



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

FIRST SECTION

**CASE OF DOVLETUKAYEV AND OTHERS v. RUSSIA**

*(Applications nos. 7821/07, 10937/10, 14046/10 and 32782/10)*

*This version was rectified on 7 April and 4 July 2014  
under Rule 81 of the Rules of the Court.*

JUDGMENT

STRASBOURG

24 October 2013

**FINAL**

**17/02/2014**

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



**In the case of Dovletukayev and others v. Russia,**

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

Isabelle Berro-Lefèvre, President,  
Elisabeth Steiner,  
Khanlar Hajiyeu,  
Linos-Alexandre Sicilianos,  
Erik Møse,  
Ksenija Turković,  
Dmitry Dedov, judges

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 1 October 2013,

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

## PROCEDURE

1. The case originated in four applications 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 Russian nationals (“the applicants”), on the dates indicated below.

2. The applicants were represented before the Court by Mr A. Ryzhov and Ms O. Sadovskaya, lawyers practising in Nizhniy Novgorod, Mr D. Itsleyev and Ms M. Irizbayeva, lawyers practising in Grozny, and lawyers from the Stichting Russian Justice Initiative, an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their relatives had been abducted and killed by State servicemen in Chechnya between 2001 and 2004 and that no effective investigations had taken place.

4. On 4 July 2011 the Court decided to communicate the applications to the Government raising specific additional questions about the structural nature of the failure to investigate the disappearances.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants live in various districts of Chechnya. They are close relatives of five men who were allegedly abducted by State agents and

whose bodies were subsequently discovered under various circumstances. In one of the applications, *Tazurkayeva and Others* (application no. 14046/10), the body of one of the two men abducted was never found. Below are the summaries of the facts relevant to each individual application. The personal data of the applicants and their disappeared relatives, and some other key facts, are summarised in the attached table (Appendix I). The events complained of took place between 2001 and 2004.

#### **A. Application no. 7821/07, Dovletukayev v. Russia**

6. The applicant, Mr Sharip<sup>1</sup> Dovletukayev, was born in 1949 and lives in Avtury, Chechnya. He is the father of Aslan Dovletukayev, born in 1973. The applicant is represented before the Court by Mr A. Ryzhov and Ms O. Sadovskaya.

##### *1. Abduction of the applicant's son and subsequent events*

7. At the material time the applicant and his family, including his son Aslan Dovletukayev, were living at 41 Ordzhonikidze Street, Avtury. The area was under the full control of the Russian federal forces. Military checkpoints were located on the roads leading to and from the village.

8. According to the applicant, at about 11 p.m. on 9 January 2004 a group of about eighteen masked armed men in camouflage uniforms arrived at his house in three APCs (armoured personnel carriers) and two grey UAZ minivans. The vehicles did not have registration numbers. The men were equipped with portable military radios.

9. Without showing any documents three of the men searched the house of the applicant's neighbours at 21 Ordzhonikidze Street. Afterwards one of them told the residents that it was a routine identity check and ordered them to stay inside. The group checked the identity documents of residents in three other houses in the street.

10. The group then went to the applicant's house and checked the passports of all the males present. The men did not return Aslan Dovletukayev's passport; they instead led him from his yard into the street and forced him into one of their vehicles. The applicant's relatives tried to stop the men, but were threatened at gunpoint. The abductors then drove away in the direction of Shali, passing through a military checkpoint on the way.

11. At about 10.20 a.m. on 17 January 2004 Aslan Dovletukayev's body was found by two servicemen of the 34th squadron stationed in Argun, by the village of Dzhalka in the Gudermes district, Chechnya.

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<sup>1</sup> Rectified on 4 July 2014: the text was "Mr Sherip Dovletukayev".

12. The Government furnished part of criminal case no. 35002 opened in connection with the abduction and murder of Aslan Dovletukayev, without specifying the number of pages. The materials comprised two volumes.

*2. Main steps of the official investigation into the abduction*

13. On 12 January 2004 the applicant reported his son's abduction to the Shali District Department of the Interior (ROVD), stating that his son had been taken away by "unknown armed persons in three APCs and two UAZ vehicles."

14. The Shali district prosecutor's office examined the crime scene that day. No evidence was collected.

15. On the same date the investigators sent requests to the Shali District Department of the Federal Security Service (FSB), the military commander's office and the military prosecutor of military unit no. 20116, seeking information about whether special operations had been carried out in Ordzhonikidze Street in Avtury, whether Aslan Dovletukayev (in a number of documents also spelt Davletukayev or Dovletmurzayev) had a criminal record, and whether he was involved in illegal armed groups. No replies were given to these requests.

16. On 14 January 2004 the search for Aslan Dovletukayev was officially ordered.

17. On 17 January 2004, the day his body was recovered, an examination was carried out by the investigators with the participation of an expert. Numerous bruises to his chest, left leg and both wrists were established and recorded.

18. On the same day the investigators ordered a forensic expert examination of the body. It established the cause of death as blunt complex blows to the head, chest, and upper and lower extremities, combined with severe brain damage. The body had borne signs of torture such as haematomas, fractures and wounds. Only part of the forensic report was furnished to the Court.

19. On 18 January 2004 the Shali district prosecutor's office opened an investigation into Aslan Dovletukayev's abduction under Article 126 § 2 of the Criminal Code (aggravated kidnapping). From 20 January 2004, following the discovery of his body, the case was treated as a murder investigation, and was subsequently reclassified as aggravated murder under Article 105 of the Criminal Code. The case file was given the number 35002.

20. On 27 January 2004 the deceased's wife, Ms S.I., was granted victim status in the criminal case and questioned about the circumstances of the abduction (see paragraph 39 below).

21. On 27 February 2004 the applicant was granted victim status and questioned (see paragraph 40 below).

22. On 20 March 2004 the investigators suspended the investigation for failure to identify the perpetrators.

23. On 22 May 2004 the Gudermes district prosecutor overruled the investigators' decision as premature and ordered them to take a number of investigative steps, including questioning the servicemen who had found Aslan Dovletukayev's body. From the documents submitted it appears that this order was not complied with, as the investigators had failed to establish the servicemen's whereabouts.

24. On 27 July 2004 one of the investigators sent a request to the Gudermes ROVD seeking information about the owner of a VAZ-21099 vehicle with the registration number 814-95 RUS. A negative reply was given. The same request was later repeatedly sent to various departments of the interior, but to no avail.

25. On 12 August 2004 one of the investigators ordered the questioning of a villager, Ms Sh.Y., stating as follows:

“...The investigation established that on 9 January 2004 at about 11 p.m. Aslan Dovletukayev, who was subsequently found dead, had been abducted and put into a vehicle belonging to a convoy of APCs. The convoy had stopped at the edge of the village of Avtury at the premises of the military unit stationed in the area, known by the name of “Don”... The events were witnessed by Ms Sh.Y., a resident of the village, who had also heard gunshots coming from the convoy.”

26. On 13 August 2004 the investigation was suspended again for failure to identify the perpetrators.

27. On 15 February 2006 following a request by the investigator, the Lipetsk OVD questioned S.M, one of the servicemen who had found Aslan Dovletukayev's body.

28. On an unspecified date between 2004 and 2007 the investigation was resumed, but on 25 May 2007 was suspended yet again for failure to identify the perpetrators.

29. On 12 May 2008 the supervising prosecutor overruled the decision to suspend the investigation as unlawful and premature and ordered that a number of steps be taken. In particular, it was pointed out that the investigators had failed to question both of the servicemen who had found Aslan Dovletukayev's body, establish the owners of the VAZ-21099 vehicle or identify the military unit stationed at the edge of Avtury, identify and question the servicemen who had manned the checkpoints at the material time, and to question a number of witnesses, including Mr E.I.

30. On 9 August 2009 the investigation was suspended yet again for failure to identify the perpetrators.

31. On 10 August 2009 the investigators asked the Chechnya Ministry of the Interior to inform them of the outcome of a criminal case against a relative of the deceased, Mr D. Abdurzakarov (also spelt Abdurzakov), in connection with the murder of FSB servicemen and police officers in 2000. The relevant parts of the request stated as follows:

“... The criminal case ... contains information about the involvement of officers of the Chechnya FSB stationed in the Shali district in Dovletukayev’s abduction and murder as revenge for the killing and wounding of FSB officers during the armed conflict of 16 April 2000 in which [Dovletukayev’s] relative [Abdurzakarov] had also taken part ...”

32. The criminal investigation was subsequently suspended and resumed on at least fourteen occasions and is still pending.

*3. Witness statements taken by the investigators*

33. On 12 January 2004 the investigators questioned the applicant. The Government only furnished the first page of his statement. According to the information available, he stated that at about 11 p.m. on 9 January 2004 a group of about fifty armed men in camouflage uniforms had arrived in three ACPs and two UAZ vehicles at his house and broken in. The intruders, some of whom had been masked, had gathered all the men in the courtyard, searched the house, and checked their identity documents. They had then taken his son away.

34. On the same date Mr S.Kh., a relative of the applicant who was staying at their house during the abduction, gave a similar statement.

35. The applicant’s neighbour, Mr I.L., was also questioned that day. Again only the first page of his statement was furnished to the Court. According to the information available, he stated that on the night of Aslan Dovletukayev’s abduction three men with machine guns in green camouflage uniforms had searched his house.

