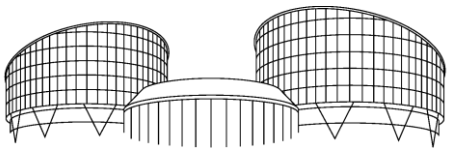

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MIKIYEVA AND OTHERS v. RUSSIA

(Applications nos. 61536/08, 6647/09, 6659/09, 63535/10 and 15695/11)

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 Mikiyeva and Others 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 five applications (see Appendix I) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Russian nationals ("the applicants"), on the dates indicated below in Appendix I.

2. The applicants were represented before the Court by lawyers from the NGO Stichting Russian Justice Initiative ("SRJI") (in partnership with the NGO Astreya), Mr D. Itslayev, a lawyer practising in Grozny, the Chechen Republic; and Mr M. Magomedov, a lawyer practising in Khasavyurt, the Republic of Dagestan. 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 on various dates between 2000 and 2004 their five relatives had been abducted by State servicemen in Chechnya and that no effective investigation of the matter had taken place.

4. On 3 November 2011 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants in the present cases are Russian nationals residing in various settlements in the Chechen Republic, Russia. They are close

relatives of individuals who disappeared in the Chechen Republic after their alleged abduction from their homes in 2001-2004 by groups of servicemen. According to the applicants, the servicemen had belonged to the Russian federal troops, as they had been in camouflage uniforms, had had Slavic features and had spoken unaccented Russian. Armed with machineguns, the servicemen had broken into the applicants' homes, searched the premises, checked the identity documents of the applicants' relatives and taken the latter away in military vehicles, such as armoured personnel carriers (APCs), UAZ cars or URAL lorries. According to witnesses, after being abducted the applicants' relatives were taken to the main federal military base in Khankala. None of the applicants have seen their missing relatives thereafter.

6. The applicants complained about the abductions to law-enforcement bodies, and official investigations were opened. The proceedings were repeatedly suspended and resumed, and have remained pending for several years without attaining any tangible results. The investigations mainly consisted of making requests for information and formal requests for operational search measures to be carried out by counterparts in various parts of Chechnya and other regions of the North Caucasus. The requests received either negative responses or no replies at all.

7. From the documents submitted it appears that the relevant State authorities were unable to identify the State servicemen allegedly involved in the arrests or abductions.

8. In their observations the Government did not challenge the allegations as presented by the applicants. At the same time, they stated that there was no evidence to prove beyond reasonable doubt that State agents had been involved in the abductions.

9. Below are the summaries of the facts relevant to each individual application. The personal details of the applicants and their disappeared relatives are shown in Appendix I.

A. Application no. 61536/08 Mikiyeva and Menchayeva v. Russia

1. Abduction of Mr Isa Mikiyev

10. The facts of this application are linked to the case of *Atabayeva and Others v. Russia*, no. 26064/02, 12 June 2008, which concerned the abduction of Mr Ramzan Kukuyev together with the applicants' relative, Mr Isa Mikiyev, during a sweeping-up operation that took place on 3 May 2001 in the settlement of Tsa-Vedeno. The following account of the events is based on the statements provided by the applicants, their relatives and neighbours.

11. According to the applicants, on 3 May 2001 at around 7 a.m. federal servicemen started a sweeping-up operation in the settlement of

Tsa-Vedeno. A group of thirty armed servicemen, some of whom were wearing masks, arrived at the applicants' house in two APCs and a URAL lorry and broke in. They took Mr Isa Mikiyev and his son, Mr Kh. Mikiyev, outside, forced them into one of the APCs and drove in the direction of Grozny. The applicants followed the intruders. On the road out of the village the servicemen freely passed through a checkpoint which was sealed off that day. When asked by the applicants the officers manning the checkpoint denied seeing the vehicles and suggested that the applicants return home. Upon their return home, the applicants saw groups of servicemen conducting identity checks in almost every courtyard. There were many military vehicles, including APCs, and helicopters were flying over the settlement. As a result of the operation, the servicemen took away another eighteen men. All men were subsequently released, except for Mr Isa Mikiyev and a few others (see *Atabayeva and others*, cited above, § 16). The last of the detained men was released on 21 May 2001.

