



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

FIRST SECTION

CASE OF AVKHADOVA AND OTHERS v. RUSSIA

(Application no. 47215/07)

JUDGMENT

STRASBOURG

14 March 2013

FINAL

09/09/2013

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

In the case of Avkhadova and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 February 2013,

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

PROCEDURE

1. The case originated in an application (no. 47215/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Russian nationals, listed in paragraph 5 below (“the applicants”), on 15 February 2007.

2. The applicants were represented by lawyers of European Human Rights Advocacy Centre/Memorial. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 25 June 2009 the President of the First Section decided to apply Rule 41 of the Rules of Court, to grant priority to the application and to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 1).

4. The Government objected to the joint examination of the admissibility and merits of the application and to the application of Rule 41 of the Rules of Court. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

1. Mrs Nurzhan Avkhadova, born in 1956;
 2. Mrs Limon Avkhadova, born in 1984;
 3. Mrs Luisa Avkhadova, born in 1986;
 4. Mrs Khava Avkhadova, born in 1991 and
 5. Mrs Kheda Avkhadova, born in 1992.
6. The first applicant is the mother of Mr Vakhit Avkhadov, born in 1979. The second to fifth applicants are Vakhit Avkhadov's sisters. The applicants reside in the town of Urus-Martan, the Chechen Republic.

A. Disappearance of Vakhit Avkhadov

1. The applicants' account

7. The account of the events below is based on the information contained in the application form; the first applicant's written statement made on 4 June 2007; a written statement of 5 June 2005 by R.A., the first applicant's daughter, who is not an applicant in the present case; a written statement by the applicants' neighbour, S.M., made on 8 June 2007; and a written statement by M.A., a resident of Urus-Martan, made on 4 December 2009.

8. On 24 April 2001 the first applicant, Vakhit Avkhadov and R.A. were at home, at 104 (subsequently re-numbered as 112) Sovetskaya Street in Urus-Martan.

9. At about 6 a.m. on 24 April 2001 the first applicant was woken up by a noise coming from outside. Through a window she saw several armed men climb over the fence and into the courtyard. She ran to the room where Vakhit Avkhadov was sleeping and alerted him about the intrusion. She then rushed downstairs to the front door, through which several armed men were already entering the house. Two of them guarded the front door while two others immediately started searching the house. All of the intruders were wearing new camouflage uniforms and were armed with submachine guns. While the first applicant was by the front door, she noticed behind the fence two armoured personnel carriers (hereinafter also "APC") surrounded by numerous armed men wearing green camouflage uniforms. Unlike the uniforms of the men who had burst into the house, the uniforms of those beside the APCs were very dirty.

10. The armed intruders neither identified themselves nor explained the reasons for their intrusion. One of them asked the first applicant who was at home. She tried to ask him who they were looking for but by that time two intruders had already spotted Vakhit Avkhadov. One of them, a tall man, pointed his gun at Vakhit Avkhadov and ordered him in Russian to put his arms behind his neck and get out of his room. Vakhit Avkhadov was taken to the hallway and ordered to kneel. When the tall intruder raised his leg to kick Vakhit Avkhadov, the first applicant shouted at him, asking him why

he was doing that to her son, but was ordered to be silent. At the same moment R.A. ran from her room and tried to approach Vakhit Avkhadov, but one of the men threatened her with his gun and made her return to her room.

11. The intruders then took Vakhit Avkhadov into the courtyard and placed him face-down on the ground. He was wearing only his underwear so the first applicant brought some of his clothes outside, in particular, a red T-shirt, a warm sports jacket with a white stripe on a sleeve and a black raincoat. She asked the intruders to allow her son to get dressed. One of them agreed, urging Vakhit Avkhadov to do so quickly, and even passed him a pair of shoes which had been by the front door.

12. Shortly thereafter the armed men who were searching the house went outside and asked the first applicant for Vakhit Avkhadov's identity papers. She started crying and begged them not to take him away. She asked them at least to explain why they were arresting him. Vakhit Avkhadov asked her to calm down and to comply with the order. He explained to her where he kept his temporary identity card and she brought it outside and handed it over to one of the armed men.

13. The intruders then covered Vakhit Avkhadov's head with his raincoat and led him outside the courtyard. The first applicant and R.A. followed them outside, where they saw three APCs and two UAZ all-terrain vehicles, and numerous armed men in camouflage uniforms and masks. All of the vehicles' registration plates had been obscured with mud. The intruders put Vakhit Avkhadov in an APC and then the convoy of two APCs, two UAZ vehicles and a third APC drove off towards the centre of Urus-Martan.

14. According to M.A., at about 5.30 a.m. on 24 April 2001 a group of armed servicemen driving an APC broke the gate to the courtyard of her family house with their APC. Immediately after that the servicemen burst into her house, handcuffed her son L.-A.A., seized his identity papers and placed him in one of their two APCs, both parked at the house. The convoy of APCs then took Bolnichnaya street and turned into Sovetskaya street, where the applicants resided.

2. The Government's account

15. The Government submitted that the domestic investigation had obtained no evidence that Vakhit Avkhadov had been abducted by State agents.

B. The search for Vakhit Avkhadov and the related investigation

1. The applicants' account

(a) The applicants' search for Vakhit Avkhadov

16. On 24 April 2001, immediately after the departure of the armed men with Vakhit Avkhadov, the first applicant's neighbours came to her house. The first applicant and one of her neighbours rushed to the centre of Urus-Martan. On the way, the women allegedly met Mrs K., who told them that her son had also been abducted by Russian servicemen in several APCs and that her husband, Mr K., would wait for her in the town centre in order to search for their abducted son. The first applicant decided to follow Mrs K. to the centre.