36. On 17 January 2004 Mr S.M. and Mr V.I., the servicemen of the 34th squadron stationed in Argun who had discovered the body, were questioned by the Gudermes ROVD. Mr S.M. stated that at around 10 a.m. on 17 January 2004 he had found a body next to the Gudermes-Argun road, which had borne signs of violence, such as blood stains and a fracture of the leg. As for Mr V.I.’s statement, the Government only furnished the first page, from which it appears that Aslan Dovletukayev had sustained such injuries as a fracture of the right leg and bruises to the forehead. No objects had been found next to the body.

37. On 20 January 2004 the applicant and his relative Mr S.Kh. were questioned again. In addition to their initial statements, they informed the investigators that Aslan Dovletukayev had never been involved in illegal armed groups. The applicant stated that the abductors had spoken unaccented Russian and that according to the forensic experts, his son’s body had displayed fractures and a bullet wound to the back of the head. As for Mr S.Kh.’s statement, only the first page was furnished to the Court.

38. On the same date the applicant’s neighbour Mr Z.Sh. was also questioned. Only the first page of his statement was furnished to the Court. According to the information available, at around 1.30 p.m. on 9 January

2004 he had seen a blue VAZ-21099 vehicle with the registration number 814-95 RUS driving around the neighbourhood.

39. On 27 January 2004 Aslan Dovletukayev's wife Ms S.I. stated that at about 11 p.m. on 9 January 2004 seven or eight armed men had broken into their house. All the men had been masked, except for two who had "looked Asian". The men had searched the house, checked identity documents, put her husband into a UAZ vehicle and had taken him away.

40. On 27 February 2004 the applicant was questioned again. In addition to his previous statements, he stated that his son had been providing assistance to human rights organisations.

41. On 2 March 2004 the applicant and his relative, Ms D.M., who lived in the same house, were questioned and gave statements similar to those they had given previously.

42. On the same date the investigators questioned the neighbour, Mr I.L. Only the first page of his statement was furnished to the Court. From the information available it appears that Aslan Dovletukayev's abductors had also searched his house, that they had used military radios, and that one of them had used a special call name which the witness could not remember. Once the perpetrators had left, he had found out from the other neighbours that the men had taken away Aslan Dovletukayev. The witness also told the investigators that he had a son, Mr Dzhabrail Abdurzakov, who had gone into hiding from the authorities.

43. On 21 July 2004 the applicant was questioned again and stated that his son had been providing assistance to a human rights organisation where he had been working with Mr E.I. He had also been providing welding services to servicemen stationed in Grozny. The applicant also submitted that Dzhabrail Abdurzakov had been living in the same street, and on account of his being a member of illegal armed groups had gone into hiding. There had been rumours that Dzhabrail Abdurzakov had been in the village on the date of his son's abduction and that the abductors must have mistaken his son for him. He stated that according to Ms Sh.Y., who also lived in his village, following his son's abduction the APCs had stopped at the military unit stationed at the edge of the village and fired several gunshots.

44. On 20 July 2006 the investigators questioned Mr I.S., an officer of the Gudermes ROVD. Only the last page of his statement was furnished to the Court. According to the information available, the reason for Aslan Dovletukayev's abduction was that he must have been mistaken for a relative of his nicknamed "Shram" (*Scar*), who was wanted for the murder of police and FSB officers.

45. On 29 March 2007 Ms Sh.Y., who had witnessed the convoy of APCs on the night of the abduction, was questioned by the investigators. Her statement was not furnished to the Court.



46. On 7 August 2009 Mr E.I., a colleague of Aslan Dovletukayev, was questioned. The relevant part of his statement reads as follows:

“... In 2002 Aslan Dovletukayev ... was researching human rights violations in Chechnya ... some information was then published on our internet site and in official reports. The information supplied by Aslan concerned war crimes in Chechnya, the bombardment of villages, and the unlawful detention and abduction of Shali district civilians by law-enforcement officers and servicemen stationed in the Chechen Republic ... It was established that servicemen of the military and law-enforcement agencies, namely the GRU (the military intelligence units), had been involved in Aslan’s abduction and murder ... our colleague, Mr K.Kh., was collecting information concerning the involvement of the above-mentioned units and the military officer in charge of Avtury at the material time, ‘Turpal-Ali’ or ‘Turko’, in Aslan’s abduction and murder ... Mr K.Kh. also found out information about the VAZ-21099 vehicle which ‘Turpal-Ali’ aka ‘Turko’ had been in during the abduction ... I think that the reason for Aslan’s abduction and murder was his human rights activities ... I heard that one of Aslan’s relatives was a member of illegal armed groups who was eliminated by the secret services.”

47. On various dates between 2004 and 2007 the investigators questioned the applicant’s relatives, neighbours and Aslan Dovletukayev’s colleagues. Only parts of their statements were furnished to the Court, which did not contain any pertinent information about the abduction or its perpetrators.

#### *4 Proceedings against the investigators*

48. On 23 November 2005, 5 March 2008 and 27 January 2010 the Gudermes District Court rejected complaints by the applicant that the criminal investigation was ineffective and suspended unlawfully as the supervising prosecutors had already ordered that it be resumed.

49. On 19 April 2010 it allowed the applicant’s complaint that the criminal proceedings were ineffective, holding that that the investigation was not comprehensive, thorough and effective and had not been concluded within a reasonable time.

### **B. Application no. 10937/10, Magamadova<sup>1</sup> v. Russia**

50. The applicant, Ms Tamara Magamadova<sup>2</sup>, was born in 1949. She is the mother of Khizir Gulmutov, born in 1982. She lives in Kurchaloy, Chechnya. She is represented before the Court by Mr D. Itslayev and Ms M. Irizbayeva.

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<sup>1</sup> Rectified on 7 April 2014 : the text was “ Magomadova v. Russia “

<sup>2</sup> Rectified on 7 April 2014 : the text was “ Ms Tamara Magomadova “

*1. Abduction of the applicant's son and subsequent events*

51. At the material time the applicant and her family, including her son Khizir Gulmutov, were living at 20 Ordzhonikidze Street, Kurchaloy. The area was under the full control of the federal forces. Military checkpoints were located on the roads leading to and from the village.

52. According to the applicant, at about 3 a.m. on 30 December 2002 a large group of armed men in camouflage uniforms broke into her house after having cordoned off the area. They spoke unaccented Russian, and arrived in an APC and a military Ural vehicle. They ordered Khizir Gulmutov to get into the Ural vehicle and drove away to an unknown destination.

53. On 8 January 2003 blown-up remains (consisting of the lower extremities and spine and scalp fractions) were found about 1.5 km from the northern outskirts of Kurchaloy, 2 km from military checkpoint KPPM-95.

54. On 9 January 2003 the applicant's relatives were able to identify the remains as belonging to Khizir Gulmutov by shoes and trousers found at the scene.

55. The Government furnished a copy of criminal case no. 75146 into the abduction and murder of Khizir Gulmutov, without specifying the number of pages. The documents comprised one volume.

*2. Main steps of the official investigation into the abduction*

56. On 30 December 2002 the applicant complained to the Kurchaloy ROVD that her son had been abducted by unidentified masked men in camouflage uniforms.

57. On the same day the Kurchaloy district prosecutor's office opened a criminal investigation into the abduction and examined the crime scene. No evidence was collected.

58. Also on that day the applicant's husband and Khizir Gulmutov's father, Mr A.G., was granted victim status.

59. On 8 January 2003 investigators examined the scene where the remains were discovered and found shoes, trousers and a detonator with a wire and a metal ring.

60. On 3 February 2003 the investigators ordered forensic expert examinations of the remains and objects found at the scene. According to the experts' conclusions, the objects belonged to an explosive device and the body had been blown to pieces as a result of the explosion.

61. On 28 February 2003 the investigators suspended the investigation for failure to identify the perpetrators. The applicant was not informed thereof.

62. On 15 August 2006 the investigation was resumed.

63. On 15 September 2006 the investigation was suspended yet again. The applicant was not informed thereof.

64. On 13 November 2008 the applicant asked the investigators to inform her of the progress of the investigation into her son's abduction and to provide her with access to the case file. In the request, she mistakenly gave the name of her son as Abubakar Gulmutov.

65. On 16 November 2008 the investigators informed the applicant that her request had not been dealt with as there was no abduction case in the name of Abubakar Gulmutov, and that the case numbered 75146 she had referred to concerned the abduction of Khizir Gulmutov.

66. On 6 August 2009 the applicant's lawyer asked the investigators to provide her with a copy of the decision to suspend the investigation.

67. On 9 August 2009 the investigators granted the lawyer's request.

68. On 16 August 2009 the applicant's lawyer requested access to the case file.

69. On 18 August 2009 her request was granted.

70. On 14 September 2011 the investigation was resumed. The proceedings are still pending.

### *3. Witness statements taken by the investigation*

71. On 30 December 2002 the investigators questioned the applicant's husband Mr A.G., who stated that at 3 a.m. on 30 December 2002 about ten armed men in masks and green camouflage uniforms had broken into their house. They had arrived in an APC and a military Ural lorry. The intruders, who had spoken Russian, had forced his son into the lorry and driven away to an unknown destination. The father further stated that in May 2002 his son had already been abducted by unidentified individuals but released several days later and that Khizir had never been involved in illegal armed groups.

72. On the same date, the investigators also questioned Khizir Gulmutov's wife, Ms E.Kh., who stated that a group of armed masked men in camouflage uniforms had broken into their bedroom at night, held Khizir at gunpoint and ordered him to go outside. When she had tried to speak to her husband in Chechen, the intruders had angrily ordered her to speak Russian and forced him to go outside. The abductors had refused to tell her where they were taking her husband and had driven away to an unknown destination.

