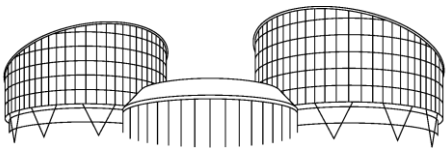

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF Z. AND KHATUYEVA v. RUSSIA

(Applications nos. 39436/06 and 40169/07)

JUDGMENT

STRASBOURG

30 January 2014

FINAL

08/09/2014

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

In the case of Z. and Khatuyeva v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 7 January 2014,

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

PROCEDURE

1. The case originated in two applications (nos. 39436/06 and 40169/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Russian nationals, Ms Z. ("the first applicant") and Mrs Yakha Khatuyeva ("the second applicant"), on 14 September 2006 and 11 September 2007 respectively. The President of the Section acceded to the first applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The second applicant was represented by lawyers of the Memorial Human Rights Centre (EHRAC), an NGO with offices in Moscow and London. 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 relative (brother and husband respectively) had been detained on 28 December 2004 in North Ossetia and had disappeared.

4. The two applications were communicated to the Government on 14 April 2009 and 27 August 2009 respectively. It was also decided to grant them priority under Rule 41 of the Rules of Court and to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

5. The President of the Chamber acceded to the Government's request not to make publicly accessible certain documents from the criminal investigation file deposited with the Registry in connection with the applications (Rule 33 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1965, is a former resident of the Chechen Republic (Chechnya) and presently lives in Austria. She is a sister of Mr Zhamalayl (also spelled as Zhamalayla and Dzhamalayl) Yanayev, born in 1961. The second applicant is the wife of Zhamalayl Yanayev. She was born in 1965 and lives in Grozny, Chechnya.

A. Detention of Mr Zhamalayl Yanayev

7. At the material time Mr Zhamalayl Yanayev and his family were living in Vladikavkaz, North Ossetia. Neither applicant was a witness to Mr Yanayev's arrest, and the following presentation is based on the information collected by the relatives after the incident and the materials of the official investigation.

8. At about 3 p.m. on 28 December 2004 Mr Zhamalayl Yanayev was about to take a flight from Vladikavkaz to Moscow from Beslan airport in North Ossetia. He checked in and passed through the security controls, and was waiting in the departure zone to board the aircraft.

9. At that time, two armed men wearing camouflage uniforms went to the office of the head of the airport security services, Lieutenant-Colonel V.T. of the Federal Security Service ("the FSB"). According to V.T., the men produced documents indicating that they were servicemen of the Regional Department for Combating Organised Crime ("the RUBOP") of the Ministry of the Interior. They told him to call for a passenger by the name of Yanayev, but did not produce any papers that could have served as the basis for Mr Yanayev's arrest.

10. The men accompanied V.T. to the departure zone. V.T. asked a police officer on duty there to call for Mr Yanayev. The men first took Mr Yanayev to the personal inspection room, and then left the building and drove off in three vehicles, two UAZ-469s and a Niva. The applicants submitted to the Court a list of names, ranks and vehicle registration numbers that had been communicated to the family by unnamed eyewitnesses, including airport security guards. The list included the names of servicemen of the Ministry of the Interior stationed in Chechnya and military servicemen. The registration number of one of the UAZ vehicles was noted as 33-03 65-86 OA 12 RUS.

11. The family have had no news of Mr Zhamalayl Yanayev since 28 December 2004.

B. Search for Mr Zhamalayl Yanayev and the official investigation

12. The applicants and other members of Mr Zhamalayl Yanayev's family learnt of his detention when he failed to arrive in Moscow. They immediately contacted the airport authorities in Beslan, prosecutors' offices and other law-enforcement agencies. On 2 January 2005 the second applicant went to Beslan airport and spoke to the head of the airport police. The latter told her that her husband was not on a wanted list and that on 28 December 2004 he had checked in for his flight. He claimed that he had been absent at that time. After his return, his subordinate officers had informed him that unidentified persons had called the airport authorities requesting that Mr Zhamalayl Yanayev's flight be postponed and that he be arrested. Shortly thereafter several officers of an unidentified "power structure" had arrived at the airport in a Niva and two UAZ vehicles. Two officers had entered the office of the head of the airport security services, Mr V.T. They had gone with V.T. to fetch Mr Zhamalayl Yanayev. Meanwhile the officers' vehicles had been admitted inside the airport security perimeter. Subsequently, the officers had taken Mr Zhamalayl Yanayev outside the terminal building, put him in a Niva vehicle and driven off.