17. When the women reached the centre of Urus-Martan, Mr K. was already waiting for them. They set off in his minibus, following the mud tracks left on the road by the APCs. The tracks led in the direction of the village of Tangi-Chu. Furthermore, residents of Urus-Martan whom the first applicant and her fellow travellers met on the way indicated to them the direction taken by the APCs. In that manner the first applicant and Mr and Mrs K. reached the grounds of the Western Zone Alignment of the armed forces (*спыннировка «Занад»*), who were stationed at the material time to the south-west of Urus-Martan. The first applicant and her fellow travellers did not catch up with the APCs but clearly saw fresh tracks made by them at the entrance to the military grounds. They then attempted to question the servicemen present about those APCs but did not succeed in getting any information. At the same time local residents allegedly told the first applicant that the APCs had been "working hard" on the two previous nights, bringing to the military grounds young men of Chechen ethnic origin. It appears that the first applicant then returned home.

18. According to the first applicant, several young men had been apprehended in Urus-Martan on 24 April 2001, including Mr L.-A.A., the son of M.A. and the then head of the Urus-Martan town administration, and also Mr G., a son of the person who subsequently held that post.

19. On the same date, the first applicant contacted, both orally and in writing, the local Department of the Interior, the prosecutor's office, the office of the military commander and the local administration, complaining about the abduction of Vakhit Avkhadov.

20. According to the first applicant, on 26 April 2001 an elderly man who had identified himself as "Ali" had come to her house. Ali allegedly told her that on 24 April 2001 he had been apprehended by Russian servicemen together with Vakhit Avkhadov and several other men from Urus-Martan. They had all been taken to the grounds of the Western Zone Alignment of the armed forces and placed in pits. Two to three hours later

the servicemen had taken Vakhit Avkhadov and L.-A.A. out of the pit and led them away, following which Ali had heard the sound of a helicopter. On the same day Ali, Mr G. and the son of Mr and Mrs K. had been released.

21. On the following days the first applicant visited Mr and Mrs K. and asked them to testify about the events of 24 April 2001. However, they refused to do so because they feared for their lives. They told the first applicant that they had sent their son outside the Chechen Republic, also fearing for his life.

22. On an unspecified date the first applicant met with members of the A. family, whose son had also been apprehended on 24 April 2001, and they agreed to join together in their search efforts.

23. On an unspecified date in June 2001 the first applicant and the A. family allegedly managed to talk to a serviceman from the Western Zone Alignment. He allegedly confirmed that Vakhit Avkhadov and L.-A.A. had been brought to the grounds of the Western Zone Alignment and placed in pits. He did not know their names but described their appearance. In particular, he said that L.-A.A. had had grey hair and had been wearing a red T-shirt, which details were confirmed by the A. family. The serviceman also stated that at 9 a.m. on 24 April 2001 two persons, one of them tall and the other short and stout, had been taken away in a helicopter. According to the first applicant, the description of the second person corresponded to that of her son because he was 165 cm tall and corpulent. Moreover, the description of the “tall man” corresponded to L.-A.A. Lastly, the serviceman allegedly also described the appearance of those who had been released on 24 April 2001 (Ali, Mr G. and the son of Mr and Mrs K.). In the submission of M.A., on 24 April 2001 and on several following days when she and her husband had applied to the Urus-Martan military commander’s office, the Western Zone Alignment and the local administration, the serviceman had confirmed that her son L.-A.A. had been arrested and had even told her that they had given him clothing because he had been arrested in a T-shirt and jeans and without shoes.

24. According to the first applicant, despite her immediate complaints to various authorities about the abduction of Vakhit Avkhadov, investigators did not call at her home until two months after the events of 24 April 2001 (see below). The investigators questioned the first applicant, inspected her house and left.

25. The applicants have had no news of Vakhit Avkhadov since his apprehension on 24 April 2001.

(b) Investigation into the abduction of Vakhit Avkhadov

26. On 7 May 2001 the first applicant submitted a further complaint about her son’s abduction. On that occasion she lodged the complaint with the Urus-Martanovskiy District Court. In her complaint she submitted that she had previously applied to various authorities concerning her son’s

disappearance but had received no responses. There is no indication that her complaint was ever answered.

27. On 28 July 2001 the prosecutor's office of the Chechen Republic (hereinafter also "the republican prosecutor's office") forwarded a complaint lodged by the first applicant (the date of the complaint was not indicated) about the abduction of Vakhit Avkhadov to the prosecutors' office of the Urus-Martanovskiy District ("the district prosecutor's office"). The latter forwarded the complaint to the Urus-Martanovskiy Temporary Department of the Interior (hereinafter also "the VOVD"), instructing it to verify the first applicant's submissions and, should they be confirmed, to open a criminal investigation, take the basic investigative measures and return the case to the district prosecutor's office.

28. On 19 February 2002 the district prosecutor's office notified the first applicant that on 16 August 2001 it had opened a criminal investigation into the abduction of Vakhit Avkhadov under Article 126 § 2 of the Criminal Code (aggravated abduction). The case file had been assigned the number 25350. The investigation appears to have been suspended between 16 August 2001 and 19 February 2002 as the letter also stated that the investigation had been resumed, but did not specify the relevant date.

