



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

FIRST SECTION

CASE OF BAYSULTANOVA AND OTHERS v. RUSSIA

(Application no. 7461/08)

JUDGMENT

STRASBOURG

4 July 2013

FINAL

04/11/2013

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

In the case of Baysultanova 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 11 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 7461/08) 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 the three Russian nationals listed in paragraph 5 below (“the applicants”) on 21 January 2008.

2. The applicants were represented by lawyers from the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Moscow, Russia. 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 10 February 2010 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 § 3).

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) Ms Tumisha Baysultanova, born in 1935;
- (2) Ms Zara (in some of the documents submitted her name is also referred to as Taus) Dzhamaldinova, born in 1960 and
- (3) Ms Zulay Bisultanova, born in 1953.

6. The first applicant is the mother of Mr Beslan Baysultanov, born in 1964. The second and third applicants are Beslan Baysultanov's sisters. They reside in the city of Grozny, in the Chechen Republic.

A. Disappearance of Beslan Baysultanov

1. The applicants' account

7. The account of the events below is based on the information contained in the application form; the second applicant's written statements of 25 December 2007 and 14 July 2010; written statements by S.D. and A.D. made on 22 November 2006; a written statement by Sh.D. dated 29 November 2006; and a detailed plan of the relevant area of Ken-Yurt indicating the location of the second applicant's house, the adjacent checkpoints, the local military commander's office and the Temporary Department of the Interior (hereinafter "the VOVD").

8. According to the applicants, during the "first Chechen war" between 1994 and 1996 Beslan Baysultanov had been involved with members of illegal armed groups. He had not participated in those groups' activities during the "second Chechen war" which started in 1999.

9. In May 2000 Beslan Baysultanov was residing at the second applicant's home at 40 Beregovaya Street in the village of Ken-Yurt, the Chechen Republic.

10. At the material time federal military forces maintained a number of manned checkpoints in Ken-Yurt, including on the roads leading in and out of it. The military commander's office and the VOVD station were located in the village. Ken-Yurt was under curfew, which was strictly enforced and lasted from 8 p.m. to 6 a.m.

11. On 7 May 2000 Beslan Baysultanov, the second applicant, her husband Sh.D. and their children S.D., I.D. and L.D. stayed at home in Ken-Yurt.

12. At about 3.30 a.m. on 7 May 2000 the family was woken up by knocking on the front door and an order to open it. When the second

applicant did so, around four people wearing masks and camouflage uniforms of the Russian federal forces and carrying assault rifles burst into the house. They shouted in Russian “Police! Don’t move!” and ordered those present to lie down. The applicants inferred that the intruders were servicemen. Upon entering the house, one of the servicemen, who was about 170 cm tall, removed his mask. He had Slavic features and wore a green uniform. Others wore green and spotted green uniforms. Apart from the group of servicemen who had burst in, there was a further group of four to six servicemen securing the perimeter of the house. In the applicants’ submission, some of the servicemen had also spoken Chechen.

13. The servicemen ordered the men to get dressed and to produce their identity papers. The serviceman without a mask took Beslan Baysultanov’s passport and after it was checked by other servicemen ordered him to follow them outside. The servicemen did not check Sh.D.’s passport. They said to the applicants that they would take Beslan Baysultanov to the local VOVD station (in some of the applicants’ submissions – to the military commander’s office) “for a check”, without providing any further details. They then ordered them to stay indoors for thirty minutes and left, apparently on foot.

14. The applicants have not seen Beslan Baysultanov since.

2. The Government’s account

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

B. The applicant’s search for Beslan Baysultanov and the related investigation

1. The applicants’ account

(a) The applicants’ search for their relative

16. At about 7 a.m. on 7 May 2000, after the end of the curfew, the second applicant and Sh.D. alerted the head of the Ken-Yurt administration to the abduction of Beslan Baysultanov. He denied knowing anything about it and advised them to apply to the military commander’s office in Grozny. The second applicant contacted that authority shortly thereafter, but they denied having arrested anyone in Ken-Yurt on 7 May 2000.

17. On the same date, the second applicant filed written complaints about the abduction of her brother with the department of the Federal Security Service in the Groznenskiy District (“the FSB”), the military prosecutor, the head of the local police and the prosecutor for the

Groznenskiy District. All those State authorities refused to accept the second applicant's complaints for examination or to take steps to establish her brother's whereabouts. In the applicants' submission, a prosecutor from the prosecutor's office for the Groznenskiy District (hereinafter "the district prosecutor's office") was the only official who promised to follow up on their complaint but they subsequently learnt that he had never done so. In view of the authorities' refusal to assist them, the applicants had to search for Beslan Baysultanov through their own contacts and efforts.