73. The investigators also questioned the applicant's brother, Mr I.M., that day. He stated that on the night of the abduction two armed masked men in camouflage uniforms had burst into his room, woken him up, kicked him several times and forced him to go outside. He and his father had been ordered to stand against a wall in the courtyard. There had been about ten armed men there speaking Russian. Ten minutes later the intruders had brought his brother to the courtyard with his hands tied behind his back. They had forced him into the Ural lorry which had then driven away

escorted by an APC. The vehicles had headed in the direction of Kurchalayevskaya Street.

74. The applicant's neighbours, Ms D.M. and Ms M.S., both submitted that they had been indoors during the abduction and had not witnessed the events. According to Ms M.S., she had heard the noise of the military vehicles but had been afraid to go outside.

75. On 17 January 2003 some local residents, Mr D.T., Mr Kh.E. and Mr Ch.S., told the investigators that they had learnt about Khizir's abduction from their neighbours.

76. On 14 September 2006 the investigators questioned Khizir Gulmotov's wife again. She reiterated her previous statement.

### **C. Application no. 14046/10, Tazurkayeva and Others v. Russia**

77. The applicants in this case are:

- 1) Ms Taus Tazurkayeva, born in 1942;
- 2) Ms Luiza Tazurkayeva, born in 1971;
- 3) Ms Laura Tazurkayeva, born in 1977; and
- 4) Ms Arbiyat Ayubova, born in 1960.

78. The applicants are the relatives of Islam Tazurkayev and Abubakar Tazurkayev, brothers born in 1968 and 1962 respectively. The first applicant is their mother, and the second, third and fourth applicants are their sisters. The applicants currently live in Oslo, Norway. They are represented before the Court by lawyers from the Stichting Russian Justice Initiative.

#### *1. Abduction of Islam Tazurkayev and subsequent events*

79. According to the applicants, at about 2 p.m. on 20 January 2001 Islam Tazurkayev and three other men were driving in a VAZ vehicle around Grozny when they were stopped by a group of Russian military servicemen in an APC and a white VAZ-2121 (Niva) vehicle for an identity check. Having checked the documents, the servicemen blindfolded Islam Tazurkayev, forced him into the APC and drove away in the direction of the Khankala military base, the headquarters of the Russian military forces in Chechnya.

80. On 20 February 2001 a body bearing signs of violence was found in a mass grave in Zdorovye, an abandoned holiday village in the Oktyabrskiy district of Grozny, along with the bodies of about fifty other people, including that of Nura Luluyeva (see *Luluyev and Others v. Russia*, no. 69480/01, § 28, ECHR 2006-XIII). The grave was located less than a kilometre from the military base.

81. On 5 March 2001 Islam Tazurkayev's father, Mr T.Kh., identified the body as being his son.

*2. Main steps of the official investigation into the abduction of Islam Tazurkayev*

82. On 24 February 2001 the Grozny prosecutor's office opened criminal case no. 21037 in connection with the discovery of the mass grave and Islam Tazurkayev's body. According to the crime scene examination report, he had suffered injuries to the top of his head, and his hands had been tied behind his back.

83. On 2 March 2001 the investigators ordered a forensic expert examination of the body. It does not appear that the examination was ever carried out (see paragraph 90 below).

84. On 5 March 2001 the body was handed over to the relatives for the burial.

85. On the same day Islam Tazurkayev's father, Mr T.Kh., was granted victim status in the criminal case.

86. On 15 April 2003 the investigators sent requests to the Chechnya FSB, the Grozny ROVD and the military commander's office, seeking information about Islam Tazurkayev's detention on their premises and the extent of his involvement in illegal armed groups. Negative responses were given; only the FSB gave a substantive response. In their reply of 18 April 2003, they claimed that Islam Tazurkayev had been listed as a member of illegal armed groups between 1994 and 1996.

87. On 23 May 2003 the investigators decided to separate the Islam Tazurkayev murder case from the other cases related to the discovery of the mass grave in February 2001. The case file was given the number 40090.

88. On 23 August 2003 the investigation was suspended for failure to identify the perpetrators.

89. On 30 March 2004 the investigation was resumed by a supervising prosecutor who ordered additional investigative measures to be carried out. In particular, the investigators were asked to identify potential witnesses and to question them in connection with Islam Tazurkayev's abduction.

90. On 12 April 2004 the investigators asked the forensic experts to provide a copy of their conclusions concerning the examination of Islam Tazurkayev's body. The experts informed them that no forensic examination of Islam's body had been carried out.

91. The investigation into Islam Tazurkayev's abduction and murder was suspended and resumed repeatedly and is still pending.

92. The Government furnished a copy of criminal case no. 40090 into the abduction and murder of Islam Tazurkayev, without specifying the number of pages. The documents comprised one volume.

*3. Witness statements taken by the investigation*

93. On 5 March 2001 Islam Tazurkayev's father Mr T.Kh. identified his son's body and was questioned by the investigators. He stated that on

20 January 2001 his son had been arrested and taken away by unidentified servicemen in APCs.

94. On 8 April 2001 he was questioned again. He stated that an unidentified woman had informed him that his son had been arrested on Minutka Square by armed men in camouflage uniforms. He and his relatives had searched for his son in various departments of the interior, including the Oktyabrskiy and the Zavoskoy ROVDs, but to no avail. He had not reported the abduction to the authorities; on 4 March 2001 he had found his son's body with a gunshot wound to the head. The bullet extracted by the forensic expert had been identified as having been fired from a Stechkin pistol. He told them his son had not been involved in any military action against the federal forces.

95. In April 2004 the investigators questioned several local residents, all of whom stated that they had not witnessed the abduction.

96. On 24 April 2004 an officer of the Oktyabrskiy ROVD, Mr A.A., prepared an internal report on the criminal case which reads, in its main part, as follows:

“... it was established that in 1999 Islam Tazurkayev was the leader of a group involved in military action against the federal forces. ...

On 20 January 2001 unidentified servicemen in armoured vehicles carried out an identity check on Minutka Square, where checkpoint no. 28 was located ...

When vehicles passed through the checkpoint, servicemen checked [the identity of] all passengers. Islam Tazurkayev (who was among them) was escorted from the bus and taken away to an unknown destination ... It was established that this operation had been carried out by special units of the federal forces stationed in the Chechen Republic in order to apprehend members of the illegal armed groups Islam Tazurkayev had belonged to ...”

#### *4. Abduction of Abubakar Tazurkayev and subsequent events*

97. At the material time Abubakar Tazurkayev was living with his family in Nazran, Ingushetia. In September 2003 they went to Grozny for a few days to exchange their passports and were staying with the first applicant at 48 Tsimlyanskaya Street in the Novye Aldi district of the city.

98. According to the applicants, on 7 September 2003 a group of three military servicemen came to their house. They spoke to Mr T.Kh., Abubakar Tazurkayev's father, who at the material time was working as a herbal healer, providing unlicensed medical services to the local community. One of the three men was unwell and asked for his assistance. Mr T.Kh. spoke to the men for about three or four hours.

99. On the night of 7 September 2003 the applicants' neighbourhood was cordoned off by the military. Early next morning at about 3 a.m. or 4 a.m., a group of armed men in military uniforms arrived at the first applicant's house and took Abubakar Tazurkayev away in a white VAZ

vehicle. One of the abductors appeared to be one of the men who had visited the applicants' house the previous day seeking medical assistance.

100. After the abduction, at about 5 a.m., the applicants heard gunshots in the vicinity of their neighbourhood, which was still cordoned off by the military.

101. On 10 September 2003 a local radio station broadcasted news that the leader of an illegal armed group, Abubakar Tazurkayev, had been eliminated as the result of a special operation carried out by the federal forces on 8 September 2003.

102. The applicants have not had any news of Abubakar ever since.

*5. Main steps of the official investigation into the abduction of Abubakar Tazurkayev*

103. The Government furnished a copy of criminal case no. 30181 into the abduction of Abubakar Tazurkayev, without specifying the number of pages. The documents comprised one volume.

104. On 12 September 2003 the second applicant reported her brother's disappearance to the Zavodskoy ROVD, stating that he had disappeared from the courtyard of their house on the night of 7 September.

105. On 14 September 2003 Abubakar Tazurkayev's wife, Ms T.Z., signed a form requesting that a search for her husband be carried out and stating that on the night of 7 September 2003 armed men in camouflage uniforms had forcibly taken him away.

106. On 17 September 2003 Abubakar Tazurkayev's father Mr T.Kh. complained to the President's Envoy that his son had been abducted by armed men in camouflage uniforms. He stated that the abductors had broken into the house and that they had neither "introduced themselves nor explained the reason for his arrest." The complaint was forwarded by the Envoy to the Zavodskoy district prosecutor's office in Grozny the same day.

107. On 22 September 2003 the prosecutor's office opened an investigation into the abduction of Abubakar Tazurkayev under Article 126 of the Criminal Code (kidnapping).

108. On 30 October 2003 the first applicant was granted victim status in the criminal case and questioned.

109. On 22 November 2003 the investigation was suspended for failure to identify the perpetrators.

110. On 15 February 2004 a supervising prosecutor overruled the decision as premature and ordered that the investigation be resumed.

111. On 17 February 2004 the crime scene was examined. No evidence was collected.

112. On 12 March 2004 the Department for the Ministry of the Interior of the Southern Federal Circuit replied to the investigators' request stating that according to information in their possession, Abubakar Tazurkayev had been involved in illegal armed groups.