29. On 20 May 2002 the first applicant complained to the military commander of the Urus-Martanovskiy District that at 5.45 a.m. on 24 October 2001 about 20 servicemen in masks and camouflage uniforms had come to her house in two APCs the number plates of which had been obscured with mud, had burst into the house and taken away Vakhit Avkhadov. She further submitted that she had followed the intruders to the village of Tangi-Chu, where the servicemen had been holding her son and from where he had been taken in a helicopter to Khankala. The first applicant submitted that she had not seen her son since, and requested assistance in establishing his whereabouts. On 29 and 31 May 2001 the first applicant addressed letters along the same lines to the head of the VOVD and the head of the administration of the Chechen Republic, Mr A. Kadyrov.

30. On 16 July 2002 the South Federal Circuit Department of the Prosecutor General's Office forwarded a further complaint lodged by the first applicant about the abduction of Vakhit Avkhadov to the republican prosecutor's office for examination.

31. On 23 July 2002 the office of the head of the administration of the Chechen Republic replied to the first applicant that they were supervising the search for Vakhit Avkhadov and had forwarded her complaint to the law-enforcement officials in charge of it.

32. On 24 July 2002 the republican prosecutor's office forwarded the first applicant's complaint about the abduction of Vakhit Avkhadov to the district prosecutor's office and instructed the latter to verify the submissions contained therein and to append the complaint to the case file.

33. On 13 August 2002 the first applicant wrote to the district prosecutor's office, asking to be granted victim status in connection with the proceedings in case no. 25350. She does not appear to have received a reply to her request.

34. On 16 August 2002 the Chief Military Prosecutor's office transferred a further complaint lodged by the first applicant about the abduction of Vakhit Avkhadov to the military prosecutor of the North Caucasus Military Circuit for examination. The latter forwarded the complaint to the republican prosecutor's office, which, in its turn, transferred it to the district prosecutor's office.

35. On 6 September 2002 the Chief Military Prosecutor's office forwarded yet another complaint lodged by the first applicant about the abduction of her son to the military prosecutor of military unit no. 20102 for examination.

36. On 17 October 2002 the military commander's office of the Chechen Republic replied to the first applicant that they had no information on the apprehension or whereabouts of Vakhit Avkhadov.

37. On 26 December 2002 the Commission on Human Rights with the President of the Russian Federation transferred a complaint lodged by the first applicant about the abduction of Vakhit Avkhadov to the South Federal Circuit Department of the Prosecutor General's Office. The latter notified the first applicant by a letter of 10 January 2003 that it had forwarded the complaint to the republican prosecutor's office for examination.

38. On 16 May 2003 the Chief Military Prosecutor's office forwarded complaints lodged by the first applicant on 8 and 12 April 2003 to the military prosecutor of the United Group Alignment ("the UGA") for examination.

39. On 9 June 2003 the republican prosecutor's office transferred the first applicant's complaint about the abduction of her son to the district prosecutor's office. The latter authority was instructed to verify the circumstances of Vakhit Avkhadov's disappearance and, in the event that servicemen of the federal armed forces were implicated in the abduction, to refer the case to a military prosecutor's office for investigation. The district prosecutor's office was also requested to provide the republican prosecutor's office with detailed information on the investigation results and, if the investigation had been suspended, to report on the justification for any such decision. Lastly, the district prosecutor's office was instructed to apprise the first applicant of the results of the investigation and the measures taken to establish the whereabouts of Vakhit Avkhadov and to identify those responsible. A copy of the letter was forwarded to the first applicant.

40. On 17 June 2003 the military prosecutor's office of military unit no. 20102 replied to the first applicant that her complaint had contained no

information on the possible involvement of servicemen of the federal forces in the abduction of Vakhit Avkhadov.

41. In a letter dated 15 August 2003 the military prosecutor's office of military unit no. 20102 notified the first applicant, in reply to her complaint, that they had made enquiries with the "security forces" (*силовые структуры*) of the Urus-Martanovskiy District about special operations carried out on 24 April 2001. According to the replies received and the reports on the special operations compiled by representatives of the federal forces and the head of the local administration, Vakhit Avkhadov had not been arrested in the course of those special operations. Having found no evidence of the implication of servicemen of the federal forces in the abduction of the first applicant's son, the military prosecutor's office forwarded the first applicant's complaint to the district prosecutor's office for examination.

42. Subsequently, the applicants systematically contacted the district prosecutor's office. Its officials allegedly asked them not to apply to them in writing, since compiling formal replies to their queries would take time that could be used for the investigation of the case. The applicants followed their instruction.

43. On 13 June 2006 the first applicant complained to the district prosecutor's office about the procrastination in the investigation into the abduction of Vakhit Avkhadov, the lack of any information on its progress and the absence of any tangible results. She asked to be granted victim status in connection with the proceedings in case no. 25350 and also sought access to the case file and the resumption of the investigation in the event that it had been suspended.

44. In reply, on 15 June 2006 the district prosecutor's office notified the first applicant that on an unspecified date the investigation had been resumed and that operational and search measures aimed at establishing the whereabouts of Vakhit Avkhadov and identifying those responsible were under way. The first applicant was summoned to the district prosecutor's office on 19 June 2006.

45. On 19 June 2006 the first applicant was granted victim status in connection with the proceedings in case no. 25350. She was notified of the decision on the same day.

46. On 8 June 2007 the first applicant applied to the district prosecutor's office, seeking access to case file no. 25350. There is no indication that she received a reply to her request.

2. Information submitted by the Government

47. Despite specific requests by the Court, the Government refused to disclose most of the contents of criminal case no. 25350, referring to Article 161 of the Russian Code of Criminal Procedure. They only provided copies of: several decisions to open, suspend and resume the investigation;

records of several witness interviews; requests for information addressed to various State authorities and some of the replies to them. Some of the documents submitted by the Government were illegible and others were only partially legible. In so far as the documents submitted by the Government were legible, the information they contained may be summarised as follows.

