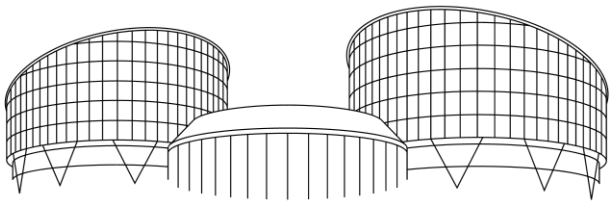

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ASLAKHANOVA AND OTHERS v. RUSSIA

(Applications nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10)

JUDGMENT

STRASBOURG

18 December 2012

FINAL

29/04/2013

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

In the case of Aslakhanova and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 4 December 2012,

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

PROCEDURE

1. The case originated in five applications against the Russian Federation (see Annex I) lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by sixteen Russian nationals ("the applicants"), on the dates indicated in Annex I.

2. The applicants were represented by lawyers of the NGO Stichting Russian Justice Initiative (SRJI) (in partnership with the NGO Astreya) and Mr D. Itslayev, a lawyer practising in Ingushetia. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their eight relatives had been detained by servicemen in Grozny or the Grozny District in Chechnya on various dates between 2002 and 2004 and that no effective investigations had taken place.

4. The applications were communicated to the Government between April 2008 and January 2011. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

5. On 15 June 2011 the Court decided to communicate to the Government additional questions under Article 46 of the Convention about the possibly structural nature of the failure to investigate disappearances.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applications have been lodged by five families who complain about the disappearance of their eight male relatives in Grozny or the Grozny District between March 2002 and July 2004. The abductions occurred in quite similar circumstances: the applicants' relatives were arrested by groups of armed and masked men at their homes or in the streets in a manner resembling a security operation. In each case a criminal investigation file was opened by the local prosecutor's office. At the end of 2011, when the latest round of observations was submitted, the investigations remained pending without having produced any tangible results as to the whereabouts of the applicants' relatives or the identity of the perpetrators.

7. In their observations the Government did not dispute the principal facts of each case as presented by the applicants, but noted that as the domestic investigations were pending, any conclusions about the exact circumstances of the crimes would be premature. They argued that it had not been established with sufficient certitude that the applicants' relatives had been detained by State agents or that they were dead.

8. Below are summaries of the facts relevant to each individual complaint. The personal data of the applicants and their disappeared relatives and some other key facts are summarised in the attached table (Annex I).

A. Application no. 2944/06, *Satsita Aslakhanova v. Russia*

1. Abduction of Apti Avtayev

9. The applicant was living in Urus-Martan, Chechnya, with her husband Apti Avtayev. They had two daughters, born in 1997 and 1999. According to the applicant, at 10 a.m. on 10 March 2002 a large group of servicemen (about fifty) wearing camouflage uniforms and armed with automatic weapons had conducted a sweeping operation in Dzerzhinskogo Street in Grozny, where the applicant's husband had been working at the time. They had used several APCs and military Ural trucks without number plates. They had entered the houses, searched them and led Apti Avtayev away.

10. The applicant had not been a witness to her husband's abduction as at the relevant time she had been staying in Urus-Martan. The description of the events of 10 March 2002 was based on the accounts provided to the applicant's representatives by her on 1 August and by the witnesses to Apti

Avtayev's abduction: by Mr M. D. on 14 July 2005; by Mr R. P. on 14 July 2005; and by Mrs A. B. on 15 July 2005.

2. Official investigation

11. The applicant arrived in Grozny on 11 March 2002 and started to search for her husband. She personally visited the local police station, the military commander's office and the prosecutor's office. In the subsequent months she wrote to numerous official and public bodies, as testified by her and attested by some responses to her queries received in June 2002.

12. On 19 August 2002 the Leninskiy District Department of the Interior ("the Leninskiy ROVD") of Grozny opened criminal investigation file no. 48139 under Article 126 § 2 of the Criminal Code (aggravated kidnapping). On the same day the applicant was questioned and granted the status of victim.

13. The investigation was suspended on several occasions. It was also transferred from one prosecutor's office to another. The Government refused to disclose any documents from the file. Instead, they referred to some documents which, in their opinion, called into question the applicant's presentation of the facts. The applicant therefore submitted a copy of a report of an unspecified date, in which the head of the Leninskiy ROVD had informed the Grozny Prosecutor's Office that Apti Avtayev had been detained by contract servicemen of the Leninskiy district military commander's office, who had told [local residents] that his body could be found in the Sunzha River. The same servicemen had later returned and terrorised the witnesses to the abduction, forcing them to flee. In their observations the Government questioned the validity of that document. Furthermore, they alleged that Mrs A.B., the owner of the house in Grozny where Apti Avdayev had been apprehended, had been away on the day in question. In turn, the applicant disputed that allegation and submitted an additional testimony by Mrs A.B. dated 15 September 2009, confirming her previous statements as an eyewitness to the abduction and attesting that she had not been questioned about the crime.

14. On 19 September 2005, following a complaint by the applicant, the Leninskiy District Court of Grozny found that the investigation had been ineffective, ordered its resumption and instructed that the applicant be issued with copies of certain procedural documents. At the same time, the court observed that the applicant could access and make copies of documents in the criminal investigation file only after the completion of those proceedings. On 9 November 2005 the Supreme Court of Chechnya confirmed that decision on appeal.

15. On 11 March 2003, following a request by the applicant, the Leninskiy District Court declared Mr Avtayev a missing person as of 10 March 2002.

B. Applications no. 8300/07, Barshova and Others v. Russia and no. 42509/10, Akhmed Shidayev and Belkis Shidayeva v. Russia

1. Abduction of Anzor and Sulumbek Barshov

16. At 2 a.m. on 23 October 2002 a group of about thirty armed men in camouflage uniforms, wearing masks, armed with sub-machine guns equipped with silencers and speaking Russian entered the applicants' house in Grozny, searched it and beat up the two Barshov brothers. They put black plastic bags over the heads of the two men, fixed them with adhesive tape and took them away in their underwear and barefoot. The intruders tied up the applicants' hands and covered their mouths with adhesive tape. Once the applicants had managed to release themselves, they followed the footprints of military boots and bare feet, which were clearly visible in the wet mud. They arrived at a military checkpoint located by a bridge over the Sunzha River, about 700 metres from their house. The servicemen stationed there allegedly told them that their relatives had been taken away by "federal servicemen" in UAZ cars.

17. The first applicant submitted her own statement of November 2006, as well as written testimonies by four of her relatives and neighbours made between August and November 2006, which were fully consistent with her statements.

2. Abduction of Abuyazid Shidayev

18. Akhmed (the applicant) and Abuyazid Shidayev (his father) were detained at 2.30 a.m. on 25 October 2002 at their home, presumably by the same group as the Barshov brothers (no. 8300/07). Akhmed Shidayev was released on 30 October 2002 in a forest near Grozny and gave detailed submissions to the Court and the investigation about being taken, blindfolded, to the checkpoint, placed in a UAZ vehicle and subsequently detained at a military installation. On the night of his abduction, while being transported in a UAZ vehicle, and later at the installation, he was detained together with his father and the Barshov brothers.

19. According to the applicants, when the first applicant was released he had had numerous bruises on his body and head, scars on the inner side of his legs and a swollen testicle. He had been afraid to seek medical assistance in Chechnya and had undergone inpatient medical treatment for three months outside the region, under a false name. He had been recommended surgery on the injured testicle. The applicants furnished no medical documents in support of the allegations of injuries sustained by the first applicant.

20. In addition to the detailed statements to the domestic investigating authorities (see below), the applicants made three testimonies to the Court dated June 2010, describing in detail the events in question.

3. Official investigation

21. The investigation into the abduction of the Barshov brothers [in many documents in the file also spelled "Borshov"] and two members of the Shidayev family was opened on 31 October 2002 by the Leninskiy ROVD of Grozny. It was suspended and resumed on several occasions but produced no tangible results. In May 2011 the Government submitted 592 pages - the entire contents of the criminal investigation file no. 48188. In November 2010 (the date of the latest documents), the case remained pending; no progress had been made in respect of finding the missing men or identifying the perpetrators. Several eyewitnesses testified that the detained men had been taken by their abductors to UAZ vehicles parked near a roadblock at the Zhukovskiy bridge; however, it does not appear that the servicemen manning the roadblock were identified or questioned.

22. On 18 November 2002 Mrs Barshova was granted the status of victim. She was questioned on several occasions after that date. Belkis Shidayeva was questioned and granted the status of victim on 28 July 2003.

23. Akhmed Shidayev was questioned on 30 May 2003 and 23 May 2005. He testified that he had been detained together with the three missing men. He gave detailed submissions about his detention, beatings, questioning and release at an installation that he presumed to be military. He referred to the black camouflage uniforms of the abductors, the UAZ vehicles and the sounds of helicopters landing and taking off above the "pit" where he had been detained. On 30 July 2003 he was accorded the status of victim in the criminal investigation. When questioned in September 2009 he explained that at the time of release he had been afraid to seek medical help, but that for some time after the beatings he had suffered acute pain in the chest and had had difficulty breathing. It does not appear that any further steps were taken to back up his allegations of ill-treatment, such as the carrying out of a forensic expert report or medical examination.

24. The investigators received mostly negative replies to their requests for information about the detained men. Various state bodies, including the Ministry of the Interior and the Federal Security Service ("the FSB"), denied having any knowledge of the events or of the fate of the disappeared men, or any information that could implicate them in any criminal activities. The case file contains a handwritten note dated June 2005 entitled "Report", drawn up by a serviceman of the Leninskiy ROVD, Senior Lieutenant Kh. The note alleged, without further references, that the Barshov brothers had been members of an illegal armed group under the command of "*emir* Murad Yu.", active in the Leninskiy District. It listed ten other men as members of the same group, some of whom had been killed and others who were being searched for. According to the note, in the autumn of 2004 the Barshov brothers had taken part in the secret burial of *emir* Yu., following which they had been abducted by unidentified servicemen.

25. Another handwritten document, which was undated and entitled "Explanation" (*объяснение*), was signed by M.Ch, one of the men listed in the "Report". According to the text, at some time in 2002 M.Ch. and "Sulumbek" [Barshov], following the orders of Murad Yu., had placed an improvised explosive device near a roadblock in Grozny, as a result of which three servicemen had been wounded. Further documents indicated that the crimes committed by that group had become the subject of a separate investigation; in 2009 some pieces of evidence had been declared inadmissible for serious procedural breaches and the investigation had been suspended. Sulumbek Barshov has never been formally charged or suspected of any criminal acts.

26. The transcripts also state that the witnesses and Akhmed Shidayev were questioned about their possible relationship with Murad Yu. According to a statement made by Akhmed Shidayev's sister to the Court in June 2010, their other brother, Magomed Shidayev, had been among the terrorists who had seized the Nord-Ost theatre in Moscow in October 2002, and had been killed there.

27. In June 2006 the applicant Larisa Barshova submitted to the investigators a handwritten note, allegedly given to her by a man who had been released from prison and who had identified her son, Anzor Barshov, from a photograph. The investigation had not located the man. The note said that Anzor Barshov had been charged with the illegal handling of explosives and had been transferred to different prisons in the Southern Federal Circuit between December 2002 and December 2003. The note also indicated the names and positions of two FSB officers who had allegedly been in charge of the investigation. It does not appear that any of those leads were successful: the two officers were not identified, and the detention centres denied having Anzor Barshov or the other disappeared men on their records.

28. Further to a complaint lodged by Mrs Barshova under Article 125 of the Code of Criminal Procedure, on 7 November 2006 the Leninskiy District Court of Grozny ordered the investigator to resume the suspended proceedings; it also criticised the investigating authorities' inactivity in the preceding period. It also upheld the refusal of the prosecutor's office to grant the applicant full access to the case file since the investigation was pending. On 7 February 2007 the Supreme Court of Chechnya confirmed that decision; it also ordered the prosecutor to issue the applicant with copies of the procedural documents sought by her.

29. On 16 October 2008 the Leninskiy district prosecutor criticised the investigation as ineffective and ordered it to be resumed.

30. On 7 May 2010, further to a complaint lodged by Belkis Shidayeva, the Leninskiy District Court of Grozny quashed a decision of 20 November 2008 to adjourn the investigation. The court found that the investigator had failed to carry out a thorough investigation.

C. Application no. 50184/07, *Malika Amkhadova and Others v. Russia*

1. Abduction of Ayub Temersultanov

31. Between 7 a.m. and 8 a.m. on 1 July 2004, fifteen to twenty persons armed with sub-machine guns, wearing camouflage uniforms and masks, entered the applicants' flat in Grozny. Some of them were equipped with metal shields to protect their bodies and metal spherical helmets, typical of the police special forces. They spoke Russian and communicated by radio with someone in command. They searched the flat and adjacent flats, checked the residents' identity documents and beat up the applicants. They covered the heads of Ayub Temersultanov and two other men with plastic bags or their own clothes and led them away to a convoy of six vehicles, consisting of a white *Volga*, a *Niva*, a *Gazel* and three grey UAZ vehicles, all without registration plates. The convoy passed in front of at least two permanent police checkpoints. Later that day, two of the applicants' relatives who had been detained together with Ayub Temersultanov were released in the Grozny District, in the vicinity of the Khankala military base. They gave detailed submissions about their journey, blindfolded, to an unknown place about one hour away, where both were questioned about their relations.

32. The applicants submitted six witness statements made in 2006 and 2007 by them, their neighbours and relatives who had witnessed the abduction.

2. Official investigation

33. The investigation into the abduction was opened by the Leninskiy District Prosecutor's Office of Grozny on 9 August 2004, even though a number of investigative measures had already been taken in July 2004. It was suspended and resumed on several occasions, without any apparent outcome. The Government have provided seventy-five pages of documents from the file. The second applicant was granted the status of victim on 10 August 2004. The witnesses alleged that some of the vehicles (including the *Gazel* and the UAZ) had been armoured and that the abduction had occurred in full view of a permanent police checkpoint. Two men who had been taken away and then released were questioned in August and October 2004. One of them testified that he had been questioned about the terrorist act of 9 May 2004 in Grozny. The latest documents submitted by the Government relate to October 2007, at which time the investigation was pending. The applicants petitioned the prosecutor's offices, but not the court.

D. Application no. 332/08, *Sagaipova and others v. Russia*

1. Abduction of Ayub Nalbiyev, Badrudin Abazov and Ramzan Tepsayev

34. Between midnight and 3 a.m. on 22 February 2003 a group of about ten men, wearing camouflage uniforms, masks and armed with automatic rifles consecutively broke into three houses in Dachu-Borzoy, in the Grozny District. The men spoke Russian and communicated with their superiors by radio. They used several (up to five) APCs and UAZ vehicles. They beat up Ayub Nalbiyev, Badrudin Abazov, Ramzan Tepsayev and some of the applicants; covered the detainees' heads with their clothes and led them away. All detainees were taken away in their underwear and barefoot. The applicants claimed to have seen the APCs' tyre tracks in the snow the following day, leading over a bridge to the village of Duba-Yurt, and passing by the side of a military base and a permanent military roadblock located on the bridge over the Argun River between the villages of Dachu-Borzoy and Duba-Yurt.

35. In 2007 three of the applicants provided the Court with witness statements describing the abductions and their efforts to locate their relatives.

2. Official investigation

36. On 12 March 2003 the Grozny district prosecutor's office opened a criminal investigation into the abduction of the three men. The Government have submitted 422 pages from that file. The documents contain numerous references to military vehicles and the servicemen's participation in the abduction; however, the investigation was not transferred to the military prosecutor's office.

37. In February 2003 the head of the Dachu-Borzoy administration corroborated the applicants' statements about the circumstances of the abductions. In his statement he also alleged that later that year an FSB officer had shown him a list of wanted persons, including the names of the three detainees. It does not appear that that officer has ever been identified or questioned. The only other testimonies contained in the file had been given by the applicants and their relatives.