13. In the weeks immediately after Mr Zhamalayl Yanayev's disappearance, the family members did not keep track of their correspondence with the authorities. They repeatedly applied in person and in writing to various public bodies, including the Ministry of the Interior, civil and military prosecutors, the administrative authorities, the media and public figures. In their letters they gave details of the abduction and asked for assistance and information on the investigation. On several occasions the first applicant contacted the organisations of the Red Cross Federation in Austria, which informed her, after having consulted their partners in Russia, that they had no information about the missing man. Below is a summary of the relevant correspondence and ensuing proceedings.

1. Investigation into the abduction of Mr Zhamalayl Yanayev by the transport prosecutor's office

14. On 18 January 2005 the second applicant wrote to the Prosecutor's Office of Vladikavkaz Public Transport ("the Vladikavkaz transport prosecutor's office") and asked them to find her husband.

15. On 10 February 2005 the Vladikavkaz transport prosecutor's office opened criminal investigation file no. 2553005 on the abduction of Mr Zhamalayl Yanayev, under Article 126 part 1 of the Criminal Code (kidnapping). Further to the Court's request, on 18 January 2010 the Government submitted 274 pages of documents from the said criminal investigation file and from the criminal investigation file on alleged negligence by V.T. (see below).

16. On 11 February 2005 the second applicant was granted victim status in those proceedings.

17. On 11 March 2005 the Ministry of the Interior of North Ossetia informed the second applicant that the search for her husband was on-going and that she would be informed of any developments in the case.

18. In June 2005 the second applicant wrote to the General Prosecutor's Office and to the chair of the Presidential Council on Civil Society and Human Rights asking for their help in finding out about the whereabouts and fate of her husband. She complained that the investigation had been ineffective and indicated that on 5 May 2005 it had been transferred to the military prosecutor's office of the Northern Caucasus military circuit located in Rostov-on-Don, and that she had had no news of its progress since that date.

19. On 13 September 2005 the acting head of the investigation initiated by the Vladikavkaz transport prosecutor's office noted a number of investigative steps to be taken, such as finding the vehicles with the recorded number plates and questioning additional witnesses.

20. In a letter of 4 October 2005 the General Prosecutor's Office informed the second applicant that the investigation had established that at about 3 p.m. on 28 December 2004 unidentified persons had detained Mr Zhamalayl Yanayev at Beslan airport and taken him away, and he had then disappeared. Those persons had presented themselves as servicemen of the FSB and the RUBOP, and had received assistance from V.T., the head of the airport security services. Although on 10 February 2005 the Vladikavkaz transport prosecutor's office had opened a criminal investigation into kidnapping, given Mr Yanayev's prolonged absence, the events had been subsequently also classified as murder. As the investigation was pending, the second applicant was told that, as a victim, she could not have access to the case file until the investigation had been completed. The investigators had established that Mr Yanayev had not been charged with any crimes. The theory that law-enforcement authorities had been involved in his kidnapping was not supported by the case materials. The letter further stated that on 9 July 2005 the Vladikavkaz military prosecutor's office had decided not to charge V.T. with any offence owing to the absence of the elements of a crime in his actions. On 29 September 2005 that decision had been quashed and a criminal investigation in respect of V.T. had been opened under Article 286 part 1 of the Criminal Code (abuse of power). The investigation was being carried out by the Vladikavkaz military prosecutor's office (see below).

21. On 13 December 2005 and 12 May 2006, the investigator put additional questions to the second applicant. She confirmed her previous statements and specified that, to her knowledge, her husband had had no conflicts or enemies. She also indicated her husband's mobile telephone number, which he had used on the day of his disappearance.

22. On 8 April 2006 the anti-terrorist department of the Ministry of the Interior in the South Federal Circuit informed the second applicant that information about the whereabouts of her husband could be obtained from the Vladikavkaz transport prosecutor's office within criminal investigation no. 2553005.

23. On 15 May 2006 the investigator of the Vladikavkaz transport prosecutor's office watched the airport's CCTV footage and concluded that the registration plates of the vehicles were illegible.