(a) Opening of the investigation and transfer of the case file between various authorities

48. On 25 May 2001 the first applicant complained to the Chechen ombudsman about the abduction of her son.

49. On 1 August 2001 the acting prosecutor of the Urus-Martanovskiy District forwarded the first applicant's complaint about her son's abduction to the Urus-Martanovskiy VOVD and instructed the latter authority to immediately open a criminal investigation, take the basic investigative steps and return the opened case file to the district prosecutor's office, should the first applicant's submissions be confirmed. It follows from the stamp on the document that it was received by the VOVD on 5 August 2001. It is unclear from the document of 1 August 2001 which of the applicant's complaints was forwarded to the VOVD, to which authority it was addressed and how it was dated.

50. On 16 August 2001 the Urus-Martanovskiy VOVD instituted criminal proceedings concerning Vakhit Avkhadov's abduction. The decision stated that at about 5 a.m. on 24 April 2001 he had been taken away from his home at 112 Sovetskaya street in Urus-Martan by unidentified persons in camouflage uniforms and that his whereabouts remained unknown.

51. By a decision of 11 September 2001 the VOVD transferred criminal case no. 25350 to the district prosecutor's office for further investigation.

(b) Interviewing of witnesses

52. On 5 August (or September) 2001 (the date is partly illegible) a police officer of the Urus-Martanovskiy Department of the Interior took a written statement from the first applicant (*объяснение*). According to the statement, at about 6 a.m. on 24 April 2001 a group of armed camouflaged men had burst into her house and taken away her son, Vakhit Avkhadov, holding the first applicant and her daughters at gunpoint. The first applicant had followed the abductors' APC in the direction of Tangi-Chu.

53. According to statements by Z.B. and Sh.S., given on 6 and 8 August 2001, they had learnt from Vakhit Avkhadov's relatives that the latter had been abducted from his house by men in camouflage uniforms. From the relevant documents it does not appear that either Z.B. or Sh.S. resided in the same street as the applicants.

54. By a decision of 16 August 2001 the first applicant was granted victim status in the proceedings concerning her son's abduction. The text of the decision did not mention whether she had been notified of that and if so, when, and did not contain her signature to that effect.

55. According to the record of an interview of the first applicant of 16 August 2001, at about 5 a.m. on 24 April 2001 a group of armed men in camouflage uniforms and masks had broken into the courtyard of her house by climbing over the fence. Five armed men had entered the house and taken away her son, who had been wearing a red T-shirt and a sports jacket with a white stripe on a sleeve. The intruders had spoken Russian and when they had taken her son outside they had put a raincoat over his head. The first applicant had noticed two APCs with number plates obscured with mud, and several more servicemen outside the courtyard. The two APCs went off in the direction of the village of Tangi-Chu. After the abduction the first applicant had immediately gone to the military commander's office and had also contacted the prosecutor's office. However, she had had no news of her son.

56. According to the Government, Mr N.S., interviewed as a witness on 17 August 2001, had stated that Vakhit Avkhadov had been his friend and that he had learnt about his abduction on 24 April 2001 from his mother. On that day six men had been abducted from Urus-Maran. Four had returned home, but Vakhit Avkhadov and L.-A.A. had not. A copy of the relevant interview record was not submitted by the Government.

57. T.Yu., interviewed as a witness on 18 August 2001, stated that the first applicant was his sister and that on 26 April 2001 she had visited him in Grozny and told him about the abduction of her son on 24 April 2001 by armed camouflaged men in two APCs. T.Yu. had subsequently assisted her in the search for Vakhit Avkhadov, during which they had learnt that on 24 April 2001 six men had been abducted from Urus-Martán, including Vakhit Avkhadov and L.-A.A. Four of them had subsequently been released.

58. According to the interview records of N.S. and A.B., both residents of Urus-Martán, dated 18 August 2001, they had learnt about Vakhit Avkhadov's abduction from his relatives. From the relevant interview records it transpires that neither N.S. nor A.B. resided in the same street as the applicants.

59. According to the Government, on 19 June 2006 the first applicant was again granted victim status (*повторно признана потерпевшей*). The record of her interview of the same date shows that she confirmed her earlier submissions to the investigation concerning the circumstances of her son's abduction: at about 6 a.m. on 24 April 2001 he had been taken away by armed camouflaged men in two APCs, which had left in the direction of Tangi-Chu. Another resident of Urus-Martán, L.-A.A., had been abducted on the same day.

(c) Further investigative steps

60. On 19 August 2001 the VOVD requested the Urus-Martan military commander's office and the Chernokozovo remand prison to inform it whether Vakhit Avkhadov had been arrested by, or detained on the premises of, those authorities.

61. On an unspecified date in August 2001 the military commander's office replied by letter to the VOVD that Vakhit Avkhadov had not been brought to that authority on 24 April 2001.

62. In a letter dated 15 June 2006 the district prosecutor's office informed the first applicant that a criminal case into the abduction of her son had been opened; that operational and search measures aimed at identifying those responsible and establishing his whereabouts were under way; and that she had been summoned to the prosecutor's office with a view to carrying out unspecified investigative measures.

63. On 15 and 16 June 2006 the district prosecutor's office asked various hospitals, law-enforcement authorities and detention facilities in the Chechen Republic and neighbouring regions, whether Vakhit Avkhadov had applied to them for medical assistance, had been arrested or held in detention by them, and whether they were in possession of compromising materials (*компрометирующий материал*) in connection with him. From the replies of various authorities enclosed by the Government, it appears that the addressees of those requests for information denied having arrested or detained the missing man, and claimed that he had not contacted them for medical assistance and that they had no compromising material in connection with him.