38. The site was examined on 26 February 2003. In March 2003 the family members of the disappeared men were accorded the status of victims in the proceedings. On 17 May 2007 the applicants' representative was allowed to study the file. By that time, the investigation had been suspended and resumed on several occasions.

39. Judging by the responses received from the Ministry of the Interior and the military prosecutor's office, their cooperation was minimal: most of

the letters contained standard phrases that no information relevant to the case had been available.

40. On at least two occasions in 2003 the progress of the case was discussed at working meetings held by the deputy prosecutor of the Grozny District, together with the police and military commanders. The minutes of the meetings contain references to the lack of cooperation of the military and the Ministry of the Interior with the investigation, and in particular to the absence of information about the possible provenance of five APCs and a UAZ vehicle.

41. On 23 March 2007 the central archive office of the Ministry of the Interior informed the investigators as follows:

> "...[P]ursuant to the State Secrets Act (Federal Law No. 5485-1) of 21 July 1993, Presidential Decree No. 1203 of 30 November 1995 setting up the list of information constituting state secrets, and Order of the Ministry of the Interior No. 200 of 2 March 2002 [confidential], all documents contained in the central archive of the Ministry of the Interior, deposited by the military units that took part in restoring constitutional order and fighting the [illegal armed groups] in the Chechen Republic, have been classified as confidential and containing state secrets.
>
> Pursuant to section 30 of the Troops of the Ministry of the Interior Act (Federal Law No. 27-FZ) of 6 February 1997 it is prohibited to disseminate information about the location or movements of the military units of the Interior Troops, or about the carrying out by those units of tasks in the context of fighting the illegal armed groups.
>
> Information about the service missions of those units may be disclosed only by an appropriate commander, upon the permission of the Ministry of the Interior.
>
> Pursuant to section 16 of the State Secrets Act (Federal Law No. 5485-1) of 21 July 1993, such information cannot be made available to you without the authorisation of the Ministry in charge of the archive. It would therefore appear necessary for you to seek permission from the Ministry of the Interior to peruse documents containing state secrets. Once such an authorisation has been obtained, the necessary documents will be provided to you by the [central archive]."

42. The investigation was adjourned in 2007. The Government submitted that it was still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code of the Russian Federation of 1996

43. Article 105 of the Russian Criminal Code of 1996 provides that murder is punishable by six to fifteen years' imprisonment. Aggravated murder, for example if committed by an organised group, is punishable by prison terms, including life imprisonment, and by the death penalty.

44. Under Article 126, kidnapping is punishable by up to eight years' imprisonment. Aggravated kidnapping, for example, committed with the use of arms or by an organised group, is punishable by up to fifteen years' imprisonment.

45. Article 78 sets time-limits for criminal liability. A person cannot be held liable for a crime after ten years in the case of a serious crime (punishable by up to ten years' imprisonment) and after fifteen years in the case of a grave crime (punishable by prison terms exceeding ten years' imprisonment). Time starts to run from the date of the crime and stops running on the judgment of the trial court. If the person escapes justice, the time does not start to run until the person is found. The applicability of time-limits in cases of crimes punishable by a life sentence or the death penalty is decided individually by the trial court. No time-limits are applicable to crimes against peace and humanity.

B. Code of Criminal Procedure

46. The 1960 Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic, which was in force until 1 July 2002, required a competent authority to institute criminal proceedings if there was a suspicion that a crime had been committed. That authority was under an obligation to establish the facts and to identify those responsible and secure their conviction. The decision whether or not to institute criminal proceedings had to be taken within three days of the first factual report (see Articles 3 and 108-09).

47. On 1 July 2002 the 1960 Code was replaced by the Code of Criminal Procedure of the Russian Federation.

48. The new Code establishes that a criminal investigation may be initiated by an investigator or a prosecutor on a complaint by an individual or on the investigating authorities' own initiative, where there are reasons to believe that a crime has been committed (see Articles 146 and 147). The decision to open a criminal investigation is to be taken within three days from the receipt of information about the crime, which period can be extended to ten and thirty days in certain circumstances (see Article 144).

49. Article 42 of the Code defines the procedural status of a victim in criminal proceedings and lists the rights and obligations vested in that person. It provides that the victim has the right to acquaint him or herself with the entire case file after the closing of the investigation. Article 42 also stipulates that the victims are to be informed of procedural decisions to open or close criminal proceedings, grant or refuse victim status, and to adjourn proceedings. Copies of those decisions must be sent to the victims. The victims also have access to any decisions to order expert reports and to the outcomes of such reports (see Article 198).

50. A prosecutor is responsible for the overall supervision of the investigation (see Article 37). He or she may order specific investigative measures, transfer the case from one investigator to another or order an additional investigation. If there are no grounds for initiating a criminal investigation, the investigator issues a reasoned decision to that effect, which has to be served on the interested party. Under Article 124, a prosecutor can examine a complaint concerning the actions or omissions of various officials in charge of a criminal investigation. Once a complaint has been examined, the complainant must be informed of the outcome and the avenues of further appeal.

51. Article 125 of the Code sets out the judicial procedure for the consideration of complaints. The orders of an investigator or a prosecutor refusing to institute criminal proceedings or terminating a case, other orders and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede a citizen's access to justice, may be appealed against to a district court, which is empowered to check the lawfulness and grounds of the impugned decisions.

52. Article 151 provides that the investigators of the Investigative Committee (as of 2007) are responsible for the investigation of serious crimes, including murder and abduction.

53. Article 161 § 1 prohibits the disclosure of details of the preliminary investigation. Such information can be disclosed only with the permission of a prosecutor or investigator and within the limits determined by them, and only in so far as it does not infringe the rights and lawful interests of the parties to the criminal proceedings and does not prejudice the investigation (see Article 161 § 3).

C. Civil Code of the Russian Federation

54. Article 1069 of the Civil Code of the Russian Federation (relevant part adopted in 1995) provides that a State agency or State official will be liable for damage caused to a citizen by their unlawful actions or failure to act. Damages are awarded at the expense of the federal or regional treasury.

55. Article 1070 sets out the rules for the payment of damages to private persons for the unlawful actions of law-enforcement officers. Other than unlawful criminal prosecution (confirmed by the criminal conviction of the perpetrators), the general rules of Article 1069 apply.

56. Articles 151 and 1099 to 1101 provide for payment of non-pecuniary damages. Article 1099 states, in particular, that non-pecuniary damages will be payable, irrespective of any award for pecuniary damage.

D. Legislation concerning confidentiality of anti-terrorist measures

57. The Suppression of Terrorism Act of 25 July 1998 (Law no. 130-FZ) (hereinafter also called "the Anti-Terrorism Act"), which was replaced on 1 January 2007 by the Counter-Terrorist Act (Law no. 35-FZ), established basic principles in the area of the fight against terrorism. Section 2 of the Anti-Terrorism Act established, *inter alia*, that the State should keep secret, to the maximum extent possible, the technical methods of anti-terrorist operations and not disclose the identity of those involved in them. Section 2(10) of the new Counter-Terrorist Act contains similar provisions.

58. On 1 August 2011 the Investigative Committee issued Order no. 113 detailing the procedure for obtaining information about persons who had taken part in counter-terrorist operations. Any such requests should contain reasons for the requested disclosure and be authorised by the Deputy Head of the Investigative Committee. The criminal investigation files containing such information should be treated as classified.

59. The Federal Security Service Act (Law no. 40-FZ) of 3 April 1995, with subsequent amendments, provided that the personal data of the agency's staff and persons cooperating with it should be stored at the central archive. As of 2008, such information could be divulged only pursuant to a federal law, or a special decision by the head of the relevant regional department of the Service.

III. INTERNATIONAL AND COMPARATIVE LEGAL INSTRUMENTS IN THE AREA OF ENFORCED DISAPPEARANCES

A. Relevant international law and practice

60. The Parliamentary Assembly of the Council of Europe (PACE) Resolution 1463 (2005**)** on Enforced Disappearances considered the following points essential for an international instrument in this field:

> "[T]he definition of enforced disappearance ... should not include a subjective element, which would be too difficult to prove in practice. The inherent difficulties in proving an enforced disappearance should be met by the creation of a rebuttable presumption against the responsible state officials involved;
>
> 10.2. family members of the disappeared persons should be recognised as independent victims of the enforced disappearance and be granted a 'right to the truth', that is, a right to be informed of the fate of their disappeared relatives;
>
> 10.3. the instrument should include the following safeguards against impunity:
>
> 10.3.1. obligation for states to include the crime of enforced disappearance with an appropriate punishment in their domestic criminal codes;

10.3.2. extension of the principle of universal jurisdiction to all acts of enforced disappearance;

10.3.3. recognition of enforced disappearance as a continuing crime, as long as the perpetrators continue to conceal the fate of the disappeared person and the facts remain unclarified; consequently, non-application of statutory limitation periods to enforced disappearances;

10.3.4. clarification that no superior order or instruction of any public authority may be invoked to justify an act of enforced disappearance;

10.3.5. exclusion of perpetrators of enforced disappearances from any amnesty or similar measures, and from any privileges, immunities or special exemptions from prosecution;

10.3.6. perpetrators of enforced disappearances to be tried only in courts of general jurisdiction, and not in military courts; ...

10.3.8. failure to effectively investigate any alleged enforced disappearance should constitute an independent crime with an appropriate punishment. The minister and/or the head of department responsible for the investigations should be held accountable under criminal law for the said failure".

61. The UN International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006 (ICED) entered into force in December 2010. Article 2 of the Convention defined "enforced disappearance" as:

"... arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."

The ICED placed signatory States under an obligation to investigate such acts and to bring those responsible to justice, whether they themselves had committed the acts in question or were the superiors of the perpetrators (see Article 6), as well as to criminalise disappearance under the national law (see Articles 4 and 7). The statute of limitations for such crimes should be of long duration and, in view of the continuous nature of the offence, should commence from the time when the offence ceases (see Article 8). The Convention also established the right of victims' relatives to know the truth and to obtain reparation (see Article 24).

62. Article 5 of the ICED and Article 7 of the Rome Statute of the International Criminal Court of 17 July 1998 both describe the widespread or systematic practice of enforced disappearance as a crime against humanity.

63. The Russian Federation signed the Rome Statute but not the ICED, and has not ratified either document.

64. International human right bodies, such as the UN Human Rights Committee and the Inter-American Court of Human Rights, consider enforced disappearances as a combination of several violations of protected rights. They often entail a violation of both the substantive and procedural aspects of the right to life, a breach of the relatives' right to be free from degrading treatment on account of the prolonged suffering caused by the absence of news about the fate of their loved ones, and a breach of the abducted persons' right to freedom and security. A summary of those approaches, stressing the lasting nature of some of the violations in question, can be found in the judgment *Varnava and Others v. Turkey* ([GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 93-107, ECHR 2009-).

B. Comparative legal framework as described in the Court's previous judgments

65. The Court has already dealt with allegations of enforced disappearances and the failure of investigations in other member States. Its judgments summarised domestic legal and practical arrangements designed to address those problems.

66. Thus, the Court has dealt with a "pattern of enforced disappearances" occurring principally between 1992 and 1996 in South-Eastern Turkey (see, among others, *Osmanoğlu v. Turkey*, no. 48804/99, 24 January 2008; *Akdeniz v. Turkey*, no. 25165/94, 31 May 2005; *İpek v. Turkey*, no. 25760/94, ECHR 2004-II (extracts); *Akdeniz and Others v. Turkey*, no. 23954/94, 31 May 2001; *Taş v. Turkey*, no. 24396/94, 14 November 2000; *Timurtaş v. Turkey*, no. 23531/94, ECHR 2000-VI; *Ertak v. Turkey*, no. 20764/92, ECHR 2000-V; and *Çakıcı v. Turkey* [GC], no. 23657/94, ECHR 1999-IV). The *İpek* judgment, in particular, outlined the relevant national legislative framework, including provisions on criminal investigations and civil liability of State officials for the pecuniary and non-pecuniary damage caused by their actions, as well as specific anti-terrorist legislation and the distribution of responsibility in respect of the offences allegedly committed by the security forces (see §§ 92-106).

67. The Cypriot conflict has resulted in a large number of missing persons in the 1960s and 1974. This matter has to be seen in the context of rather lengthy historical developments. Relevant summaries can be found in the judgments of *Cyprus v. Turkey* ([GC] no. 25781/94, ECHR 2001-IV) and *Varnava and Others v. Turkey* (cited above). As can be seen from those judgments, efforts were made from the start to set up a mechanism to deal with the problem of disappearances. In 1981 the Commission on Missing Persons (CMP) was created under the United Nations' auspices. The actual work on cases started in 1984, and some investigative steps were taken in the following years. Since 2004 the CMP has organised exhumations and

begun to locate and identify remains (see *Varnava*, cited above, § 168). More than 230 bodies of missing persons have now been exhumed, identified and returned to their relatives. The criminal investigations triggered by those findings are still pending (see *Charalambous and Others v. Turkey* (dec.), nos. 46744/07 et al., 3 April 2012, and *Emin v. Cyprus* (dec.), no. 59623/08 et al., 3 April 2012).

68. A list of legislative and practical measures aimed at solving the disappearance and war crimes issues in Bosnia and Herzegovina can be found in *Palić v. Bosnia and Herzegovina* (no. 4704/04, §§ 7, 8, 36-40, 15 February 2011). The Court found, in particular:

> "While it is true that the domestic authorities made slow progress in the years immediately after the war, they have since made significant efforts to locate and identify persons missing as a consequence of the war and combat the impunity. To start with, Bosnia and Herzegovina has carried out comprehensive vetting of the appointment of police and judiciary ... Secondly, the domestic Missing Persons Institute was set up pursuant to the Missing Persons Act 2004 (see paragraph 40 above). It has so far carried out many exhumations and identifications; for example, in seven months of 2009 the Missing Persons Institute identified 883 persons. Thirdly, the creation of the Court of Bosnia and Herzegovina in 2002 and its War Crimes Sections in 2005 gave new impetus to domestic prosecutions of war crimes. That court has so far sentenced more than 40 people. Moreover, the number of convictions by the Entity and District courts, which retain jurisdiction over less sensitive cases, has considerably increased. Fourthly, in December 2008 the domestic authorities adopted the National War Crimes Strategy which provides a systematic approach to solving the problem of the large number of war crimes cases. It defines the time-frames, capacities, criteria and mechanisms for managing those cases, standardisation of court practices, issues of regional cooperation, protection and support to victims and witnesses, as well as financial aspects, and supervision over the implementation of the Strategy. ... Lastly, domestic authorities contribute to the successful work of the international bodies set up to deal with disappearances and other serious violations of international humanitarian law committed in Bosnia and Herzegovina ..."

IV. INTERNATIONAL AND DOMESTIC REPORTS ON DISAPEARANCES IN CHECHNYA AND INGUSHETIA

A. Reports by international inter-governmental and non-governmental organisations

1. Council of Europe Committee of Ministers Documents

69. According to document CM/Inf/DH(2010)26E of 27 May 2010 entitled "Action of the security forces in the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights", a special unit has been set up within the Investigative Committee in Chechnya to address the issues raised in the

Court's judgments. An information document submitted by the Russian Government in March 2011 (DH-DD(2011)130E) stated that out of 136 cases discussed (concerning the so-called "*Khashiyev* group" involving findings of violations of core rights in the Northern Caucasus), only two criminal cases had been concluded (one of which had been terminated as a result of the suspect's death). The remainder were pending; most of them had been suspended as a result of a failure to identify the suspects.