113. On 15 March 2004 the investigation was suspended yet again for failure to identify the perpetrators.

114. On 30 January 2007 the applicants complained to the investigators that Abubakar Tazurkayev had been abducted by State agents and that they required information as to how the investigation was progressing. In reply they were informed that the investigation had been suspended and that operational search measures were being carried out to establish his whereabouts.

115. The investigation was resumed and suspended repeatedly.

116. On 20 May 2008 the fourth applicant asked the investigators to grant her victim status in the criminal case. She was granted that status on 18 September 2008.

*6. Witness statements taken by the investigation*

117. On 12 September 2003 the investigators questioned the second applicant, who stated that on the night of 7 September her brother had disappeared under mysterious circumstances and that his absence had only been noticed the morning after.

118. On 14 September 2003 the investigators questioned several of Abubakar Tazurkayev's relatives, including the first applicant, who stated that on the night of the abduction she had not been at home.

119. The fourth applicant stated that on the night of 7 September 2003 unidentified armed men had abducted her brother. On 10 September 2003 she had heard her brother's name read out on the radio as being the leader of an illegal armed group who had been eliminated by the authorities.

120. Abubakar Tazurkayev's wife Ms T.Z. (in the documents submitted also referred to as D.Z.) stated that on the night of the abduction at about 3 a.m. a group of armed men in masks and camouflage uniforms had broken into their house and had taken her husband away. She also stated that in August 2000 her husband had been detained by FSB officers for two weeks and released.

121. Mr T.Kh. stated that his son had been abducted by armed men in masks and camouflage uniforms. He also stated that he had provided unlicensed medical services from home and that the day before the abduction, armed Chechen men in camouflage uniforms had come to his house and told him that they would be bringing a sick man to him. The men had arrived in a VAZ vehicle with a registration number containing the digits 909. Two of the men had introduced themselves as 'Lomi-Ali' and 'Edilbek'.

122. On 30 October 2003 the first applicant told the investigators again that on the night of the abduction she had not been home and that she had learnt about her son's disappearance from her daughter-in-law Ms T.Z.

123. On 30 October 2003 the investigators questioned Mr T.Kh. again, who stated that he had learnt about his son's disappearance from his



daughter-in-law and that he had learnt from a neighbour, Mr Y.S., that a radio station had broadcasted news that his son had been arrested.

124. On 24 February 2004 the investigators questioned Ms T.Z. again. She reiterated that she had seen her husband being abducted from their courtyard by three armed men in camouflage uniforms. The abductors had put him into a white vehicle and had driven away in the direction of Grozny. She stated again that in 2000 her husband had already been taken away and released several days later.

125. On 25 February 2004 the investigators questioned the second applicant again. She stated that she had learnt about her brother's abduction from his wife. She said that at some point in 2000 her brother had been taken away by officers of the Zavovdskoy ROVD and released a few days later.

126. On 9 March 2004 the investigators questioned the fourth applicant again. She stated that she had learnt about her brother's abduction from her son, who was staying in the family house on the night of the events. According to her, in 2000 her brother had already been abducted by FSB officers and held for several days. After the incident, he had moved with his family to Nazran, Ingushetia. In August 2003 he had returned to Grozny to sort out his passport. On 10 September 2003 she had heard her brother's name read out on the radio as being the leader of an illegal armed group who had been eliminated by the authorities. She had telephoned one of the radio stations broadcasting the news and found out that this information had been provided to them by the press secretary of the United Group Alignment (UGA), Mr Shabolkin.

#### **D. Application no. 32782/10, Khutsayeva v Russia**

127. The applicant, Ms Maryat Khutsayeva, was born in 1941. She is the wife of Supyan Khutsayev, born in 1936. She lives in Gekhi, Chechnya and is represented before the Court by lawyers from the Stichting Russian Justice Initiative.

##### *1. Abduction of the applicant's husband and subsequent events*

128. According to the applicant, on 13 February 2001 a group of armed representatives of the federal forces arrived at her house in Gekhi and arrested her husband. The servicemen told the applicant that her husband was suspected of kidnapping. On 16 February 2001 she paid a ransom of 4,000 United States dollars (USD) to the servicemen, who then released her husband from detention. According to him, he had been detained in the vicinity of the village of Tangi-Chu in the Urus-Martan district, Chechnya.

129. At about 7 a.m. on 26 February 2001 a group of about thirty armed men in camouflage uniforms broke into the applicant's house. The men had

arrived in an armoured Ural lorry. She and her relatives thought that the intruders were representatives of the federal forces.

130. The men forced her husband into the lorry and the vehicle drove away, without being stopped at the military checkpoint situated between Urus-Martan and Gekhi. Her daughter, Ms Malika Ts., managed to follow the abductors' vehicle, which eventually stopped at the district military commander's office in Urus-Martan town centre.

131. On 27 February 2001 the applicant and her daughter waited outside the military commander's office for news about Supyan Khutsayev. At one point the Ural lorry drove out of the premises; they could not see its registration number as it was covered in mud. The women noticed that a blanket, which the abductors had taken from their house, was hanging off from the tailgate of the vehicle.

132. On 4 March 2001 a body bearing signs of violence was found next to the Michurina state farm in the Urus-Martan district. Tyre tracks of military vehicles were found next to it.

133. Later that day the applicant and her relatives identified the body as being Supyan Khutsayev.

## *2. Main steps of the official investigation into the abduction*

134. On 4 March 2001 the Urus-Martan district prosecutor's office opened an investigation into Supyan Khutsayev's killing under Article 105 § 1 (murder).

135. On the same date the investigators examined the scene where the body was discovered. No evidence was collected. According to their report, tyre tracks of military vehicles had been found next to the body, which had borne injuries to the left temple and breastbone.

136. On 9 March 2001 the applicant's daughter, Ms Malika Ts., was granted victim status in the criminal case and questioned.

137. On 12 March 2001 the investigators ordered a forensic expert examination of the cause of Supyan Khutsayev's death. That examination was never carried out.

138. On 31 March 2001 the investigators forwarded the criminal case to the Chechnya prosecutor's office for it to be transferred to the military prosecutor's office in accordance with the rules of jurisdiction. The main part of their covering letter stated as follows:

“... the preliminary investigation established that on 26 February 2001 [Supyan Khutsayev] had been detained by military servicemen from the Urus-Martan military commander's office and taken to [their headquarters] in Urus-Martan [town centre] ...”

139. On 10 April 2001 the Chechnya prosecutor's office returned the case to the district prosecutor's office.

140. On 4 May 2001 the investigators suspended the investigation for failure to identify the perpetrators. The applicant was not informed thereof.

141. On 17 May 2006 the applicant wrote to the district prosecutor's office, asking to be granted victim status and for copies of the investigative decisions, which she needed in order to apply for benefits at the Ministry of Labour and Social Development.

142. On 23 May 2006 the investigation was resumed.

143. On 25 May 2006 the applicant was granted victim status in the criminal case.

144. On the same date, 25 May 2006 the investigation was suspended for failure to identify the perpetrators.

145. On 26 May 2007 the investigation was resumed by a supervising prosecutor. The prosecutor noted, in particular, that there was no forensic expert evaluation in the criminal case file establishing Supyan Khutsayev's cause of death, and ordered additional investigative measures to be carried out. On the same date the applicant's daughter was informed of the decision.

146. On 21 June 2007 the investigators ordered a forensic expert examination to establish the cause of Supyan Khutsayev's death based on the crime scene examination report of 4 March 2001. According to an experts' report dated 28 June 2007, it was impossible to establish the cause of death based on the crime scene examination report owing "to the scant and deficient information" contained therein.

147. On 26 June 2007 the investigators asked the Urus-Martan military commander's office for information about which military and police units had been stationed in Urus-Martan in February 2001. Negative responses were given as they did not have the relevant information.

148. On the same date the investigation was suspended for failure to identify the perpetrators. The applicant was informed thereof.

149. On 6 February 2008 the applicant complained to the Achkhoy-Martan district investigator's office that the investigation was unreasonably lengthy and requested permission to access the case file. On 15 February 2008 the investigators replied that she could only access the file following completion of the criminal proceedings.

150. On 15 December 2008 another daughter of the applicant, Ms Madina Kh., asked the investigators to grant her victim status in the criminal case as her mother was in poor health. She also complained that her mother had not been informed of the outcome of her complaint of 6 February 2008. In a reply dated 15 January 2009 the investigators informed Ms Madina Kh. that her sister Ms Malika Ts. had already been granted victim status, that the investigation was still pending and that, as they had told her mother on 15 February 2008, access to the investigation file was only given following completion of an investigation, which in their case was still pending. The investigators also stated that on 15 January 2009 the investigation had been resumed and that additional investigative measures were being carried out to identify the perpetrators.

151. On 17 January 2009 the investigators sent a request to the Urus-Martan ROVD to carry out operational search measures. On 6 February 2009 the ROVD replied that the measures had been carried out, but that no relevant information had been obtained.

152. On 19 January 2009 the investigators sent requests to various military bodies, seeking information about which military units had been stationed in Urus-Martan between 26 February and 4 March 2001 and whether they had carried out any special operations. Replies in the negative were received.

153. On the same date Ms Madina Kh. was granted victim status in the criminal case and questioned. She was given access to copies of the investigator's order of 12 March 2001 to carry out a forensic expert examination of Supyan Khutsayev's body, and to the expert's reply of 28 June 2007.

154. On 16 February 2009 the investigation was suspended yet again. Ms Madina Kh. was informed thereof.

155. On 23 March 2009 the supervising prosecutor resumed the investigation, stating that its suspension was unlawful and premature. In particular, the investigators had failed to either question Supyan Khutsayev's relatives and neighbours, or to identify and question the owners of the Ural lorries used by the abductors.