12. According to Mr Kh. Mikiyev, the applicants' relative and Mr Isa Mikiyev's son, on 3 May 2001 the abductors took them to the checkpoint, where both of them, along with the eighteen other detained residents of Tsa-Vedeno, were put in a military helicopter and taken to the main military base of the federal forces in Khankala. All of the detainees, except for Mr Kh. Mikiyev and his neighbour, Mr A. S., were dropped off at the base, whereas those two men were taken on further to Serzhen-Yurt.

13. In the afternoon on 3 May 2001 the Tsa-Vedeno district military commander's office informed the applicants that their relative Mr Kh. Mikiyev and Mr A. S. were in Shali. A local policeman brought them home in the evening.

14. Other detainees told the applicants that in Khankala they had been placed together with Mr Isa Mikiyev in a cellar. Servicemen had questioned the detainees one by one and beaten them up.

15. The applicants have not seen Mr Isa Mikiyev since his abduction on 3 May 2001.

2. Official investigation

16. The Government submitted copies of documents from criminal case file no. 37061 opened into the abduction of three men: Mr Isa Mikiyev, Mr Ramzan Kukuyev and Mr Kh. K. The relevant information may be summarised as follows.

17. On 25 November 2001 the Vedeno district prosecutor's office opened criminal case no. 37061 relating to the three men's abduction under Article 126 of the Russian Criminal Code (kidnapping).

18. On 17 December 2002 the investigation file was destroyed in a fire that broke out as a result of an attack by illegal armed groups on the prosecutor's office.

19. On 25 August 2004 the district prosecutor ordered that the investigation file in case no. 37061 be restored.

20. On 12 August 2005 the second applicant was granted victim status.

21. In August 2005 the investigator sent information requests to various authorities asking whether they had conducted a special operation on 3 May 2001. These requests did not yield any pertinent information.

22. In 2005 and 2008 the investigator questioned the applicants and a number of their relatives and neighbours. They also questioned Mr Isa Mikliyev's son, Mr Kh. Mikiyev, who had been released after the abduction on 3 May 2001. All the witnesses gave statements similar to those furnished by the applicants to the Court.

23. On 2 October 2006 the investigator examined the crime scene. No evidence was collected.

24. In 2008 the investigator forwarded requests to a number of police departments and hospitals in Chechnya asking for information on the whereabouts of the applicants' relative, his possible arrest or detention by law-enforcement agencies, the discovery of his body or any medical treatment that he might have received. Negative replies were given. The investigator also questioned the applicants and other witnesses again.

25. On an unspecified date the head of the Vedeno department of the interior (the "OVD") issued a report, which in its relevant parts reads as follows:

> "... During operational search measures it was established that on 3 May 2001 in the settlement of Tsa-Vedeno ... unidentified servicemen conducted a special operation, as a result of which about ten men were arrested and taken away. [Mr Isa Mikiyev, Mr Khampasha Kukuyev Mr and Mr Ramzan Kukuyev], [who were among the arrested persons], did not return home ...
>
> ... During operational search measures it was established that the special operation was conducted by servicemen from the DON-2 military unit of the Russian Ministry of the Interior stationed near Shali ..."

26. The investigation has been suspended and resumed on a number of occasions and is still pending.

3. The applicants' contact with the national authorities

27. On 27 April 2002 upon the second applicant's request the Vedeno District Court declared Mr Isa Mikiyev a missing person, stating, in particular, that "on 3 May 2001 unidentified Russian servicemen took away Mr Isa Mikiyev in an APC, who has been missing since".

28. In February 2003 the applicants complained to the Chechnya prosecutor's office about the abduction and requested assistance in their search.

29. In February 2008 the first applicant requested that the Vedeno district prosecutor's office inform her of the progress of the investigation. In

March 2008 she was informed that the investigation had been suspended and resumed on several occasions and was still pending.

B. Application no. 6647/09 Ibragimova v. Russia

1. Abduction of Mr Artur Ibragimov

30. At the material time Shali was surrounded by military checkpoints and vehicles required authorisation to enter and leave the town. The applicant lived with her nephew, Mr Artur Ibragimov, in the Rostov region, where he worked in a construction company. The following account of the events is based on the statements provided by the applicant, her relatives and neighbours.