64. In a report (*панопм*) of 14 July 2006 the Department of the Interior of the Urus-Martanovskiy District (hereinafter also "the Urus-Martanovskiy ROVD" or "the ROVD"), informed the district prosecutor's office that despite a door-to-door check (*подворный обход*) carried out in Urus-Martan, it had proved impossible to identify witnesses to the abduction of Vakhit Avkhadov because he had been abducted early in the morning.

65. On 11 July 2006 the district prosecutor's office instructed the ROVD to verify whether Vakhit Avkhadov had been arrested by servicemen of the Urus-Martanovskiy District and held in the district's detention facilities. On the same date the district prosecutor's office sent out similar requests to departments of the interior of other districts in the Chechen Republic. Those requests do not appear to have resulted in any relevant information.

(d) Information concerning the decisions to suspend and resume the investigation and the applicants' access to the case file

66. On 16 October 2001 the district prosecutor's office decided to suspend the investigation in case no. 25350 and to send a copy of the decision to the prosecutor of the Urus-Martanovskiy District. However, the

decision contained no reference as to whether the first applicant was to be notified and there is no indication that she was so informed.

67. On 15 June 2006 the acting prosecutor of the Urus-Martanovskiy District overturned the decision of 16 October 2001 to suspend the investigation on the grounds that it was premature and unfounded, and ordered it to be resumed.

68. On 13 July 2006 the district prosecutor's office suspended the investigation of Vakhit Avkhadov's abduction owing to the failure to identify those responsible.

69. In a letter of 16 June 2007 the deputy prosecutor of the Urus-Martanovskiy District replied to a request for information about the investigation from the first applicant, saying that on 15 June 2006 the investigation in case no. 25350 had been resumed and that on 19 June 2006 she had been granted victim status in those proceedings.

70. On 8 June 2007 the first applicant had asked the district prosecutor's office to grant her access to the case file concerning her son's abduction and permission to make copies from it. She had submitted that she had had no information about the investigative steps taken and had received no reply to her previous request of 13 June 2006 for access to the case file. There is no indication that that request was ever replied to.

71. According to the Government, the investigation into the abduction of the applicants' relative is pending.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

A. Submissions by the parties

73. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into Vakhit Avkhadov's disappearance had not yet been completed. They further claimed that it had been open to the applicants to challenge the acts or omissions of the investigating authorities before the

courts under Article 125 of the Code of Criminal Procedure (hereinafter also “the CCP”). In that respect they referred to the cases of A., S. and E. Furthermore, given that the first applicant had been granted victim status, she could have lodged complaints or petitions with the investigating authorities. Lastly, the Government asserted that it had been open to the applicants to pursue civil complaints for compensation of non-pecuniary damage under Articles 151 and 1069 of the Civil Code or to ask the civil courts to declare their missing relative dead, but that they had failed to do so.

74. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. As regards the Government’s reference to the cases of A., S. and E., the applicants asserted that, to their knowledge, although the domestic courts in those cases had granted those persons’ complaints about the decisions to suspend the investigations or instructed the investigating authorities to grant them access to the case files, that had not influenced the relevant investigations in any way and they had remained ineffective. With reference to the Court’s practice, the applicants argued that they were not obliged to apply to the civil courts in order to exhaust domestic remedies.

B. The Court’s assessment

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

76. As regards a civil action to obtain redress for damage sustained through the allegedly illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the Court’s view, the same holds true for their submission concerning the applicants’ ability to apply to the civil courts to have their relative declared missing or dead. In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

77. As regards the parties’ submissions concerning the criminal investigation, the Court observes that the applicants complained to the law-enforcement authorities shortly after the abduction of Vakhit Avkhadov and that an investigation has been pending since 16 August 2001. The applicants and the Government dispute the effectiveness of the investigation of the abduction.

78. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

79. The applicants complained that Vakhit Avkhadov had been arrested by Russian servicemen, that he had then disappeared, and that the domestic authorities had failed to carry out an effective investigation of the matter. They relied on Article 2 of the Convention, which reads:

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

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

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

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

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

A. Submissions by the parties

80. The Government argued that the applicants had failed to submit evidence “beyond reasonable doubt” that their relative had been abducted by State agents. The fact that the abductors had worn military uniforms and masks, had spoken Russian and had used APCs did not prove that they had belonged to Russian military forces. Vakhit Avkhadov's body had never been discovered and there was no evidence that any special operations had been conducted in Urus-Martan on 24 April 2001, in particular, with a view to arresting him.

81. As regards the investigation, the Government submitted that it was not a matter of result but of means. Various complex investigative steps, including interviewing witnesses and sending out requests for information, had been carried out in the framework of the criminal case concerning the abduction of the applicants' relative. The fact that those measures had produced no positive results could not be attributed to the Russian authorities.

82. The applicants claimed that there existed evidence “beyond reasonable doubt” that Vakhit Avkhadov had been abducted by servicemen on 24 April 2001 and should be presumed dead. In particular, they stressed that the Government had not disputed any of the circumstances surrounding their relative’s abduction, as presented by the applicants, and invited the Court to draw inferences from the Government’s refusal to produce an entire copy of the investigation file. They further submitted that the abductors had been armed and had worn camouflage uniforms and masks. They had spoken Russian and, more importantly, had arrived in several APCs, in which they had moved around freely despite the curfew and the presence of checkpoints, which at the material time had blocked the entry to and exit from the village. Moreover, the applicants emphasised that at about the same time on the same date, several other men had been abducted from their homes in Urus-Martan and that those who had been released had stated that they had been detained by servicemen and held on the premises of their military base. In the applicants’ submission, the Government had failed to adduce any evidence that insurgents or private persons could have used such military vehicles as APCs at the material time, and to do so was unrealistic.

