



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

FIRST SECTION

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

*(Application no. 40799/06)*

JUDGMENT

STRASBOURG

7 November 2013

**FINAL**

**24/03/2014**

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



**In the case of Bopayeva and Others v. Russia,**

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

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 October 2013,

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

**PROCEDURE**

1. The case originated in an application (no. 40799/06) 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 ten Russian nationals listed below (“the applicants”), on 28 September 2006.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative (SRJI), an NGO based in the Netherlands with a representative office in Russia (in partnership with the NGO Astreya). 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 three relatives had disappeared in Grozny, Chechnya, in April 2000 and that no effective investigation had taken place.

4. On 14 April 2009 the application was communicated to the Government. It was also decided to grant priority to the application (Rule 41 of the Rules of Court).

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicants are:

1. Lidiya Bopayeva, born in 1947;

2. Lecha Bopayev, born in 1934 (died on 31 December 2006);
3. Nurdi Bopayev, born in 1970;
4. Zulay Khaysumova, born in 1937;
5. Naib Khaysumov, born in 1917;
6. Shamkhan Khaysumov, born in 1954;
7. Shamset Khaysumova, born in 1966;
8. Tamara Tabulayeva, born in 1931;
9. Magomed Alaudinov, born in 1920 (died in 2009);
10. Larisa Alaudinova, born in 1968.

The first, second and third applicants were living in the village of Martan-Chu, Urus-Martan district; the remainder were living in Grozny, Chechnya.

#### **A. Arrest of the applicants' relatives**

6. The ten applicants in this case belong to three separate families. One member of each family was detained on 17 April 2000 in Grozny and taken to the premises of the Oktyabrskiy district temporary department of the interior ("VOVD"). The three individuals disappeared following their detention, and the applicants conducted the search together. For about five years the disappearances were investigated within the set of criminal proceedings concerning the torture of Mr Alaudin Sadykov, who had been detained at the Oktyabrskiy VOVD between March and May 2000 (see *Sadykov v. Russia*, no. 41840/02, 7 October 2010) and the disappearance of Magomed Dzhabayev in March 2000 (see *Dzhabayeva v. Russia*, no. 13310/04, 2 April 2009).

##### *1. Arrest of Ms Luiza Dagayeva (Bopayeva)*

7. The first two applicants are the parents of Luiza Dagayeva (maiden name Bopayeva), born in 1972. The third applicant is their son and a brother of Luiza Dagayeva. Luiza Dagayeva was married to Arbi Dagayev; they had two children – Ramzan, born in 1992, and Petimat Dagayeva, born in 1996. At the material time Luiza Dagayeva was pregnant with her third child, although the exact term of her pregnancy is unclear (different witnesses mentioned that she was four, five and seven months pregnant).

8. In April 2000 Luiza Dagayeva and her family were living in Urus-Martan. On 17 April 2000 Luiza Dagayeva travelled to Grozny to check her flat, situated in Veterinarnaya Street. A relative, Fatima O., travelled with her from Urus-Martan and testified that between 11 a.m. and 12 noon on that day she saw Luiza Dagayeva enter the courtyard of the five-storey building on Minutka Square where her flat was located. One of the offices of the Oktyabrskiy VOVD was situated in nearby Ukrainskaya Street.

9. According to the applicants, an unidentified woman saw Luiza Dagayeva and her neighbour, Sharip Khaysumov, being arrested in the

courtyard of that building by a group of police officers from the Oktyabrskiy VOVD, who put cloth sacks over their heads. The woman related that information to the second applicant on the following day when he went to Grozny to look for his daughter. She described the clothes Luiza Dagayeva had been wearing, as well as those of Sharip Khaysumov. Other witnesses saw two men and a woman whose heads had been covered with cloth being taken to the premises of the Oktyabrskiy VOVD in Ukrainskaya Street on the same day.

10. The applicants have had no news of Luiza Dagayeva since 17 April 2000.

### *2. Arrest of Mr Sharip Khaysumov*

11. The fourth and fifth applicants are the parents of Sharip Khaysumov, born in 1956. The sixth and seventh applicants are Sharip Khaysumov's brother and sister. Sharip Khaysumov owned a small café in Grozny near his flat in Lenina Street.

12. When the hostilities started in October 1999, Sharip Khaysumov and his family left Grozny and moved to Novye Atagi. In March 2000 the sixth applicant returned to Grozny. On 17 April 2000 Sharip Khaysumov went to Grozny to help the sixth applicant. He told the sixth applicant that he would go and check his flat, but he did not return.

13. On 18 April 2000 the sixth applicant went to the passport section of the Oktyabrskiy VOVD to ask about his brother. Several people who were queuing at the passport section told him that they had also been there the day before and had seen police officers from the Khanty-Mansiysk Region (at the time seconded to the Oktyabrskiy VOVD) bring in two men and a pregnant woman. They described the clothes the detainees had been wearing and said that their heads had been covered with cloth. The arrested persons were then allegedly taken to the VOVD headquarters situated in the adjacent building.

14. The sixth applicant then went to the Oktyabrskiy VOVD and talked with several officers there, including the head of the criminal section, "Rashid". The officers denied that they had detained Sharip Khaysumov and assured the sixth applicant that detainees were only brought in by car.

15. The applicants have had no news of Sharip Khaysumov since 17 April 2000.

### *3. Arrest of Mr Ramzan Alaudinov*

16. The eighth and ninth applicants are the parents of Ramzan Alaudinov, born in 1963. The tenth applicant is his wife, with whom he had four children, born in 1988, 1990, 1993 and 1995. The eighth and ninth applicants lived in the village of Avtury, and Ramzan Alaudinov and his family lived in Grozny, where he had been working for the Russian

Ministry of Emergency Situations (Emercom) since 1994. In January 2000 they fled from the hostilities in Grozny and lived in Avtury with the eighth and ninth applicants.

17. On 16 April 2000 Ramzan Alaudinov went to Grozny. He spent the night of 16 to 17 April at his friend's place. At about 9 a.m. on 17 April he went to check his house at Veterinarnaya Street, 62. He failed to return home that day. His family have had no news of him since 17 April 2000.

18. Ramzan Alaudinov's elder sister, Zara A., started to look for him the following day. She soon found out from the people who had been queuing at the passport section of the Oktyabrskiy VOVD that Ramzan Alaudinov had been detained on 17 April 2000 together with Luiza Dagayeva and Sharip Khaysumov. Although the faces of the three detainees had been covered, Zara A. identified her brother from the description of the clothes he had been wearing.

## **B. Search for Luiza Dagayeva, Sharip Khaysumov and Ramzan Alaudinov and the official investigation**

### *1. Events on the days following the arrest and search for the applicants' relatives*

19. Although the applicants immediately started to look for their relatives after 17 April 2000, they did not keep records of their contacts with the authorities in the initial period. They provided the Court with copies of their subsequent correspondence with various authorities, including with different levels of prosecutors' offices, other law-enforcement bodies, public figures and the administration.