31. In May 2003 the applicant and Mr Artur Ibragimov went to Shali as the latter had to renew his passport. They stayed in Shali at the house of the grandmother of Mr Artur Ibragimov. Mr Artur Ibragimov applied for the renewal and had an appointment to receive the new passport scheduled on 18 July 2003 at the Shali ROVD (the Shali district department of the interior). However, on 16 July 2003 at around 5 p.m. a grey UAZ "tabletka" minivan without registration numbers and a white VAZ-21099 car with blackened windows arrived at their house. A group of twelve to fifteen servicemen in helmets and camouflage uniforms got out of the vehicles. They spoke unaccented Russian and were armed with machineguns, pistols and special firearms with silencers used by the Special Forces, known as "vintorezy" (*винторезы*). The servicemen quickly searched the premises looking for firearms. Then they put Mr Artur Ibragimov in the UAZ and drove in the direction of Serzhen-Yurt. The servicemen also used an APC which had been parked in the neighbourhood and which departed in the direction of Avtury. One of the servicemen lost his identification tag when leaving.

32. On 17 July 2003 the head of the Shali administration told the applicant that the servicemen could have belonged to special division no. 1or no. 2 (*Дивизия особого назначения № 1 or № 2*, known as *ДОН-1 or 2*) of the Federal Security Service (the "FSB"), stationed in the outskirts of Avtury. The Shali district military commander's office denied having any information about the events to the applicant.

33. On 18 July 2003 the applicant handed over the serviceman's identification tag to an investigator from the Shali district prosecutor's office, who promised to have it examined by experts.

34. On an unspecified date in 2004 the applicant learnt from witnesses whose name was not disclosed that her nephew had been taken to the main federal military base in Khankala and then allegedly transferred to Chernokozovo detention centre in Chechnya.

35. The applicant has not seen Mr Artur Ibragimov since his abduction on 16 July 2003.

2. Official investigation

36. The Government submitted copies of documents from criminal case file no. 22109 opened into the abduction of Mr Artur Ibragimov. The relevant information may be summarised as follows.

37. On 17 July 2003 the applicant complained to the Shali district prosecutor's office about the abduction of Mr Artur Ibragimov by armed men in camouflage uniforms.

38. On 18 July 2003 an investigator examined the crime scene. No evidence was collected.

39. On the same date the investigator questioned the applicant, Mr Artur Ibragimov's grandmother, his mother-in-law and four neighbours who had witnessed the abduction. All of them stated that Mr Artur Ibragimov had been abducted by armed men in camouflage uniforms who had arrived in a grey UAZ "tabletka" minivan without licence plates and a white VAZ-21099 car with a licence plate, the last numbers of which were "310". From the documents submitted it appears that the investigators' subsequent attempts to identify the owners of the VAZ-21099 were to no avail.

40. On 28 July 2003 the Shali district prosecutor's office opened criminal case no. 22109 into the abduction of Mr Artur Ibragimov under Article 126 of the Criminal Code (kidnapping).

41. On 12 August 2003 the applicant was granted victim status.

42. On 19 August 2003 the investigator sent information requests to various authorities requesting information about Mr Artur Ibragimov and his possible arrest or detention. Replies in the negative were received.

43. On 30 August 2003 the Shali FSB informed the investigators that they had not arrested Mr Artur Ibragimov and that they had no information concerning his involvement in illegal armed groups.

44. On several occasions, namely on 11 October and 12 December 2003 and then on 14 February, 6 March and 26 April 2004, the military prosecutor's office of military unit no. 20116 replied to the applicant that the involvement of servicemen in the abduction had not been established. They also denied that a special operation had been conducted in Shali at the relevant time.

45. In October 2003 the applicant requested that the authorities establish whether Mr Artur Ibragimov was being held in detention facilities in the Rostov Region. On 5 November 2003 the Rostov Region Department for the Execution of Punishments stated that Mr Artur Ibragimov was not detained in temporary detention facilities in their region.

46. On 27 November 2003 the North Caucasus FSB replied to the applicant that the military units stationed in Chechnya were not equipped with VAZ-21099 cars and that internal troops had not been involved in

special operations in Shali. On 17 March, 8 June and 30 October 2004 the Military prosecutor's office of the United Group Alignment (the "UGA") wrote to the applicant denying any involvement of federal forces in the abduction.

47. On 30 April 2004 the Shali FSB informed the investigators that they had no information concerning the reasons for Mr Artur Ibragimov's arrest, his whereabouts or the abductors' identities.

48. On 30 September and 14 October 2005 the Shali ROVD informed the applicant that they had opened an operational search file in connection with her nephew's abduction and taken a number of operational search measures.