83. The applicants further argued that the investigation into their relative’s disappearance had been pending for more than eight years. It had not been promptly opened, despite the fact that the first applicant had immediately alerted the authorities to the abduction of her son. None of the key witnesses, whose names had been provided by the first applicant, had been interviewed. The investigators had failed to identify and interview law-enforcement officials from the Western Zone Alignment concerning the arrival of the APCs with the abductors of the applicants’ relative at their base on 24 April 2001. Other key investigative steps had not been carried out. The applicants had not been properly informed of the progress of the investigation, so as to ensure an adequate protection of their interests. In sum, the applicants concluded that the investigation into Vakhit Avkhadov’s disappearance had not satisfied the Convention requirements of effectiveness.

B. The Court’s assessment

1. Admissibility

The Court considers, in the light of the parties’ submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court has already found that the Government’s objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 78 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) Alleged violation of the right to life of Vakhit Avkhadov

(i) General principles

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

(ii) The establishment of the facts

85. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-09, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

86. The applicants alleged that at about 6 a.m. on 24 April 2001 their relative, Vakhit Avkhadov, had been abducted by servicemen and had then disappeared. They invited the Court to draw inferences as to the well-founded nature of their allegations from the Government's failure to provide the documents requested from them. They submitted that several people had witnessed Vakhit Avkhadov's abduction and that at the same time on the same day further men had been abducted in the same manner. The applicants enclosed those witnesses' statements to support that submission.

87. The Government did not contest any of the applicants' factual allegations and conceded that Vakhit Avkhadov had been abducted on 24 April 2001 by unidentified armed camouflaged men, who had driven several APCs. However, they denied that the abductors had been

servicemen, referring to the absence of conclusions from the ongoing investigation.

88. The Court notes that despite its requests for a copy of the investigation file, the Government refused to produce most of the documents from the case file, referring to Article 161 of the Code of Criminal Procedure. The Court reiterates that in previous cases it has already found that explanation insufficient to justify the withholding of key information requested by it (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

89. Consequently, and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-founded nature of the applicants' allegations.

90. Having regard to the applicants' submissions concerning the circumstances of the abduction of their relative, the Court cannot but observe that they have remained consistent, detailed and coherent before both the domestic authorities and this Court (see paragraphs 9-14, 16-18, 29, 52, 55 and 59 above). Furthermore, the applicants furnished several witness statements in support of their allegations (see paragraph 7 above), which were not only uncontested by the Government but appeared to be confirmed, albeit indirectly, by the witness statements collected during the investigation carried out by the domestic authorities (see paragraphs 53 and 56-58 above).

91. The Court further points out that the Government did not dispute the applicants' submission that, at the time of their relative's abduction, the town of Urus-Martan had been under curfew and that the authorities had maintained manned checkpoints on the roads in and out of it.

92. It is also significant for the Court that one of the witnesses, on whose statement the applicants relied, explicitly submitted that her son had been apprehended and taken away at the same time, on the same day and in the same manner, namely by armed camouflaged persons driving APCs (see paragraph 14 above) and that a number of witnesses interviewed by the investigators stated that six men had been abducted in Urus-Martan on the same day as the applicants' relative (see paragraphs 56 and 57 above). Those submissions, as well as the reply to the first applicant by the military prosecutor's office of military unit no. 20102 of 15 August 2003 (see paragraph 41 above), appear to seriously undermine the Government's assertion that the law-enforcement authorities had not carried out any special operations in Urus-Martan on the day the applicants' relative was abducted.

93. In the Court's view, the fact that a large group of armed men in camouflage uniforms, driving in a convoy of several military vehicles, including APCs, was able to pass freely through checkpoints during curfew hours and proceeded to arrest the applicants' relative and, as it transpires, a number of other individuals, in a manner similar to that of State agents,

strongly supports the applicants' allegation that the abductors were State servicemen and that they were conducting a special operation in Urus-Martan at the time of Vakhit Avkhadov's abduction.

94. The Court notes that in their applications to the authorities the applicants consistently maintained that their relative had been detained by unknown servicemen and asked the investigating authorities to look into that possibility. It further notes that after more than 11 years the investigation has produced no tangible results.

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

96. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was abducted by State agents. The Government's argument that the investigation had found no evidence that servicemen had been involved in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents requested, which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Vakhit Avkhadov was arrested on 24 April 2001 by servicemen during an unacknowledged security operation.

97. There has been no reliable news of Vakhit Avkhadov since the date of the abduction. His name has not been found in any official detention facility records. Lastly, the Government have not submitted any explanation as to what happened to him after his arrest.

98. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among many others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-VIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007; and *Umayevy v. Russia*, no. 47354/07, 12 June 2012), the Court finds that in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of

Vakhit Avkhadov or of any news of him for more than eleven years supports that assumption.

99. Accordingly, the Court finds that the available evidence permits it to establish that Vakhit Avkhadov must be presumed dead following his unacknowledged detention by State agents.

(iii) *The State's compliance with Article 2*

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

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

102. Accordingly, the Court finds that there has been a violation of Article 2 in its substantive aspect in respect of Vakhit Avkhadov.

(b) *Alleged inadequacy of the investigation*

103. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be thorough, independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*,

no. 24746/94, §§ 105-09, ECHR 2001-III (extracts); *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002; *Esmukhambetov and Others v. Russia*, no. 23445/03, §§ 115-18, 29 March 2011, and *Umarova and Others v. Russia*, no. 25654/08, §§ 84-88, 31 July 2012).

