth applicant;
- (viii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the ninth applicant;
- (ix) EUR 3,000 (three 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;

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

Done in English, and notified in writing on 10 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President