20. The applicants and other family members of the three detained persons met in front of the Oktyabrskiy VOVD on the days following the arrests of Luiza Dagayeva, Sharip Khaysumov and Ramzan Alaudinov. From the information that they collected from eyewitnesses, they concluded that the two men and the pregnant woman taken to the Oktyabrskiy VOVD on 17 April 2000 were their family members. They conducted the search for them together. They received conflicting information from the officers of the VOVD concerning the arrests of their relatives, although the detention was never officially confirmed.

21. Three or four days after the arrests, the sixth applicant was invited to the VOVD premises located in the building of a former boarding school. He went through a gymnasium and a room where he saw two cages. A police officer who introduced himself as "Rauf Badikov" told the sixth applicant that on 17 April 2000 he had arrested two men and a pregnant woman. He then invited him to return the following day at 10 a.m. On the following day the same police officer asked him if the pregnant woman was his brother's wife, to which the sixth applicant replied in the negative. Mr Badikov again

asked him to return the following day at 10 a.m. According to the sixth applicant, on the following two days Mr Badikov and another police officer, “Oleg Karpenko,” proposed that he bring a gun in exchange for his brother. The sixth applicant refused to do so.

22. On 20 April 2000 the ninth applicant wrote to the head of the Ministry of the Interior in Chechnya about the disappearance of his son in Grozny, near his house at Veterinarnaya Street, 62. According to a note on the letter, it had been forwarded to the Oktyabrskiy VOVD.

23. The eighth applicant, Ramzan Alaudinov’s mother, approached an unidentified Chechen police officer who worked at the Oktyabrskiy VOVD. He confirmed to her that her son had been detained there. Another police officer, by the name of Rashid, suggested that the applicant return on 11 May 2000 with a gun, a sheep and money, and warm clothes for Ramzan. The eighth applicant took the items as proposed. According to the ninth applicant, Ramzan Alaudinov’s detention at the VOVD had also been confirmed on 3 May 2000 by Isa M., who worked at the Oktyabrskiy district administration.

24. At about 11 a.m. on 11 May 2000 the eighth applicant and her daughter, Zara A., were waiting in front of the VOVD to meet with Rashid when they saw three servicemen enter a nearby abandoned building with jerry-cans. When the servicemen left the building, smoke started to come out of several windows. Ten or fifteen minutes later about twenty vehicles left the premises of the VOVD. The women were told that all the detainees had been taken away. It appears that on that day the police officers from the Khanty-Mansiysk Region departed because their secondment in Chechnya had come to an end. The eighth applicant submitted that the head of the Oktyabrskiy VOVD had later told her that the detainees had been transferred to Khankala, the main Russian military base in Chechnya.

25. The ninth applicant submitted that his daughter, Zara A., had immediately met with the head of the Grozny department of the Federal Security Service (“FSB”), Mr Semenov, and informed him about the burning of the building adjacent to the VOVD. The ninth applicant submitted that several days later they had met with Mr Semenov and he had instructed two investigators to look into the matter. The ninth applicant further submitted that several days later he had met with one of the investigators, who had told him that there were three bodies in that building but that the building had been mined and Emercom needed to carry out demining work. After the building had been demined, no bodies were found there.

26. In May 2000 Zubidat K. and Zara A., sisters of the two missing men, wrote detailed letters to a member of the State Duma. They related the available information about the arrest on 17 April 2000 of their brothers and Luiza Dagayeva by officers of the Oktyabrskiy VOVD. They also referred to the contacts with two officers from the VOVD who had allegedly been

ready to assist them in obtaining the release of their relatives. They mentioned that the local prosecutor's office was already aware of the disappearances and had carried out an investigation into the matter. Furthermore, they recounted that on 11 May 2000 they had seen servicemen setting fire to a nearby building where they could have hidden the bodies of their victims. Zara A. also referred to the meeting with Mr Semenov of the FSB and information received from an investigator that bodies had allegedly been found in the building, which had been mined.

27. Also in May 2000 the tenth applicant wrote to the public prosecutor's office of Chechnya ("the Chechnya prosecutor's office") and to the General Prosecutor's Office complaining about the unlawful detention of his son and two other persons by officers of the Oktyabrskiy VOVD. The tenth applicant submitted that although the head of the VOVD had denied that the three persons had been detained, he had talked to other detainees who had told him that they had seen Ramzan Alaudinov being detained at the VOVD. He also referred to a meeting with the deputy head of the Oktyabrskiy district administration, who had allegedly been to the VOVD and talked to his son while he was in detention. That official had transferred to him a request from his son to bring him some of his personal belongings.

28. On 31 May 2000 the Chechnya prosecutor's office instructed the Chechnya Department of the Ministry of the Interior to carry out a search for a number of missing persons, including Ramzan Alaudinov.

29. On 18 August 2000 the Grozny Town Prosecutor's Office ("the Grozny prosecutor's office") informed Zara A. that the Oktyabrskiy VOVD had checked the information contained in her letter and found no grounds for opening a criminal investigation. A search file in respect of Ramzan Alaudinov had been opened by the same office and she would be informed of the results.

30. On 7 February 2001 Ramzan Alaudinov's family received information from the Chechnya Administration's department responsible for missing persons that as of 21 December 2000 he had been included in their list as missing since 17 April 2000. They were also informed of the legal possibilities of declaring him missing and getting assistance in the event of the loss of a breadwinner.

31. On 10 June 2002 the applicants, along with the relatives of several other persons who had disappeared in 2000-01 at the Oktyabrskiy VOVD and Alaudin Sadykov, wrote to the General Prosecutor's Office, the Chechnya prosecutor's office and several other federal and regional authorities. They referred in their letters to several known instances in which people had been beaten and tortured at the VOVD or had disappeared after detention. They complained that the investigation into each of the allegations had been pending without any progress.

32. On 27 November 2002 Zara A., the daughter of the eighth and ninth applicants and sister of Ramzan Alaudinov, who had been actively involved



in the search for her brother, died of a sudden cerebrovascular attack. The applicants believed that her death had been caused by the stress and despair connected to the disappearance of her brother and the fact that she had fallen victim to a swindler who had promised to help her find Ramzan Alaudinov in exchange for money.

33. In October 2004 the tenth applicant asked the Oktyabrskiy District Court of Grozny to declare her husband a missing person following his arrest by officers of the Oktyabrskiy VOVD and his subsequent disappearance.

34. The applicants submitted that their health had deteriorated after the disappearance of their family members. The ninth applicant submitted a medical report dated October 2004 indicating that he had been suffering from a number of chronic respiratory and cardiovascular diseases. In May 2005 and June 2006 the eighth applicant was diagnosed with a number of serious health problems, including a heart condition and the consequences of a trauma to the head. In September 2006 the first applicant was treated for a number of neurological problems; and the second applicant suffered a third stroke (previous ones in 2004 and 2005).