49. On 16 December 2008 the Shali FSB replied to the investigators' information request of November 2008, stating that there was information concerning Mr Artur Ibragimov's involvement in illegal armed groups between 2003 and 2006. The relevant parts of the letter read as follows:

> "... According to the information [we have gathered], from approximately the middle of 2003 [Mr Artur Ibragimov] was a member of an armed group in the Vedeno district under the command of Mr Khuseyn Gakayev ... (aka "Dunga"), active in the outskirts of the settlement of Elistanzhi ... [Mr Artur Ibragimov] was responsible for the supply of food, weapons and ammunition ... In particular, he attended a meeting of leaders of illegal armed groups, as a result of which Mr Shamil Basayev appointed Mr Huseyn Gakayev as a leader of the "southern sector" of the Vedeno district.
>
> On 12 July 2003 [Mr Artur Ibragimov] was in Shali and with the assistance of [Mr I. G, a police officer from the Vedeno district] attempted to move firearms from Shali to Elistanzhi in the Vedeno district.
>
> On 15-16 July 2003 [Mr Artur Ibragimov] went to Elistanzhi by public transport.
>
> After [Mr Artur Ibragimov's] departure, on 18 July 2003 [the applicant], knowing [his] real whereabouts and following his instructions, informed the duty office of the Shali OVD by phone that on 16 July 2003 at about 5 p.m. [Mr Artur Ibragimov] had been abducted by unidentified men.
>
> According to the information [gathered], this was done in order to conceal [Mr Artur Ibragimov's] involvement in illegal armed groups and the crimes committed [by them].
>
> As of April 2006 there was reliable information that [Mr Artur Ibragimov] was involved in the illegal armed group of [Mr Huseyn Gakayev,] which provides grounds to believe that [Mr Artur Ibragimov] could not have been abducted in 2003. Since then [Mr Artur Ibragimov] has not come to the attention of the Chechnya FSB ..."

50. On 7 May 2009 the investigators decided to verify the above information and summoned officers of the Vedeno ROVD for questioning concerning the firearms transfer by Mr Artur Ibragimov and Mr I. G. in July 2003.

51. On 2 June 2009 the investigators questioned two officers of the Vedeno OVD, both of whom stated that the Vedeno OVD had not uncovered any information about a weapons transfer from Shali to Elistanzhi by Mr Artur Ibragimov and I.G in July 2003.

52. From the documents submitted it is clear that the investigation neither carried out an expert evaluation of the serviceman's identification tag nor verified the theory of Mr Arthur Ibragimov's detention in Khankala and Chernokozovo.

53. The investigation has been suspended and resumed on numerous occasions. It is still pending.

3. The applicant's contact with the national authorities

54. From the documents submitted it is evident that since the abduction the applicant has regularly contacted various authorities asking for assistance in the search for her relative and information on the progress of the investigation.

55. In September 2008 the applicant complained to the Shali prosecutor's office, asking it to resume the suspended investigation and remedy its shortcomings. On 15 October 2008 the prosecutor's office informed her that they had accepted her request.

C. Application no. 6659/09 Kosumova and Others v. Russia

1. Abduction of Mr Ramzan Shaipov and subsequent events

56. At the material time Mr Ramzan Shaipov (also spelt as Shoipov) and the applicants lived in their family home in the settlement of Chiri-Yurt. Ramzan's mother resided in a neighbouring house. The settlement was under curfew and surrounded by checkpoints. The following account of the events is based on the statements provided by the applicants, their relatives and neighbours.

57. On 8 May 2004 at about 11 p.m. a convoy of vehicles, including two APCs (one of which had the registration number 233), a UAZ "tabletka" minivan, two NIVA cars, four VAZ cars and a GAZEL minivan, arrived in the neighbourhood. Several groups of up to fifteen armed, masked servicemen in camouflage uniforms got out of the vehicles and stormed into the applicants' and Mr Ramzan Shaipov's mother's houses, as well as three other neighbouring houses.

58. The servicemen quickly searched Mr Ramzan Shaipov's mother's house, locked her inside and left.

59. Meanwhile, at the applicants' house, about six servicemen, who spoke unaccented Russian, searched the premises saying that they were looking for Wahhabis or radical Chechen rebels, as they had received information that the applicant's family subscribed to the tenets of those movements. They checked Mr Ramzan Shaipov's passport and took him outside. According to the first applicant, she tried to intervene, but one of the servicemen fired at the wall and ordered her to shut up or he would cut her ears off. Afterwards, the intruders beat the first applicant, tied her limbs,

sealed her mouth with duct tape and left. Shortly afterwards the applicant managed to set herself free and tried to follow the departing vehicles. She saw them passing through checkpoint number 121 situated between Chiri-Yurt and Novye Atagi.