70. Interim Resolution CM/ResDH(2011)292 of 2 December 2011 on "Execution of the judgments of the European Court of Human Rights in 154 cases against the Russian Federation concerning actions of the security forces in the Chechen Republic of the Russian Federation" stated, in so far as relevant:

> "2. Search for disappeared persons
>
> Considering that, in all judgments concerning disappearances, the Court also found a violation of Article 3 of the Convention on account of the applicants' suffering as a result of the disappearance of their relatives and of their inability to find out what had happened to them;
>
> Taking note of measures aimed at improving the regulatory framework governing the search for disappeared persons in general and at enhancing the search for such persons in the Chechen Republic in particular, through the developments in use of DNA tests of relatives of disappeared persons;
>
> Noting however with particular concern that little progress has been made so far in this respect and that fresh applications concerning disappearances are being lodged with the Court;
>
> Considering that the numerous disappearances which took place in the Chechen Republic constitute a specific situation which calls for additional tools and means;
>
> Stressing in this respect the need to intensify further the search for disappeared persons, in particular through better co-ordination between the different agencies involved, collection, centralisation and sharing of all information and data relevant to the disappearances among different authorities concerned, strengthening local forensic institutions, enhanced cooperation with the relatives of disappeared persons, identification of possible burial sites and other relevant practical measures;
>
> Emphasising that the need for such measures is all the more pressing in cases where the continued failure to account for the whereabouts and fate of the missing persons gives rise to a continuing violation of the Convention; ...
>
> Emphasising the need for continuous efforts aimed at ensuring close co-operation with victims' families and for further improvement of the legal and regulatory framework governing the participation of victims in domestic investigations; ...
>
> URGES the Russian authorities to enhance their efforts so that independent and thorough investigations into all abuses found in the Court's judgments are conducted, in particular by ensuring that the investigating authorities use all means and powers at their disposal to the fullest extent possible and by guaranteeing effective and

unconditional co-operation of all law-enforcement and military bodies in such investigations;

STRONGLY URGES the Russian authorities to take rapidly the necessary measures aimed at intensifying the search for disappeared persons;

ENCOURAGES the Russian authorities to continue their efforts to secure participation of victims in investigations and at increasing the effectiveness of the remedies available to them under the domestic legislation;

ENCOURAGES the Russian authorities to take all necessary measures to ensure that the statutes of limitation do not negatively impact on the full implementation of the Court's judgments."

2. Reports by other Council of Europe bodies

71. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued three public statements in relation to Chechnya between 2001 and 2007, deploring the absence of cooperation in the investigation of the alleged violations. The public statement of 13 March 2007 conceded that "the abductions (forced disappearances) and the related problem of unlawful detention ... continue to constitute a troubling phenomenon in the Chechen Republic".

72. On 4 June 2010 the PACE Committee on Legal Affairs and Human Rights presented a report entitled "Legal remedies for human rights violations in the North-Caucasus Region". On the basis of that report, on 22 June 2010 PACE adopted Resolution no. 1738 and Recommendation no. 1922 deploring the absence of an effective investigation and prosecution of serious human rights violation in the region, including disappearances. They found that "the suffering of the close relatives of thousands of missing persons in the region and their inability to get over their grief constitute a major obstacle to true reconciliation and lasting peace." Among other measures, the Resolution called on the Russian authorities to:

"13.1.2. bring to trial in accordance with the law all culprits of human rights violations, including members of the security forces, and to clear up the many crimes which have gone unpunished ...;

13.1.3. intensify co-operation with the Council of Europe in enforcing the judgments of the European Court of Human Rights, especially where they concern reinforcement of the individual measures to clear up the cases of, in particular, abduction, murder and torture in which the Court has ascertained a lack of proper investigation;

13.1.4. be guided by the example of other countries which have had to contend with terrorism, particularly as regards the implementation of measures conducive to the suspects' co-operation with justice in dismantling the terrorist networks and the criminal entities that exist within the security forces, and to prevent further acts of violence;

...

13.1.6. implement the proposals of the International Committee of the Red Cross to resolve as far as possible the serious problem of missing persons, and to create favourable conditions to renewed ICRC visits to detainees arrested and held in relation with the situation in the Northern Caucasus;

...

13.2. both Chambers of the Russian Parliament to devote their utmost attention to the situation in the North Caucasus and to demand exhaustive explanations of the executive and judicial authorities concerning the malfunctions observed in the region and mentioned in this resolution, and to stipulate that the necessary measures be applied."

In Recommendation no. 1922, PACE advised the Committee of Ministers to:

"2.1 pay the utmost attention to the development of the human rights situation in the North Caucasus;

2.2 in enforcing the judgments of the European Court of Human Rights (the Court) concerning this region, emphasise the prompt and complete elucidation of the cases in which the Court has ascertained an absence of effective investigation; ..."

73. In Resolution 1787 (2011) entitled "Implementation of judgments of the European Court of Human Rights", PACE considered deaths and ill-treatment by law-enforcement officials and a lack of effective investigation thereof in Russia as one of the four "major systemic deficiencies which cause a large number of repetitive findings of violations of the Convention and which seriously undermine the rule of law in the states concerned".

74. A report dated 6 September 2011 by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Russian Federation from 12 to 21 May 2011, found a number of positive developments aiming to improve daily life in the republics visited. Despite those positive steps, the Commissioner defined as some of the most serious issues counter-terrorism measures, abductions, disappearances and ill-treatment, combating impunity and the situation of human rights defenders. The report included the Commissioner's observations and recommendations in relation to those topics.

75. In particular, the Commissioner was deeply concerned by the persistence of allegations and other information relating to abductions, disappearances and ill-treatment of people deprived of their liberty in the Northern Caucasus. While the number of abductions and disappearances in Chechnya might have decreased recently compared with 2009, the situation remained far from normal. Referring to the far-reaching effects of disappearances on a society as a whole, he supported the proposal of the Presidential Council for Civil Society Institutions and Human Rights to create an interdepartmental federal commission to determine the fate of

persons who had gone missing during the entire period of counter-terrorism operations in the Northern Caucasus. The Commissioner further emphasised the importance of the systematic application of rules prohibiting the wearing of masks or non-standard uniforms without badges, as well as the use of unmarked vehicles in the course of investigative activities.

76. The Commissioner went on to state that the persistent patterns of impunity for serious human rights violations were among the most intractable problems and remained a source of major concern to him. There had certainly been a number of positive steps, such as the establishment of Investigating Committee structures, the increased support for victim participation in criminal proceedings, and the promulgation of various directives regarding the conduct of investigations. Despite those measures of a systemic, legislative and regulatory nature, the information gathered during the visit had led the Commissioner to conclude that the situation had remained essentially unchanged in practice since his previous visit in September 2009. He called on the Russian leadership to help in creating the requisite determination on the part of the investigators concerned by delivering the unequivocal message that impunity would no longer be tolerated.

3. International Committee of the Red Cross (ICRC) Report

77. In August 2009 the International Committee of the Red Cross (ICRC) issued report "Families of Missing Persons: Responding to their Needs". One hundred families were interviewed in the Northern Caucasus. In the majority of cases the abductions occurred between 2000 and 2004. The report found:

> "In general, the families are unable to carry out normal activities without the shadow of the missing relative being a constant reminder. Many withdraw from society, ignoring their needs and those of their family (for example, some children's birthday parties are not allowed to be celebrated) as they focus on the search for their loved ones and they become socially and physically isolated – they often feel guilty doing something just for themselves".

The report also found that 90% of the families had opened a criminal case with the local prosecutor's office, but that most of the cases had been suspended. The inability to get answers had "left them with a sense of hopelessness". The report stressed the importance of finding the bodies and the performance of burial rites, since for most families the acceptance of the death was inconceivable as long as the body had not been returned. It concluded by finding that the families of the missing persons were "very much alone in managing their difficult situation". It made a number of recommendations to the Russian authorities, in particular to set up a high-level body on missing persons, which should be transparent, credible, have a clear humanitarian mandate and be independent from the judiciary. The families of the missing persons should be associated with the search and be

kept informed of all the important aspects of any progress made, as well as the chances of success. The ICRC further proposed changes to the legislation which would more clearly reflect Russia's international obligations, in order to prevent enforced disappearances in the future, as well as to protect the families of the disappeared. It contained a number of other detailed recommendations to improve psychological, socio-economic and legal support to such families.

4. NGO Reports

78. In September 2009 Human Rights Watch (HRW) issued a report entitled "Who Will Tell Me What Happened to My Son? Russia's Implementation of European Court of Human Rights Judgments on Chechnya", which was strongly critical of the absence of progress in the investigations in disappearance cases.

79. On 20 April 2011 HRW and two Russian NGOs, the Committee Against Torture and Memorial published a joint open letter to the Russian President. They spoke of a "complete failure of the Chechen Republic investigative authorities to deal with the abductions of Chechnya residents by local law-enforcement and security agencies", of "systematic sabotage of investigations by Chechen law-enforcement agencies and the inability of the Investigative Committee to fulfil its direct mandate to investigate crimes".

B. Relevant reports and statements by the national authorities

80. The Ombudsman of Chechnya, Mr Nukhazhiyev, has issued, over the years, a number of documents on disappearances. His special report of 16 April 2009 contained the following passages:

> "The problem of finding the abducted and missing persons ... becomes the topic of my third special report. The first special report entitled 'The problems of disappearances in Chechnya and search of mechanisms to find the forcibly detained persons' was presented on 20 April 2006 to both chambers of the Chechen Parliament. That report analysed the reasons and conditions leading to the disappearances. At that time, the local prosecutor's office had opened 1,949 criminal cases into abductions; of those 1,679 have been adjourned in view of absence of information about the culprits. Many of these cases contained dates, exact timing of the abductions, registration numbers of the military vehicles, the servicemen' names and radio call-names, the names and numbers of the military units involved, etc.
>
> Despite obvious competence of the military prosecutor's office over these crimes, they are dealt with by the local prosecutors' offices, who are unable to obtain the relevant information about the perpetrators or to question them. ...
>
> According to the Chechnya Prosecutor's Office, since the beginning of the counter-terrorist operation [in October 1999] they had opened 2,027 criminal investigations into the abduction of 2,826 persons. 1,873 of those cases remain adjourned, 74 have been transferred to the military prosecutor's office. ...

> The problem of identification of the bodies is closely linked to the problem of finding the missing persons. Various sources indicate up to 60 mass burials in Chechnya, containing up to 3,000 bodies of those who had lost their lives during the two consecutive military campaigns. Another mass burial site is located in Mozdok in North Ossetia. ... In view of the need to exhume mass burial sites, there remains the problem of absence of a laboratory in Chechnya which could carry out the identification of the exhumed bodies. ..."

The Ombudsman recommended, principally, that a single inter-agency body in charge of disappearances be created in Chechnya; that a parliamentary inquiry be set up and that they rely on the experience of independent lawyers and the staff of the Ombudsman's office, which had maintained a database of disappeared persons; that a specialist laboratory be created in Chechnya for the identification of exhumed remains; and that a database of DNA samples of the disappeared persons' relatives be created in order to carry out systematic matching with the exhumed remains. In his statement of 30 August 2011 devoted to the International Day of the Disappeared, Mr Nukhazhiyev said that about 5,000 persons had disappeared in Chechnya during the counter-terrorist operation. He repeated his recommendation to set up a single inter-agency body to deal with the problem.

81. Mr Pashayev, Deputy Head of the Chechnya Investigative Committee, published an article entitled "Problems of investigating cases which have become the subject of review by the European Court" in the specialist review *Vestnik Sledstvennogo Komiteta RF* (Bulletin of the Investigative Committee), No. 2 (8) 2010. He noted that the majority of the resolved abductions had been committed by members of illegal armed groups. Mr Pashayev named some recurrent problems in the investigation of the unresolved crimes allegedly committed by servicemen: the need to fill in information gaps many years after the events; the difficulties in gaining access to the archives of various security and military units; the absence of a single database of disappeared persons; the weakness of the local forensic laboratories, which had been unable to carry out genetic research; the unclear legal framework for differentiating between the competence of military and civil investigators; the poor results of the military investigators in collecting evidence concerning potential perpetrators among servicemen; and the fact that there were no mechanisms for compensating the relatives in the absence of conclusions from the criminal investigations.

82. On 24 May 2010 the press service of the President and Government of Chechnya reported a speech by Mr Savchin, the Chechnya Prosecutor, at a high-level meeting devoted to the search for missing persons. The Prosecutor referred to the absence of political will to investigate crimes allegedly committed by servicemen. He recommended setting up a single federal inter-agency body to deal with the search for missing persons and the investigation of crimes. The body would have unrestricted access to the relevant archives and decide on the confidentiality of the data contained

therein. Regarding the conflict of powers between the military and civilian investigators, he suggested that the relevant legislation be amended so as to put the military prosecutors in charge of identifying suspects among servicemen.

83. In a letter to the Chechnya Minister of the Interior (no. 396-201/2-191-10) of August 2010, the Head of the Investigative Committee of Chechnya complained that the "operative assistance rendered by police in the criminal proceedings [instituted on abductions] was inappropriate, the investigators' requests about the carrying out of search measures and other requests had been carried out with undue delays or not thoroughly, and the replies were mostly of a formal nature and did not contain the data requested". He asked the Ministry of the Interior to alert its staff to the importance of the cases in question and to ensure their proper cooperation.

84. In March 2011 the Deputy Prosecutor of the Chechen Republic sent a letter to the head of the NGO Committee Against Torture, Mr Kalyapin. The Deputy Prosecutor strongly criticised the Investigative Committee's work on abduction cases in Chechnya:

> "The investigative authorities fail to carry out urgent investigative actions and organise proper cooperation with the operational services in order to solve crimes. In fact, top-ranking officials of the Investigative Committee have no departmental control over criminal investigations. No concrete steps are taken to eliminate the violations identified by the agencies of the prosecutor's office. The perpetrators are not held accountable. There are instances where crimes of abductions have actually been concealed by the investigators of the [Investigative Committee] ... As a result of delayed initiation of criminal proceedings and the inactive and passive nature of investigations, the perpetrators flee and the whereabouts of the affected [abducted] persons are not established."

THE LAW

I. JOINDER OF THE APPLICATIONS

85. In accordance with Rule 42 § 1 of the Rules of Court, the Court has decided to join the applications, given their similar factual and legal background.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

86. The Government contended that the complaints should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigations into the disappearances 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, but that the applicants had not availed themselves of any such remedy. They also argued that it had been open to the applicants to pursue civil complaints, which they had failed to do.

87. The applicants contested that objection. With reference to the Court's practice, they argued that they had not been obliged to apply to the civil courts, that the criminal investigations had proved to be ineffective and that their complaints had been futile.

B. The Court's assessment

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

89. As regards a civil action to obtain redress for damage sustained as a result of 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). Accordingly, the Court confirms that the applicants were not obliged to pursue civil remedies. The preliminary objection in this regard is thus dismissed.

90. As regards criminal-law remedies, the Court observes that the criminal investigations are currently pending. The parties disagreed as to their effectiveness.

91. 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 complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

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

A. Arguments of the parties

92. The applicants in all the cases maintained that it was beyond reasonable doubt that the men who had taken away their relatives had been State agents. In support of this assertion they referred to the ample evidence contained in their submissions and the criminal investigation files, in so far as they had been disclosed by the Government. They submitted that they had each made a *prima facie* case that their relatives had been abducted by State agents and that the essential facts underlying their complaints had not been challenged by the Government. In view of the absence of any news of their relatives for a long time and the life-threatening nature of unacknowledged detention in Chechnya at the relevant time, they asked the Court to consider their relatives dead.

93. The Government, in all the cases, argued that there was not enough evidence to conclude that any of the applicants' relatives had been abducted by State agents or that the men were dead. They pointed to the inconclusive results of the domestic criminal investigations and the absence of official certification of the missing men's deaths. The domestic investigations had obtained no evidence that the missing men had been arrested in the course of any special operations in the area or that such operations had been conducted at all. The Government submitted that the fact that the abductors had been wearing camouflage uniforms, had been armed and had spoken Russian did not prove that they were servicemen. Reference to the vehicles used during some of the abductions, such as UAZ, *Gazel*, *Niva* and even APCs did not, in their view, unequivocally point to the involvement of the military or law-enforcement structures, since such vehicles could have been obtained by criminal groups. None of the witnesses had referred to military insignia on the perpetrators' uniforms or other details which would have associated them with particular military units or security structures. Lastly, no remains had been found, and the applicants' allegations that their relatives were dead had remained speculative.

94. The Court will reiterate the general principles applicable in cases where the factual circumstances are in dispute between the parties and then examine each of the cases in turn.