18. On 7 May 2000 the applicants learnt through third parties and from Mr Is., the then head of the VOVD, that Beslan Baysultanov had been detained at the VOVD. Is. allegedly promised the applicants that he would "exchange Beslan Baysultanov for six assault rifles" but never did so.

19. On the morning of 8 May 2000 the second applicant and Sh.D. went to the VOVD station, where they handed over a parcel for Beslan Baysultanov to the VOVD officers. The officers first checked the missing man's family name and then took the parcel for him.

20. On the following day the applicants attempted to hand over another parcel for him but the VOVD officers handed it back.

21. On 10 or 11 May 2000 the applicants found a handwritten note at the entry gate of their house in Ken-Yurt, saying that Beslan Baysultanov had been abducted by "Mr K.'s men". According to the applicants, at the material time K. held the post of commander of the "West" battalion, which formed part of the Main Intelligence Directorate ("the GRU") of the Ministry of Defence of the Russian Federation in the Chechen Republic. After that, the second applicant and her husband went to the battalion's barracks several times to meet K. and to enquire about Beslan Baysultanov, but their efforts yielded no results. At the same time, on several occasions at the battalion's barracks they saw the serviceman who had taken his mask off during Beslan Baysultanov's abduction on 7 May 2000. Both the second applicant and Sh.D. recognised him. Mr A., the deputy head of the battalion whom the applicants had also contacted in their search for their relative, told them that the serviceman's name was "Yura".

22. On an unspecified date in May 2007 the second applicant was held at gunpoint by a group of people, who took the file which contained many of the applicants' documents concerning their search for Beslan Baysultanov from her, including the handwritten note the applicants had found at their gate.

(b) The investigation

23. On 25 August 2000 the first applicant wrote to the President of the Russian Federation, seeking assistance in establishing Beslan Baysultanov's whereabouts. She submitted, among other things, that all State authorities, including the district prosecutor's office, the police and various military commander's offices, had refused to accept for examination the applicants'

previous complaints about the abduction of their relative. Moreover, although the district prosecutor's office had at some point accepted the complaint about the abduction for examination, it had not taken any steps to establish the whereabouts of Beslan Baysultanov.

24. On an unspecified date the first applicant's complaint was transferred to the Ministry of the Interior of the Chechen Republic and on 20 October 2000 she was informed that she would be advised of the outcome in due course.

25. On 22 October 2000 the district prosecutor's office initiated a criminal investigation (case no. 19076) into the disappearance of Beslan Baysultanov. According to the applicants, two months later the investigation was suspended.

26. On 3 June 2001 the district prosecutor's office reopened the investigation in case no. 19076.

27. On 25 June 2001 the second applicant was interviewed by investigator B. from the district prosecutor's office about the circumstances of the abduction of Beslan Baysultanov. She informed him, among other things, of the handwritten note concerning her relative's possible abduction by servicemen from the "West" battalion and of the fact that she had seen one of the servicemen ("Yura") who had participated in the arrest. B. immediately told her that she should "forget about Yura". He then compiled an interview record and made the second applicant sign it. According to her, B. did not put down the entirety of the information she had provided during the interview. She signed the interview record without carefully reading it because she trusted that B. would do the necessary to find her brother.

28. On 7 July 2001 the second applicant complained to the President of the Russian Federation about the abduction of Beslan Baysultanov. She submitted, among other things, that on 20 October 2000 the first applicant had been informed that her complaint about the kidnapping had been forwarded to the Ministry of the Interior of the Chechen Republic, which would advise her of any decision taken. However, in response to the applicants' queries, that authority had denied the existence of that complaint.

29. On 12 September 2001 the applicant's letter was forwarded to the Security Council of the Russian Federation.

30. On 21 September 2001 the Main Military Prosecutor's Office forwarded the second applicant's complaint about the abduction of Beslan Baysultanov to the military prosecutor for the North Caucasus Military Circuit for examination, which sent it to the prosecutor's office for the Chechen Republic ("the republican prosecutor's office") on 8 January 2002, noting that there was no indication of the involvement of servicemen in the abduction of the applicants' relative.

31. On 19 February 2002 the district prosecutor's office informed the second applicant that it had received her complaint addressed to the

President of the Russian Federation. The letter stated that on 3 June 2001 the district prosecutor's office had launched an investigation into the abduction of Beslan Baysultanov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). On 3 August 2001 the investigation had been suspended because of failure to identify the perpetrators. However, operational and search measures aimed at solving the crime and establishing Beslan Baysultanov's whereabouts were underway.