*2. Information from the criminal investigation file concerning the disappearances and Alaudin Sadykov's detention*

35. In September 2009 the Government submitted 893 pages of criminal investigation file no. 12136. Between 2002 and 2007 the file concerned investigations into three episodes: the disappearance of Magomed Dzhabayev on 10 March 2000; the disappearances of the applicants' three relatives on 17 April 2000; and the torture of Alaudin Sadykov, who had been detained at the Oktyabrskiy VOVD between March and May 2000.

36. S.Z., who had been seconded as an investigator at the Oktyabrskiy VOVD between 11 May and 27 August 2000 was questioned as a witness in July 2001. He confirmed that he had talked to the second applicant about the disappearance of his daughter on several occasions. At the end of May 2000, following a request submitted by the second applicant, he had invited Emercom to demine the building at Lenina Street, 136. The demining operation had taken three days, following which the building had been searched but no bodies had been found. The witness was not aware who had set fire to the building.

37. On 27 November 2002 Mr Sadykov identified Luiza Dagayeva (Bopayeva) from a photograph as the woman he had seen in the basement of the Oktyabrskiy VOVD in April 2000. He described the clothes the woman had been wearing at the time and her features.

38. In April 2003 the investigator from the Chechnya prosecutor's office in the Khanty-Mansiysk Region questioned several local police officers who had been on secondment to the Oktyabrskiy VOVD at the relevant time. Witness Sergey Z. testified that he had been the head of the convoy group

between February and May 2000. He explained that at first the gymnasium of the former boarding school had been used as a temporary detention ward (“IVS”). He stated that the keeping of records and detention logs had been very poor, if it had been done at all, and that the VOVD officers had had unrestricted access to the persons detained at the ward. He then described how two officers had cut off Alaudin Sadykov’s ear. He also testified that he had heard that a woman had been detained in the basement of the VOVD and had cooked for the officers, but he claimed that he had never seen her.

39. Rashit Ya. testified that at the material time he had served at the Oktyabrskiy VOVD as deputy head of the VOVD and head of the criminal section. He was questioned about Mr Sadykov’s allegations, but denied any involvement in or knowledge of them. He also testified that at about 5 a.m. in early March 2000 a group of officers from the special police force (“the OMON”) on secondment from the Moscow Region, who had guarded the headquarters at hotel “Arena”, had brought in a group of ten or twelve men who had been arrested the previous night on the outskirts of Grozny. The detainees displayed signs of beatings. The OMON officers lined up the detained men in the courtyard and called them by their names. They selected several of them, ordered them to climb back into the truck and took them away. The remaining men were left in the courtyard of the VOVD. The OMON officers said that “they did not need them”. They were immediately escorted to the gates, where they waited until the end of the curfew and then left. Those men were never brought to the premises of the VOVD or detained there. Rashit Ya. explained that subsequently he had been approached on several occasions by a senior officer of the Chechnya Ministry of the Interior who had claimed that his relative had been among those taken to the VOVD that night; however, Rashit Ya. had always denied any knowledge of the missing man. When questioned about the disappearance of a pregnant woman, he submitted that he was aware of the case because a number of inquiries had been made by her relatives and other authorities. He suggested that the disappearance of the woman and of some other persons in the vicinity of Minutka Square in Grozny could have been linked to revenge taken by military servicemen. He stated that during the period in question the mutilated bodies of several servicemen had been found in the area. He denied any knowledge of the missing persons. He further explained that although the VOVD had not employed civilian staff, an elderly woman had lived near the gymnasium on the premises of the VOVD and kept her personal belongings in one of the rooms.

40. On 27 May 2003 the Chechnya prosecutor’s office obtained permission to extend the term of the preliminary investigation to 15 September 2003. The document contained a detailed description of the steps taken up to that date, including the following relevant passages:

“On 10 March 2000 unidentified armed persons, possibly officers of the Oktyabrskiy VOVD, kidnapped two men, [A.T.] and Magomed Dzhabayev, from a house at Tobolskaya Street, 25 in Grozny. On 18 December 2000 the Grozny Town Prosecutor’s Office opened criminal investigation file no. 12365 under Article 126 part 1 of the Criminal Code [kidnapping]. ...

On 21 April 2000 [Zubidat K.] complained to the Oktyabrskiy VOVD about the disappearance of her brother, Sherip Khaysumov, on 17 April 2000 in the Oktyabrskiy district. On 25 August 2000 the Grozny prosecutor’s office opened criminal investigation file no. 12136 under Article 105 part 1 of the Criminal Code [murder].

On 6 September 2000 [the second applicant] lodged a complaint with the Grozny prosecutor’s office concerning the disappearance of his daughter, Luiza Bopayeva, on 17 April 2000 in the Oktyabrskiy district. On 15 September 2000 the Grozny prosecutor’s office opened criminal investigation file no. 12169 under Article 126 part 2 of the Criminal Code.

On 20 October 2000 criminal case files nos. 12136 and 12169 were joined under file no. 12136.

On 25 October 2000 the investigation was adjourned ... On 19 December 2001 the investigation was reopened ... On 30 January 2002 the investigation was adjourned ... On 11 July 2002 the investigation was reopened ...

On 5 March 2000 A. Sadykov was placed in the IVS of the Oktyabrskiy VOVD. During his detention unidentified officers of the Oktyabrskiy VOVD cut off Sadykov’s left ear, causing him grave bodily harm. On 13 July 2000 the Grozny prosecutor’s office opened criminal investigation file no. 12088... On 13 August 2000 the investigation was adjourned ... On 24 August 2001 the investigation was reopened...

Between 5 and 24 March 2000 unidentified persons stole a car belonging to Mr Sadykov from a garage situated at Flotskaya Street, 94 in Grozny. On 31 August 2001 the Grozny prosecutor’s office opened criminal investigation file no. 15082 ... On 5 September 2001 criminal investigation files nos. 12088 and 15082 were joined under file no. 12088. On 24 September 2001 the investigation was adjourned ... On 6 October 2001 the investigation was reopened ... On 6 November 2001 the investigation was adjourned ... On 19 November 2001 the investigation was reopened ... On 19 December 2001 the investigation was adjourned ... On 30 December 2001 the investigation was adjourned ... On 30 January 2002 the investigation was adjourned ... On 18 July 2002 the investigation was reopened.

On 18 July 2002 criminal investigation files nos. 12088, 12136 and 12365 were joined under a single file no. 12088 ... On 18 October 2002 the investigation was adjourned for failure to identify those responsible for the crimes. On 15 November 2002 the investigation was reopened and on the same day the senior investigator of the Chechnya prosecutor’s office [K.K.] accepted it for further proceedings ...