B. General principles

1. Burden of proof

95. A number of principles have been developed in the Court's case-law as regards applications in which it is faced with the task of establishing facts on which the parties disagree. As to facts in dispute, the Court reiterates its jurisprudence requiring a standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

96. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, among other authorities, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Avşar*, cited above, § 283), even if certain domestic proceedings and investigations have already taken place.

97. According to the Court's settled case-law, it is for the applicant to make a *prima facie* case and to adduce appropriate evidence. If, in response to such allegations made by the applicants, the Government then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn (see *Varnava*, cited above, § 184, with further references). The State bears the burden of providing a plausible explanation for injuries and deaths occurring to persons in custody (see *Ribitsch*, § 32, and *Avşar*, § 283, both cited above, with further references). The Court reiterates in this connection that the distribution of that burden is intrinsically linked to, among other things, the specificity of the facts of the case (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII). In cases concerning armed conflicts, the Court has extended that obligation to situations where individuals were found injured or dead, or disappeared, in areas under the exclusive control of the authorities and there was *prima facie* evidence that State agents could be involved (see *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts); *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005; *Makhauri v. Russia*, no. 58701/00, § 123, 4 October 2007; *Gandaloyeva v.*

Russia, no. 14800/04, § 89, 4 December 2008; and *Varnava*, cited above, § 184).

2. Prima facie evidence of State control

98. The Court has addressed a whole series of cases concerning allegations of disappearances in the Russian Northern Caucasus, in particular Chechnya and Ingushetia. Applying the above principles, it has concluded that it would be sufficient for the applicants to make a *prima facie* case of abduction by servicemen, thus falling within the control of the authorities, and it would then be for the Government to discharge their burden of proof either by disclosing the documents in their exclusive possession or by providing a satisfactory and convincing explanation of how the events in question occurred (see, among many examples, *Aziyevy v. Russia*, no. 77626/01, § 74, 20 March 2008; *Utsayeva and Others v. Russia*, no. 29133/03, § 160, 29 May 2008; and *Khutsayev and Others v. Russia*, no. 16622/05, § 104, 27 May 2010).

99. In adjudicating those cases, the Court bore in mind the difficulties associated with obtaining the evidence and the fact that, often, little evidence could be submitted by the applicants in support of their applications. The *prima facie* threshold was reached primarily on the basis of witness statements, including the applicants' submissions to the Court and to the domestic authorities, and other evidence attesting to the presence of military or security personnel in the area concerned at the relevant time. The Court relied on references to military vehicles and equipment; the unhindered passage of the abductors through military roadblocks, in particular during curfew hours; the conduct typical of security operations, such as the cordoning off of areas, checking of identity documents, searches of premises, questioning of residents and communication within a chain of command; and other relevant information about the special operations, such as media and NGO reports. Given the presence of those elements, it concluded that the areas in question had been within the exclusive control of the State authorities in view of the military or security operations being conducted there and the presence of servicemen (see, for example, *Ibragimov and Others v. Russia*, no. 34561/03, § 82, 29 May 2008; *Abdulkadyrova and Others v. Russia*, no. 27180/03, § 120, 8 January 2009; and *Kosumova and Others v. Russia*, no. 27441/07, § 67, 7 June 2011). If the Government failed to rebut this presumption, this would entail a violation of Article 2 in its substantive part. Conversely, where the applicants failed to make a *prima facie* case, the burden of proof could not be reversed (see, for example, *Tovsultanova v. Russia*, no. 26974/06, §§ 77-81, 17 June 2010; *Movsayevy v. Russia*, no. 20303/07, § 76, 14 June 2011; and *Shafiyeva v. Russia*, no. 49379/09, § 71, 3 May 2012).

3. Whether the disappeared persons could be presumed dead

100. Even where the State's responsibility for the unacknowledged arrest was established, the fate of the missing person often remained unknown. The Court has on numerous occasions made findings of fact to the effect that a missing person could be presumed dead. Generally, this finding has been reached in response to claims made by the respondent Government that the person was still alive or has not been shown to have died at the hands of State agents. The presumption of death is not automatic and is only reached on examination of the circumstances of the case, in which the lapse of time since the person was seen alive or heard from is a relevant element (see *Varnava*, cited above, § 143, and *Timurtaş v. Turkey,* no. 23531/94, §§ 82-83, ECHR 2000-VI).

101. Having regard to the numerous previous cases concerning disappearances in Chechnya and Ingushetia which have come before it, the Court has found that in the particular context of the conflict, when a person was detained by unidentified State agents without any subsequent acknowledgment of the detention, this could be regarded as life-threatening (see, among many others, *Bazorkina v. Russia*, no. 69481/01, 27 July 2006; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-XIII (extracts); *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-VIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, 10 May 2007; *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007; and *Dubayev and Bersnukayeva v. Russia*, nos. 30613/05 and 30615/05, 11 February 2010, for the events in Chechnya; *Khatuyeva v. Russia*, no. 12463/05, 22 April 2010; *Mutsolgova and Others v. Russia*, no. 2952/06, 1 April 2010; and *Velkhiyev and Others v. Russia*, no. 34085/06, 5 July 2011 for the events in Ingushetia).

102. The Court has made findings of presumptions of deaths in the absence of any reliable news about the disappeared persons for periods ranging from four and a half years (see *Imakayeva*, cited above, § 155) to over ten years.

C. Application in the present case

1. Application no. 2944/06, Satsita Aslakhanova v. Russia

103. Several witness statements and other documents collected by the applicant confirm that her husband, Mr Avtayev, was abducted in Grozny on 10 March 2002 by a group of armed men using military vehicles. By a decision of the district court, the applicant's husband has been declared missing as of that date (see paragraphs 10, 13 and 15 above). In view of all the materials in its possession, the Court finds that the applicant has

presented a *prima facie* case that her husband was abducted by State agents in the circumstances as set out by her.

104. The Government, while questioning the validity of some of the evidence presented by the applicant, failed to produce any documents from the criminal investigation file, or to otherwise discharge their burden of proof, for example by providing a satisfactory and convincing explanation for the events in question.

105. Bearing in mind the general principles enumerated above, the Court finds it established that Mr Apti Avtayev was taken into custody by State agents on 10 March 2002. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraphs 101 and 102 above), the Court also finds that Mr Avtayev should be presumed dead following his unacknowledged detention.

2. Applications no. 8300/07, Barshova and Others v. Russia and no. 42509/10, Akhmed Shidayev and Belkis Shidayeva v. Russia

106. The applicants have presented ample evidence, including Akhmed Shidayev's own detailed statements, that in the early hours on 23 and 25 October 2002, a group of armed men drove a UAZ vehicle through a military checkpoint located at a bridge over the Sunzha River in Grozny. The group had searched several houses and arrested four men, three of whom subsequently disappeared. The fourth man, Akhmed Shidayev, was released by the abductors several days later and gave a detailed testimony about the abduction and detention, at what he presumed to be a military installation, together with the three missing men. The documents reviewed by the Court show that the criminal investigation corroborated those essential facts (see paragraphs 17, 20-23 above). The Court is satisfied that the applicants have made a *prima facie* case that their three relatives – the two Barshov brothers and Akhmed Shidayev's father - were abducted by State agents.

107. The Government referred to the unfinished nature of the criminal investigation and to the lack of evidence of special operations and of the detention or death of the applicants' relatives. However, the Court considers that the fact that the investigation has failed to progress beyond establishment of the basic facts should not be detrimental to the applicants' arguments. The Government further alluded to the possibility that the abductors might not have been State servicemen. However, this suggestion is not supported by any credible evidence reviewed by the Court and stands in contradiction to the established facts of the case. The Court finds that the Government have failed to discharge their burden of proof by raising either of those arguments.

108. For the same reasons as above, the Court finds that Sulumbek Barshov, Anzor Barshov and Abuyazid Shidayev should be presumed dead following their unacknowledged detention.

3. Application no. 50184/07, Malika Amkhadova and Others v. Russia

109. The applicants have submitted witness statements made and collected by them to the effect that Ayub Temersultanov had been arrested at his house in Grozny on 1 July 2004. The abduction had been carried out by a group of up to twenty persons, heavily armed and wearing camouflage uniforms, communicating by radio. The group had searched the applicants' flat and neighbouring flats and checked the residents' documents. Their vehicles, some of which had been armoured, had had no number plates and had been driven in convoy through police roadblocks. Two other persons detained with Mr Temersultanov had been released the same day and had given statements about their detention and questioning (see paragraphs 32 and 33 above). The documents from the criminal investigation disclosed by the Government are consistent with this presentation.

110. For the same reasons as above, the Court finds that the applicants have made a *prima facie* case about the detention of Mr Temersultanov in the course of an unacknowledged security operation. Equally, the Court finds that the Government's references to the unfinished investigation or the mere possibility of the abductors being other than State agents cannot replace a satisfactory and convincing explanation as to what happened to him on 1 July 2004. The Court also finds that, in the circumstances of the case, Mr Temersultanov should by now be presumed dead.

4. Application no. 332/08, Sagaipova and Others v. Russia

111. The parties' submissions and the documents of the criminal investigation contain plenty of evidence that, in the early hours of 22 February 2003, a group of up to ten men wearing camouflage uniforms and masks and armed with automatic weapons broke into several houses in Dachu-Borzoy in the Grozny District. The men, who spoke Russian and communicated with their superiors by radio, arrested three of the applicants' relatives and took them, barefoot and in their underwear, to a bridge over the Argun River, where they put them in military vehicles, including UAZ and APCs. The convoy then passed through a permanent roadblock and a military base (see paragraphs 34-37). Thus, the Court is satisfied that a prima facie case of abduction by State agents has been made.

112. For the same reasons as above, the Court does not find that the Government have discharged their burden of proof to the contrary. Equally, in these circumstances, the Court finds that Ayub Nalbiyev, Badrudin Abazov and Ramzan Tepsayev should be presumed dead.

D. Conclusions

113. The Court finds that, as in other cases that it has decided, the applicants' relatives were abducted by groups of armed men in uniforms,

displaying conduct characteristic of security operations. These groups were able to move freely through police and security roadblocks and used vehicles which, in all probability, could not be used by anyone other than State servicemen. The applicants' allegations are supported by the witness statements collected by them and by the investigations. In their applications to the authorities the applicants consistently maintained that their relatives had been abducted by State agents. The domestic investigations accepted factual assumptions as presented by the applicants and took steps to check whether the law-enforcement agencies were involved in the abductions. As it appears from the documents, the investigations have regarded the possibility of abduction by servicemen as the only, or at least the main, plausible explanation of the events.

114. In sum, the facts of each case contain sufficient elements which enable the Court to make findings about the carrying out of security operations and, thus, about the State's exclusive control over the detainees (see, among many others, *Betayev and Betayeva v. Russia*, no. 37315/03, §§ 69-70, 29 May 2008). The Government's arguments are limited to the reference to the unfinished nature of the criminal investigations, which in itself raises issues under the Convention, or are of a speculative nature and stand in contradiction to the evidence reviewed by the Court. In any case, they are insufficient to discharge them of the burden of proof which has been shifted to them in such cases.

115. The detention in life-threatening circumstances of each of the eight men and the long periods of absence of any news of them lead the Court to conclude that they should be presumed dead.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

116. The applicants complained that there had been a double violation of the right to life: not only had their relatives disappeared but also no efficient investigation had taken place. Article 2 of the Convention reads as follows:

> "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. Admissibility

117. 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.

B. Merits

1. Alleged violation of the right to life

118. The Court has already found it established that the applicants' family members must be presumed dead following their unacknowledged detention by State agents. The liability for their presumed deaths rests with the respondent State. Noting that the Government do not rely on any grounds for the justification of the deaths, the Court finds that there have been violations of the right to life in respect of Apti Avtayev, Sulumbek Barshov, Anzor Barshov, Abuyazid Shidayev, Ayub Temersultanov (also known as Ruslan Tupiyev), Ayub Nalbiyev, Badrudin Abazov and Ramzan Tepsayev.

2. The alleged inadequacy of the investigations into the abductions

(a) Arguments of the parties

119. The applicants argued that the investigations into the abductions of their relatives had been ineffective and inadequate, in breach of the requirements derived from Article 2 of the Convention. They pointed to the delays in taking the most basic steps, failures to identify and question important witnesses other than the applicants or their neighbours, repeated suspensions and reopening of the proceedings, and failure to keep the victims informed about any progress.

120. The Government considered that the investigations had been effective and that the applicants had been duly informed of all the important steps. In their view, the applicants had not made full use of their procedural status as victims and thus had failed to exhaust domestic remedies.

(b) The Court's assessment

121. The Court has stated on many occasions 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. According to

the Court's settled case-law, for an investigation into alleged killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for carrying out the investigation to be independent from those implicated in the events (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II, and *Öğur v. Turkey*, [GC] no. 21954/93, ECHR 1999-III, §§ 91-92). The investigation must also be effective in the sense of being capable of ascertaining the circumstances in which the incident took place and of leading to a determination of whether the force used was or was not justified in the circumstances, and to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. A requirement of promptness and reasonable expedition is implicit in this context. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness (see *Leonidis v. Greece*, no. 43326/05, § 68, 8 January 2009, and *Anguelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002-IV). In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see *Varnava*, cited above, § 191, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 303, ECHR 2011 (extracts)).

122. A disappearance is a distinct phenomenon, characterised by an ongoing situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment and obfuscation of what has occurred. This situation is very often drawn out over time, prolonging the torment of the victim's relatives. Thus, the procedural obligation will, potentially, persist as long as the fate of the person is unaccounted for; the ongoing failure to provide the requisite investigation will be regarded as a continuing violation. This is so, even where death may, eventually, be presumed (see *Varnava*, cited above, § 148).

123. More specifically, in the context of disappearances that took place in Chechnya and Ingushetia between 1999 and 2006, the Court has previously identified the following common shortcomings of the criminal investigations: 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; failure to involve the military prosecutors even where there was sufficient evidence of the servicemen's involvement in the crimes; inability to trace the vehicles, their provenance and passage

through military roadblocks; belated granting of victim status to the relatives; and failure to ensure public scrutiny by informing the next of kin of the important investigative steps and by granting them access to the results of the investigation. In numerous such cases, the Court has noted that the combination of these factors had rendered the criminal investigations ineffective, and thus had rendered the domestic remedies, potentially available to the victims, futile (see, among many examples, *Vakhayeva and Others v. Russia*, no. 1758/04, § 157, 29 October 2009; *Shokkarov and Others v. Russia*, no. 41009/04, § 107, 3 May 2011; and *Umarova and Others v. Russia*, no. 25654/08, § 94, 31 July 2012).

124. The Court will examine the general effectiveness of the criminal investigation measures in the disappearance cases below. In the cases at hand, the investigations have been pending for many years without bringing about any significant developments as to the identities of the perpetrators or the fate of the applicants' missing relatives. While the obligation to investigate effectively is one of means and not of results, the Court notes that the criminal proceedings in each of the four files opened by the district prosecutor's office have been plagued by a combination of the same defects as enumerated in the preceding paragraph. To give but a few examples, the delays in the opening of the criminal investigation files amounted to between seven days in the case of Abuyazid Shidayev (see paragraph 21 above) and more than five months in the case of Apti Avtayev (see paragraph 12 above). The eyewitnesses of the abductions were questioned with substantial delays, for example seven and nine months in the case of the abduction of the Barshov brothers (see paragraphs 22 and 23 above). Each of the cases at hand was the subject of several decisions to adjourn the investigation, followed by periods of inactivity, which further diminished the prospects of solving the crimes. No steps have been taken in any of the four criminal cases to identify and question the servicemen who could have witnessed, registered or participated in the operation.

125. Even where there was sufficient evidence of the involvement of the military or security officers in the operation, the case file was not transferred to the military prosecutors for investigation, as in the case of the abductions in Dachu-Borzoy (see paragraph 36 above). That case is particularly illustrative of the low level of cooperation of the security services, which refused to provide the law-enforcement agencies with the requisite information (see paragraphs 39-41). As in many previous cases, the supervising prosecutors and the courts were aware of the investigations' faults (see paragraphs 14, 28-30), but their instructions did not bring about any positive developments. Lastly, even where the applicants tried to obtain access to the case file, their requests were rejected (see paragraphs 14 and 28). They were thus deprived of the possibility to acquaint themselves with the progress of the proceedings and to safeguard their procedural interests in an effective manner.