156. The investigation was suspended and resumed repeatedly and is still pending.

157. The Government submitted a copy of criminal case no. 25033 into the murder of Supyan Khutsayev, without specifying the number of pages. The documents comprised one volume.

### *3. Witness statements taken by the investigation*

158. On 9 March 2001 the investigators questioned the applicant, who stated that at 6.45 a.m. on 26 February 2001 a group of twenty servicemen in camouflage uniforms armed with submachine guns had arrived at their house in a military Ural lorry. Her husband had been bedridden owing to health problems caused by his previous abduction on 13 February 2001. The servicemen had forced him to go outside; one of them had gone back in and grabbed a pink blanket from the bed. Her daughter Ms Malika Ts. had followed the lorry in which her father had been driven away and had seen it go to the district military commander's office in Urus-Martan. The next day, while waiting outside the premises, the applicant had seen the same Ural lorry pulling out. She had looked inside the vehicle and noticed the pink blanket which the abductors had taken from her house. It was the applicant's view that her husband had been abducted and subsequently killed by the servicemen of the Urus-Martan military commander's office.

159. Ms Malika Ts. gave her statement to the investigators the same day. According to her, on 13 February 2001 her father had already been abducted

and detained in a military unit stationed by the main road between Urus-Martan and Tangi-Chu. Her father could not tell exactly where he had been detained since a bag had been put over his head, but he had known roughly where he was from the noise of helicopters landing nearby. On 17 February 2001 he had been thrown out of a vehicle next to the Martanka river and had made his way home. On 26 February 2001, after her father had been abducted in the Ural lorry, she had managed to stop a passing car and asked the driver to follow the abductors. She had seen them drive the lorry into the headquarters of the Urus-Martan military commander's office. The following day the same lorry had pulled out of the premises and she had seen a blanket hanging off it; the very same blanket which had been taken from their house by the abductors. She had not seen the registration number as it had been covered in mud. It was her view that her father had been abducted by the servicemen of the Urus-Martan military commander's office.

160. From the documents submitted it appears that no servicemen of the Urus-Martan military commander's office were ever questioned by the investigators.

161. On 25 May 2006 the investigators questioned the applicant again. She reiterated her previous statement.

162. On 19 January 2009 the applicant's other daughter Ms Madina Kh. was questioned by the investigators. As regards the circumstances preceding her father's abduction, she stated that in November 2000 her brothers had been arrested in Astrakhan and convicted of kidnapping a businesswoman, Ms M.P. Her father had gone there to find out why his sons had been arrested. He had also been arrested and a week later had been released. After his return to Chechnya, in January 2001 her father had been taken away by armed men who had introduced themselves as officers of the Urus-Martan ROVD. Her aunt had gone to the ROVD and asked an officer named Sergey about Supyan Khutsayev's fate. Sergey had told her that a certain Mr Shaid Takayev had lodged a criminal complaint against Supyan Khutsayev for unknown reasons. Sergey had come to an agreement with her father that they would release him in exchange for USD 2,000. Two days after the money had been paid her father had been released. On 13 February 2001 her father had been abducted again by officers of the same ROVD. One of the officers, Lechi Mamatsuyev, had acted as the negotiator and told her mother, the applicant, that Supyan Khutsayev would be released in exchange for USD 4,000. Her mother had paid the money and the abductors had told her where to meet them to hand her husband over. On the same day her father, who had been blindfolded, had been thrown out of a moving UAZ vehicle in the vicinity of Urus-Martan. Supyan Khutsayev had been severely beaten and could not walk. As to the circumstances concerning his abduction on 26 February 2001, Ms Madina Kh. gave a statement similar to that of her sister Ms Malika Ts.

163. On 5 February 2009 Mr T.Z. was questioned. He submitted that his uncle Shaid Takayev had moved from Chechnya to Saratov. In 2000 or 2001 a woman had been kidnapped by Supyan Khutsayev's relatives.

164. On 1 April 2009 the investigators questioned the applicant again. In addition to her initial submissions, she stated that one of her sons had been released from prison, three were currently in prison and another had been killed.

165. On 2 April 2009 the investigators questioned Mr M.T., who stated that his brother Lechi Mamatsuyev had been killed in December 2001.

166. On 8 and 10 April 2009 the investigators questioned an officer of the ROVD, Mr A.A., and a local resident, Mr M.A. both of whom had no pertinent information for the investigation.

#### *4. The Government's submissions on the facts*

167. In respect of all four applications the Government did not challenge the allegations as presented by the applicants. However, they stated that there was no evidence in any of them to suggest that State agents had been involved in the alleged abductions and/or subsequent killings.

168. Upon the Court's request to submit specific documents reflecting the most important steps taken by the investigation, the Government furnished copies of "entire criminal case files". From the documents submitted it appears that in *Dovletukayev* (application no. 7821/07) only parts of the requested documents were furnished to the Court (see, for example, paragraphs 33, 35, 36, 38 and 42 above).

## II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

169. For a summary of the relevant domestic law and practice and for international and domestic reports on disappearances in Chechnya see *Aslakhanova and Others v. Russia* (nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, §§ 43-59 and 80-83, 18 December 2012).

## THE LAW

### I. JOINDER OF THE APPLICATIONS

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

## II. SIX-MONTH RULE

### A. The parties' submissions

#### 1. The Government

171. The Government argued that the applicants had not complied with the six-month rule “on account of their failure to exhaust domestic remedies”. It was their view that the six-month time-limit had to be triggered by the appeal decision, a stage not yet reached in the applicants’ criminal cases as the investigations were still in progress. In addition, the applicants had failed to lodge appeals against the investigators’ decisions to the domestic courts or to claim civil damages.

#### 2. The applicants

172. The applicant in *Dovletukayev* (application no. 7821/07) stated that he had complied with the admissibility criteria and the relevant time-limits and that the only effective remedy – the criminal investigation – had been ineffective.

173. The applicants in *Magamadova*<sup>1</sup> (application no. 10937/10), *Tazurkayeva and Others* (application no. 14046/10) and *Khutsayeva* (application no. 32782/10) submitted that they had complied with the six-month rule. In particular, they noted that during the armed conflict in Chechnya thousands of people had been killed or had disappeared and the newly-formed investigative authorities had opened criminal cases into those events. Therefore, the applicants had found some of the delays in the investigations objectively justified. They argued that there had not been any excessive or unexplained delays on their part in submitting their applications to the Court.

174. The applicants further stated that after the criminal investigations had been opened they had had no reason to doubt their effectiveness because of their age, lack of legal knowledge and poor command of Russian. They had not had the financial means to hire a lawyer, and the Russian legislation did not provide victims with the right to receive free legal assistance. After a certain length of time they had begun to doubt the effectiveness of the investigation on account of the delays, and had found lawyers who agreed to assist them free of charge. Only after the lawyers had familiarised themselves with the contents of the investigation file had the applicants realised that the proceedings had been ineffective. According to the applicants, the six-month period had started to run from that date.

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<sup>1</sup> Rectified on 7 April 2014 : the text was “ *Magomadova* “

175. The applicants stressed that their applications had been lodged within six months of them finding out that the investigation had been ineffective.

176. As for the alleged failure to exhaust domestic remedies, all the applicants, referring to the Court's case law, submitted that they were not obliged to pursue civil remedies and that lodging complaints against the investigators under Article 125 of the Criminal Procedure Code would not have remedied the investigation's shortcomings. They all submitted that the only effective remedy in their cases – the criminal investigation into the abduction and/or death of their relatives – had proved to be ineffective.

## **B. The Court's assessment**

### *1. Compliance with the six-month rule*

177. The Court observes that in a number of cases concerning ongoing investigations into the deaths of applicants' relatives it has examined the period of time from which the applicant could or should start doubting the effectiveness of a remedy and its bearing on the six-month time-limit provided for in Article 35 § 1 of the Convention (see *Şükran Aydın and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005; *Elsanova v. Russia* (dec.) no. 57952/00, 15 November 2005; and *Narin v. Turkey*, no. 18907/02, § 50, 15 December 2009). The determination of whether the applicant in a given case has complied with the admissibility criteria will depend on the circumstances of the case and other factors such as the diligence and interest displayed by the applicants, as well as the adequacy of the investigation in question (see *Narin*, cited above, § 43). The Court has found that in cases concerning instances of violent death the ineffectiveness of the investigation will generally be more readily apparent; the requirement of expedition may require an applicant to bring such a case to Strasbourg within a matter of months, or at most, depending on the circumstances, only a few years after the events (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 158, ECHR 2009).

178. As it can be seen from the case-law referred to above, the Court has refrained from indicating a specific period for establishing when an investigation has become ineffective for the purposes of assessing the date the six-month period starts to run from. The determination of such a period by the Court depends on the circumstances of each case and other factors such as the diligence and interest displayed by the applicants.

179. In the case at issue, a question arises as to whether the applicants should be placed under a more stringent obligation to pursue their complaints and to apply to Strasbourg sooner, since they had learnt of their relatives' deaths. The Court has previously concluded that the discovery of



remains bearing signs of violence and buried in circumstances highly suggestive of extra-judicial execution or murder trigger a renewed obligation on the authorities to take investigative steps to identify the remains, the likely cause and circumstances of death and the identity of the perpetrators of any unlawful violence. The finding of the bodies in a particular location, bearing signs from which the cause of death may be ascertained and allowing the pursuit of leads that might possibly lead to identification of those responsible for the killings must be regarded as crucial evidence casting new light on the case (see *Charalambous and Others v. Turkey* (dec.), nos. 46744/07 et al., § 58, 1 June 2010).