The investigators carried out a number of steps to locate the missing persons and the officers of the Oktyabrskiy VOVD who had committed unlawful acts towards the civilian population. [The fourth applicant] was questioned and granted victim status, as were [the sixth applicant], [L.K.], A. Sadykov and [the second applicant]. The investigation also questioned [Luiza Dagayeva’s husband], who was granted victim

status, [Zara A.], who was granted victim status, and [thirty-eight other persons, mostly officers of the Oktyabrskiy VOVD, investigator Z. and two relatives of A.T. and Magomed Dzhabayev, who were also granted the status of victims in the proceedings].

The investigators requested the local prosecutor's offices of the Khanty-Mansiysk Region to collect photographs of the officers ... who had served at the temporary detention ward and the convoy group of the Oktyabrskiy VOVD during the disappearance of Khaysumov, Bopayeva, Alaudinov, [A.T.] and [Magomed] Dzhabayev ... The prosecutor's office of the Khanty-Mansiysk Region was also requested to identify the missing persons by means of photographs. [Seven officers of the VOVD] who had worked at the temporary detention ward and in the convoy group were identified with the assistance of the victim, Mr Sadykov, and witness [Yu.K.]

...The investigation requested information about the possible detention of Khaysumov, Bopayeva, Alaudinov, [A.T.] and Dzhabayev from the information centres of the South Federal Circuit. Similar requests were sent to the departments for the execution of sentences and to the regional departments of the FSB. ...

Witness [M.A.] testified that she had been convicted on 11 July 2001 in Stavropol and at the end of July 2001 had been detained at the pre-trial detention centre in Pyatigorsk [Stavropol Region]. There she met Luiza Bopayeva, who asked her to inform her relatives, who lived in Urus-Martan, that she had been sentenced to a long prison sentence for terrorism and that she was doing well. In relation to this, the Pyatigorsk Town prosecutor's office was requested to question the officers of the pre-trial detention centre ... and the prison hospital in Georgiyevsk [Stavropol Region] where Ms Bopayeva could have received medical assistance related to pregnancy and birth. Those actions led to the finding that L. Bopayeva had never been detained in the said detention centre.

...The deputy head of the special police force (OMON) of Chechnya [B.S.] testified that on 12 March 2000 he had sought information about [A.T.] and [Magomed] Dzhabayev from the Oktyabrskiy VOVD and had been told that the two men had been detained at the VOVD and that they needed medical assistance. On the following day he learnt from a medical worker of the VOVD that he had given medical assistance to [A.T.] and [Magomed] Dzhabayev. In relation to this, the Khanty-Mansiysk prosecutor's office was asked to question medical workers who had served at the Oktyabrskiy VOVD about the injuries caused to A. Sadykov, [A.T.] and [Magomed] Dzhabayev...

Witness [Kh. G.] testified that he had known Sharip Khaysumov since childhood. In the second half of April 2000 he saw on the evening news of one of the federal channels a report about the officers of the Khanty-Mansiysk OMON (judging by the captions) who had detained Khaysumov and an unknown pregnant woman. In 2001 he saw extracts of the same report on local television in Chechnya. The investigators are currently trying to obtain copies of that report.

Witness [R. B.] testified that since 2000 she had been looking for her sons who had disappeared after being detained in Urus-Martan by security forces. In the course of the search she turned to various people who could be of assistance to her. In particular, she talked to a Russian woman who worked at the Oktyabrskiy VOVD and to an Armenian woman connected with the VOVD. The Armenian woman, who later died, told her that two men and a pregnant woman had been taken to the so-called

“underground prison” located in a passageway under Minutka Square. She also gave her a piece of paper with some names, apparently of those who had been detained by officers of the Oktyabrskiy VOVD. The investigation is currently trying to identify the Russian woman who worked at the Oktyabrskiy VOVD at the relevant time.

Witness [Isa N.] explained [on 15 February 2003] that he had been detained at the IVS of the Oktyabrskiy VOVD between 5 May and 30 June 2000 on charges of illegal handling of narcotics. On several occasions he carried out building works at the VOVD. He was assisted by two men, [S.L.] and [S.A.], who told him that at the end of May or beginning of June 2000 when they had been collecting clay near the fence of the VOVD they had found a woman’s body covered with earth. ... The investigation is taking measures to find [S.L.] and [S.A.] and to carry out the necessary investigative measures with their participation.

In April 2003 the investigator in charge of the case went on mission to the Khanty-Mansiysk Region, where the persons who had served at the Oktyabrskiy VOVD currently reside. During the mission he obtained additional information supporting the allegation that the personnel of the Oktyabrskiy VOVD were involved in the crimes.

Witness [S.D.] stated that between February and May 2000 he had served as head of the Oktyabrskiy VOVD in Grozny. He explained that he had not seen Sadykov immediately after his arrest, but had only seen him with a bandaged head. Sadykov had explained to him that shortly before his arrest, unknown persons in camouflage uniforms had entered his house and cut off his ear. [S.D.] was not aware of the detention at the VOVD premises of Bopayeva, Alaudinov, Khaysumov, [A.T.] and Dzhabayev. The VOVD premises were adjacent to those of an OMON unit from the Moscow Region, whose officers could only enter the VOVD through the main entrance, which was equipped with a check-point. It was out of the question that those officers could have entered the VOVD during the night, and especially in an intoxicated state.

Witness [Rashit Ya.] had served as deputy head of the VOVD and head of the criminal police section. ... Concerning the disappearances in the Oktyabrskiy district, including that of a woman, he stated that during his secondment, Ministry of Defence servicemen had been stationed in the Minutka Square area. At that time, the mutilated bodies of two servicemen had been found there. He suggested that the disappearances could be linked to revenge by the servicemen. ...

Witness [A. K.] stated that while on secondment to Grozny he had tried to help [the sixth applicant] to find his missing brother. For this purpose he had contacted the IVS of the Oktyabrskiy VOVD, as well as the wards of [other districts in Grozny], a filtration point in Khankala and the pre-trial detention centre in Chernokozovo. Khaysumov had not been found anywhere. The witness submitted that on many occasions, OMON officers on secondment from various regions brought detainees to the premises of the VOVD and then took them away in an unknown direction. He could not say whether Mr Khaysumov had ever been brought to the VOVD. ...

Witness [Sergey Z.] confirmed [that during the relevant period] he had been in charge of the IVS. While he was on duty, a group of intoxicated officers from the special forces had entered the cell where Sadykov and [K.] were detained and cut off Sadykov’s ear. On 19 May 2003 [Sergey Z.] was charged under Article 293 part 2 of the Criminal Code [improper carrying out of one’s professional duties, resulting in

serious bodily harm or death] and put under a pledge not to leave his place of residence. [Sergey Z.] is currently on the run and a search warrant has been issued. ...

The victim, Mr Sadykov, identified from a photograph the former head of the search department of the Nizhnevartovsk Town police department [S.V.D.] as the person who had cut off his left ear. [S.V.D.] had been discharged from service in the Ministry of the Interior on 9 October 2001 ... The investigation is taking measures to find [S.V.D.] and to bring charges against him”.