126. The Court has joined the Government's preliminary objection of non-exhaustion in respect of a criminal investigation to the merits of the complaint. In view of the above, it concludes that this objection should be dismissed, since the remedy relied on by the Government was ineffective in the circumstances.

127. In the light of the foregoing, the Court finds that the authorities failed to carry out effective criminal investigations into the circumstances of the disappearance of Apti Avtayev, Sulumbek Barshov, Anzor Barshov, Abuyazid Shidayev, Ayub Temersultanov (also known as Ruslan Tupiyev), Ayub Nalbiyev, Badrudin Abazov and Ramzan Tepsayev. Accordingly, there has been a violation of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLES 3 AND 5 OF THE CONVENTION ON ACCOUNT OF UNLAWFUL DETENTION AND DISAPPEARANCE OF THE APPLICANTS' RELATIVES

128. The applicants complained of a violation of Articles 3 and 5 of the Convention, as a result of the mental suffering caused to them by the disappearance of their relatives and the unlawfulness of detention. Articles 3 and 5 read, in so far as relevant:

Article 3

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

Article 5

"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."

129. The Government contested that argument.

130. The Court notes that the complaint is linked to those examined above under Article 2 and must therefore likewise be declared admissible.

131. The Court has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. The essence of such a violation does not lie mainly 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).

132. Equally, the Court has found on many occasions that unacknowledged detention is a complete negation of the guarantees contained in Article 5 and discloses a particularly grave violation of its provisions (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev*, cited above, § 122).

133. The Court reiterates its findings regarding the State's responsibility for the abductions and the failure to carry out a meaningful investigation into the fates of the disappeared men. It finds that the applicants, who are close relatives of the disappeared men, must be considered victims of a violation of Article 3 of the Convention, on account of the distress and anguish which they suffered, and continue to suffer, as a result of their inability to ascertain the fate of their family members and of the manner in which their complaints have been dealt with.

134. The Court furthermore confirms that since it has been established that the applicants' relatives were detained by State agents, apparently without any legal grounds or acknowledgement of such detention, this constitutes a particularly grave violation of the right to liberty and security of persons enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLES 3 AND 5 OF THE CONVENTION IN RESPECT OF AKHMED SHIDAYEV (No. 42509/10).

135. Akhmed Shidayev further complained that he himself had been a victim of a breach of Article 3 on account of his ill-treatment by the abductors and the failure to investigate his allegations, and of Article 5 in

view of the unlawful manner of his detention between 25 and 30 October 2002.

136. The Government stressed that no separate criminal investigation had been carried out into the alleged detention and ill-treatment of Akhmed Shidayev. The Court considers that the Government raise the issue of non-exhaustion and, in view of its nature, finds it appropriate to join it to the merits of the complaint.

137. The Court further notes that this complaint is linked to those examined above and must therefore likewise be declared admissible.

1. Whether Mr Shidayev was subjected to treatment in breach of Article 3 and to unacknowledged detention in breach of Article 5

138. The applicant asked the Court to qualify the ill-treatment to which he had been subjected as "torture", in view of his young age (he was 18 years old in October 2002), the intensity of the ill-treatment, which included beatings with machine gun butts and batons, cigarette burns to his skin, deprivation of food and water, and detention in a pit for five days. The applicant had heard his relatives and neighbours being subjected to beatings, and crying for help. Throughout his detention he was aware that he could be killed. The applicant referred to witness statements made by him and his relatives in the course of the domestic investigation, which contained descriptions of the treatment to which he had been subjected and the effect it had had on his health.

139. The Government referred to the absence of any material evidence attesting to the applicant's injuries or the traces of ill-treatment. They stressed that Mr Shidayev had never sought medical assistance in connection with his alleged injuries.

140. Turning to the Government's preliminary objection, which has been joined to the merits of the complaint, the Court first observes that the applicants promptly informed the authorities of Mr Shidayev's abduction by a group of armed men most likely belonging to State agencies. The investigation into the abduction of four persons, including Akhmed Shidayev, was opened on 31 October 2002 but has not been completed to date. In such circumstances the Court finds that the applicant has raised the complaint concerning his ill-treatment and unlawful detention at the national level. For the same reasons as those mentioned above in respect of Article 2 of the Convention, the Government's preliminary objection is dismissed (see *Nenkayev and Others v. Russia*, no. 13737/03, § 177, 28 May 2009).

141. As to the merits of the complaint, the Court first reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. Furthermore, allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such

proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 61, *in fine*, Series A no. 25,).

142. The Court has found it established that Akhmed Shidayev was arrested on 25 October 2002 at his house, together with his father Abuyazid Shidayev, who later disappeared and must be presumed dead. Akhmed Shidayev was released by his captors in the forest on 30 October 2002 and later complained that he had suffered ill-treatment while in detention. The Court notes that the mere fact of being held incommunicado in unacknowledged detention, witnessing the ill-treatment of his father and neighbours, would have caused Mr Shidayev considerable anguish and distress, and put him in acute and constant fear of being subjected to ill-treatment or even killed. In view of all the known circumstances of the present case, that treatment reached the threshold of inhuman and degrading treatment.

143. Accordingly, the Court considers that there has been a violation of Article 5 of the Convention in respect of Akhmed Shidayev on account of his unacknowledged detention, and a violation of Article 3, in so far as it prohibits inhuman and degrading treatment. In view of this finding, the Court does not consider it necessary to examine the applicant's further allegations of ill-treatment.

2. Alleged inadequacy of the investigations into ill-treatment

144. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, 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. An obligation to investigate is not an obligation of result, but of means: not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998‑VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000‑IV).

145. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill‑founded conclusions to close their investigation or as the basis of their decisions (see *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006,

with further references). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimonies and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. The investigation into the alleged ill-treatment must be prompt. Lastly, there must be a sufficient element of public scrutiny of the investigation or its results; in particular, in all cases the complainant must be afforded effective access to the investigatory procedure (see, among many other authorities, *Mikheyev*, cited above, §§ 108-10, and *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 137, ECHR 2004−IV (extracts)).

146. In the present case a certain amount of evidence has been put before the investigation as regards the allegations of ill-treatment of Akhmed Shidayev. Several witness statements produced by the applicant and his relatives mention the ill-treatment and the consequences it had on his health. However, the investigation did not take any steps to obtain additional information about this aspect of the crime. No forensic or medical reports have been requested by the investigation and no steps have been taken to pursue this complaint, apart from granting Mr Shidayev the status of victim in the proceedings.

147. Bearing in mind its above-mentioned conclusions about the inadequacy of the criminal investigation in the present case, the Court concludes that there has been a violation of Article 3 in its procedural aspect, too, in respect of the failure to investigate credible allegations of the ill-treatment of Akhmed Shidayev.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

148. The applicants argued that they had no available domestic remedies against the violations claimed, in particular those under Articles 2 and 3 of the Convention. Article 13 reads:

> "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."

149. The Government disagreed with that submission, pointing to a number of instruments available to the applicants in the criminal proceedings and in Russian civil law.

A. Admissibility

150. 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.

B. Merits

151. The Court observes that it has examined the effectiveness of various domestic remedies suggested by the Russian Government in a number of cases.

152. In respect of complaints to higher-ranking prosecutors provided for by Article 124 of the Code of Criminal Procedure (see paragraph 50 above), the Court reiterates that it has consistently refused to consider that extraordinary remedy as a remedy to be exhausted by applicants in order to comply with the requirements of Article 35 § 1 of the Convention (see, among many other authorities, *Trubnikov v. Russia* (dec.), no. 9790/99, 14 October 2003; *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 90, 24 February 2005; *Belevitskiy v. Russia*, no. 72967/01, § 59, 1 March 2007; and *Umayevy v. Russia*, no. 47354/07, § 94, 12 June 2012).

153. Secondly, Article 125 of the Code of Criminal Procedure provides for the possibility of judicial review of some of the investigators' decisions (see paragraph 51 above). The Court reiterates that, in principle, an appeal against a decision to discontinue criminal proceedings may offer a substantial safeguard against the arbitrary exercise of power by the investigating authority, given a court's power to annul such a decision and indicate the defects to be addressed (see, *mutatis mutandis*, *Trubnikov* (dec.), cited above). Therefore, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution has decided not to investigate the claims. The Court has strong doubts, however, that this remedy would have been effective in cases such as the present ones, where the investigations have already been adjourned and reopened on several occasions. In such circumstances, the Court is not convinced that an appeal to a court, which could only have had the same effect, would have offered the applicants any redress. It considers, therefore, that such an appeal in the particular circumstances of the present cases would be devoid of any purpose and could not be considered effective (see *Esmukhambetov and Others v. Russia*, no. 23445/03, § 128, 29 March 2011).

154. To illustrate the point, the Court notes that some of the applicants in the present cases have sought judicial review of the investigators' decisions (see paragraphs 14, 28 and 30 above). However, this has not brought about any positive developments in the investigations, as confirmed by the above findings under Article 2 of the Convention in its procedural aspect.

155. The Court also notes that the general effectiveness of the criminal investigations in cases such as those under examination is discussed below under Article 46 of the Convention.

156. Lastly, in the absence of the results of the criminal investigation, any remedy possible under the Civil Code (see paragraphs 54-56 above) becomes inaccessible in practice. The Government's submission about the absence of civil claims being brought in Chechnya and Ingushetia (see below) is a further indication of the futility of such attempts.

157. Accordingly, the Court finds that the applicants did not dispose of an effective domestic remedy for their grievances under Articles 2 and 3, in breach of Article 13 of the Convention.

VIII. APPLICATION OF ARTICLE 46 OF THE CONVENTION

158. Having regard to the numerous previous findings about the lack of proper investigations into the allegations of disappearances, the Court considers it necessary to determine the consequences which may be drawn from Article 46 of the Convention for the respondent State. The relevant part of Article 46 of the Convention reads as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

A. The parties' submissions

159. In view of the numerous previous findings about the lack of proper investigations into the allegations of disappearances that occurred in Chechnya and Ingushetia between 1999 and 2006, the Court put a number of specific questions to the parties. Their answers may be summarised as follows.

1. The applicants

160. The applicants insisted that the problem of non-investigation of disappearances in Chechnya and Ingushetia was systemic and resulted from the lack of political will to investigate crimes committed by security and military personnel. They submitted a number of relevant reports, letters, and transcripts of interviews by public officials in support of their argument. The pleadings submitted through both applicants' representatives – the SRJI and Mr Itslayev – are summarised below.

(a) Scope of the problem

161. As to the scope of the problem, the applicants referred to the Court's relevant practice and argued that the non-investigation of the present group of cases should be qualified as systemic in view of the number and frequency of analogous breaches, for which no remedies exist, and the official tolerance of such breaches, resulting in a continuing situation that is incompatible with the Convention. They referred to the Court's findings of a violation of the procedural aspect of Article 2 in more than 130 judgments delivered up to October 2011 in connection with abductions committed in Chechnya and Ingushetia between 1999 and 2006. The applicants also cited the statement by the Chechnya Ombudsman, estimating the total number of disappeared persons at 5,000 (see paragraph 80 above).

(b) Ineffectiveness of the pending criminal investigations

162. The applicants submitted that the existing system of criminal investigation was inadequate to address the abuses committed during the so-called anti-terrorist operations in the Northern Caucasus. The majority of cases concerning abductions had been opened under Article 126 of the Criminal Code (kidnapping). After the opening of the criminal case, the subsequent conduct of the investigative authorities had displayed the common flaws which have been enumerated in the Court's many judgments. The investigations into disappearances in Ingushetia and Chechnya were, as a rule, never completed, but were suspended indefinitely. The applicants pointed out that the investigations had been suspended under the pretext that they had been unable to identify the perpetrators (Article 208 § 1 of the Code of Criminal Procedure) or for absence of *corpus delicti* (Article 24 § 2), even in cases where there had existed strong evidence as to the identity of the perpetrators, and the names and numbers of the military units to which they had belonged.

163. By way of example, the applicants represented by the SRJI drew the Court's attention to six previous judgments concerning disappearances: *Bazorkina*, cited above; *Baysayeva*, cited above; *Isigova and Others v. Russia*, no. 6844/02, 26 June 2008; *Akhmadova and Others v. Russia*, no. 3026/03, 4 December 2008; *Rasayev and Chankayeva v. Russia*, no. 38003/03, 2 October 2008; and *Elsiyev and Others v. Russia*, no. 21816/03, 12 March 2009. In each of those cases there had existed particularly strong evidence as to the identity of the perpetrators and the military units to which they belonged. The applicants found that:

> "...the investigations in the above cases exemplify one of the most salient characteristics of the practice of non-investigation of disappearances: that no matter how strong the evidence in the case, the perpetrators are never prosecuted. Indeed, the availability of specific evidence as to the identity of likely suspects makes it no less likely that the investigation will be ineffective".

164. The applicants accepted that a number of reforms had taken place, aiming to increase the effectiveness of the investigations in question. The setting up of a special division of the Investigative Committee to deal with the crimes which have become the subject of review by the European Court had been an appropriate and necessary measure. However, those reforms had failed to resolve the main problem, namely that of official tolerance of non-investigation, and the same problems that had plagued the investigations for many years had persisted. In view of the Court's judgments in each of the six cases mentioned above, the applicants' representatives had tried to obtain further investigations. Their attempts had been unsuccessful in making progress on any of the important aspects of the investigations criticised by the Court.

165. The applicants also referred to the institutional deficiencies of the proceedings conducted by the Investigative Committee, which was unable to investigate effectively the acts committed by the agents of the FSB, and depended in its work on the inadequate operational support provided by the police, who themselves could have been involved in the abductions. They referred to a letter of 11 March 2011 sent by the Deputy Prosecutor of Chechnya to the Head of the NGO, Committee Against Torture, in which the prosecutor had accused the officers of the Investigative Committee of outright "concealment" of the crimes related to the abductions (see paragraph 84 above).

166. The applicants suggested that the provisions of Article 126 of the Criminal Code were insufficient to reflect the complex nature of the phenomenon of the enforced disappearances, and advocated changes to the relevant legislation.

(c) Ineffectiveness of the existing legal framework and practice to address the continuing violations arising from non-investigation into the abductions

167. The applicants argued that the investigations into the abductions committed in the Northern Caucasus during the counter-terrorist operations were still ineffective. This had resulted in a continuing violation of Article 2 of the Convention in its procedural limb.

168. As to the division of competence between military and civilian prosecutors and investigative bodies, the applicants pointed out that the legislation and practice regulated the military investigators' powers restrictively. The military investigative authorities refused to take over cases unless the involvement of specific servicemen could be established; at the same time, they alone had unrestricted access to military and security archives and thus were in a position to identify the presumed perpetrators. Insufficient inter-agency cooperation had been mentioned in several official letters and documents. Furthermore, the independence of the military prosecutors and investigators could not be guaranteed, since under the relevant legislation both military investigators and military prosecutors had

the status of military servicemen, were remunerated by the Ministry of Defence and were stationed at military installations.

169. Referring by way of example to the six cases mentioned in paragraph 163 above, the applicants argued that, despite particularly strong evidence in each case, the military prosecutors had refused to acknowledge the involvement of servicemen in the crimes or had closed proceedings on the grounds that no crime had been committed. They had also displayed a blatant lack of compliance with the decisions taken by the courts and the prosecutors concerning the steps to be taken in the investigation, and had persisted in suspending the investigations on the grounds that the identities of the perpetrators were unknown, whereas they had been perfectly capable of identifying them.