180. However, in the present case the circumstances in which four of the victims were abducted and killed and one victim, Abubakar Tazurkayev, was abducted and then disappeared, were never elucidated and the finding of the bodies was preceded by a period (ranging from six days in the *Supyan Khutsayev* case to one month in the *Islam Tazurkayev* case) during which they too had been considered missing. The applicants maintained active contact with the investigative authorities throughout the period in question and the investigation and thus it does not appear that they perceived the remedy as ineffective.

181. Having examined the documents in the case at hand, the Court finds that the conduct of the applicants *vis-à-vis* the investigation in each of their criminal cases has been determined not by their perception of the remedy as ineffective, but rather by their expectation that the authorities would, of their own motion, provide them with an adequate answer in the face of their serious complaints. They furnished the investigative authorities with timely and sufficiently detailed accounts of their relatives' abductions, assisted them with finding witnesses and other evidence and fully cooperated in other ways (see, by contrast, *Nasirkhayeva v. Russia* (dec.), no. 1721/07, where the applicant lodged her complaint with domestic authorities six years after the events). They thus reasonably expected further substantive developments from the investigation. It could not be said that they failed to show the requisite diligence by waiting for the pending investigation to yield results (see, *mutatis mutandis*, *Abuyeva and Others v. Russia*, no. 27065/05, § 179, 2 December 2010).

182. The Court thus considers that investigations were being conducted, albeit sporadically, during the periods in question, and that the applicants did all that could be expected of them to assist the authorities (see *Varnava and Others*, cited above, § 166, and *Er and Others v. Turkey*, no. 23016/04, § 60, 31 July 2012). In the light of the foregoing, the Court dismisses the Government's objection as to the admissibility of these complaints based on the six-month time-limit.

## 2. *Exhaustion of domestic remedies*

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

184. As regards criminal-law remedies, the Court observes that in a recent judgment it concluded that the ineffective investigation of disappearances that occurred in Chechnya between 2000 and 2006 constitutes a systemic problem, and that criminal investigations are not an effective remedy in this respect (see *Aslakhanova and Others*, cited above, § 217). Taking into account the similarity of the circumstances of the present case to those examined by the Court in the *Aslakhanova and Others* case, and bearing in mind that the only meaningful distinction is that in the applications under examination the applicants' abducted relatives were found dead after the abduction, as well as that the fate of the abducted men has not been elucidated by the official investigation, the Court finds that the conclusions concerning the systemic problem are applicable in the present four applications.

185. In such circumstances, and noting the absence over the years of tangible progress in any of the criminal investigations into the abductions and subsequent death of the applicants' relatives, the Court concludes that this objection must be dismissed since the remedy relied on by the Government was not effective in the circumstances.

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

### A. *The parties' submissions*

186. The applicants maintained that it had been established beyond reasonable doubt that the men who had taken away and then killed their relatives had been State agents. In support of that assertion they referred to the ample evidence contained in their submissions and the criminal investigation files, in so far as they had been disclosed by the Government. They submitted that they had each made a *prima facie* case that their relatives had been abducted and killed by State agents and that the essential facts underlying their complaints had not been challenged by the Government.

187. The Government did not contest the essential facts of each case as presented by the applicants. At the same time, they claimed that none of the investigations had obtained information proving that the applicants' relatives had been detained or killed by State agents. There was no evidence proving beyond reasonable doubt that State agents were involved in their abductions and deaths.

## **B. The Court's assessment**

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

### *1. General principles*

#### **(a) Burden of proof**

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

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

191. According to the Court's settled case-law, it is for the applicant to make a *prima facie* case and to adduce appropriate evidence. If, in response to such allegations made by the applicants, the Government then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn (see *Varnava*, cited above, § 184, with further references). The State bears the burden of providing a plausible explanation for injuries and deaths occurring to persons in custody (see *Ribitsch*, § 32,

and *Avşar*, § 283, both cited above, with further references). The Court reiterates in this connection that the distribution of that burden is intrinsically linked to, among other things, the specificity of the facts of the case (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII). In cases concerning armed conflicts, the Court has extended that obligation to situations where individuals were found injured or dead, or had disappeared, in areas under the exclusive control of the authorities and where there was prima facie evidence that State agents could be involved (see *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II; *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005; *Gandaloyeva v. Russia*, no. 14800/04, § 89, 4 December 2008; and *Varnava*, cited above, § 184).

**(b) Prima facie evidence of State control**

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

193. In adjudicating those cases, the Court bore in mind the difficulties associated with obtaining the evidence and the fact that, often, little evidence could be submitted by the applicants in support of their applications. The prima facie threshold was reached primarily on the basis of witness statements, including the applicants' submissions to the Court and to the domestic authorities, and other evidence leading the Court to conclude that there were military or security personnel in the area concerned at the relevant time. The Court relied on references to military vehicles and equipment; the unhindered passage of the abductors through military roadblocks, in particular during curfew hours; the conduct typical of security operations, such as the cordoning off of areas, checking of identity documents, searching of premises, questioning of residents and communicating within a chain of command; and other relevant information about the special operations, such as media and NGO reports. Given the presence of those elements, it concluded that the areas in question had been within the exclusive control of the State authorities in view of the military or security operations being carried out there and the presence of servicemen (see, for example, *Ibragimov and Others v. Russia*,

no. 34561/03, § 82, 29 May 2008; *Abdulkadyrova and Others v. Russia*, no. 27180/03, § 120, 8 January 2009; and *Kosumova and Others v. Russia*, no. 27441/07, § 67, 7 June 2011). If the Government failed to rebut this presumption, this would entail a violation of Article 2 in its substantive part. Conversely, where the applicants failed to make a prima facie case, the burden of proof could not be reversed (see, for example, *Movsayevy v. Russia*, no. 20303/07, § 76, 14 June 2011).

**(c) Whether the disappeared persons could be presumed dead**

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

195. Having regard to the numerous previous cases concerning disappearances in Chechnya which have come before it, the Court has found that in the particular context of the conflict, when a person was detained by unidentified State agents without any subsequent acknowledgment of the detention, this could be regarded as life-threatening (see, among many other authorities, *Bazorkina v. Russia*, no. 69481/01, 27 July 2006; *Luluyev and Others v. Russia*, cited above; *Dubayev and Bersnukayeva v. Russia*, nos. 30613/05 and 30615/05, 11 February 2010; and *Aslakhanova and Others*, cited above).

196. The Court has made findings of presumptions of deaths in the absence of any reliable news about the disappeared persons for periods ranging from four years (see *Askhabova v. Russia*, no. 54765/09, § 137, 18 April 2013) to more than ten years.

*2. Application of the principles to the present case*

**(a) Application no. 7821/07, Dovletukayev v. Russia**

197. Several witness statements and other documents collected by the applicant confirm that his son, Aslan Dovletukayev, had been abducted from his home in Avtury on 9 January 2004 by a group of armed men using military vehicles and that his body had been found several days later bearing signs of violence (see, for example, paragraphs 8-11, 25, 33-35 above). In view of all the materials in its possession, the Court finds that the applicant

has presented a prima facie case that his son had been abducted and then killed by State agents in the circumstances as set out by him.

198. The Government failed to produce any documents from the criminal investigation file, or to otherwise discharge their burden of proof, for example by providing a satisfactory and convincing explanation for the events in question.

199. Having regard to the above principles, the Court considers that the evidence furnished by the parties proves “beyond reasonable doubt” that Aslan Dovletukayev had been detained by State agents on 9 January 2004 in Avtury and then killed while under their exclusive control.

**(b) Application no. 10937/10, Magamadova<sup>1</sup> v. Russia**

200. Several witness statements and other documents collected by the applicant confirm that her son, Khizir Gulmutov, had been abducted from his home in Kurchaloy on 30 December 2002 by a group of armed men using military vehicles and that his body had been found several days later bearing signs of violence (see, for example, paragraphs 53-54, 59 and 71-73 above). In view of all the materials in its possession, the Court finds that the applicant has presented a prima facie case that her son had been abducted and then killed by State agents in the circumstances as set out by her.

201. The Government failed to produce any documents from the criminal investigation file, or to otherwise discharge their burden of proof, for example by providing a satisfactory and convincing explanation for the events in question.

202. Having regard to the above principles, the Court considers that the evidence furnished by the parties proves “beyond reasonable doubt” that Khizir Gulmutov had been detained by State agents on 30 December 2002 in Kurchaloy and then killed while under their exclusive control.

**(c) Application no. 14046/10, Tazurkayeva and Others v. Russia**

*(i) In respect of Islam Tazurkayev*

203. Several witness statements and other documents collected by the applicants confirm that their relative Islam Tazurkayev, had been abducted 20 January 2001 by a group of armed men using military vehicles and that his body had been found several days later bearing signs of violence (see, for example, paragraphs 80, 93, 94 and 96 above). In view of all the materials in its possession, the Court finds that the applicants have presented a prima facie case that Islam Tazurkayev had been abducted and then killed by State agents in the circumstances as set out by them.

204. The Government failed to produce any documents from the criminal investigation file, or to otherwise discharge their burden of proof,

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<sup>1</sup> Rectified on 7 April 2014 : the text was “ Magomadova v. Russia ”

for example by providing a satisfactory and convincing explanation for the events in question.