60. On 10 May 2004 the Shali district prosecutor's office denied having any information about the events to the applicants.

61. The applicants then conducted their own investigation into the abduction. Their acquaintance, Mr N. E., informed them that Mr Ramzan Shaipov had been taken to the FSB station in Avtury upon the order of Mr G., an FSB officer, also known as 'Terek'. Afterwards, Mr Ramzan Shaipov had been transferred to an FSB station in Stariye Atagi headed by an FSB officer nicknamed 'Piton'. Both FSB departments acknowledged Mr Ramzan Shaipov's detention on their premises. At some point 'Piton' negotiated Mr Ramzan Shaipov's release with the applicants in exchange for a machinegun. They agreed for the exchange to take place in the outskirts of Mesker-Yurt by the Rostov-Baku road. At the exchange point 'Piton' informed the applicants that Mr Ramzan Shaipov had been transferred to the main federal military base in Khankala and, therefore, he was unable to obtain his release.

62. The applicants have not seen Mr Ramzan Shaipov since his abduction on 8 May 2004.

2. Official investigation

63. The Government submitted copies of documents from criminal case file no. 36046 into the abduction of Mr Ramzan Shaipov. The relevant information may be summarised as follows.

64. On 11 May 2004 the first applicant complained to the Shali prosecutor's office about the abduction of her husband on 8 May 2004 by armed masked men in camouflage uniforms.

65. On the same date investigators from the Shali district prosecutor's office examined the crime scene and recovered a bullet from a hole in the wall, which was subsequently subjected to an expert examination. According to the expert report, the bullet was of 9 mm calibre and came from a "Makarov"-type pistol, but it was not possible to identify the exact model due to deformation of the bullet.

66. The investigators questioned the first applicant and her neighbours. The first applicant gave statements similar to those furnished to the Court. Two of the neighbours, Ms A. I. and Ms Kh. A., stated that on the night of Mr Ramzan Shaipov's abduction the masked servicemen in camouflage uniforms had also broken into their houses and searched them.

67. On 15 May 2004 the investigators forwarded information requests to various authorities. However, no pertinent information was received in reply.

68. On 21 May 2004 the Shali prosecutor's office opened criminal case no. 36046 into the abduction of Mr Ramzan Shaipov under Article 126 of the Criminal Code (kidnapping).

69. On 22 May 2004 the investigators decided to question the officers who manned the checkpoint between Chiri-Yurt and Novye Atagi on the night of the abduction and to check the logbook of the checkpoint. Shortly afterwards three of the officers were questioned. All of them stated that on 8 May 2004 at 10.58 p.m. two APCs without registration numbers had passed through the checkpoint without stopping. The vehicles arrived from Novye Atagi and travelled in the direction of Chiri-Yurt. About 800-850 metres from the checkpoint the APCs had stopped, unidentified men had got out of them and taken up a defensive position. About 40 minutes later a convoy consisting of two APCs, four NIVA cars, one UAZ "tabletka" car and a GAZEL minivan had passed through the checkpoint in the opposite direction from Chiri-Yurt to Novye Atagi. All the vehicles had been without registration numbers. The investigator also examined the logbook of the checkpoint. From its contents it appeared that on 8 May 2004 at 10.54 p.m. two APCs and on the same date at 11.42 p.m. two APCs, four NIVA cars, one UAZ "tabletka" car and a GAZEL minivan had passed through the checkpoint without stopping; the vehicles had not had registration numbers.

70. On 24 May 2004 the first applicant was granted victim status in the criminal case.

71. In June 2004 the investigator questioned several witnesses. In particular, the applicants' neighbour, Ms L. A., stated that on 8 May 2004 at about 11 p.m. servicemen had broken into her house and searched it. They had told her that they were looking for "Ramzan", but she had replied that nobody with that name lived at her house. Later, she had learnt that the servicemen had abducted Mr Ramzan Shaipov.

72. In September 2004, June 2005 and April 2006 the investigator questioned several witnesses again and resent information requests to various authorities.