170. The applicants in the three cases represented by Mr Itslayev argued that the investigations should have resulted in answers to a number of general questions related to the carrying out of special operations, such as the procedure for their authorisation, recording and reporting; the establishment of commanding officers; the responsibility for the detainees; and the authorisation and recording of military and other vehicles passing through roadblocks, in particular during curfew hours. They stressed that none of the criminal investigation files for the cases at hand had contained testimonies of the officials, servicemen or law-enforcement agents, and that the transcripts of witness statements by the applicants and their neighbours and relatives had been superficial. The recurrent nature of those and other failings attested to a practice of inadequate investigations that was incompatible with the Convention.

171. The applicants conceded that the passage of time in the cases at hand had presented serious obstacles to the successful solving of the crimes; however they were of the opinion that this was not an insurmountable obstacle. They referred to crimes which had been resolved many years later by determined investigators, and quoted the encouraging statements to that effect by the Russian officials responsible.

172. The applicants also referred to the problem of the statute of limitations and the absence of a coherent official policy in that respect. They referred to the developments following two of the Court's judgments: *Khadisov and Tsechoyev v. Russia* (no. 21519/02, 5 February 2009) and *Akhmadov and Others v. Russia* (no. 21586/02, 14 November 2008). In the first case, the Court had qualified the ill-treatment of the applicants as torture and found a breach of both the substantive and the procedural aspects of Article 3. In May 2010 the domestic criminal investigation into abuse of authority had been closed because the prescribed period had expired. In the second case, the criminal investigation into the death of the applicants' relatives, opened following charges of abduction and murder, had been terminated in October 2011 for the same reasons. The applicants stressed that since the crime of kidnapping under Article 126 of the

Criminal Code could be qualified as either serious or particularly serious, depending on the circumstances, a more coherent approach was necessary to prevent the application of the period of limitations to the bulk of unresolved cases in the near future. The applicants referred, by way of example, to Article 44 of the Constitution of the Republic of Poland, which stipulated that for crimes which were not investigated for political reasons, the statute of limitations started to run once such reasons had ceased to exist.

(d) The victims' rights

173. The applicants complained of insufficient participation of victims in criminal proceedings. The restrictive interpretation of the relevant provisions of the Code of Criminal Procedure (namely, Articles 42 and 161) and the absence of definitive results in most investigations into abductions had resulted in widespread decisions not to allow victims full access to the investigation files. In some cases, their right to obtain such access had to be confirmed by judicial decisions; in other cases, they were denied access in the courts as well. In any event, even where such access had been granted – in most cases many years after the start of the investigation – this had not increased its effectiveness.

174. The applicants maintained that the remedies available to them – in theory under Articles 124 and 125 of the Criminal Procedure Code – had in practice been ineffective, even where the applicants had been successful in obtaining a positive response to their complaints. They referred to numerous examples cited in the Court's case-law, as well as to the applicants' experience in the present cases.

175. As to possible reform measures, the applicants argued that victims should be guaranteed the right to full access to the case file if an investigation was suspended, and free legal assistance in cases where it could be presumed that the crimes had been committed by State agents. They also argued that military investigators should be excluded from proceedings concerning crimes committed during special operations; civil investigators and prosecutors should be given unrestricted access to military and security archives; and that investigators should be held criminally liable for delays in proceedings that could lead to the permanent loss of evidence.

(e) Search for the missing persons

176. The applicants submitted that it was "public knowledge" that no centralised database or information bank for disappearances existed in the region, and also that none of the laboratories or institutions located in Chechnya or Ingushetia was capable of handling the forensic tests required in any concerted effort to locate and identify the missing persons. They referred to the ICRC's efforts to create such a database, as well as to their recommendation to set up a DNA databank to carry out systematic genetic matching.

(f) Possibility to obtain compensation

177. The applicants argued that no domestic mechanisms were available to them for claiming compensation where sufficient information existed that the abduction had been carried out by unidentified military or security servicemen, but where no individual perpetrators had been identified or prosecuted and the criminal proceedings had remained suspended.

178. They suggested that the Code of Civil Procedure should be amended to expressly allow individuals who had suffered from the actions of unidentified representatives of the State to claim compensation prior to the completion of the criminal investigations. They further suggested that the Russian Government could envisage granting administrative compensation to the relatives of persons who had gone missing in the region since 1999.

2. The Government

179. The Government disagreed that the inadequate investigation of the disappearances occurring in Chechnya and Ingushetia between 1999 and 2006 had disclosed a systemic problem. They described the difficulties associated with the investigations in question and the steps taken by the authorities to address the issue.

(a) Scope of the problem

180. The Government submitted the following figures in support of their argument that the inadequacy of investigations was not systemic. In Chechnya between 1999 and 2006, 1,876 crimes under Article 126 of the Criminal Code (kidnapping) had been recorded; of those, 139 cases had been solved and 95 persons had been identified as implicated in those crimes. In 2002, a record number of abductions had occurred in Chechnya: – 565 cases. Since then, the numbers had dropped: in 2006, 61 cases of abduction had been recorded, and in 2010 only seven. In 2002, 3.5% of such crimes had been solved; in 2003 – 4.6%, in 2004 – 8.6%, in 2005 – 12.8% and in 2006 – 28%. The average rate over those five years was 7.5%, whereas in 2010 33.3% of abductions had already been successfully resolved.

181. The Government further submitted that in Ingushetia, between 1999 and 2006 148 abductions had been recorded. Of the thirty-three criminal investigations that had resulted in charges being brought in court, only one case had resulted in a non-guilty verdict. Twenty-four criminal cases had been terminated owing to the absence of *corpus delicti* or evidence of the crime, or to the suspect's death. Seventy-one criminal investigations into abductions dating from that period were pending; most (fifty cases) had been adjourned for failure to identify the culprits. The fate of seventy-nine missing persons had been resolved between 1999 and 2006.

(b) Problems associated with the criminal investigations

182. The Government accepted that a number of problems had been widespread in the investigations of the crimes in question. They emphasised the difficult general context of the events in Chechnya at the material time. The carrying out of urgent investigative steps had been impossible because of security threats, which had often compromised subsequent attempts to solve the crimes. The Government also referred to the difficulties in indentifying the culprits:

> "2. Most of [the] criminal cases [that are] the subject of examination by the European Court [were] opened [as a result of] abductions [that occurred] when servicemen conducted local special operations in the Chechen Republic to identify [the] whereabouts and arrest the members of illegal armed groups. ...
>
> 3. As a rule, abductions [in] the Chechen Republic took place at night. The perpetrators of the abductions were masked and had no distinctive signs on [their] uniforms. [The] difficulties in the investigation were caused by [the] simultaneous participation of a significant amount of forces and resources in anti-terrorist and special operations (the Ministry of Defence, the Ministry of the Interior, the Federal Security Service, [and] the Internal Troops of the Ministry of the Interior); [the] secrecy about special operations; [the] short-term presence of separate special units [in Chechnya]; [the] periodic rotation of personnel, with departure to [their] permanent deployment, and in some cases the lack of individual identification numbers on the armoured vehicles, aircrafts and transport vehicles."

183. The Government confirmed that most of those files had been affected by undue delays in the opening of the proceedings and in the carrying out of essential steps. They again stressed the difficulties that had existed in Chechnya during the "active stage of the counter-terrorist operation" [the counter-terrorist operation in Chechnya ended on 16 April 2009], including security threats and the frequent rotation of personnel.

(c) Work of the Investigative Committee

184. The Government further submitted that in September 2007 the Investigative Committee of the Prosecutor's Office had been set up by the Russian Federation and that on 28 December 2010 it had been given autonomy under the Investigative Committee Act. The aim of the Committee was to provide unified, effective and independent criminal proceedings, without the previous problems of inter-agency conflict. On 15 January 2011 the Chechnya Investigative Committee had set up a special division ("the third division for particularly important crimes"), entrusted with the carrying out of investigations of the abductions and murders committed in the previous years, which had been considered by the European Court. The setting up of that division had ensured a single approach to the investigation of those crimes, optimised supervision of the investigations and allowed closer monitoring of progress.

185. The efforts of that division had led to a number of important developments: district military commanders, officers of the temporary district departments of the interior and other officials had been identified and questioned; and a number of relevant documents had been seized in the central archives of the security and law-enforcement agencies. The investigators had remedied the gaps in the proceedings: they had examined the crime sites, carried out additional questioning, and drawn up expert reports. The Government listed six cases that had been solved as a result of the work of that division, without giving any further details about the nature of the progress made.

186. The Government said that the Investigative Committee had issued detailed guidelines to ensure that crimes such as abductions were recorded immediately and that effective investigations were carried out even if the abductions had taken place a long time ago. All relevant information about the work of the Investigative Committee was on display in their offices and accessible on the internet. On 14 May 2009 the Investigative Committee had issued practice direction no. 59/211, containing a number of measures to bring the preliminary investigation stage in line with relevant international standards.

187. The Investigative Committee of the Southern Federal Circuit maintained an electronic database containing information about all serious violent crimes committed in the area, such as murders and terrorist acts, as well as about the identification and detention of persons suspected of abductions. The data were supplied by the relevant departments of the Investigative Committee, military investigators and the Ministry of the Interior.

188. In 2011 the Investigative Committee had started to request the carrying out of DNA tests of the missing persons' close relatives, with the aim of setting up a database to match them with unidentified remains. By October 2011, seventy expert reports had been requested and forty-seven had been carried out.

189. The Government explained that those cases continued to pose serious challenges for the Investigative Committee in view of the passage of time (the loss of traces of the crimes, and the fading memories of victims and eyewitnesses). They also explained that there had been sufficient reasons to suspect that some of those crimes had been committed by members of illegal armed groups aiming to discredit the security forces; in each case the investigation had to take steps to check that possibility. Furthermore, many important official and military documents dating back to the periods in question had been destroyed.

(d) Cooperation with the military and other bodies

190. The Government submitted that the military investigators, who comprised a branch of the Investigative Committee and were independent

from the Ministry of Defence, checked information about the possible involvement of military personnel in the crimes concerned. Their participation was triggered by the suspicion that the perpetrators might have been military servicemen, even if the identities or the military unit had not been established.

191. Furthermore, the Investigative Committee may involve officials of other law-enforcement agencies, where necessary. It cooperated actively with other law-enforcement and security agencies, by obtaining answers to their requests for information and identification of those involved in the counter-terrorist operations. The local police were instructed to treat as a priority any request concerning abductions.

192. The General Prosecutor's Office of the Russian Federation retained the power of general supervision over criminal investigations. Military prosecutors supervised the work of the military investigators. Their access to the information of other State bodies in the course of their work was unrestricted and was based on the relevant provisions of the Prosecutors' Office Act of 17 January 1992, with subsequent amendments (Federal Law no. 2202-01).

193. The cooperation of the investigative authorities with the FSB is defined by the relevant legislation (see paragraph 59 above). The Government further referred to the provisions that obliged all State bodies to comply with requests for information made by the FSB and the practice of maintaining the FSB special representatives within the military and law-enforcement bodies, facilitating the exchange of information.

(e) Confidentiality issues

194. The Government submitted:

> "34. Receiving full information on request is complicated by the remoteness of the events, as well as the fact that sometimes the information requested, in accordance with Russian legislation, constitutes [a] State secret, has various degrees of secrecy and [is] referred to [as] confidential."

The Government referred to the rule of confidentiality as one of the foundations of the anti-terrorist activity. They emphasised the importance of the relevant instruction of the Investigative Committee regulating access to potentially confidential documents (see paragraph 58 above). They explained that, even where requests for information could be justified from the procedural point of view, the risk that they might be used as a means of personal revenge against members of the security forces had to be considered.

(f) Search for the disappeared persons

195. Apart from the prosecutors' office and the Investigative Committee, the Government listed other competent authorities that were involved in the search for the disappeared persons. A number of permanent

working groups, set up under the auspices of the Investigative Committee in the Southern Federal Circuit and in Chechnya, analysed the criminal investigation files in cases under consideration by the European Court, and cooperated with other relevant bodies. The working groups included officials of the Ministry of the Interior and the FSB. The Government did not supply any other details about the structure, terms of reference or results of the working groups.

196. The Government said that the Chechnya Parliament had created a committee for the search of persons who had gone missing during the counter-terrorist operation, which worked in close cooperation with the Investigative Committee and the Ministry of the Interior. Again, no other information about the work of that committee had been furnished.

197. The Russian Ministry of the Interior had set up, within the department dealing with organised crime, a division specialising in abduction and human trafficking. The experts working in the division regularly visited Chechnya, Ingushetia and other regions of the Northern Caucasus; between 2009 and 2011 they had gone to the region seven times. The Police Act of 7 February 2011 (Law no. 3 FZ) provided that the local police must take urgent steps as soon as they receive information about an abduction, whether or not a criminal case has been opened. The Ministry of the Interior in both Chechnya and Ingushetia, as well as at the federal level, maintained special databases which brought together all information about missing persons and unidentified bodies.

198. The prosecutor's offices in Chechnya and Ingushetia monitored the occurrence of such crimes and maintained electronic databases of murders and abductions, as well as an electronic system of recording all procedural steps taken in the pending criminal investigation files. The Ministry of the Interior, the FSB, the Investigative Committee and military investigators and prosecutors had access to those databases.

199. The Government further described two documents, adopted consecutively in 2007 and 2011, which had established integrated programmes aimed at preventing abductions and at assisting in the search for the disappeared persons. The most recent document contained a programme of actions to be taken from 2011 to 2014, including the setting up of a unified database, as well as the holding of regular inter-agency working-group meetings.

200. The forensic expert bureau had been functioning in Chechnya since 2002, but until March 2008 it had been unable to carry out autopsies. At the time of the observations, the bureau had counted 26 forensic experts able to carry out a variety of biological, chemical and medical examinations, including autopsies.

201. The Government listed a number of other permanent working groups and meetings aimed at further enhancing the effectiveness of the investigations of abductions in the region and the prevention of such crimes.

They comprised various law-enforcement bodies, and worked in cooperation with the ombudsmen's offices, NGOs, international bodies such as the ICRC, and the media.

(g) Work with the victims' families

202. The Government submitted that providing relatives with complete and up-to-date information was considered top priority by the State. The Investigative Committee was implementing a combined programme of work with the victims. In all cases the victims had been informed of the important procedural steps, such as the adjournment and reopening of their case and had been given access to the case files in line with the relevant legislation. They had been provided with full information about any decisions that could serve as a basis for complaints to the supervising prosecutors or the court.

203. In accordance with international standards, the Investigative Committee had held regular meetings with the victims, developed a questionnaire to obtain an evaluation of its work and to take into account the victims' wishes, and drawn up detailed reports about the progress and results of each criminal case (pursuant to the order of the head of the Chechnya Investigative Committee no. 44/216-r of 14 April 2010).

204. The Government stressed that the usual means of legal protection had been available to the victims in criminal proceedings, such as complaints to the prosecutors and courts in accordance with Articles 124 and 125 of the Code of Criminal Procedure. They referred to the relevant decisions of the Supreme Court and the Constitutional Court, aimed at safeguarding victims' rights. At present, the scope of the victims' access to the pending case files had to be determined by the investigators, who in each case struck a balance between the interests of justice and the right of the victims to be informed. In all cases, such decisions had to be reasoned and were open for review by supervising prosecutors or courts. In any event, the victims had a right of access to a number of important procedural documents.

205. The Government referred to the difficulties associated with the search for the relatives of the missing persons, many of whom had left Russia without providing any contact details.

206. They also referred to their plans for legislative reforms to further strengthen the protection of victims in criminal proceedings. The draft legislation would introduce the right of a victim to be informed of the progress of a criminal investigation and the possibility of compensation by the State for damage caused by the crime.

(h) Compensation

207. The Government referred to the provisions of the Civil Code, which provided for a possibility to obtain compensation arising out of torts

committed by civil servants and State employees, as well as for unlawful actions of judges, prosecutors and law-enforcement officials. The Civil Code also provided for the award of non-pecuniary damages (see paragraphs 54-56 above). The victims of crimes in Chechnya and Ingushetia have so far failed to use those means of redress.

208. The Government also referred to the domestic legislation establishing assistance for the loss of a breadwinner, available in cases of death, or an official declaration by a court that a person was missing.