41. The document concluded with a list of tasks that needed to be carried out. These included additional questioning of the witnesses and confrontations in order to resolve the discrepancies in their statements, the finding of video materials mentioned by the witnesses and other steps.

42. The investigation was adjourned and reopened on several occasions between 2003 and 2005. While some of the persons who had caused injuries to Mr Sadykov had been identified and charged with offences (see below), no one had been identified or charged in relation to the disappearances of the applicants’ relatives or with the other disappearances.

43. On 30 May 2006, following a request by the Memorial Human Rights Centre, an investigator of the Oktyabrskiy district prosecutor’s office inspected the building of the former boarding school located in Musorova Street (see paragraph 36 above). According to his description, the building had been partly destroyed. The investigator noted that the basement housed an IVS consisting of a corridor and three cells. Having dismantled a freshly constructed brick wall, the investigator found behind it a room measuring five by eight metres containing a metal bed frame, a metal chair and some other pieces of furniture. Another walled-in room was found in the basement behind an office. It contained empty bottles and other debris. Names and dates ranging from 2004 to 2006 had been written on the cell walls.

44. On 3 June 2006 the investigator again examined one of the rooms in the basement. Numerous brown spots were found on a cement column in the centre of the room. Two bags with women’s clothing, as well as various documents, were also found.

45. In 2007 blood samples were taken from the relatives of the missing persons. It appears from subsequent documents and submissions that a forensic examination concluded that the brown substance collected from the basement was blood, but it was impossible to conduct a DNA matching test or to obtain more information owing to the poor quality of the samples.

46. The sixth applicant was questioned again on 6 April 2007. Repeating his previous testimonies, he referred to his conversation with Razet, a woman who had worked at the VOVD at the time and who had seen the three missing persons at the VOVD in April 2000. He referred to Razet’s testimonies to the investigation, as well as the statements made by another witness, Roza, who had allegedly passed on a note saying “Khaysumov and Ramzan Avtury” written in blood.

47. On 28 May 2007 witness Khizhan Z. stated that in April 2000, while waiting for news about her relative, Alaudin Sadykov, in front of the Oktyabrskiy VOVD building, she had seen a man being escorted into the building by a police officer. The man had been wearing house slippers and the witness clearly remembered him. On the following day the sixth applicant questioned her and identified the man in slippers as his brother. She also heard from other people waiting in the queue that another man and a woman had been arrested at about the same time.

48. On 2 May 2007 the acting prosecutor of Chechnya ruled to separate the investigations concerning Alaudin Sadykov and the applicants' three relatives and Magomed Dzhabayev. He held that the decision of 18 July 2002 to join the investigations had been unfounded, since there were insufficient reasons to believe that the crimes had been committed by the same persons.

49. On 28 May 2007 the investigator of the Chechnya prosecutor's office in charge of the case stated that the investigation had established that on 17 April 2004 Sharip Khaysumov, Ramzan Alaudinov and Luiza Bopayeva had been taken to the Oktyabrskiy VOVD of Grozny, following which their whereabouts could not be established. The abduction of M. Dzhabayev and A.T. had been committed by officers of the Oktyabrskiy VOVD. The perpetrators of the crimes had not been identified. The investigation had therefore to be adjourned.

50. According to the information submitted by the Government, in 2011 the investigation was still pending.

### **C. Additional information submitted by the applicants**

51. The applicants submitted several press and NGO reports indicating that a number of people had disappeared or had been found dead after being detained by police officers from the Khanty-Mansiysk Region on secondment at the Oktyabrskiy VOVD. Those documents also indicated that servicemen had on several occasions set fire to nearby buildings where, it was suggested, the victims' bodies could have been found. In particular, the reports mentioned Abdulkasim Zaurbekov, who had been employed at the VOVD as a construction worker and had disappeared on 17 October 2000 after having entered the premises of the VOVD in order to receive his wages (see *Yusupova and Zaurbekov v. Russia*, no. 22057/02, 9 October 2008). Some of the reports referred to the case of Zelimkhan Murdalov, who had disappeared on 2 January 2001 after being detained at the VOVD. In the latter case, one VOVD officer had been tried and found guilty of causing grave injuries to Mr Murdalov, who had later disappeared.

52. On 19 May 2005 the International Helsinki Federation for Human Rights (IHF) issued a report entitled "Impunity: A Leading Force behind Continued Massive Violations in Chechnya". It described the trial and

conviction of a police officer from the city of Khanty-Mansiysk, Sergey L. for intentionally causing serious harm to the health of Zelimkhan Murdalov in January 2001. The report noted that neither he nor anyone else had been convicted for the “disappearance” and alleged killing of Murdalov, and no one except him had been held responsible for torturing Murdalov (and many other detainees) in the temporary detention ward of the Oktyabrskiy VOVD.

53. According to the reports, in May 2006 the VOVD vacated the premises of the former boarding school. Between 29 and 31 May 2006 the relatives of the missing persons and former detainees, accompanied by staff of the Memorial Human Rights Centre, filmed the building and examined the rooms which had been used for detention, offices and living quarters. They noted numerous inscriptions on the walls, many of which indicated the names and dates – ranging from 2000 to 2006 – of those detained there.

54. In May 2006 the Memorial Human Rights Centre reported its findings at the location of the “illegal jail” in the Oktyabrskiy district of Grozny. Memorial’s representatives examined and took video footage and photographs of the building after it had been vacated by the Oktyabrskiy police department (see paragraphs 36 and 44 above). The building was demolished soon afterwards; and on the eve of 31 May, before the building was torn down, unidentified persons burnt tyres inside the building, so that the writing on the walls had been covered with soot. Before being demolished on 31 May 2006, the building was inspected by the investigators (see paragraphs 36 above).

## II. RELEVANT DOMESTIC LAW

55. For a recent summary, see *Aslakhanova and Others v. Russia* (nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, §§ 43-59, 18 December 2012).

## III. RELEVANT PREVIOUS JUDGMENTS OF THE COURT

56. In the case of *Magomadov v. Russia* (no. 68004/01, 12 July 2007), the Court found it established that on 2 October 2000 Ayubkhan Magomadov had been detained by a group of servicemen from several law-enforcement agencies, including the Oktyabrskiy VOVD in Grozny, on suspicion of involvement in illegal activities. On the same day he was questioned on the premises of the Oktyabrskiy VOVD by officers of the FSB. No formal charges were ever laid against him and no formal records were drawn up in respect of his detention or questioning (§ 97). The Court found that Ayubkhan Magomadov could be presumed dead and that the State bore responsibility for his presumed death, in breach of Article 2. The judgment also found a violation of Article 2 in its procedural aspect, and stated in § 108:



“The Court finds it particularly disturbing that during the investigation of the present case the prosecutor’s office came across at least four other cases of disappearances in September and October 2000 of persons who had been last seen at the Oktyabrskiy VOVD. Despite the factual similarity of these cases, and probably the involvement of the same personnel in the events, it does not appear that the investigation of these cases was interconnected. The Court believes that more coordinated efforts were required from the investigating authorities to bring to justice those responsible for what appears not to have been an isolated instance of enforced disappearances from the premises of the VOVD during the period in question.”