73. The investigation has been suspended and resumed on several occasions and is still pending.

3. The applicants' complaints lodged before the national authorities following the opening of the criminal investigation

74. From the documents submitted it is clear that since 2004 the first applicant has regularly contacted various authorities asking for assistance in the search for her husband and information on the progress of the investigation. In reply she was informed that the investigation was in progress and operational search measures were under way to solve the crime.

75. On 4 June and 9 October 2008 the first applicant applied to the investigators for access to the investigation file but to no avail.

D. Application no. 63535/10 Batariyeva v. Russia

1. Abduction of Mr Zelimkhan Batariyev

76. In 2001 the applicant's son Mr Zelimkhan Batariyev was studying in Grozny and rented a flat there. According to the applicant, on the night of 4 May 2001 Russian servicemen conducted a special operation to arrest a Mr T. who resided in the same block of flats as Mr Zelimkhan Batariyev. A number of armed servicemen in camouflage uniforms cordoned off the neighbourhood in their APCs and UAZ cars. They arrested Mr T. and a number of his relatives, as well as Mr Zelimkhan Batariyev and several other young men and women who lived in the block of flats. It was claimed that some of the people arrested belonged to illegal armed groups.

77. On 6 May 2001 Mr B. S. and Mr T. S., brothers, who had been arrested on 4 May 2001 at the Grozny central market and subsequently released, contacted the applicant. They told her that the servicemen had taken them, together with Mr Zelimkhan Batariyev, to the main federal military base in Khankala. The servicemen had beaten them up and suggested that Mr Zelimkhan Batariyev's relatives pay a ransom to have him released.

78. In June 2001 the applicant spoke to Mr Kh. I., who had been detained with Mr Zelimkhan Batariyev in Khankala. The two of them had been detained together for sixteen days in a pit at the military base. Servicemen had repeatedly subjected them to beatings, coercing them to confess to involvement in illegal armed groups. Most of the time the detainees had been blindfolded, their hands tied and they had been allowed to speak only at night.

79. According to anonymous witnesses, whose identity was not disclosed by the applicant, Mr Zelimkhan Batariyev remained in Khankala until 20 May 2001. Then in July 2001 the applicant met Ms T. Z., whose son, Mr I. Z., had allegedly been detained in Chernokozovo with Mr Zelimkhan Batariyev until October 2001.

80. In July 2001 the applicant visited Ms Z. D., who had been arrested on the same day as Mr Zelimkhan Batariyev at the block of flats. According to her, she had heard the following exchange in unaccented Russian between servicemen before they took Mr Zelimkhan Batariyev away: "This guy is clean, we might have problems" – "We don't need live witnesses". Ms Z. D. and her sister had been detained in a building in Grozny. She had recognised Mr Zelimkhan Batariyev among the detainees; he had been on the floor and had looked like he had been beaten up.

81. The applicant has not seen Mr Zelimkhan Batariyev since his abduction on 4 May 2001.

82. The applicant did not witness the abduction. The foregoing account is based on the statements provided by Mr Zelimkhan Batariyev's neighbours, individuals arrested with him on the same day and relatives of the arrested individuals who witnessed the events.

2. Official investigation

83. The Government submitted copies of documents from criminal case file no. 50113 into the abduction of Mr Zelimkhan Batariyev. The relevant information may be summarised as follows.

84. From the documents submitted it is evident that after Mr Zelimkhan Batariyev's abduction the applicant complained to various authorities about the disappearance of her son and sought assistance in the search for him.

85. On 31 July 2002 the Grozny prosecutor's office opened criminal case no. 50113 under Article 126 of the Criminal Code (kidnapping).

86. In July 2002 the investigator forwarded requests to various authorities asking for information about Mr Zelimkhan Batariyev's detention. The request did not yield any information. The investigator also questioned a local resident living in the neighbourhood, who confirmed that a special operation had been conducted in the area in May 2001 and a number of young men living in the same building had been arrested.

87. On 30 September 2002 the investigation was suspended.

88. On an unspecified date the proceedings were resumed and on 12 August 2003 the applicant was granted victim status.

89. On an unspecified date the proceedings were again suspended and then on 27 October 2006 they were resumed.

90. On 3 November 2006 the applicant was questioned for the first time. The investigator also questioned the applicants' relatives. They gave statements similar to those submitted before the Court. The investigator sent further information requests to various authorities but to no avail.

91. On 27 November 2006 the investigation was suspended and then resumed on an unspecified date in 2009, which was followed by questioning of witnesses and forwarding of information requests.