32. On 27 March 2002 the second applicant complained to the Prosecutor General's Office about the abduction of Beslan Baysultanov, describing its circumstances in detail and stressing that it had occurred during curfew hours. She averred that at the material time all roads in and out of the village had been sealed off by checkpoints, that federal troops had been stationed around Ken-Yurt and that there had been a local police station in the centre of the village.

33. On 16 May 2002 the head of the Moscow office of the NGO "Human Rights Watch" wrote to the Prosecutor General of the Russian Federation on behalf of the applicants and requested the resumption of the investigation into the abduction of Beslan Baysultanov (criminal case no. 19076). There is no indication that the applicants received a reply to that request.

34. On 17 November 2006 the applicants' representatives wrote to the district prosecutor's office and the republican prosecutor's office, enquiring about the progress of the investigation in case no. 19076 and complaining that the applicants had not been provided with any information in that respect. They further asked that the applicants be informed of any decisions to suspend the investigation and of the reasons for the belated grant of victim status to the second applicant and sought access to case file no. 19076.

35. On 28 November 2007 the second applicant wrote to the district prosecutor's office, seeking information on the progress of the investigation in case no. 19076. She submitted, in particular, that although the district prosecutor's office had informed her that on 14 June 2007 the decision to suspend the investigation had been overturned, she had received no further information since that date. It appears that she received no reply to that query.

36. On 16 January 2008 the second applicant filed a repeated request for information on the progress of the investigation in case no. 19076 with the district prosecutor's office. According to a slip furnished by the applicants, the complaint was received by the district prosecutor's office on the same date. No reply followed.

2. Information submitted by the Government

37. Despite specific requests by the Court, the Government refused to disclose most of the contents of criminal case no. 19076, without providing

any reasons for their refusal. They only furnished copies of: a number of procedural decisions, including those to open, suspend and resume the investigation; several records of witness interviews; requests for information addressed to a number of 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. The Government also failed to reply to a specific question as to when the applicants had complained about the abduction of their relative to the national authorities. In so far as the documents submitted by the Government were legible, the information they contain may be summarised as follows.

(a) Opening of the investigation

38. On 27 April 2001 the Ombudsman for the Chechen Republic, with the President of the Russian Federation, forwarded the second applicant's complaint about the abduction of Beslan Baysultanov dated 10 April 2001 to the republican prosecutor's office for examination. The latter authority transferred the applicant's complaint to the district prosecutor's office on 2 May 2001. On 24 May 2001 investigator B. from the district prosecutor's office was instructed to examine the complaint and to take a decision on it.

39. By a decision of 3 June 2001 the district prosecutor's office instituted criminal proceedings into the "unlawful arrest" of Beslan Baysultanov under Article 127 § 2 of the Code of Criminal Procedure (unlawful deprivation of liberty, not connected with abduction).

(b) Interviewing of witnesses

40. The second applicant and Sh.D. were interviewed as witnesses on 25 June and 2 July 2001. They submitted, among other things, that at about 3.30 a.m. on 7 May 2000 a group of masked, camouflaged and armed men had burst into their house, shouting "Police! Lie down!" One of the intruders had not been wearing a mask. The intruders had ordered the men to produce their identity papers but had only taken Beslan Baysultanov's passport for checking, following which they had ordered him to follow them outside. In the courtyard there had been a further group of armed and masked men wearing camouflage uniforms. They had told the second applicant that they would take Beslan Baysultanov to the local VOVD station for an identity check and had left by foot. At about 8 a.m. on the same date the second applicant and Sh.D. had gone to the VOVD station to look for Beslan Baysultanov but the VOVD officers had denied having him on the premises. Two to three days later Sh.D. had met Mr Is., the head of the Groznenskiy VOVD, who had asked for "six assault rifles in exchange for Beslan Baysultanov". On the day following the abduction officers from the VOVD station's detention facility had accepted a food parcel for Beslan Baysultanov from Sh.D., and Sh.D. had realised that Beslan Baysultanov was being held on the premises of that authority. However, when he had

brought another parcel for him on the following day, an officer from the VOVD station's detention facility had told him that Beslan Baysultanov had not been there.

41. When re-interviewed on 17 and 26 May 2006, the second applicant and Sh.D. confirmed their earlier statements to the investigators. In addition, Sh.D. submitted that when the VOVD officer had returned the parcel to him, he had found a written note in it saying "in Khankala" (*в Ханкале*).