57. In the case of *Yusupov and Zaurbekova v. Russia* (cited above), the Court decided that since Abdulkasim Zaurbekov had entered the premises of the Oktyabrskiy VOVD on 17 October 2000 and had never left, he could be presumed dead. The Court stated in § 55:

“The Court considers that, in the context of the conflict in Chechnya, in a situation where the applicants’ relative entered the premises of a police station and went missing for years, it may be presumed, even in the absence of any conclusive evidence as to what exactly happened to him afterwards, that he was placed in unacknowledged detention under the control of the State. The Court further notes that these circumstances may be described as life-threatening, given, in particular, the available information attesting several other cases of disappearance from the premises of the Oktyabrskiy VOVD of Grozny in September – October 2000.”

The Court went on to find a breach of Article 2 in both its substantive and procedural aspects. In respect of the investigation, in particular, the Court found that despite abundant evidence to the effect that Mr Zaurbekov had gone missing on the premises of the VOVD, hardly any meaningful efforts had been made to investigate the possible involvement of VOVD personnel in his disappearance. The premises had not been inspected, no expert examinations had been carried out, and none of the police officers seconded to the VOVD at the material time had been questioned in the months following Abdulkasim Zaurbekov’s disappearance (*ibid.*, § 63).

58. In the case of *Dzhabayeva v. Russia* (cited above), the Court found that Magomed Dzhabayev could be presumed dead following his unacknowledged detention by unidentified servicemen in Grozny on 10 March 2000 (*ibid.*, § 85). The applicant alleged that his relative had been detained at the Oktyabrskiy VOVD, and his disappearance had been the subject of investigation file no. 12365. According to the information summarised above (see paragraph 42), on 18 July 2002 criminal investigation files nos. 12088, 12136 and 12365 were joined under file no. 12088, and thus until 5 May 2007 (see paragraph 50 above) the disappearance of Magomed Dzhabayev was investigated within the same set of proceedings as the disappearance of the three relatives of the applicants in the present case. In the *Dzhabayeva v. Russia* judgment the Court concluded that there had been a breach of the procedural aspect of Article 2 of the Convention (*ibid.*, § 99).

59. The judgment rendered in the case of *Gelayevy v. Russia* (no. 20216/07, 15 July 2010), concluded that Murad Gelayev had been

arrested by unidentified servicemen in Grozny on 27 February 2000, following which he could be presumed dead. The applicants' submissions, as well as a number of documents from the investigation file opened in relation to Murad Gelayev's suspected murder (criminal investigation file no. 44065) contained sufficient information for the Court to conclude that following his detention he had been detained in the basement of the Oktyabrskiy VOVD, where he had been subjected to torture, including severe beatings, and where his ear had been cut off (*ibid.*, §§ 124 and 127). In that case the Court found both substantive and procedural breaches of Articles 2 and 3 of the Convention in respect of the missing man. The Court noted, in particular, that the identification and questioning of the personnel of the Oktyabrskiy VOVD, including those officers who were on secondment from Khanty-Mansiysk, had been carried out with such long delays, or in such a superficial manner, that it had prevented the investigation from progressing in any meaningful manner (*ibid.*, § 113).

60. The above-mentioned judgment in the case of *Sadykov v. Russia* (no. 41840/02, 7 October 2010) found that the applicant had been tortured while in detention at the Oktyabrskiy VOVD of Grozny between 5 March and 24 May 2000. As regards the incident when the applicant's ear had been cut off, the Court found it "shocking that such a horrid act of violence was committed by a police officer who was, furthermore, a representative of the State seconded to the Chechen Republic to maintain constitutional order" (*ibid.*, § 236). The Court also found a breach of the procedural obligation to investigate ill-treatment.

61. Information about the execution of the above-mentioned judgments is available from the documents made public by the Council of Europe's Committee of Ministers. It appears from the Communication from the Government of the Russian Federation in the "*Khashiyev* group of cases against the Russian Federation (application no. 57942/00)" prepared for the 1144th meeting DH (June 2012) that there have been some developments in the *Sadykov* case. On 21 March 2012 criminal proceedings against B., one of the suspects, were discontinued in application of the Amnesty Act of 22 September 2006 (enacted by the State Duma in respect of perpetrators of criminal offences committed during counter-terrorism operations within the territory of the Southern Federal Circuit). Another suspect, Sergey Z., identified by Mr Sadykov as one of his captors at the time, was arrested but then released. In 2011 Sergey Z. named S. as the person who had cut off the applicant's ear. On 15 December 2011 criminal proceedings against Sergey Z. were discontinued pursuant to the above-mentioned Amnesty Act. S. was put on the list of wanted persons and is being searched for.

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

62. The Government argued that the application should be dismissed because the applicants had failed to exhaust domestic remedies. They stated that the investigations were still pending and it was premature to conclude that the applicants had exhausted domestic remedies and that the remedies had not been effective. Lastly, the applicants had civil remedies at their disposal, which would allow them to obtain compensation for the torts allegedly committed by the State representatives.

63. The applicants argued that the investigation had been pending for a long time without producing any tangible results. That remedy had proved to be ineffective and their complaints had been futile. Other remedies were also futile in such circumstances.

64. In a recent judgment the Court concluded that the non-investigation of disappearances that had occurred, principally, in Chechnya between 1999 and 2006 constituted a systemic problem and that criminal investigations were not an effective remedy in this respect (see *Aslakhanova and Others*, cited above, §§ 217 and 219).

65. In such circumstances, and noting the absence of tangible progress in the criminal investigations over the years, the Court concludes that the objection raised in respect of the pending criminal investigation should be dismissed, since the remedy relied on by the Government was ineffective in the circumstances.

66. As regards a civil action to obtain redress for damage sustained as a result of the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005; and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). Accordingly, the Court confirms that the applicants were not obliged to pursue civil remedies. The preliminary objection in this regard is also dismissed.

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

### A. The parties' submissions

#### 1. *The applicants*

67. The applicants maintained that it was beyond reasonable doubt that on 17 April 2000 their relatives had been detained at the Oktyabrskiy VOVD in Grozny, and had then disappeared. In support of that assertion they referred to the evidence contained in their submissions and the criminal investigation file. They submitted that they had made a prima facie case that their relatives had been detained by State agents and that the essential facts underlying their complaints had not been challenged by the Government. They also asked the Court to draw inferences from the Government's failure to submit the entire content of the criminal investigation file. In view of the absence of any news of their missing relatives for a long time and the life-threatening nature of unacknowledged detention in Chechnya at the relevant time, they asked the Court to consider their relatives dead.

#### 2. *The Government*

68. The Government did not contest the essential facts as presented by the applicants. At the same time, they claimed that during the investigation no information had been obtained proving beyond reasonable doubt that State agents had been involved in the abductions.