205. Having regard to the above principles and to its findings in the case of *Luluyev and Others v. Russia*, cited above, the Court considers that the evidence furnished by the parties proves “beyond reasonable doubt” that Islam Tazurkayev had been detained by State agents on 20 January 2001 in Grozny and then killed while under their exclusive control.

*(ii) In respect of Abubakar Tazurkayev*

206. Several witness statements and documents from the investigation file furnished by the applicants (see, for example, paragraphs 106, 114, 119, 123 and 126 above) demonstrate that Abubakar Tazurkayev had been abducted in Noviye Aldi on 8 September 2003 by a group of armed servicemen. In view of all the materials in its possession, the Court finds that the applicants have presented a *prima facie* case that their relative had been abducted by State agents in the circumstances as set out by them.

207. The Government did not provide a satisfactory and convincing explanation for the events in question. Therefore, they failed to discharge their burden of proof.

208. Bearing in mind the general principles enumerated above, the Court finds that Abubakar Tazurkayev was taken into custody by State agents on 8 September 2003. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraphs 194-95 above), the Court also finds that he may be presumed dead following his unacknowledged detention.

**(d) Application no. 32782/10, Khutsayeva. v Russia**

209. Several witness statements and other documents collected by the applicant confirm that her husband Supyan Khutsayev had been abducted from his home in Gekhi on 26 February 2001 by a group of armed men using military vehicles and that his body had been found several days later bearing signs of violence (see, for example, paragraphs 132, 135, 138 and 158-59 above). In view of all the materials in its possession, the Court finds that the applicant has presented a *prima facie* case that her husband had been abducted and then killed by State agents in the circumstances as set out by her.

210. The Government failed to produce any documents from the criminal investigation file, or to otherwise discharge their burden of proof, for example by providing a satisfactory and convincing explanation for the events in question.

211. Having regard to the above principles, the Court considers that the evidence furnished by the parties proves “beyond reasonable doubt” that Supyan Khutsayev had been detained by State agents on 26 February 2001 in Gekhi and then killed while under their exclusive control.

**(e) Conclusions**

212. The Court finds that in all four applications the applicants' relatives were abducted by armed men in uniforms, displaying the behaviour characteristic of security operatives. Their conduct and appearance, ability to pass through roadblocks and to cordon areas along with their use of military vehicles, in all probability, lead the Court to conclude that these could not be anyone other than State servicemen. The applicants' allegations are supported by the witness statements given by them and by the investigations. In their submissions to the authorities the applicants consistently maintained that their relatives had been abducted by State agents. The domestic investigations accepted as fact the versions of events as presented by the applicants, and took steps to check whether State servicemen had been involved in the incidents. As it appears from the documents, the investigations regarded the possibility of abduction and subsequent killing by servicemen as the only, or at least the main, plausible explanation of the events.

213. The Government did not dispute the circumstances of the abductions and the discovery of the bodies of the applicants' abducted relatives. Their arguments were limited to references to the unfinished criminal investigations, or were of a speculative nature and stood in contradiction to the evidence reviewed by the Court. In any case, they were insufficient to discharge them of the burden of proof shifted to them in such cases.

214. The detention of the applicants' relatives in life-threatening circumstances and the subsequent discovery of their bodies, except for that of Abubakar Tazurkayev, contain sufficient elements to enable the Court to make findings about the carrying out of security operations and thus about the State's exclusive control over the detainees (see, among many other authorities, *Aslakhanova and Others*, cited above, § 114). The facts of the present case strongly suggest that the death of the applicant's relatives was part of the same sequence of events as their abduction and support the conclusion that they were extrajudicially executed by State agents following their unacknowledged detention (see, among many other authorities, *Khachukayev v. Russia*, no. 28148/03, § 122, 23 April 2009, and *Shakhgiriyeve and Others v. Russia*, no. 27251/03, § 175, 8 January 2009).

215. As for Abubakar Tazurkayev, his detention in life-threatening circumstances coupled with the absence of any news from him for several years enables the Court to conclude that he may be presumed dead following his unacknowledged detention by State agents (see, among many other authorities, *Aslakhanova and Others*, §§ 113-15, cited above).



#### IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

216. The applicants complained under Article 2 of the Convention that their relatives had been abducted and killed by State agents and that the domestic authorities had failed to carry out effective investigations into the matters. Article 2 reads as follows:

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

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

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

##### **A. The parties’ submissions**

217. The Government contended that none of the domestic investigations had obtained evidence proving that the applicants’ relatives had been held or killed under State control. They further noted that the mere fact that the investigative measures had not produced any specific results, or had given only limited ones, did not mean that there were any omissions on the part of the investigative authorities. They claimed that all necessary steps were being taken to comply with the obligation to carry out an effective investigation.

218. The applicants reiterated their complaints.

##### **B. The Court’s assessment**

###### *1. Admissibility*

219. The Court considers, in the light of the parties’ submissions, that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The complaint under Article 2 of the Convention must therefore be declared admissible.

###### *2. Merits*

###### **(a) Alleged violation of the right to life of the applicants’ relatives**

220. The Court has already found that in all the applications under examination, the applicants’ relatives, except for Abubakar Tazurkayev, had

been killed following their unacknowledged detention by State agents. As for Abubakar Tazurkayev, the Court has found that he could be presumed dead. In the absence of any justification put forward by the Government, the Court finds that the deaths of the applicants' relatives can be attributed to the State and that there has been a violation of the substantive aspect of Article 2 of the Convention in respect of Aslan Dovletukayev, Khizir Gulmutov, Islam Tazurkayev, Abubakar Tazurkayev and Supyan Khutsayev.

**(b) Alleged inadequacy of the investigations into the abductions**

221. The Court has already found that a criminal investigation does not constitute an effective remedy in respect of abductions which have occurred, in particular, in Chechnya between 1999 and 2006, and that such a situation constitutes a systemic problem under the Convention (see paragraph 184 above and *Aslakhanova and Others*, cited above, § 217). In the case at hand, as in many previous similar cases reviewed by the Court, the investigations have been pending for many years without bringing about any significant developments as to the identities of the perpetrators or the fate of the applicants' missing relatives. While the obligation to investigate effectively is one of means and not of results, the Court notes that each set of criminal proceedings have been plagued by a combination of the same defects as those enumerated in the *Aslakhanova and Others* judgment (cited above, §§ 123-25). Each was subjected to several decisions to suspend the investigation, followed by periods of inactivity, which further diminished the prospects of solving the crimes. No meaningful steps have been taken to identify and question the servicemen who could have witnessed, registered or participated in the operations.

222. In the light of the foregoing, the Court finds that the authorities failed to carry out effective criminal investigations into the circumstances the abductions and deaths of Aslan Dovletukayev, Khizir Gulmutov, Islam Tazurkayev, Abubakar Tazurkayev and Supyan Khutsayev. Accordingly, there has been a violation of Article 2 of the Convention in its procedural aspect.

**V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION**

223. The applicants in *Tazurkayeva and Others* (application no. 14046/10) complained of a violation of Article 3 of the Convention, as a result of the mental suffering caused to them by the disappearance of their relative Abubakar Tazurkayev. Article 3 of the Convention reads as follows:

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

### **A. The parties' submissions**

224. The Government noted that Abubakar Tazurkayev's disappearance had undoubtedly caused the applicants emotional shock. However, it could not be established beyond reasonable doubt that State agents had been involved in his abduction and the national authorities could not be therefore held liable for the applicants' mental suffering. The steps taken by the national authorities in response to the applicants' requests were not in breach of Article 3. All the measures had been carried out in accordance with the domestic law and the applicants had received replies to all their applications and requests.

225. The applicants stated that they were close relatives of Abubakar Tazurkayev and they actively sought the authorities' assistance to establish his whereabouts. Notwithstanding their numerous attempts, the applicants had not received any proper explanation or information on what happened to their close relative after his detention. The way in which the authorities had responded to the request constituted a violation of Article 3.

### **B. The Court's assessment**

#### *1. Admissibility*

226. 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*

227. The Court has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of the close relatives of the victim. The essence of such a violation does not lie mainly in the fact of the "disappearance" of the family member, but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164). Where the news about the missing person's death was preceded by a sufficiently long period when he or she had been deemed disappeared, there exists a distinct period during which the applicants sustained uncertainty, anguish and distress characteristic to the specific phenomenon of disappearances (see *Aslakhanova and Others*, cited above, § 133).

228. The Court reiterates its findings regarding the State's responsibility for the abductions and the failure to carry out a meaningful investigation into the fate of Abubakar Tazurkayev. It finds that the applicants, who are close relatives of the disappeared, must be considered victims of a violation

of Article 3 of the Convention on account of the distress and anguish which they suffered, and continue to suffer, as a result of their inability to ascertain the fate of their family member and of the manner in which their complaints have been dealt with.

## VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

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

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

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

...

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

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

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

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

### A. The parties' submissions

230. The Government noted that according to the information received within the investigation, the applicants' relatives had not been arrested by State agents and had not been held in detention facilities.

231. The applicants maintained their complaint.

### B. The Court's assessment

#### 1. *Admissibility*

232. 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

233. 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 those guarantees and discloses a particularly grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001; and *Luluyev and Others*, cited above, § 122).

234. The Court has established that the applicants' relatives were detained by State servicemen and then unlawfully killed. Their detention was not acknowledged, was not logged in any custody records and for one of them, Abubakar Tazurkayev, no official trace of his subsequent whereabouts or fate exists.