209. Lastly, the Government referred to their plans to create a new compensatory remedy for the victims of terrorist acts and counter-terrorist operations. Section 18 of the Counter-Terrorist Act could be amended so as to provide for compensation where the damage had resulted from the lawful actions of the State officials, or where the perpetrators had not been identified. In the case of a disappearance, compensation could be awarded if a court had declared the person missing or dead. The introduction of such a remedy would not deprive the victims of the possibility to claim pecuniary and non-pecuniary damages under the provisions of the Civil Code.

B. General principles

210. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. The Contracting State's duty in international law to comply with the requirements of the Convention may require action to be taken by any State authority, including the legislature. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002-VI; *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X; *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008 ...; and *M. and Others v. Bulgaria*, no. 41416/08, § 136, 26 July 2011). This obligation has consistently been emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, among many authorities, Interim Resolutions DH(97)336 in cases concerning the length of proceedings in Italy; DH(99)434 in cases concerning the action of the security forces in Turkey; ResDH(2001)65 in the case of *Scozzari and Giunta* cited above; and ResDH(2006)1 in the cases of *Ryabykh v. Russia*, no. 52854/99, ECHR 2003-IX and *Volkova v. Russia*, no. 48758/99, 5 April 2005).

211. In principle, it is not for the Court to determine what measures of redress may be appropriate for a respondent State to take in accordance with its obligations under Article 46 of the Convention. The Court's concern is to facilitate the rapid and effective suppression of a shortcoming found in the national system of protection of human rights (see *Driza v. Albania*, no. 33771/02, § 125, ECHR 2007-XII (extracts)).

212. The Court may find that the growing mass of similar cases supports the conclusion that there is a "systemic practice incompatible with the Convention": an accumulation of identical breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system. Such breaches reflect a continuing situation that has not yet been remedied and in respect of which litigants have no domestic remedy. This accumulation of breaches constitutes a practice that is incompatible with the Convention. It is inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware of the existence of such a practice. Furthermore, under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected (see *Ireland v. the United Kingdom*, cited above, § 159, and *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V*)*.

213. The Court reiterates that, in cases concerning deprivations of life, Contracting States have an obligation under Article 2 of the Convention to conduct an effective investigation capable of leading to the identification and punishment of those responsible. The Court considers that that obligation would be rendered illusory if, in respect of complaints under Article 2 of the Convention, an applicant's victim status were to be remedied by merely awarding damages (see, *mutatis mutandis*, *Yaşa v. Turkey*, 2 September 1998, § 74, Reports 1998-VI, and *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 55, 20 December 2007 and the cases cited therein).

214. The procedural obligation in the case of a disappearance will, potentially, persist as long as the fate of the person is unaccounted for; the ongoing failure to provide the requisite investigation will be regarded as a continuing violation (see *Varnava and Others*, cited above, § 148). Investigation into a disappearance does not serve the sole purpose of establishing the circumstances of the killing, and finding and punishing the perpetrator. The crucial difference in investigations into disappearances is that, by conducting an investigation, the authorities also aim to find the missing person or find out what happened to him or her. When conducting investigations into disappearance cases the authorities often have to start with very little evidence and have to search for the evidence in order to trace the disappeared person or discover his or her fate. Crucial evidence may not come to light until later. Furthermore, the consensus in international law is

that it should be possible to prosecute the perpetrators of such crimes even many years after the events (see *Er and Others v. Turkey*, no. 23016/04, §§ 55-57, 31 July 2012, with further references).

215. Article 3 of the Convention requires the respondent State to exhibit a compassionate and respectful approach to the anxiety of the relatives of the deceased or disappeared person and to assist the relatives in obtaining information and uncovering relevant facts. The silence of the authorities of the respondent State in the face of the real concerns of the relatives can only be categorised as inhuman treatment (see *Varnava and Others*, cited above, § 201).

C. Application in the present cases

1. Whether there exists a systemic problem

216. In the present case the Court finds, in particular, violations of Article 2 in respect of the applicants' eight relatives who must be presumed dead and in respect of the ineffective criminal investigation into the circumstances of the disappearances; Article 3 in respect of the applicants who suffered, and continue to suffer, as a result of the unknown fate of their relatives and the inadequate response of the authorities to their plight; Article 5 on account of the unacknowledged detention of the eight men; and Article 13 on account of the absence of effective remedies. As mentioned above, the Court has regularly found violations of the same rights in similar cases (more than 120 judgments have been adopted up to September 2012). In addition, more than 100 similar cases have been communicated to the Government and yet others are currently pending before the Court. The reasons of the violations found are also similar and inter-connected and have been summarised above (see paragraphs 101, 123, 131-132 and 153 above).

217. Accordingly, the Court finds that the situation in the present case must be characterised as resulting from systemic problems at the national level, for which there is no effective domestic remedy. It affects core human rights and requires the prompt implementation of comprehensive and complex measures.

218. The widespread nature of the above-mentioned problems is attested by other relevant sources, including national and international bodies, and statements by various public officials (see paragraphs 69-82 above). Despite the Government's assurances to the contrary, most of the recent documents and, in particular, the Council of Europe Committee of Ministers' reports, show that these issues have remained largely unresolved (see paragraphs 69-70 above).

219. Although a majority of cases concern disappearances that occurred between 1999 and 2006 in Chechnya and Ingushetia, the Court has

concluded that the criminal investigations were ineffective also in cases of abductions that occurred either before or after that date, and outside of those two regions (see *Tashukhadzhiyev v. Russia*, no. 33251/04, 25 October 2011, for a disappearance in Chechnya in 1996; *Umarovy v. Russia*, no. 2546/08, 12 June 2012, for disappearances in 2007 in Chechnya and Dagestan; and *Shafiyeva v. Russia*, cited above, for a disappearance in Dagestan in 2009). The Court therefore finds that, even though the systemic nature of the violation is obvious in relation to the period between 1999 and 2006, the problems of the investigation of such events are more widespread and should be borne in mind when examining complaints arising out of similar cases occurring outside of that period and/or elsewhere in the region.

220. Given the scope and nature of the problems involved, the Court is not in a position to order the exact general and individual measures to be implemented by Russia in order to comply with the judgment. Nor does it find it necessary to set a time-limit for the implementation of any such measures. It falls to the Committee of Ministers, acting under Article 46 of the Convention, to address the issue of what – in practical terms – may be required of the respondent State by way of compliance, and when (compare and contrast with *Abuyeva and Others v. Russia*, no. 27065/05, §§ 240-43, 2 December 2010).

221. Nevertheless, the Court feels compelled to provide some guidance on certain measures that must be taken, as a matter of urgency, by the Russian authorities to address the issue of the systemic failure to investigate disappearances in the Northern Caucasus. Such steps should be taken with the aim of putting an end to the continued suffering of the relatives of the disappeared persons, conducting effective investigations into the cases of abduction, unlawful detention and disappearance allegedly committed by servicemen, and ensuring that the families of the victims are awarded adequate redress. In so doing, the Russian authorities should have due regard to the findings of the present judgment, the Court's applicable case-law and the Committee of Ministers' recommendations, resolutions and decisions (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 212-13, 10 January 2012, and *Kaverzin v. Ukraine*, no. 23893/03, § 181, 15 May 2012). The Court's findings below serve to identify what it considers to be an underlying systemic problem and the source of this problem, so as to assist the States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments (see Resolution Res(2004)3 and Recommendation Rec(2004)6, adopted by the Committee of Ministers of the Council of Europe on 12 May 2004).

2. The measures to be taken

222. In the Court's view, the measures to redress the systemic failure to investigate disappearances in the region would fall into two principal groups.

(a) Situation of the victims' families

223. The first and, in the Court's opinion, most pressing group of measures to be considered concerns the suffering of the relatives of the victims of disappearances, who continue to remain in agonising uncertainty as to the fate and the circumstances of the presumed deaths of their family members. The Court has already found that a duty on the respondent State to account for the circumstances of the death and the location of the grave could be derived from Article 3 of the Convention (see *Varnava and Others*, cited above, § 201).

224. It is apparent from the cases at hand and from the bulk of the Court's previous judgments on the subject that the criminal investigations are particularly ineffective in this regard, resulting in a sense of acute helplessness and confusion on the part of the victims. As a rule, investigations of abduction in circumstances suggesting the carrying out of clandestine security operations do not reveal the fate of the disappeared persons. Despite the magnitude and gravity of the problem, noted in many national and international reports, the response to this aspect of human suffering by means of the criminal investigations remains inadequate. Thus, as attested by the statistics submitted by the Russian Government, the average rate of success in solving such crimes in Chechnya was 7.5%, falling to 3.5% in 2002 – the year when the largest number of disappearances occurred (see paragraph 180 above).

225. A number of recommendations to the Russian authorities have been formulated by various expert bodies and officials in this respect (see paragraphs 72, 74, 77, 80-82 above). Without enumerating them all, the Court notes that one recurrent proposal is to create a single, sufficiently high-level body in charge of solving disappearances in the region, which would enjoy unrestricted access to all relevant information and would work on the basis of trust and partnership with the relatives of the disappeared. This body could compile and maintain a unified database of all disappearances, which still appears to be lacking. The Government, in their observations, point to a plethora of institutions that maintain such lists (see paragraphs 197-198), but those databases do not appear to be sufficiently interrelated and the very number of agencies responsible for the collection of such information may be an indication of the need for a more coherent approach. This view seems to be supported by the experts' reports cited above and by the fact that, to date, the exact scope of the problem is subject to various, quite diverging, opinions.

226. Another pressing need is the allocation of specific and adequate resources required to carry out large-scale forensic and scientific work on the ground, including the location and exhumation of presumed burial sites; the collection, storage and identification of remains and, where necessary, systematic matching through up-to-date genetic databanks (see paragraphs 77, 80 and 81 above). Some work has already been done in that connection,

as attested by the Government (see, for example, paragraph 200 above), and the Court welcomes those steps, in particular those occurring after 2010. Nevertheless, it would appear reasonable to concentrate the relevant resources within a specialised institution, based in the region where the disappearances have occurred and, possibly, working in close cooperation with, or under the auspices of, the specialist high-level body mentioned above.

227. Another aspect of the problem concerns the possibility of payment of financial compensation to the victims' families, as suggested by the Government in their observations. The Court welcomes this forthcoming development and notes that, under certain circumstances, the payment of substantial financial compensation, coupled with a clear and unequivocal admission of State responsibility for the relatives' "frustrating and painful situation", could resolve the issues under Article 3 (see *Skendžić and Krznarić v. Croatia,* no. 16212/08, § 96, 20 January 2011).

228. In the same vein, the Court has not ruled out the possibility of unilateral remedial offers to the relatives in cases concerning persons who have disappeared or been killed by unknown perpetrators and where there is *prima facie* evidence supporting allegations that the domestic investigation fell short of what is necessary under the Convention. In addition to the question of compensation, such an offer should at the very least contain an admission to that effect, combined with an undertaking by the respondent Government to conduct, under the supervision of the Committee of Ministers in the context of the latter's duties under Article 46 § 2 of the Convention, an investigation that is in full compliance with the requirements of the Convention as defined by the Court in previous similar cases (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 84, ECHR 2003-VI).

(b) Effectiveness of the investigation

229. The second group of measures that should be taken without delay to comply with this judgment relate to the ineffectiveness of the criminal investigation and the resulting impunity for the perpetrators of the most serious human rights abuses. The Court reiterates its position as formulated in the *Varnava* case, cited above:

> "191. The Court does not doubt that many years after the events there would be considerable difficulty in assembling eye-witness evidence or in identifying and mounting a case against any alleged perpetrators. However, the Court's case-law on the ambit of the procedural obligation is unambiguous. The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. Even where there may be obstacles which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or

tolerance of unlawful acts (see *McKerr v. the United Kingdom*, no. 28883/95, §§ 111 and 114, ECHR 2001‑ III; and *Brecknell v. the United Kingdom*, no. 32457/04, § 65, 27 November 2007). Besides being independent, accessible to the victim's family, carried out with reasonable promptness and expedition and affording a sufficient element of public scrutiny of the investigation or its results, the investigation must also be effective in the sense that it is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999‑ III; *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001; and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

192. ... It may be that investigations would prove inconclusive, or insufficient evidence would be available. However, that outcome is not inevitable even at this late stage and the respondent Government cannot be absolved from making the requisite efforts. By way of example, the Court recalls that in the context of Northern Ireland the authorities have provided for investigative bodies (variously, the Serious Crimes Review Team and Historical Enquiry Team) to review the files on past sectarian murders and unsolved killings and to assess the availability of any new evidence and the feasibility of further investigative measures; in cases before the Court, these measures were found, given the time that had elapsed, to have been adequate in the particular circumstances (see *Brecknell*, cited above, §§ 71, 75, 79-81). It cannot therefore be said that there is nothing further that could be done.

193. It may be that both sides in this conflict prefer not to attempt to bring out to the light of day the reprisals, extra-judicial killings and massacres that took place or to identify those amongst their own forces and citizens who were implicated. It may be that they prefer a "politically-sensitive" approach to the missing persons problem and that the CMP [Commission on Missing Persons] with its limited remit was the only solution which could be agreed under the brokerage of the UN. That can have no bearing on the application of the provisions of the Convention."

230. The continuing obligation to investigate the situations of known or presumed deaths of individuals, where there is at least *prima facie* evidence of State involvement, remains in force even if the humanitarian aspect of the case under Article 3 may be resolved. The Court acknowledges the difficulties cited by the Government, and welcomes the steps which aim to resolve at least some of the recurrent problems, such as ensuring closer inter-agency cooperation, establishing rules for access to confidential information or ensuring the victims' rights in criminal proceedings (see, in particular, paragraphs 202-206 above). Nevertheless, it appears that a number of further general measures are required in this direction.

231. The Court is fully aware of the difficulties faced by the Russian Federation in combating illegal militant groups in the Northern Caucasus who make recourse to the most audacious terrorist methods. It therefore understands the need to mount an efficient system capable of counteracting them, and maintaining law and order in this much-suffering region. Nevertheless, the confines of a democratic society governed by the rule of law cannot allow this system to operate in conditions of guaranteed impunity for the abuses committed by its agents. Within the limits of the

obligations imposed by the Convention, it should be possible to ensure accountability of the anti-terrorist and security services without compromising the legitimate need to combat terrorism and to maintain the necessary level of confidentiality.

232. Practically speaking, it is of utmost importance that the disappearances which have occurred in the region in the past become the subject of a comprehensive and concentrated effort on the part of the law-enforcement authorities. In view of the clear patterns and similarities in the occurrence of such events, it is vital to adopt a time-bound general strategy or action plan to elucidate a number of the questions that are common to all the cases where it is suspected that the abductions were carried out by State servicemen. The plan should also include an evaluation of the adequacy of the existing legal definitions of the criminal acts leading to the specific and widespread phenomenon of disappearances.

233. As the Government admit, and as can be seen from the case files reviewed by the Court in the cases at hand and in many previous similar cases, a number of military and security agencies could be suspected of involvement in the operations. However, any attempts to obtain more specific information have turned out to be extremely difficult for a variety of organisational and confidentiality reasons (see the Government's observations, paragraphs 182-83, 185 and 194 above). Accordingly, in order for such investigations to be effective, the investigative authority would have to identify the leading agencies and commanding officers of special operations aimed at identifying and capturing suspected illegal insurgents in given areas and at given times, and the procedure for recording and reporting such operations. They would also need to clarify the responsibility for the detainees within those arrangements. One aspect of those general inquiries should be to resolve the problem of access to records of the passage of service vehicles through security roadblocks, including during curfew hours, which appears to be a recurrent feature of many such abductions.

234. Closely connected to the above is the unhindered access of the investigators to the relevant data of the military and security agencies. The problem of lack of cooperation with the investigators is brought up sufficiently often in the relevant documents, including those produced within the investigations of the cases at hand (see paragraphs 39-41 and 81-82 above). It is difficult to see how the investigative group, or groups, put in charge of those crimes could be effective without having unrestricted access to all relevant data, including information about commanding officers and staff taking part in those operations, and thus without having the possibility to identify and question those who had ordered or performed the deeds which are the subject matter of the investigation. It should be possible, in exceptional circumstances giving rise to fears for staff security, to at least identify the personnel in question by their rank and office. However, such

exceptions should be strictly regulated and could not become the rule or remain impermeable in the event of sufficient information that a serious crime has been committed.