24. On 15 February 2007 the second applicant asked the Vladikavkaz transport prosecutor's office to allow her access to the criminal investigation file into her husband's kidnapping. She indicated that as she intended to complain about the failure to carry out an effective investigation she needed to be aware of the progress of the investigation to date.

25. On 28 February 2007 the Vladikavkaz transport prosecutor's office informed the second applicant that the case file would be transferred to the Vladikavkaz military prosecutor's office. Once the office in charge of further investigation had been established, she could submit a new request to gain access to the file.

26. On 15 March 2007 the second applicant asked the Prosecutor's Office of North Ossetia to inform her which prosecutor's office was responsible for investigating her husband's abduction.

27. It appears from the documents submitted that the latest decision to reopen the proceedings is dated 8 June 2009. According to the Government's submissions, the investigation has remained pending without having made any progress as to Mr Zhamalayl Yanayev's fate or the identities of the perpetrators. The second applicant submitted that she had not received any update about the state of that investigation.

2. Criminal proceedings against Mr V.T.

28. On 14 June 2005 V.T. was questioned by an investigator from the Vladikavkaz garrison military prosecutor's office ("the garrison military prosecutor's office"). V.T. explained that at about 4 p.m. on 28 December 2004, two men wearing camouflaged uniforms had arrived at his office and shown him papers identifying them as colonels of the regional RUBOP. He could not remember their names. He was certain that the identity papers were genuine, as he had often seen such documents before. In accordance with the instructions on access of unauthorised personnel into the airport security zone, V.T. accompanied the two men to the waiting area. The police officer on duty there, Ts., called Mr Yanayev to the room used for personal searches. The two RUBOP officers entered the room together with Mr Yanayev, while V.T. waited outside. Soon afterwards V.T. saw the officers leaving the building through a service exit, together with Mr Yanayev. By that time, three vehicles – one Niva and two UAZ – had crossed the airport security perimeter and were parked by that exit. The

witness did not recall their registration numbers. V.T. further specified that he had not seen, or demanded to see, any documents on the basis of which Mr Yanayev had been detained and taken away. He later learnt from another police officer, G., that the two colonels had come from Khankala (the main Russian military base in Chechnya).

29. On 20 June 2005 the investigator questioned T., the head of the internal security directorate of the FSB's North Ossetia department. He confirmed that V.T.'s actions had been correct and in line with the relevant internal instructions.

30. On 9 July 2005 the garrison military prosecutor's office ruled not to open criminal proceedings against V.T.

31. On 29 September 2005 the garrison military prosecutor's office set aside the above decision and instituted criminal proceedings against V.T. on suspicion of abuse of power in respect of the events of 28 December 2004. The case was assigned the number 14/03/0335-05.

32. On 13 January 2006 the garrison military prosecutor's office notified the applicant that on 13 January 2006 it had discontinued case no. 14/03/0335-05 against V.T. because of the absence of the constituent elements of a crime in his actions.

33. On 1 March 2006 the applicant complained about the discontinuation of the proceedings.

34. On an unspecified date the proceedings were resumed.

35. On 20 April 2006 the garrison military prosecutor's office again decided to discontinue criminal case no. 14/03/0335-05 owing to the absence of the constituent elements of a crime in V.T.'s actions. The decision read as follows:

> "At about 4 p.m. on 28 December 2004, in Vladikavkaz airport in the town of Beslan ..., Mr [V.T.], officer of the [North Ossetia] FSB department, deputy head of Vladikavkaz airport and head of the airport security services, was approached by two persons in light-coloured camouflage uniforms. [They] identified themselves as officers of the [RUBOP] and produced their service ID documents [*служебные удостоверения*] showing that they were colonels in the above-mentioned department. [V.T.] had no doubts about the authenticity of those documents. Following a request by those persons and in accordance with the applicable regulations on access control in airports ..., [V.T.] took them to the airport security zone. An airport police officer there, Mr Ts., took [Mr Zhamalayl Yanayev], who had already passed through the security check, to a personal inspection room (*комната индивидуального досмотра*). The latter was followed into the room by the persons who had arrived in the security zone together with [V.T.].
>
> Five minutes later the above-mentioned persons and [Mr Zhamalayl Yanayev] left the airport administration building through a side exit. Having put Mr Yanayev in an UAZ-469 vehicle, they drove off to an unknown destination.
>
> Pursuant to chapter 7 of the regulations on access control in airports ... of 20 January 1998, ... officers of the FSB, ... the Ministry of the Interior, ... and the prosecutor's

> offices ... may be admitted to the airport premises, including the security zone, upon presentation of their service ID documents...
>
> ... It follows from the job description of the deputy head of [Beslan] airport responsible for airport security services ... that [V.T.] has a duty to cooperate closely with the FSB, ...[and] the [Ministry of the Interior] ... He enjoys unrestricted access to the entire airport premises."