### B. The Court's assessment

#### 1. *General principles*

69. A number of principles have been developed in the Court when it is faced with the task of establishing facts on which the parties disagree (see *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, §§ 151-53, 13 December 2012).

70. More specifically, the Court has adjudicated a series of cases concerning allegations of disappearances in the Russian Northern Caucasus. The Court had borne 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. Applying the above-mentioned principles, it has concluded that it would be sufficient for the applicants to make a prima facie case of abduction of the missing person 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. 7626/01, § 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). If the Government failed to rebut that presumption, this would entail a violation of Article 2 in its substantive part. Conversely, where the applicants failed to make a prima facie case, the burden of proof could not be reversed (see, for example, *Tovsultanova v. Russia*, no. 26974/06, §§ 77-81, 17 June 2010; *Movsayevy v. Russia*, no. 20303/07, § 76, 14 June 2011; and *Shafiyeva v. Russia*, no. 49379/09, § 71, 3 May 2012).

71. The Court has also made findings of fact to the effect that a missing person could be presumed dead. Having regard to the previous cases concerning disappearances in Chechnya and Ingushetia which have come before it, the Court has found that in the particular context of the conflict, when a person was detained by unidentified State agents without any subsequent acknowledgment of the detention, this could be regarded as life-threatening (see, among many others, *Bazorkina v. Russia*, no. 69481/01, 27 July 2006; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-XIII (extracts); *Luluyev and Others*, no. 69480/01, ECHR 2006-XIII (extracts); *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, 10 May 2007; and *Velkhiyev and Others v. Russia*, no. 34085/06, 5 July 2011).

72. Turning to the case at hand, the Court finds the following. Although the applicants themselves were not eyewitnesses to the detention, they found witnesses who testified that their three relatives had been taken to the premises of the Oktyabrskiy VOVD on the day of their “disappearance”. Some witnesses were identified by the investigation and testified accordingly (see paragraphs 40 and 47 above). Alaudin Sadykov, who had been detained at the Oktyabrskiy VOVD at the time, identified Luiza Bopayeva as one of the detainees (see paragraph 37 above). Some other indirect evidence relevant to the possible detention of the three persons at the VOVD in April 2000 and confirming the applicants’ statements was also collected by the investigation (see paragraphs 40, 46 and 47 above). In their submissions to the authorities, the applicants consistently maintained that their relatives had been detained at the Oktyabrskiy VOVD. The investigative authorities accepted as fact the version of events as presented by the applicants and took steps to check whether the law-enforcement agencies had been involved in the abductions. As it appears from the documents, the investigation regarded the possibility of abduction by police officers as the only plausible explanation of the event (see paragraph 49 above). Moreover, between July 2002 and March 2007 those events were regarded as one element in a pattern of similar occurrences of unlawful detention, ill-treatment and disappearances, which had occurred during 2000

at the Oktyabrskiy VOVD of Grozny. Only in May 2007 the prosecutor ruled to disjoin the proceedings in the cases concerning the disappearance of the applicant's relatives, ill-treatment of Mr Sadykov and disappearance of Mr Dzhabayev (see paragraph 48 above).

73. In such circumstances, the Court is satisfied that the applicants have made a prima facie case that their missing relatives were last seen in the hands of State agents.

74. The Government referred to the unfinished nature of the criminal investigation and to the lack of evidence that the applicants' relatives were dead. However, the Court considers that that argument is insufficient to discharge their burden of proof in a case where there is prima facie evidence of State control over the disappeared prisoners.

75. Bearing in mind the general principles outlined above, the Court finds it sufficiently established that Luiza Dagayeva, Sharip Khaysumov and Ramzan Alaudinov were taken into custody by State agents on 17 April 2000. In the absence of any reliable news of them since that date and given the life-threatening nature of such detention, the Court also finds that these persons could be presumed dead.

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

76. The applicants complained under Article 2 of the Convention that their relatives had disappeared after having been detained by State agents and that the domestic authorities had failed to carry out an effective investigation into the matter. 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**

77. The Government contended that the domestic investigations had obtained no evidence that the detainees had been held under State control or that they were dead. They further noted that the mere fact that the

investigative measures had not produced any specific results, or had produced only limited ones, did not mean that there were any omissions on the part of the investigative authorities. They claimed that all necessary measures were being taken to comply with the obligation to conduct an effective investigation.

78. The applicants reiterated their complaints.

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

### *1. Admissibility*

79. 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**

80. The Court has already found it established that the applicants' three family members could be presumed dead following their unacknowledged detention by State agents. The liability for their deaths rests with the respondent State. Noting that the Government do not rely on any justification for the deaths, the Court finds that there have been violations of the right to life under the substantive aspect of Article 2 in respect of Luiza Dagayeva, Sharip Khaysumov and Ramzan Alaudinov.

#### **(b) Alleged inadequacy of the investigation into the abductions**

81. The Court has already found that a criminal investigation does not constitute an effective remedy in respect of disappearances which have occurred, in particular, in Chechnya and Ingushetia between 1999 and 2006, and that such a situation constitutes a systemic problem under the Convention (see *Aslakhanova and Others*, cited above, §§ 217 and 219). In the case at hand, as in many previous similar cases reviewed by the Court, the investigation has been pending for many years without bringing about any significant developments as to the identities of the perpetrators or the fate of the applicants' missing relatives. While the obligation to investigate effectively is one of means and not of results, the Court notes that the criminal proceedings have been plagued by a combination of the same defects as those enumerated in the *Aslakhanova and Others* judgment (cited above, §§ 123-25).

82. Moreover, the Court has already found the same set of criminal investigations to be in breach of procedural obligations under Articles 2 and 3 of the Convention in two previous judgments – *Dzhabayeva v. Russia* and *Sadykov v. Russia* (both cited above).

83. The Court is concerned by the fact that the submissions made by the Government in September 2009 in relation to the present case did not demonstrate any progress in the establishment of the facts and in bringing to justice the perpetrators of what appears to be a chain of the gravest human-rights abuses. It is shocking, as already remarked by the Court in the *Sadykov* case, that the acts in question appear to be imputable to a group of police officers (§ 236). The Court's five judgments cited above (see paragraphs 56-61) provide strong evidence of a pattern of illegal detention, torture and disappearances of persons detained at, or indeed simply entering, the premises of the Oktyabrskiy VOVD at the relevant time. The Court reiterates that what is at stake is nothing less than public confidence in the State's monopoly on the use of force (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-VI; and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 300, ECHR 2011 (extracts)). The State must therefore ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Zavoloka v. Latvia*, no. 58447/00, § 34, 7 July 2009). It appears that in the present case the respondent State has failed to ensure such an adequate response.