42. Between 18 and 20 May 2006 the investigators interviewed two residents of Ken-Yurt, as well as R.G. and A.D., the applicants' relatives who had been present at the time of Beslan Baysultanov's abduction. The former stated that they had learnt about the kidnapping of Beslan Baysultanov from his relatives and the latter gave an account of the events on the night of the kidnapping similar to those previously given by Sh.D. and the second applicant.

43. Six residents of Ken-Yurt, interviewed as witnesses between 21 and 23 June 2007, submitted that they had learnt about the abduction from Beslan Baysultanov's relatives. When questioned on 24 June 2007 as witnesses, the applicants' relatives A.D. and I.D., who had been at home at the time of the kidnapping, confirmed the account of events given by the second applicant and Sh.D.

44. On 25 and 28 June 2007 the investigators interviewed two officers from the Groznenskiy Department of the Interior (hereinafter "the ROVD"). They submitted, among other things, that the ROVD was in possession of operative information indicating that in 1994-99 Beslan Baysultanov had been involved in illegal armed groups and had offered active resistance to the federal forces. In that connection, the ROVD had taken steps to verify whether he had been arrested by members of the security forces of the Chechen Republic who had conducted a series of "special operations aimed at identifying and apprehending members of illegal armed groups".

45. When re-interviewed on 24 January and 4 February 2008, the second applicant, Sh.D. and I.D. confirmed their earlier statements concerning the circumstances of the abduction of Beslan Baysultanov. In addition, the second applicant submitted that in May 2007 she had been assaulted by several people who had told her to stop searching for Beslan Baysultanov and threatened her that if she continued to look for him, she would have to start searching for her own sons. Sh.D. also stressed that at the time of the abduction of Beslan Baysultanov the village of Ken-Yurt had been under curfew, which implied that no one could move around it during curfew hours and that, accordingly, the missing man could not have been taken anywhere without the knowledge of the head of the VOVD. He also reiterated the information he had previously given concerning Mr K. and serviceman "Yura" and confirmed, yet again, that he would be able to identify the latter.

(c) Further investigative steps

46. On 17 May 2006 investigators from the district prosecutor's office examined the crime scene.

47. On the same date they granted the second applicant victim status in the proceedings in case no. 19076.

48. On 28 May 2006 the investigators instructed the Ministry of the Interior of the Chechen Republic's Department for the Fight Against Organised Crime (hereinafter "the UBOP") and a number of local police offices in Chechnya to take steps to identify possible witnesses to the abduction of Beslan Baysultanov, to carry out door-to-door enquiries (*подворный обход*) in the area from which he had been abducted and to check whether his body could be found among unidentified corpses.

49. On 30 May 2006 the investigators asked a number of State authorities in the Chechen Republic to inform them whether Beslan Baysultanov had been arrested by them or detained in their facilities. In their replies, those authorities stated that they had no relevant information.

50. By letter of 16 June 2006 the Staropromyslovskiy ROVD informed the district prosecutor's office that they were unable to check whether Beslan Baysultanov could be found among the unidentified bodies found in the district because the latter authority had failed to specify his distinctive features or the clothes he had been wearing when abducted. It is unclear whether that shortcoming was subsequently rectified.

51. By letter of 26 June 2006 the UBOP informed the district prosecutor's office that they were in possession of information to the effect that in 1999 Beslan Baysultanov had been involved in an illegal armed group led by Mr G.

52. On 18 June 2007, following the district court's order to resume the investigation (see paragraph 60 below), the district prosecutor's office asked the head of the Groznenskiy ROVD to provide it with the list of officers who had been working there at the time of Beslan Baysultanov's abduction. The letter stated, among other things, that the criminal case file contained information that the VOVD officers had accepted a parcel for the missing man.

53. On 22 June 2007 the Groznenskiy ROVD replied to the investigators that it had no information concerning the officers who had worked in its detention facility in 2000 and recommended that they contact the Operational Task Force of the Russian federal forces in the Groznenskiy District on that account. It is unclear whether this has been done.

(d) Information concerning the pace of the investigation

54. The district prosecutor's office suspended the investigation in case no. 19076 on the following dates: 3 August 2001; 10 September 2003; 16 June 2006; 14 July 2007, and 15 February 2008. All those decisions

referred to the failure to identify those responsible for the abduction of Beslan Baysultanov.

55. The investigators decided to resume the investigation on the following dates: 10 July 2003, 16 May 2006; 14 June 2007; 17 January 2008.

56. The decisions to have the investigation resumed noted, among other things, that the district prosecutor's office had suspended it without carrying out a number of crucial investigative measures, such as verifying whether officers from the Groznenskiy ROVD/VOVD had been involved in the unlawful arrest of Beslan Baysultanov; granting victim status to his relatives; taking steps to establish the whereabouts of the missing man and to identify the perpetrators of the crime.