235. Beyond the issue of access to confidential information, the Court does not find it necessary to question the independence of military prosecutors or investigators *in abstracto*; however, it must be ensured that the investigation, or the supervision of the investigation, is not entrusted to persons or structures who could be suspected of being implicated in the events at issue (see *Putintseva v. Russia*, no. 33498/04, § 52, 10 May 2012).

236. The next point to address is the access of the victims' relatives to the case files when an investigation remains adjourned, sometimes for years. The Court has found on many occasions that the relevant provisions of the Russian legislation and practice give rise to situations which directly affect the victims' legitimate interests in the proceedings. In the wider sense, this also has a bearing on maintaining a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts (see *Anguelova v. Bulgaria*, cited above, § 140). The current unsatisfactory situation should be amended, with due regard to the need to ensure the protection of confidential or secret information. This could be done, for example, by setting a rule that victims would have access to the case files where the investigation has been suspended for failure to identify the suspects, with the possibility of exception for specific documents classified confidential or secret.

237. Lastly, the application of the statute of limitations to the bulk of investigations of the abductions committed prior to 2007 has to be addressed. Bearing in mind the seriousness of the crimes, the large number of persons affected and the relevant legal standards applicable to such situations in modern-day democracies, the Court finds that the termination of pending investigations into abductions solely on the grounds that the time-limit has expired is contrary to the obligations under Article 2 of the Convention (see *Association 21 December 1989 and Others v. Romania*, nos. 33810/07 and 18817/08, § 194, 24 May 2011). The Court also notes that there is little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events, since the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity (see *Brecknell v. the United Kingdom*, no. 32457/04, § 69, 27 November 2007).

3. Conclusions

238. A number of urgent and result-oriented measures appear inevitable in order to put an end, or at the very least to alleviate the continuing

violation of Articles 2 and 3 resulting from the disappearances that have occurred in the Northern Caucasus since 1999. While it is for the Committee of Ministers to supervise the execution of final judgments, in line with Article 46 § 2 of the Convention, the Court considers that the systemic dysfunction of the investigation of such crimes requires a number of remedial measures, as outlined above. Given their wide-ranging scope, the nature of the violations concerned and the pressing need to remedy them, it would appear necessary that a comprehensive and time-bound strategy to address the problems enumerated above (see paragraphs 223-237 above) is prepared by the Respondent State without delay and submitted to the Committee of Ministers for the supervision of its implementation.

239. At present, the Court does not consider it possible to apply any adjournments in respect of other similar cases pending before it, in view of the serious and continuing nature of the violations alleged.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

240. 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 parties' submissions

1. Application no. 2944/06, Satsita Aslakhanova v. Russia

(a) Damage

241. The applicant claimed 3.038.928 Russian roubles (RUB) in respect of pecuniary damage. She argued that her husband had been a mason and the sole breadwinner of the family, and that she could have relied on 30% of his earnings, plus 10% per child until the age of majority. She submitted a calculation leading to that result, based on the Ogden Actuary Tables. In the absence of any evidence of her husband's previous employment or salary, the applicant relied on an information note from a Chechen road construction company of September 2008, setting the monthly remuneration for masons at RUB 24.000.

242. The applicant further claimed 70.000 euros (EUR) in respect of non-pecuniary damage .

243. The Government disputed the reasonableness and justification of those claims.

(b) Costs and expenses

244. The applicant claimed EUR 6.154 for the costs and expenses incurred before the domestic authorities and the Court. She submitted a copy of the legal agreement with her representatives and a breakdown of the costs and expenses incurred, complete with postal receipts and translators' invoices. She requested the transfer of that sum directly to her representative's bank account in the Netherlands.

245. The Government disputed the reasonableness and justifications of the amount claimed.

2. Application no. 8300/07, Barshova and Others v. Russia and no. 42509/10, Akhmed Shidayev and Belkis Shidayeva v. Russia

(a) Damage

246. All the applicants asked the Court to determine the compensation in respect of non-pecuniary damage caused by the illegal detention and disappearance of their close relatives. In addition, Akhmed Shidayev sought compensation as the victim of ill-treatment and unlawful detention.

(b) Costs and expenses

247. The applicants also claimed reimbursement of costs and expenses incurred before the domestic authorities and the Court. They submitted copies of legal agreements with their representatives and a breakdown of the costs and expenses incurred, complete with postal receipts and translators' invoices. Thus, applicant Larisa Barshova sought EUR 8.726 under this head and Akhmed and Belkis Shidayevy sought EUR 6.777.

248. The Government expressed doubts as to whether the expenses claimed had actually been incurred and were reasonable.

3. Application no. 50184/07, Malika Amkhadova and Others v. Russia

(a) Damage

249. The applicants claimed RUB 1,112,321 in respect of pecuniary damage. They argued that Ayb Temersultanov had been unemployed at the time of his abduction, but had remained the sole breadwinner of the family. They argued that, based on the subsistence level provided for by federal and regional legislation, as mother and wife they could have relied on 20% of his earnings, plus 10% per child until the age of majority. They submitted a calculation based, principally, on the Ogden Actuary Tables.

250. The applicants further claimed EUR 500,000 in respect of non-pecuniary damage.

(b) Costs and expenses

251. The applicants also claimed EUR 1,812 for costs and expenses incurred before the domestic courts and the Court. They submitted a copy of the legal agreement between the second applicant and the representatives, and a breakdown of the costs and expenses incurred, complete with postal receipts and translators' invoices. They requested the transfer of that sum directly to their representative's bank account in the Netherlands.

252. The Government questioned whether the expenses claimed had actually been incurred and were reasonable as to quantum.

4. Application no. 332/08, Sagaipova and Others v. Russia

(a) Damage

253. Satsita Sagaipova, Aminat Nalbiyeva and Abu Nalbiyev – the wife and minor children of Ayub Nalbiyev – claimed a total of RUB 2,297,750 in respect of pecuniary damages. They submitted that Ayub Nalbiyev had been in employment at the time of his abduction and had provided for his family, even though no records relevant to his employment or salary could be obtained. They argued that until the youngest child had reached the age of majority, his wife and each child could have relied on a monthly amount equal to the subsistence level provided for by federal and regional legislation.

254. All the applicants further claimed non-pecuniary damages in the amounts to be determined by the Court.

(b) Costs and expenses

255. The applicants also claimed EUR 10,299 for costs and expenses incurred before the domestic courts and the Court. They submitted a copy of the legal agreement between Satsita Sagaipova, Tatyana Magomerzayeva and Seda Abazova and Mr Itslayev, a breakdown of the costs and expenses incurred, complete with postal receipts and translators' invoices. They requested the transfer of that sum directly to their representative's bank account in Chechnya.

256. The Government submitted that the applicants were entitled to the reimbursement of costs and expenses only in so far as it had been shown that such expenses had actually been incurred and were reasonable as to quantum. They disputed that the applicants had complied with this test in the case at hand.

B. The Court's assessment

1. General principles

257. The Court reiterates that there must be a clear causal connection between the damages claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. The Court further finds that the loss of earnings applies to close relatives of the disappeared persons, including spouses, elderly parents and minor children (see, among other authorities, *Imakayeva*, cited above, § 213).

258. Wherever the Court finds a violation of the Convention, it may accept that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations and make a financial award.

259. As to the costs and expenses, the Court has to establish first whether the costs and expenses indicated by the applicant's 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, and *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV).

2. Application in the present cases

260. Having regard to its above conclusions, the principles enumerated above and the parties' submissions, the Court awards the amounts to the applicants as detailed in Annex II, plus any tax that may be chargeable to the applicants on these amounts. The awards in respect of the costs and expenses are to be paid into the representatives' bank accounts in the Netherlands and in Russia, as identified by the applicants.

C. Default interest

261. 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 the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of the applicants' eight relatives: Apti Avtayev, Sulumbek Barshov, Anzor Barshov, Abuyazid Shidayev, Ayub Temersultanov (also known as Ruslan Tupiyev), Ayub Nalbiyev, Badrudin Abazov and Ramzan Tepsayev;

4. *Holds* that there has been a procedural violation of Article 2 of the Convention in respect of the failure to investigate effectively the disappearance of the applicants' eight relatives;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants, on account of their relatives' disappearance and the authorities' response to their suffering;

6. *Holds* that there has been a violation of Article 5 of the Convention in respect of the applicants' disappeared relatives;

7. *Holds* that there has been a violation of Article 3 of the Convention in respect of Akhmed Shidayev, on account of inhuman and degrading treatment inflicted upon him between 25 and 30 October 2002 and the failure to effectively investigate this allegation;

8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Akhmed Shidayev, on account of his illegal detention between 25 and 30 October 2002;

9. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Articles 2 and 3 of the Convention;

10. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts as indicated in Annex II, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, save in cases of the payment in respect of costs and expenses to the applicants represented by SRJI;

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

ANNEX I

Details of the applications

	Application number and name	Case details	Applicants	Persons disappeared, date and place of abduction	Investigation
1.	2944/06 Satsita Aslakhanova v. Russia	Lodged on 13 January 2006; represented by SRJI; communicated on 30 April 2008.	Satsita Aslakhanova, born in 1971, wife of Apti Avtayev and mother of their two children, born in 1997 and 1999. Lives in Urus-Martan, Chechnya.	Apti Avtayev, born in 1967; 10 March 2002, Grozny.	On 19 August 2002 the Leninskiy ROVD of Grozny opened criminal investigation no. 48139. No documents from the file were disclosed. The case is suspended. On 11 March 2003 the Leninskiy District Court in Grozny declared Mr Avtayev a missing person as of 10 March 2002.
2.	8300/07 Larisa Barshova v. Russia	Lodged on 9 January 2007; represented by D. Itslayev; communicated on 20 May 2009.	Larisa Barshova, born in 1952, mother of the disappeared men. Lives in Grozny, Chechnya.	Sulumbek and Anzor Barshov, born in 1981 and 1983; 23 October 2002 at 2 a.m., Grozny.	The investigation file no. 48188 into the abduction of the Barshov brothers and two members of the Shidayev family was opened on 31 October 2002 by the Leninskiy ROVD of Grozny. In May 2011 the Government submitted the entire contents of the criminal investigation file, 592 pages. On 7 May 2010, upon Belkis Shidayeva's complaint under Article 125 of the CCP, the Leninskiy district court of Grozny quashed the decision of 20 November 2008 to adjourn the investigation. The court found that the investigator had failed to carry out an entire and all-encompassing investigation.
3.	42509/10 Akhmed Shidayev and Belkis Shidayeva v. Russia	Lodged on 28 July 2010; represented by D. Itslayev; communicated on 19 January 2011.	1) Akhmed Shidayev, born in 1984, son of the disappeared man; 2) Belkis Shidayeva, born in 1949, wife of the disappeared man. Both live in Grozny, Chechnya.	Abuyazid Shidayev, born in 1944; 25 October 2002 at 2:30 a.m., Grozny.	

					By November 2010 (latest documents) the file remained pending; no progress has been made in respect of finding the missing men or identifying the perpetrators.
4.	50184/07 Malika Amkhadova and others v. Russia	Lodged on 23 October 2007; represented by SRJI; communicated on 26 January 2010.	1) Malika Amkhadova, born in 1947, mother of the disappeared man; 2) Malika Abubakirova, born in 1979, wife of the disappeared man; 3) Aminat Temersultanova, born in 2002; 4) Fatima Temersultanova, born in 2003; 5) Tanzila Temersultanova, born in 2004; daughters of Ayub Temersultanov and the second applicant. All applicants live in Mesker-Yurt, Shalinksyi District, Chechnya.	Ayub Temersultanov (also known as Ruslan Tupiyev), born in 1972; 1 July 2004 Between 7 and 8 a.m., Grozny.	The investigation into the abduction was opened by the Leninskiy district prosecutor's office of Grozny on 9 August 2004. The Government provided 75 pages of documents from the file. The latest documents date October 2007; at that time the investigation was pending. The applicants petitioned the prosecutor's offices, but not the court.
5.	332/08 Satsita Sagaipova and Others v. Russia	Lodged on 16 November 2007; represented by D. Itslayev; communicated on 26 June 2009.	1) Satsita Sagaipova, born in 1971, wife of Ayub Nalbiyev; 2) Khadizhat Nalbiyeva, born in 1937, mother of Ayub Nalbiyev; 3) Aminat Nalbiyeva, born in 2000, daughter of Ayub Nalbiyev; 4) Abu Nalbiyev, born in 2003, son of Ayub Nalbiyev; 5) Seda Abazova, born in 1937, mother of Badrudin Abazov; 6) Tatyana Magomerzayeva, born in 1953, mother of Mr Ramzan Tepsayev; 7) Aminat Magomerzayeva, born in 1983, sister of Mr Ramzan Tepsayev. All applicants live in Dachu-Borzoy, Grozny District, Chechnya.	1) Ayub Nalbiyev, born in 1971; 2) Badrudin Abazov, born in 1976; 3) Ramzan Tepsayev, born in 1981. 22 February 2003, between midnight and 3 a.m., Dachu-Borzoy, Grozny District.	The Grozny District prosecutor's office opened criminal investigation into the abduction of three persons on 12 March 2003. The Government submitted 422 pages from the investigation file. The investigation was for the last time adjourned in 2007, it is still pending.

ANNEX II

Awards made by the Court under Article 41

Application number and name	Applicants	Pecuniary damage	Non-pecuniary damage	Costs and expenses
2944/06 Satsita Aslakhanova v. Russia	Satsita Aslakhanova, born in 1971, wife of Apti Avtayev and mother of their two children, born in 1997 and 1999.	EUR 14,000	EUR 60,000	Represented by SRJI EUR 3,000
8300/07 Larisa Barshova v. Russia	Larisa Barshova, born in 1952, mother of the disappeared men.	-	EUR 120,000	Represented by D. Itslayev EUR 3,000
42509/10 Akhmed Shidayev and Belkis Shidayeva v. Russia	1) Akhmed Shidayev, born in 1984, son of the disappeared man; 2) Belkis Shidayeva, born in 1949, wife of the disappeared man.	-	EUR 60,000, jointly EUR 7,500 to the first applicant in respect of inhuman treatment suffered by him during unlawful detention.	Represented by D. Itslayev EUR 3,000

50184/07 Malika Amkhadova and others v. Russia	1) Malika Amkhadova, born in 1947, mother of the disappeared man; 2) Malika Abubakirova, born in 1979, wife of the disappeared man; 3) Aminat Temersultanova, born in 2002; 4) Fatima Temersultanova, born in 2003; 5) Tanzila Temersultanova, born in 2004, daughters of Ayub Temersultanov and the second applicant.	EUR 16,000, jointly	EUR 60,000, jointly	Represented by SRJI EUR 1,182
332/08 Satsita Sagaipova and Others v. Russia	1) Satsita Sagaipova, born in 1971, wife of Ayub Nalbiyev; 2) Khadizhat Nalbiyeva, born in 1937, mother of Ayub Nalbiyev 3) Aminat Nalbiyeva, born in 2000, daughter of Ayub Nalbiyev; 4) Abu Nalbiyev, born in 2003, son of Ayub Nalbiyev;	EUR 14,000 to the first, third and fourth applicants, jointly	1) EUR 60,000, jointly to the first four applicants; 2) EUR 60,000 to the fifth applicant; 3) EUR 60,000, jointly to the sixth and seventh applicants.	Represented by D. Itslayev; EUR 9,000

	5) Seda Abazova, born in 1937, mother of Badrudin Abazov; 6) Tatyana Magomerzayeva, born in 1953, mother of Mr Ramzan Tepsayev; 7) Aminat Magomerzayeva, born in 1983, sister of Mr Ramzan Tepsayev.			