The decision also mentioned that the investigators had questioned Mr D., the airport director, as a witness. Mr D. had submitted that V.T.'s actions on 28 December 2004 had been in accordance with the applicable regulations and his professional duties.

36. The investigator concluded that V.T. had not abused his powers and discontinued the criminal proceedings against him for absence of the constituent elements of a crime.

37. On 13 January 2006 the second applicant was informed by the Vladikavkaz military prosecutor's office that the criminal proceedings against V.T. for abuse of power had been discontinued. The letter referred to criminal investigation file no. 14/03/0335-D and indicated that this decision was subject to appeal.

38. On 1 March 2006 the second applicant wrote letters to various officials, including the General Prosecutor and the head of the FSB, complaining about the decision of the Vladikavkaz military prosecutor's office. In the letters she mentioned that after having received the letter of 13 January 2006, she had had a meeting with the Vladikavkaz military prosecutor who had told her that V.T. had acted in accordance with instructions and that the persons whom he had allowed to arrest her husband had had all the necessary credentials.

39. On 15 March 2006 the Chechnya Ombudsman wrote to the Vladikavkaz military prosecutor's office. His letter contained detailed questions about the actions of V.T. He asked them to make further inquiries about the identities of the persons who had been allowed to enter the security zone of the airport and carry out an arrest there. He also asked them to check the official records and reports which the airport security services, including V.T., had made about the incident and to identify the vehicles used by the abductors.

40. On 2 June 2006 the Garrison Military Court dismissed the second applicant's complaint about the decision of 13 January 2006. It held that the decision to discontinue proceedings in case no. 14/03/0335-05 had been made by a competent body; that the investigation had questioned all the witnesses and the suspect (V.T.), had examined all the relevant regulations and had arrived at well-reasoned conclusions. This decision was quashed on appeal and the case was remitted to the first-instance court for a fresh examination.

41. On 30 June 2006 the Garrison Military Court again dismissed the second applicant's complaint for the same reasons as in its decision of

2 June 2006. According to the second applicant, she received the decision of 30 June 2006 after the time-limit for appealing had expired.

42. On 20 November 2006 the Military Court of the North Caucasus Military Circuit refused the applicant's request for a supervisory review of the decision of 30 June 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

43. 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).

THE LAW

I. JOINDER OF THE APPLICATIONS

44. 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. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

45. The Government argued that the applications should be dismissed for failure to exhaust domestic remedies. They stressed that the applicants had had, and currently had, various remedies at their disposal to which they could have recourse with respect to the on-going investigation. The applicants had failed to appeal against all of the investigators' decisions by requesting a judicial review. The investigation into the abduction was still pending and it was premature to conclude that the applicants had exhausted domestic remedies and that the remedies had not been effective. Lastly, they pointed out that the applicants could have claimed damages in civil proceedings.

46. The applicants argued that the investigations had been pending for a long time without producing any tangible results. That remedy had proved to be ineffective and their complaints, as well as any other potential remedies, had proved futile.

B. The Court's assessment

47. 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.

48. As regards criminal-law remedies, the Court observes that the criminal investigation is currently pending. The parties disagreed as to its effectiveness.

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

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

A. The parties' submissions

1. The applicants

50. The applicants maintained that it was beyond reasonable doubt that the men who had taken away their relative had been State agents. In support of this 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 Mr Zhamalayl Yanayev had been abducted by State agents and that the essential facts underlying their complaints had not been challenged by the Government. In view of the absence of any news of their missing relative for a long time and the life-threatening nature of unacknowledged detention in the Northern Caucasus at the relevant time, they asked the Court to consider their relative dead.