57. In the Government's submission, the investigation in case no. 19076 is pending.

C. Court proceedings against the investigating authorities

58. On 4 May 2007 the second applicant complained to the Groznenskiy District Court ("the District Court") about the inaction of the district prosecutor's office. She submitted, in particular, that the investigation must have been suspended on numerous occasions and that the applicants had not been informed of its progress and results, or of any decisions to suspend or reopen it. She referred, among other things, to the district prosecutor's office's failure to reply to her representatives' query dated 17 November 2006 and to the fact that that authority had disregarded the instructions of the republican prosecutor's office in that respect. She further stressed that she had only been granted victim status in May 2006. Lastly, the second applicant sought access to the case file.

59. On 25 May 2007 the District Court examined the second applicant's complaint in her presence. Before the court she described in detail the circumstances of the abduction of Beslan Baysultanov and reiterated her submissions concerning the quality of the investigation.

60. By a decision of 25 May 2007 the District Court granted the applicant's request in part concerning the reopening of the investigation. It held that the investigators had failed to rectify the shortcomings indicated by higher-ranking prosecutors. In particular, they had failed to interview officers from the Groznenskiy ROVD's detention facility or Is., head of the VOVD, who had told the second applicant that he would be able to liberate Beslan Beksultanov in exchange for assault rifles. At the same time, the court dismissed the second applicant's request for access to the case file, finding that she would only be entitled to it after the investigation was completed.

61. There is no indication that the applicants appealed against that decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

62. For a summary of the relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007), and *Aslakhanova and Others v. Russia* (nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, §§ 43-59, 18 December 2012).

THE LAW

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

A. Submissions by the parties

63. The Government argued that the application had to be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the abduction of Beslan Baysultanov 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 in court under Article 125 of the Code of Criminal Procedure (hereinafter "the CCrP"). Only the second applicant had made use of that remedy and, moreover, she had not challenged all of the alleged deficiencies in the investigation. Furthermore, by virtue of her victim status, the second applicant was also able to lodge petitions with the investigating authorities or complain to them about their omissions, if any.

64. The applicants maintained that they had exhausted all domestic remedies available to them. They insisted that the criminal investigation had proved to be ineffective and invited the Court, with reference to its practice, to dismiss the Government's objection.

B. The Court's assessment

65. The Court will examine the submissions 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).

66. It is observed that the Government raised a number of arguments under this head relating to the criminal investigation into the disappearance of Beslan Baysultanov. The applicants contested those arguments. The Court notes that the investigation into the disappearance of the applicants'

relative has been pending since 3 June 2001 and that the parties dispute its effectiveness.

67. 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 and considers that the issue falls to be examined below.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

68. The applicants complained that Beslan Baysultanov had been abducted 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

69. The Government submitted that the facts related to the abduction of Beslan Baysultanov, as presented by the applicants, corresponded to the materials of the criminal file opened into his disappearance. With reference to the judgments in the cases of *Zubayrayev v. Russia* and *Shaipova and Others v. Russia* (nos. 67797/01 and 10796/04, 10 January 2008 and 6 November 2008, respectively), the Government argued that the applicants had failed to furnish evidence “beyond reasonable doubt” that their relative had been abducted by servicemen. The fact that the abductors had worn military uniforms and masks and had spoken Russian did not prove that they had been State agents. Moreover, they had not used military vehicles, such as armoured personnel carriers (“APCs”), and the applicants were unable to describe the kidnappers. The investigating authorities had obtained no evidence indicating that any special operations aimed at arresting Beslan Baysultanov had been carried out in Ken-Yurt or that the

village had been under curfew. The body of the missing man had not been discovered.

70. As to the investigation, the Government submitted that the national authorities had promptly opened a criminal case into the applicants' allegations and had taken an important number of investigative steps. The fact that the proceedings had been repeatedly suspended, that the authorities had not been able to identify the perpetrators and that the applicants were dissatisfied with the amount of information provided to them did not indicate that the investigation was ineffective.