235. Consequently, the Court finds that Aslan Dovletukayev, Khizir Gulmutov, Islam Tazurkayev, Abubakar Tazurkayev and Supyan Khutsayev were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

## VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

236. The applicants complained that there had been no effective remedies at their disposal in respect of the aforementioned violations, contrary to Article 13 of the Convention, which reads as follows:

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

### A. The parties' submissions

237. The Government contended that the applicants had had effective remedies at their disposal and that the authorities had not prevented them from using them. The applicants could have appealed to a court regarding the steps taken during the investigations and they could have also claimed civil damages.

238. The applicants maintained their complaint.

## B. The Court's assessment

### 1. Admissibility

239. 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

240. The Court reiterates that in circumstances where, as here, the criminal investigation into a violent death and disappearance was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

241. The Court reiterates its findings of the general ineffectiveness of the criminal investigations in cases such as those under examination. In the absence of the results of the criminal investigations into the abductions and deaths of Aslan Dovletukayev, Khizir Gulmutov, Islam Tazurkayev and Supyan Khutsayev and the abduction and disappearance of Abubakar Tazurkayev, any other possible remedy becomes inaccessible in practice.

242. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention in respect of the applicants in *Dovletukayev* (application no. 7821/07), *Magamadova*<sup>1</sup> (application no. 10937/10) and *Kutsayeva* (application no. 32782/10) and in conjunction with Articles 2 and 3 of the Convention in respect of the applicants in *Tazurkayeva and Others* (application no. 14046/10).

243. 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*, cited above, § 118, 20 March 2008, and *Alikhadzhiyeva v. Russia*, no. 68007/01, § 96, 5 July 2007).

## VIII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

244. The Court has examined the other complaints submitted by the applicants under Articles 3 and 8 of the Convention. However, having regard to all the material in its possession, and in so far as those complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must

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<sup>1</sup> Rectified on 7 April 2014 : the text was “ *Magomadova* ”

be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

245. 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

#### *1. Application no. 7821/07, Dovletukayev v. Russia*

246. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

247. The Government stated that the amount claimed was unjustified and excessive.

#### *2. Application no. 10937/10, Magamadova<sup>1</sup> v. Russia*

248. The applicant claimed EUR 500,000 in respect of non-pecuniary damage.

249. The Government stated that that the amount claimed was unjustified and excessive.

#### *3. Application no. 14046/10, Tazurkayeva and Others v. Russia*

250. The first applicant claimed 1,316,607 Russian roubles (approximately EUR 31,200) in respect of pecuniary damage for the loss of financial support by her sons Islam and Abubakar Tazurkayev, who were the breadwinners of the family. She based her calculations on the subsistence level provided for by domestic law and the Ogden Actuary Tables.

251. The applicants jointly claimed EUR 140,000 euros in respect of non-pecuniary damage.

252. The Government submitted that the first applicant's claim was unsubstantiated as she had failed to provide official documents proving the amount of her sons' earnings. As for the applicants' joint claim for non-pecuniary damage, the Government stated that it was excessive and that finding a violation of the Convention would in itself comprise adequate compensation.

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<sup>1</sup> Rectified on 7 April 2014 : the text was “ *Magomadova v. Russia* ”

4. *Application no. 32782/10, Khutsayeva v Russia*

253. The applicant claimed EUR 500,000 in respect of non-pecuniary damage.

254. The Government stated that the amount claimed was unjustified and excessive.

**B. Costs and expenses**

255. The applicant in *Magamadova*<sup>1</sup> (application no. 10937/10) was represented by Mr D. Itslayev and Ms M. Irizbayeva. The aggregate claim in respect of costs and expenses related to her legal representation amounted to EUR 5,103, which included drafting of legal documents submitted to the Court, translation services, and administrative and postal costs. She submitted a copy of her legal representation contract with a breakdown of the costs incurred.

256. The applicants in *Tazurkayeva and Others* (application no. 14046/10) and *Khutsayeva* (application no. 32782/10) were represented by the Stichting Russian Justice Initiative. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 4,682 and EUR 4,264 respectively, which included drafting of legal documents submitted to the Court, translation services, and administrative and postal costs. They submitted a copy of their legal representation contract with a breakdown of the costs incurred.

257. The Government submitted in respect of each application that the applicants' claims for costs and expenses were unsubstantiated as it had not been shown that the expenses claimed had actually been incurred.

**B. The Court's assessment**

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

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

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<sup>1</sup> Rectified on 7 April 2014 : the text was “ *Magomadova* ”



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

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

### C. Default interest

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the complaints concerning Article 2, Article 3 in respect of the applicants' mental suffering in *Tazurkayeva and Others* (application no. 14046/10), Articles 5 and 13 admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of the applicants' relatives Aslan Dovletukayev, Khizir Gulmutov, Islam Tazurkayev, Abubakar Tazurkayev and Supyan Khutsayev;
4. *Holds* that there has been a procedural violation of Article 2 of the Convention in respect of the failure to investigate effectively the abductions and deaths of the applicants' relatives Aslan Dovletukayev, Khizir Gulmutov, Islam Tazurkayev and Supyan Khutsayev and the disappearance of Abubakar Tazurkayev;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants in *Tazurkayeva and Others* (application no. 14046/10) on account of their mental suffering;

6. *Holds* that there has been a violation of Article 5 of the Convention in respect of the applicants' relatives on account of their unlawful detention;
7. *Holds* there has been a violation of Article 13 of the Convention in conjunction with Article 2 in *Dovletukayev* (application no. 7821/07), *Magamadova*<sup>1</sup> (application no. 10937/10) and *Khutsayeva* (application no. 32782/10) and in conjunction with Articles 2 and 3 of the Convention in *Tazurkayeva and Others* (application no. 14046/10);
8. *Holds* that no separate issue arises under Article 13 of the Convention in conjunction with Article 5;
9. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts as indicated in Appendix II, plus any tax that may be chargeable to the applicants. The amounts are to be converted into Russian roubles, at the rate applicable at the date of settlement. As for the payments in respect of costs and expenses to the applicants' representatives, they are to be made to the representatives' bank accounts as indicated by the applicants; the payments are to be made in euros to the applicants represented by the SRJI and to be converted into Russian roubles to the applicants represented by Mr D. Itslayev and Ms M. Irizbayeva;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
10. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 24 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Isabelle Berro-Lefèvre  
President

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<sup>1</sup> Rectified on 7 April 2014 : the text was “ *Magomadova* “

## APPENDIX I

	Application no., date lodged	Representatives	Applicant's name, year of birth	Relation to the missing person	Abducted person (name, year of birth)	Date of the alleged abduction/discovery of the body
1.	7821/07, <i>Dovletukayev v. Russia</i> , 29/12/2006	Mr A.Ryzhov and Ms O.Sadovskaya, lawyers practising in Nizhniy Novgorod	Mr Sharip <sup>1</sup> Dovletukayev (1949)	Father	Mr Aslan Dovletukayev (1973)	9 January 2004; body found on 17 January 2004
2.	10937/10, <i>Magamadova</i> <sup>2</sup> <i>v. Russia</i> , 22/02/2010	D. Itsleyev and Ms M. Irizbayeva, lawyers practising in Grozny, Chechnya	Ms Tamara Magamadova <sup>3</sup> (1949)	Mother	Mr Khizir Gulmutov (1982)	30 December 2002; body found on 8 January 2003
3.	14046/10, <i>Tazurkayeva and Others v. Russia</i> , 05/03/2010	Stichting Russian Justice Initiative	Ms Taus Tazurkayeva, (1942) Ms Luiza Tazurkayeva (1971) Ms Laura Tazurkayeva (1977) Ms Arbiyat Ayubova (1960)	Mother Sister Sister Sister	a) Mr Islam Tazurkayev (1968)  b) Mr Abubakar Tazurkayev (1962)	a) 20 January 2001; body found on 5 March 2001  b) 8 September 2003; body never found

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<sup>1</sup> Rectified on 4 July 2014 : the text was “Mr Sherip Dovletukayev”

<sup>2</sup> Rectified on 7 April 2014 : the text was “*Magomadova v. Russia*”

<sup>3</sup> Rectified on 7 April 2014 : the text was “Ms Tamara Magomadova”

4.	32782/10, <i>Khutsayeva v. Russia</i> 24/05/2010	Stichting Russian Justice Initiative	Ms Maryat Khutsayeva (1941)	Wife	Mr Supyan Khutsayev (1936)	26 February 2001; body found on 4 March 2001
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## APPENDIX II

Awards made by the Court under Article 41 of the Convention

	Application number and name	Represented by	Pecuniary damage	Non-pecuniary damage	Costs and expenses
1.	7821/07, <i>Dovletukayev v. Russia,</i>	Mr A.Ryzhov and Ms O. Sadovskaya, lawyers practising in Nizhniy Novgorod	-	EUR 40,000 (forty thousand euros)	-
2.	10937/10, <i>Magamadova<sup>1</sup> v. Russia,</i>	D. Itslayev and Ms M. Irizbayeva, lawyers practising in Grozny, Chechnya	-	EUR 60,000 (sixty thousand euros)	EUR 3,000 (three thousand euros)
3.	14046/10, <i>Tazurkayeva and Others v. Russia,</i>	Stichting Russian Justice Initiative	EUR 20,000 to the first applicant	EUR 120,000 (one hundred twenty thousand euros) , jointly	EUR 4,000 (four thousand euros)

<sup>1</sup> Rectified on 7 April 2014 : the text was “ *Magomadova v. Russia,* ”

4.	32782/10, <i>Khutsayeva v. Russia</i>	Stichting Russian Justice Initiative	-	EUR 60,000 (sixty thousand euros)	EUR 3,000 (three thousand euros)
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