2. The Government

51. The Government did not contest the essential facts as presented by the applicants. At the same time, they claimed that during the investigations no information had been obtained proving beyond reasonable doubt that

State agents had been involved in the abduction. The mere fact that the abductors had worn camouflage uniforms and used forged documents was not enough to presume so. Nor could the death of the applicants' relative be established with certainty.

B. The Court's assessment

52. A number of principles have been developed in the Court when it has been 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).

53. More specifically, the Court has adjudicated a series of cases concerning allegations of disappearances in the Russian Northern Caucasus. 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 persons 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 this presumption, this would entail a violation of Article 2 in its substantive part. Conversely, where the applicants failed to make a prima facie case, the burden of proof could not be reversed (see, for example, *Tovsultanova v. Russia*, no. 26974/06, §§ 77-81, 17 June 2010; *Movsayevy v. Russia*, no. 20303/07, § 76, 14 June 2011; and *Shafiyeva v. Russia*, no. 49379/09, § 71, 3 May 2012).

54. 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); *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, 10 May 2007; and *Velkhiyev and Others v. Russia*, no. 34085/06, 5 July 2011).

55. Turning to the case at hand, the Court finds that it contains clear, convincing and concordant evidence that Mr Zhamalayl Yanayev was detained on 28 December 2004 by agents of the State. The Court notes, in particular, that he was detained in the security zone of an airport which

persons and vehicles were allowed to enter only after undergoing a thorough check by the police and the airport security services and upon presentation of valid identity documents. The proceedings in respect of V.T., who was in charge of the airport security services and was himself an officer of the FSB, failed to establish any fault in his actions when he had allowed the men whom he believed to be officers to enter the security zone and carry out the arrest (see paragraphs 12, 20, 28 and 35 above). There is nothing in the documents reviewed by the Court to support the Government's assertion that the identity documents had been forged. Finally, the Court remarks that the domestic criminal proceedings have treated Mr Yanayev's disappearance as murder (see paragraph 20 above).

56. The Court finds that when persons present themselves to airport security officers, pass unhindered through the airport security perimeter and produce seemingly valid documents in support of the lawfulness of an arrest, which they then carry out, the most obvious conclusion is that those men are indeed security personnel. It appears too that this line of inquiry was pursued by the domestic criminal investigations. As can be seen from many previous judgments involving allegations of disappearances, such security operations in the region have taken place without prior or subsequent acknowledgment, and have been routinely denied by the authorities (see for example, *Alikhadzhiyeva v. Russia*, no. 68007/01, § 59, 5 July 2007; *Vakhayeva and Others v. Russia*, no. 1758/04, § 134, 29 October 2009; *Mutsolgova and Others v. Russia*, no. 2952/06, § 100, 1 April 2010; and *Malika Alikhadzhiyeva v. Russia*, no. 37193/08, § 88, 24 May 2011). Bearing this in mind, the Court finds that the theory that the crime might have been committed by imposters is at variance with the established facts in this case. The Court rejects it as mere conjecture which is not supported by any evidence. Accordingly, the Government's arguments are insufficient to discharge them of their burden of proof in a case where there is prima facie evidence of State control over the disappeared person.

57. In view of the general principles outlined above, the Court finds it sufficiently established that Mr Zhamalayl Yanayev was detained on 28 December 2004 by State agents. In the absence of any reliable news of him since that date, and given the life-threatening nature of such detention, the Court finds that he may be presumed dead.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

58. The applicants complained, under Article 2 of the Convention, that their relative 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. Admissibility

59. The Court recalls that the question of exhaustion of domestic remedies in criminal proceedings has been joined to the merits (see paragraph 49 above). It 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.

B. Merits

1. Alleged violation of the right to life of the applicants' relative

60. The Court has already found it established that the applicants' brother and husband could be presumed dead following his unacknowledged detention by State agents. The liability for his death rests with the respondent State. Noting that the Government do not rely on any grounds for the justification of the death, the Court finds that there has been a violation of the right to life in respect of Mr Zhamalayl Yanayev, in breach of the substantive aspect of Article 2 of the Convention.

2. Alleged inadequacy of the investigation into the abduction

61. In a recent judgment the Court concluded that the non-investigation of disappearances that had occurred, principally, in Chechnya and Ingushetia 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). The Court also noted that the problems of investigating such events were widespread and

should be borne in mind when examining complaints arising out of similar cases occurring outside of that period and/or elsewhere in the region.