71. The applicants claimed that there existed evidence "beyond reasonable doubt" that Beslan Baysultanov had been abducted by State agents on 7 May 2000 and that he was to be presumed dead. They stressed that the Government had not contested their submissions concerning the circumstances of the abduction. In particular, they had accepted that at the material time the village of Ken-Yurt had been sealed off by checkpoints manned by federal forces. One of the abductors whom the applicants had been able to identify had belonged to the "West" battalion of the Russian federal forces. Shortly after the kidnapping Mr Is., head of the Groznenskiy VOVD, had offered the applicants the chance to exchange Beslan Baysultanov for six assault rifles and the VOVD officers had accepted a parcel for their relative. Therefore, it was clear that after his abduction Beslan Baysultanov had been held in the Groznenskiy VOVD station. Referring to the judgments in the cases of *Suleymanova v. Russia* (judgment no. 9196/06, 12 May 2010) and *Khamzatov and Others v. Russia* (no. 31682/07, 28 February 2012), the applicants submitted that in those proceedings the Government had acknowledged that at the material time a curfew had been in force in the Chechen Republic. With reference to the national authorities' statements that Beslan Baysultanov had been involved with illegal armed groups, the applicants also stressed that the authorities had had good reason to arrest him. Lastly, they invited the Court to draw inferences from the Government's refusal to produce an entire copy of the investigation file.

72. The applicants also maintained that the investigation into their relative's disappearance had not satisfied the Convention requirements. Although they had informed the authorities about the serviceman named "Yura" and the offer by Mr Is., those individuals, as well as other VOVD officers, had not been questioned. In spite of that, the investigators had repeatedly suspended the proceedings because of their failure to identify the perpetrators. The applicants had received no information on the progress of the investigation.

B. The Court's assessment

1. Admissibility

73. 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 of non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 67 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 Beslan Baysultanov

(i) General principles

74. 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

75. 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, §§ 103-109, 27 July 2006). It is also noted that 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, § 65899/01, ECHR 2005–VIII, and *Aslakhanova*, cited above, § 95).

76. The applicants argued that at about 3.30 a.m. on 7 May 2000 Beslan Baysultanov had been abducted by State agents and had then disappeared. They invited the Court to draw inferences as to the well-foundedness of their allegations from the Government's failure to provide the documents requested from them. They submitted that several people had witnessed their relative's abduction and enclosed a number of witness statements in support of that submission.

77. The Government did not contest the applicants' factual allegations and conceded that Beslan Baysultanov had been abducted on 7 May 2000 by unidentified armed camouflaged men. However, they denied that the abductors had been State agents, referring to the absence of findings from the ongoing investigation. They also argued that case file no. 19076 contained no evidence that, at the material time, Ken-Yurt had been under curfew and stressed that there was no indication that the perpetrators had used vehicles such as APCs.

78. The Court notes at the outset that, despite its requests for a copy of the investigation file, the Government refused to produce most of the documents from it, without providing an explanation. Against this background and taking into account the principles enunciated in paragraph 75 above, the Court will draw inferences from the Government's conduct in assessing the applicants' allegations.

79. As regards the Government's argument concerning the existence of a curfew, the Court is unable to accept it as convincing in view of their refusal to furnish an entire copy of the very case file to which they referred in support of that submission. Moreover, it cannot overlook the fact that the applicants and other witnesses to the abduction consistently, and from the very beginning of the investigation, maintained that Beslan Baysultanov had been abducted during curfew hours (see paragraphs 40 and 41 above). Furthermore, a number of cases examined by this Court and relating to the same period of time support the applicants' submission concerning the existence of a curfew (see, among other authorities, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 18, 24 February 2005, and *Aziyevy v. Russia*, no. 77626/01, § 72, 20 March 2008).

80. In so far as the Government stressed that the abductors had not used military vehicles, the Court is mindful that this fact could have facilitated their moving around the area or possible passage through checkpoints (see *Shaipova and Others v. Russia*, cited above, § 85). However, it considers that the present case should be distinguished from the cases of *Zubayrayev* and *Shaipova*, on which the Government relied and where the Court found insufficient evidence of the involvement of State agents in the abduction of the missing persons, for the following reasons.

81. In the first place, the Court observes that it was undisputed between the parties that at the material time Ken-Yurt was under the control of the Russian authorities, the roads in and out of it being sealed off by manned

checkpoints and a military commander's office and a police station being located in the village.

82. It is further noted that the applicants, some of whom witnessed the kidnapping, provided a consistent, detailed and coherent description of those events before both the domestic authorities and this Court (see paragraphs 7-14, 16-22, 27, 40-41 and 45 above, and see, by contrast, *Zubayrayev*, cited above, § 83). They also furnished a number of witness statements in support of their allegations (see paragraph 7 above), which were confirmed by the statements of further witnesses collected in the course of the investigation conducted by the national authorities (see paragraphs 42 and 43 above). From those statements it follows, among other things, that the abductors carried out an identity check of the men present in the house and told Beslan Baysultanov's relatives that they would take him to the local VOVD station for a further check.