104. The Court notes at the outset that the Government refused to produce most of the documents from case file no. 25350 and furnished only copies of several documents summarised above. It therefore has to assess the effectiveness of the investigation on the basis of the very sparse information submitted by the Government and the few documents available to the applicants which they provided to the Court.

105. Turning to the facts of the present case, the Court observes that Vakhit Avkhadov was abducted on 24 April 2001 and that the investigation into his abduction was opened on 16 August 2001 (see paragraph 28 above), namely three months and twenty-two days later. The applicants submitted that on 24 April 2001 they had complained about their relative's disappearance to various authorities, both orally and in writing (see paragraph 19 above). However, they did not provide copies of their complaints. The Government did not contest that submission. It further follows from the materials submitted by the applicants that on 7 and 25 May 2001 the first applicant complained about the abduction of her son to the district court and the ombudsman (see paragraphs 26 and 48 above). Whilst in her complaint to the district court she explicitly stated that her earlier complaints to the authorities had yielded no results and the copy of that complaint was furnished by the applicants, the complaint to the ombudsman was furnished by the Government and apparently included in the investigation file (see *ibid.*).

106. Against that background, the Court is unable to attribute the responsibility for the delay in the opening of the investigation to any of the parties in the period between 24 April and 25 May 2001. Nonetheless, having regard to the available documents, it considers that as of 25 May 2001 at the latest the domestic authorities became aware of the crime allegedly committed and it was for them to report the matter to the appropriate prosecutor's office via the official channels of communication that should exist between various law-enforcement agencies (see *Khalidova and Others v. Russia*, no. 22877/04, § 93, 2 October 2008, and *Vakayeva and Others v. Russia*, no. 2220/05, §§141-42, 10 June 2010). Accordingly, it finds that the delay of two months and twenty-two days in the opening of the investigation is attributable to the domestic authorities (compare *Gerasiyev and Others v. Russia*, no. 28566/07, § 96, 7 June 2011). In this connection, it stresses that such an important postponement *per se* is liable to affect the investigation of an abduction in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

107. As regards the scope of the investigative measures taken, the Court considers it important to note the following.

108. First, it notes that between 6 and 18 August 2001 officers of the VOVD interviewed the first applicant and five residents of Urus-Martan (see paragraphs 53-58 above). In this connection it takes note of the applicants' submission that the majority of the residents of Urus-Martan interviewed by the investigators did not reside in the same street as the applicants. Accordingly, it does not appear that the investigators took genuine attempts to identify and interview possible eyewitnesses to the abduction of Vakhit Avkhadov. The reason why the investigators omitted to interview members of the applicants' family, other than the first applicant, who had been present at the time of the abduction of Vakhit Avkhadov, also remained unexplained. In this connection, the Court also cannot but note that the first attempt to identify possible witnesses to the abduction residing in the same street does not appear to have been carried out until July 2006, namely more than five years after the events (see paragraph 64 above). Even assuming that that was a genuine attempt to identify possible eyewitnesses to the abduction, given the time that had lapsed since the events in question, the Court doubts whether that investigative step could have brought about any positive results.

109. It further follows from the materials submitted by the Government that a number of investigative steps were taken with a considerable delay. In particular, in so far as the Government referred to numerous requests for information on Vakhit Avkhadov's possible whereabouts and/or arrest and detention, it transpires from the documents made available by the respondent party that those requests were mainly made in June and July 2006, that is more than five years after the abduction (see paragraphs 63-65 above).

110. Those delays, for which there has been no explanation in the instant case, constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

111. Furthermore, it appears that a number of investigative steps have not been taken at all. In particular, the Court observes that, during more than eleven years in which the investigation has been pending, the investigators made no attempt to verify information concerning the use of military vehicles by the abductors and their possible itinerary, despite the fact that the first applicant, when interviewed, provided the relevant information. Moreover, there is no indication that the investigators took any steps to verify the applicants' allegation that their relative had been taken to the premises of the Western Zone Alignment. Having regard to the witness statements obtained by the investigators in August 2001 and, in particular, to the fact that many of them submitted that the abduction of Vakhit Avkhadov had not been an isolated incident but that several other

men had been abducted in the same manner and at the same time from Urus-Martan (see paragraphs 52-59 above), the Court notes that the investigators made no attempt to take such basic steps as identifying the servicemen who participated in the operation, establishing their chain of command, and obtaining information from the checkpoints about the possible passage through them of the convoy of military vehicles.

112. It is further pointed out that the Government failed to explain why the first applicant was twice granted victim status. However, bearing that fact in mind and having regard to the documents submitted by them and the first applicant's request to be granted victim status made in 2002, it transpires, at the very least, that she was not aware of the decision to grant her victim status issued in 2001 (see paragraphs 33 and 54 above). Furthermore, in view of the applicants' repeated requests for access to the case file and to be provided with information on the progress of the investigation (see paragraphs 42, 43 and 46 above), the Court seriously doubts that they were informed of important developments in the investigation. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny or to safeguard the interests of the next of kin in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

113. Lastly, it follows from the information submitted by the Government that the investigation was repeatedly suspended and resumed (see paragraphs 66-71 above). The Court emphasises in this respect that while the adjourning or reopening of proceedings is not in itself a sign that the proceedings are ineffective, it appears in the present case that the decisions to adjourn were made without the necessary investigative steps being taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted.

114. Having regard to the part of the Government's objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for many years and has produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection in this part.