84. This is apparent in the following aspects of the investigation. First, the delays in questioning the potential perpetrators of the crime were such that they alone presented a challenge to the effectiveness of the investigation. In the past, the Court has found a violation where no appropriate steps were taken to reduce the risk of collusion among officers potentially involved in a crime, which amounted to a significant shortcoming in the adequacy of the investigation (see *Ramsahai and Others* [GC], cited above, § 330). In the present case, many years passed before the key persons identified by the witnesses were questioned, greatly increasing the risk of such collusion.

85. This risk of obstructing justice through collusion is further exacerbated in a situation of hierarchical subordination and common service, such as that of police officers. In the present case, many of them had been identified and questioned as witnesses, and some of them were charged with crimes in relation to Alaudin Sadykov's complaints. Despite a plausible complaint about the involvement of several police officers, including high-ranking officers, in serious crimes, the documents reviewed by the Court suggest that no steps were taken to remove them from their posts during the investigation and thus to limit their – at least potential – ability to put pressure on others involved in the investigation.



86. The Court is further struck by the fact that, despite a well-founded suspicion that serious crimes had occurred, the prosecution authority merely accepted the explanations of the VOVD officers that they were not aware of the ill-treatment and disappearances in question. Such acceptance stands in sharp contrast with the duty of vigilance expected from law-enforcement authorities when facing allegations of crimes that encroach on the core values of a democratic society, such as the right to life and the prohibition of torture. The Court observes that the investigation did not come up with any other version of the events and failed to elucidate the fate of the disappeared persons. In this respect, too, failing to follow an obvious line of inquiry undermines the investigation's ability to establish the circumstances of the case and the person responsible (see *Kolevi v. Bulgaria*, no. 1108/02, § 201, 5 November 2009; and *Tsechoyev v. Russia*, no. 39358/05, § 153, 15 March 2011).

87. The fact that in 2005 officer Sergey L., who was questioned as a witness in the present case, was found guilty and sentenced for severely beating a detainee (who later disappeared) in January 2001 proves that the investigation was capable of identifying and bringing to justice members of the police force who were guilty of abuses (see paragraph 52 above). However, this finding appears particularly limited in the context of well-founded allegations of other serious crimes committed at the Oktyabrskiy VOVD of Grozny in 2000. The outcome of that trial highlights the impunity of the perpetrators of other similar acts and, as such, must be particularly frustrating to the relatives of the victims in this case.

88. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances of the disappearance and death of the applicants' three relatives. Accordingly, there has been a violation of Article 2 in its procedural aspect.

#### IV. ALLEGED VIOLATIONS OF ARTICLES 3, 5 AND 13 OF THE CONVENTION

89. The applicants complained that Articles 3 and 5 of the Convention had been violated as a result of the mental suffering caused to them by the disappearance of their relatives and the unlawfulness of their detention. They also claimed that, contrary to Article 13 of the Convention, they had no available domestic remedies against the violations claimed, in particular those under Articles 2 and 3. These Articles read, in so far as relevant:

##### Article 3

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

**Article 5**

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

...

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

...

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

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

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

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

**Article 13**

“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.”

90. The Government contested those claims.

**A. Admissibility**

91. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## B. Merits

92. 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).

93. Equally, the Court has found on many occasions that unacknowledged detention is a complete negation of the guarantees contained in Article 5 and discloses a particularly grave violation of its provisions (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, *Luluyev and Others*, cited above, § 122; and *El Masri*, cited above, § 239).

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

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

96. 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 investigation, any other possible remedy becomes inaccessible in practice. The Court thus finds that the applicants in this case did not dispose of an effective domestic remedy for their grievances under Articles 2 and 3, in breach of Article 13 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. Article 41 of the Convention provides:

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

### A. The applicants' claims

#### 1. *Pecuniary damage*

98. Several applicants claimed pecuniary damage for the loss of financial support by the breadwinner. They based their calculation on the subsistence level provided for by Russian law and on the Ogden Actuarial Tables. The fourth, fifth, eighth and tenth applicants claimed 155,031 Russian roubles (RUB), RUB 118,719, RUB 215,467 and RUB 276,432 respectively. The tenth applicant stressed that she had brought her claim also in respect of her four children, for whom, after the disappearance of Ramzan Alaudinov, she remained the sole provider.

99. The Government contested the reasonableness of and grounds for the claim.

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

101. Having regard to its above findings, the Court finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relatives and the loss by the applicants of the financial support which they could have provided. Having regard to the applicants' submissions, the Court awards 3,000 euros (EUR) to the fourth and fifth applicants jointly; EUR 3,000 to the eighth applicant and EUR 6,000 to the tenth applicant in respect of pecuniary damage, plus any tax that may be chargeable on these amounts.

#### 2. *Non-pecuniary damage*

102. Each of the three applicant families (the first and third applicants jointly, the fourth to seventh applicants jointly and the eighth and tenth applicants jointly) claimed EUR 150,000 in respect of non-pecuniary damage.

103. 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. In the present case the Court finds it reasonable to award EUR 60,000 to the first and third applicants jointly; EUR 60,000 to the fourth to seventh applicants jointly; and EUR 60,000 to the eighth and tenth applicants jointly.

#### **B. Costs and expenses**

104. The applicants claimed EUR 7,183 for the costs and expenses incurred before the domestic authorities and the Court. The first applicant submitted a copy of her legal agreement with the representatives, and the other applicants submitted a breakdown of the costs and expenses incurred, complete with postal receipts and translators' invoices. They requested the transfer of that sum directly to the representative's bank account in the Netherlands.

105. The Government disputed the reasonableness of and justifications for the amount claimed.

106. In accordance with its case-law, the Court has to establish first whether the costs and expenses indicated by the applicant's representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324, and *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV).

107. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,183 for the proceedings before the Court, to be paid directly to the representative's bank account in the Netherlands.

#### **C. Default interest**

108. 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. *Declares* the application admissible;

2. *Declares* that there has been a substantive violation of Article 2 of the Convention in respect of Luiza Dagayeva, Sharip Khaysumov and Ramzan Alaudinov;
3. *Holds* that there has been a procedural violation of Article 2 of the Convention in respect of the failure to investigate effectively the disappearance and deaths of the applicants' relatives;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
5. *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;
6. *Holds* there has been a violation of Article 13 of the Convention in conjunction with Articles 2 and 3 of the Convention;
7. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement, save in respect of costs and expenses to the applicants represented by SRJI:
    - (i) EUR 3,000 (three thousand euros) to the fourth and fifth applicants jointly; EUR 3,000 (three thousand euros) to the eighth applicant and EUR 6,000 (six thousand euros) to the tenth applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
    - (ii) EUR 60,000 (sixty thousand euros) to the first and third applicants jointly; EUR 60,000 (sixty thousand euros) to the fourth to seventh applicants jointly; and EUR 60,000 (sixty thousand euros) to the eighth and tenth applicants jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (iii) EUR 7,183 (seven thousand one hundred and eighty-three euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid directly to the representative's bank account in the Netherlands;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Isabelle Berro-Lefèvre  
President