83. It is moreover significant that the applicants' specific submissions concerning Beslan Baysultanov's subsequent physical presence at the local VOVD station, his relatives' handing over of a parcel for him to VOVD officers, Mr Is.'s offer to release him and one of his kidnappers belonging to a specific military unit of the federal forces were not contested as such by the Government. With this in mind, the Court considers that the information concerning Beslan Baysultanov's active involvement with illegal armed groups and the Chechen security forces' operations targeting former rebel fighters, as conveyed by the VOVD officers (see paragraph 44 above), supports the validity of the applicants' allegation concerning the implication of State agents in the kidnapping. Indeed, the applicants consistently, and from the beginning of the investigation, maintained that version of events before the national authorities (see, by contrast, *Zubayrayev*, cited above, § 84, and *Tovsultanova v. Russia*, no. 26974/06, § 80, 17 June 2010) and it transpires that it was the main version of events, subscribed to by the investigators (see paragraph 44 above).

84. The Court has examined a series of cases concerning allegations of disappearances in the Chechen Republic. In those cases it concluded that where the applicants had made out a *prima facie* case of abduction by State agents, it was 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 had occurred (see, among many other authorities, *Aziyevy v. Russia*, cited above, § 74; *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).

85. 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 are in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Beslan Baysultanov was arrested on 7 May 2000 by State agents during an unacknowledged security operation.

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

87. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among many others, *Bazorkina*, cited above; *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*, 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 State agents without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Beslan Baysultanov or of any news of him for more than twelve years supports that assumption.

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

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

89. Article 2, which safeguards the right to life and sets out the circumstances in which 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)).

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

91. Accordingly, the Court finds that there has been a violation of Article 2 in its substantive aspect in respect of Beslan Baysultanov.

(b) Alleged inadequacy of the investigation

92. 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).

93. The Court notes at the outset that the Government refused to produce most of the documents from case file no. 19076 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.

94. Turning to the facts of the present case, the Court observes that Beslan Baysultanov was abducted on 7 May 2000 and that the investigation into his abduction was opened on 3 June 2001, namely one year and twenty-seven days later. In the applicants' submission, on 7 May 2000 they complained about the kidnapping of their relative to various authorities, including the military prosecutor, the head of the local police and the district prosecutor's office, but those State bodies refused to accept their complaints for examination (see paragraph 17 above). The copies of the applicants' complaints of 25 August 2000 and 7 July 2001, furnished to the Court, indeed refer to their unsuccessful earlier attempts to alert the authorities to the abduction of their relative (see paragraphs 23 and 28 above).

95. The Court notes that the Government did not contest those submissions and failed to reply to its specific question as to when the applicants had complained to the national authorities about the abduction

(see paragraph 37 above). They also provided no explanation for the exceptional delay of more than a year in the opening of the investigation into Beslan Baysultanov's disappearance. Accordingly, the Court is led to conclude that the responsibility for this delay lies with the respondent Government (see *Vakayeva and Others v. Russia*, no. 2220/05, § 141-42, 10 June 2010). In this connection, it emphasises that such a considerable delay is in itself 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.

96. As regards the scope of the investigative measures, the Court cannot but point out that a majority of them were carried out with considerable delay. In particular, some of the members of the applicants' family who were eyewitnesses to the abduction, as well as the applicants' neighbours, were only interviewed in May 2006 and June 2007, that is to say between four and six years after the opening of the investigation and more than six years after Beslan Baysultanov had been kidnapped (see paragraphs 42 and 43 above). The same holds true for the inspection of the crime scene (see paragraph 46 above). The Government offered no explanation for the time it took the national authorities to carry out those basic investigative measures. The Court also does not lose sight of the fact that the first attempts to identify the VOVD officers involved were made in June 2007 and only after the District Court's explicit request for that investigative step to be taken (see paragraph 52 above). Moreover, the selection of documents furnished by the Government does not permit the Court to establish whether those efforts were subsequently pursued.

97. It is further observed that there is no indication that a number of crucial investigative steps were ever taken. For instance, nothing suggests that the district prosecutor's office made any attempt to identify and interview the serviceman named "Yura", Mr K. or Mr Is., despite the fact that the applicants had brought the information concerning those individuals to the authorities' attention without undue delay (see paragraphs 27 and 40 above). In the same vein, it does not seem that the investigators made any genuine attempt to verify the information concerning Beslan Baysultanov's detention at the VOVD station or to follow-up on the second applicant's submissions concerning the men who had taken the documents concerning the abduction from her. In the Court's view, those omissions seriously undermined the capacity of the investigation to establish the relevant facts.