115. In so far as the Government argued that it had been open to the applicants to challenge the investigating authorities' acts or omissions before the courts or before the investigators themselves, the Court observes that, as has already been pointed out, the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures. The investigation was

repeatedly suspended and resumed, but it appears that no significant investigative measures were taken to identify those responsible for the abduction. In such circumstances, the Court considers that the applicants could not be required to challenge in court every single decision of the district prosecutor's office. Moreover, as it has established above, the applicants received only fragmentary and incomplete information about the course of the investigation and the investigative measures taken. Against that background, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

116. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Vakhit Avkhadov, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

117. The applicants relied on Article 3 of the Convention, submitting that, as a result of their relative's disappearance and the State's failure to investigate it properly, they had endured psychological distress in breach of Article 3 of the Convention, which reads:

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

A. Submissions by the parties

118. The Government argued that there had been no breach of the applicants' rights under Article 3 because all their complaints had been examined in accordance with the applicable legislation.

119. The applicants maintained the complaint.

B. The Court's assessment

1. Admissibility

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

2. *Merits*

121. The Court has found on many occasions that in a situation of enforced disappearance, close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member, but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention (see *Orhan*, cited above, § 358, and *Imakayeva*, cited above, § 164).

122. In the present case, the Court notes that the first applicant is the mother of the disappeared person and that the second to fifth applicants are his sisters. The first applicant witnessed her son’s abduction. The applicants have not had any news of their relative for more than eleven years. During this period they have made enquiries of various official bodies, both in writing and in person, about their missing relative. Despite their attempts, the applicants have never received any plausible explanation or information about what became of Vakhit Avkhadov following his detention. Most of the responses they received denied State responsibility for his arrest or simply informed them that the investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

124. The applicants further stated that Vakhit Avkhadov had been detained in violation of the guarantees contained in Article 5 of the Convention, which reads, in so far as relevant:

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

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

...

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

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within

a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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

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

A. Submissions by the parties

125. The Government asserted that no evidence had been obtained by the investigators to confirm that Vakhit Avkhadov had been deprived of his liberty by State agents. He had not been listed among the names of people kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

126. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

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

2. Merits

128. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001; *Luluyev*, cited above, § 122, and *El Masri v. “the former Yugoslav Republic of Macedonia”* [GC], no. 39630/09, § 233, 13 December 2012).

129. The Court has found that Vakhit Avkhadov was abducted by State servicemen on 24 April 2001 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and no official trace of his subsequent whereabouts or fate exists. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, because it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape

accountability for the fate of a detainee. Furthermore, the absence of detention records noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

131. In view of the foregoing, the Court finds that Vakhit Avkhadov was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

132. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations of Articles 2, 3 and 5, contrary to Article 13 of the Convention, which provides:

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

A. Submissions by the parties

133. The Government contended that the applicants had had effective remedies at their disposal, as required by Article 13 of the Convention, and that the authorities had not prevented them from using those remedies.

134. The applicants maintained the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

136. The Court reiterates that in circumstances where, as in the instant case, a criminal investigation into a disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

137. Consequently, there has been a violation of Article 13 in conjunction with Articles 2 and 3 of the Convention.

138. As regards the applicants' reference to Article 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction with Article 5 of the Convention (see *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008, and *Alikhadzhiyeva*, cited above, § 96).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

139. 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. Damage

140. The applicants made no claim in respect of pecuniary damage. As regards non-pecuniary damage, they submitted that, as a result of the alleged violations of Articles 2, 3, 5 and 13 of the Convention, they had endured mental and emotional suffering which could not be compensated for solely by a finding of a violation of those Convention provisions. They asked the Court to award them non-pecuniary damages, leaving the amount to the Court's discretion.

141. The Government submitted that, should the Court find a violation of any of the Convention provisions, a finding of such a violation would constitute a sufficient just satisfaction.

142. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' son and brother. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention on account of their mental suffering endured as a result of the disappearance of their relative and the authorities' attitude to that fact. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate

to award the first applicant 45,000 euros (EUR) and the second to fifth applicants EUR 15,000 jointly under this heading, plus any tax that may chargeable to them.

B. Costs and expenses

143. The applicants were represented by lawyers from the NGO European Human Rights Advocacy Centre/Memorial. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to 1,911.05 pounds sterling (GBP), to be paid into the representatives' account in the United Kingdom. The amount claimed was broken down as follows:

(a) GBP 700 for six hours of legal drafting of documents submitted to the Court at a rate of GBP 100 and 150 per hour;

(b) GBP 1,036.05 for translation costs, and

(c) GBP 175 for administrative and postal costs.

144. The Government pointed out that the applicants should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had actually been incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005).

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

146. Having regard to the details of the information and the timesheets submitted by the applicants, the Court is satisfied that those rates are reasonable and reflect the expenses actually incurred by the applicant's representatives. Accordingly, it considers it appropriate to award the applicants' representatives the amount claimed, that is GBP 1,911.05, in respect of costs and expenses, plus any tax that may be chargeable to the applicants, the award to be paid into the representatives' bank account in the United Kingdom, as identified by the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Vakhit Avkhadov;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Vakhit Avkhadov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Vakhit Avkhadov;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Articles 2 and 3 of the Convention;
8. *Holds* no separate issue arises under Article 13 of the Convention in respect of the alleged violation of Article 5 of the Convention;
9. *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 following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 45,000 (forty-five thousand euros) to the first applicant and EUR 15,000 (fifteen thousand euros) to the second to fifth applicants jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) GBP 1,911.05 (one thousand nine hundred and eleven pounds and five pence), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the United Kingdom;
 - (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.

Done in English, and notified in writing on 14 March 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President