62. In the case at hand the detention occurred in North Ossetia. However, 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 relative. While the obligation to investigate effectively is one of means and not of results, the Court notes that the proceedings have been plagued by a combination of the defects such as enumerated in the *Aslakhanova and Others* judgment (cited above, §§ 123-125).

63. Most importantly, no meaningful steps have been taken to identify the persons who had arrested the applicants' relative. The domestic investigations carried out into the disappearance of Mr Yanayev and the alleged negligence by officer V.T. simply accepted the latter's statements that he did not remember or had not recorded the names of the men whom he had accompanied into the airport security zone. Nonetheless, he allowed them to detain Mr Yanayev and to leave the secured premises with the detainee without undergoing any formalities. The investigation did not come up with any other version of the events and failed to elucidate the fate of the disappeared person. In this connection, failure 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).

64. In addition, the investigations were affected by delays as a result of regular decisions to adjourn the proceedings without taking the most obvious investigative steps, followed by periods of inactivity. Those delays further diminished the prospects of solving the crime. Despite her request, the second applicant has had no chance to acquaint herself with the case-file materials (see paragraph 24, 25 and 27 above).

65. Bearing in mind the above considerations, and noting the absence of tangible progress in the criminal investigation over the years, the Court concludes that the objection in relation to the pending criminal investigation should be dismissed, since the remedy relied on by the Government was ineffective in the circumstances.

66. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the disappearance of Mr Zhamalayl Yanayev. Accordingly, there has been a violation of Article 2 in its procedural aspect.

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

67. The applicants complained of violations of Articles 3 and 5 of the Convention on account of the mental suffering caused to them by the disappearance of their relative and the unlawfulness of his detention. They also argued that, contrary to Article 13 of the Convention, they had no available domestic remedies against the alleged violations, 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."

68. The Government contested those arguments.

A. Admissibility

69. 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

70. 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).

71. 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 v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII (extracts); and *Aslakhanova*, cited above, § 132).

72. The Court reiterates its findings regarding the State's responsibility for the abduction and the failure to carry out a meaningful investigation of the fate of the disappeared person. It finds that the applicants, who are his sister and wife, 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 member and also of the manner in which their complaints have been dealt with.

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

74. The Court reiterates its finding that the criminal investigation has been ineffective. In such circumstances, any other possible remedy becomes inaccessible in practice. The Court thus finds that the applicants did not dispose of an effective domestic remedy for their grievances under Articles 2 and 3 of the Convention, in breach of Article 13.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The second applicant asked the Court to award her non-pecuniary damages in the amount which it would consider reasonable to compensate her for the suffering she has endured, and continues to endure, as a result of her husband's disappearance and the authorities' reaction to her grief.

77. The Government were of the opinion that the finding of violations would constitute sufficient compensation.

78. The Court awards the second applicant 60,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

79. In respect of costs and expenses, the second applicant claimed 1,560 pounds sterling (GBP), which included the costs of drafting legal documents submitted to the Court, translation services, and administrative and postal expenses. She submitted a breakdown of the costs incurred and invoices.

80. As regards costs and expenses, the Court has to establish first whether the costs and expenses indicated by the applicant's representatives were actually incurred and, second, whether they were necessary and reasonable as to quantum (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).

81. In view of its conclusions, the principles enumerated above and the parties' submissions, the Court awards the second applicant EUR 1,800, plus any tax that may be chargeable to her. The award in respect of costs and expenses is to be paid into the representative's bank account, as identified by the second applicant.

C. Default interest

82. 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. *Joins* to the merits the Government's objection of non-exhaustion of domestic remedies and rejects it;

3. *Declares* the applications admissible;

4. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Mr Zhamalayl Yanayev;

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

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

7. *Holds* that there has been a violation of Article 5 of the Convention in respect of the unlawful detention of Mr Zhamalayl Yanayev;

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

9. *Holds*

(a) that the respondent State is to pay to the second applicant, 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 on the date of settlement, save in the case of the payment of costs and expenses:

(i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;

(ii) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, the net award to be paid into the representative's bank account, as identified by the applicant;

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

Done in English, and notified in writing on 30 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President