98. In the Court's opinion, the investigators' failure to indicate the missing man's distinctive features in their requests for his identification among the dead bodies (see paragraphs 48 and 50 above) suggests, at the very least, that those investigative measures were carried out in a superficial manner and raises further doubts as to the thoroughness of the investigation.

99. As regards the accessibility of the investigation to the next-of-kin of the victim, the Court notes that the second applicant was the only member

of Beslan Baysultanov's family to be granted victim status and that the decision in that regard was ultimately taken four years and eleven months after the proceedings had been instituted (see paragraph 47 above). Moreover, given the applicants' repeated, and apparently unanswered queries (see paragraphs 28 and 33-36 above), the Court doubts that they were properly informed of the important developments in the investigation.

100. Lastly, it is evident from the information submitted by the Government that the investigation was repeatedly suspended and resumed (see paragraphs 54-57 above). The Court emphasises in this respect that while the adjourning or reopening of proceedings is not in itself a sign that an investigation is ineffective, it appears in the present case that the decisions to adjourn were made without the necessary investigative steps being taken (see paragraphs 56 and 60 above), 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.

101. Having regard to 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.

102. In so far as the Government submitted that it had been open to the applicants to challenge the investigating authorities' acts or omissions before the courts or before the investigators, the Court points out that the second applicant made use of the former remedy (see paragraph 58 above). However, 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, contrary to the Government's assertion, the Court considers that the applicants could not be required to challenge every single decision of the district prosecutor's office in court. Moreover, as has been 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.

103. 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 Beslan Baysultanov, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

104. 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

105. 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.

106. The applicants maintained the complaint.

B. The Court's assessment

1. Admissibility

107. 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

108. 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).

109. In the present case, the Court notes that the first applicant is the mother of the disappeared person and that the second and third applicants are his sisters. The second applicant witnessed the abduction of Beslan Baysultanov. The applicants have not had any news of their relative for

more than twelve 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 Beslan Baysultanov 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.

110. 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

111. The applicants further stated that Beslan Baysultanov 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

112. The Government asserted that no evidence had been obtained by the investigators to confirm that Beslan Baysultanov 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.

113. The applicants maintained the complaint.

B. The Court's assessment

1. Admissibility

114. 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

115. 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).

116. The Court has found that Beslan Baysultanov was abducted by State agents on 7 May 2000 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).

117. 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.

118. In view of the foregoing, the Court finds that Beslan Baysultanov 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

119. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations of Articles 2 and 3, 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

120. 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.

121. The applicants maintained the complaint.

B. The Court’s assessment

1. *Admissibility*

122. 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*

123. 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).

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. 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

126. The applicants made no claims in respect of pecuniary damage. They sought 500,000 euros (EUR) jointly in respect of non-pecuniary damage.

127. The Government submitted that, should the Court find a breach of the applicants' Convention rights, a finding of a violation would constitute sufficient just satisfaction. Otherwise, they invited the Court to follow its case-law concerning similar applications.

128. The Court notes that it 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 distress 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 considers it appropriate to award the applicants jointly EUR 60,000 under this heading, plus any tax that may be chargeable to them.

B. Costs and expenses

129. The applicants were represented by lawyers from the SRJI. They submitted an agreement between them and the SRJI for their representation before the Court; an itemised schedule of costs and expenses that included the drafting of legal documents submitted to the Court at a rate of 50 euros (EUR) per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff; and invoices in respect of translation and postal expenses. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,437.02, to be paid into their representatives' bank account in the Netherlands.

130. The Government stated that the applicants had failed to itemise their costs and expenses and to support them properly, except for “two notes of a general nature”. They invited the Court to dismiss the applicants' claims.

131. The Court has to establish whether the costs and expenses indicated by the applicants were actually and necessarily incurred and whether they were reasonable as to quantum (see *McCann and Others*, cited above, § 220).

132. Having regard to the details of the information and the documents furnished by the applicants, the Court is satisfied that those rates are reasonable and reflect the expenses actually incurred by their representatives. As to whether they were necessary, the Court notes that this application was rather complex and required a certain amount of research and preparation. It notes at the same time that the case involved little documentary evidence, in view of the Government's refusal to submit most of the materials from the case file. Accordingly, it considers it appropriate to award the applicants EUR 4,000 in respect of costs and expenses, plus any tax that may be chargeable to them, the award to be paid into their representatives' bank account in the Netherlands, as identified by the applicants.

C. Default interest

133. 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 Beslan Baysultanov;
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 Beslan Baysultanov 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 distress;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Beslan Baysultanov;

7. Holds that there has been a violation of Article 13 of the Convention in conjunction with Articles 2 and 3 of the Convention;
8. *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 60,000 (sixty thousand euros) to the applicants jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President