92. The investigation is still pending.

3. The applicant's contact with the national authorities

93. From the documents submitted it is clear that between 2002 and 2006 the applicant regularly complained to various authorities about the abduction and asked for assistance in the search. In particular, on 29 August 2006 she complained to the Grozny prosecutor's office, stating that she had not been yet questioned by the investigators.

94. On 5 October 2009 the applicant sought access to the investigation file. On 29 April 2010 her request was granted.

95. On 26 October 2010 the applicant complained to the Grozny Zavodskoy District Court, alleging that the investigators had failed to take a number of steps and seeking to have the investigation resumed. The district court dismissed her complaint owing to the resumption of the investigation in the meantime.

E. Application no.15695/11 Esuyev v. Russia

1. Abduction of Mr Mansur Esuyev

96. At the material time Mr Mansur Esuyev lived with his family, including his father, the applicant, in the settlement of Verkhniy Gerzel in the Gudermes district of Chechnya. The following account of the events is based on the applicant's submissions.

97. On 11 January 2003 at around 4 a.m. a group of masked servicemen in camouflage uniforms armed with machineguns arrived at the applicant's house in three UAZ cars, a white VOLGA car and a GAZEL minivan. The intruders broke inside, beat up the family members, including Mr Mansur Esuyev, and took him away to an unknown destination.

98. The applicant conducted his own inquiry and learnt that Mr Mansur Esuyev had been taken to the Novogroznenskiy police station, then to the sixth station of the Gudermes ROVD and after that to the main military base in Khankala.

99. The applicant has not seen Mr Mansur Esuyev since his abduction on 11 January 2003.

2. Official investigation

100. The Government submitted copies of documents from criminal case file no. 32133 opened into the abduction of Mr Mansur Esuyev. The relevant information may be summarised as follows.

101. On 27 October 2003 the applicant complained to the Gudermes district prosecutor's office about his son's abduction.

102. On 6 November 2003 the Gudermes district prosecutor's office opened criminal case no. 32133 under Article 126 of the Criminal Code (kidnapping), granted victim status to the applicant and questioned him. The investigator also questioned Mr Mansur Esuyev's wife and his brother, who had also witnessed the abduction. All three witnesses gave statements similar to the applicant's submissions before the Court.

103. On 17 November 2003 the investigator asked the Gudermes FSB to provide information about Mr Mansur Esuyev's possible arrest by their agents and his involvement in illegal armed units. No reply was given.

104. In January 2005 the investigator examined the crime scene and questioned the applicant's relatives. He also forwarded information requests to various authorities which did not yield any pertinent information.

105. On 28 February 2008 the investigator examined the log book of the Gudermes ROVD. According to the register, Mr Mansur Esuyev had not been taken to the ROVD's premises between 1 January and 1 April 2003.

106. On 3 March 2008 the investigator again questioned the applicant, his relatives and a few of his neighbours.

107. The investigation was suspended and resumed on several occasions and is still pending.

3. The applicant's contact with the national authorities

108. From the documents submitted it is clear that since 2003 the applicant has regularly contacted various authorities asking for assistance in the search for his son and inquiring about the progress of the investigation.

109. In March 2010 the applicant complained to the Gudermes District Court, alleging that the investigation had been ineffective and protracted. On 8 June 2010 his complaint was rejected owing to the resumption of the investigation on 2 June 2010.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

110. For a summary of the relevant domestic law and international and domestic reports on disappearances in Chechnya and Ingushetia, see *Aslakhanova and Others v. Russia* (nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, §§ 43-59 and §§ 69-84, 18 December 2012).

THE LAW

I. JOINDER OF THE APPLICATIONS

111. 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 OBJECTIONS

A. *Locus standi*

1. The parties' submissions

112. Ms Roza Batariyeva, the applicant in application *Batariyeva v. Russia* (no. 63535/10), died on 15 April 2012. Mr Bekkhan (also spelt as Bekkha) Batariyev, her son and the brother of the disappeared Mr Zelimkhan Batariyev, expressed his wish to pursue the proceedings before the Court in her stead.

113. The Government contended that Mr Bekkhan Batariyev did not have standing in the proceedings before the Court owing to his "lack of legitimate interest in the examination of the case". In particular, they pointed out that Mr Bekkhan Batariyev had "... neither witnessed his brother's abduction... nor been involved in the investigation of the criminal case initiated into the abduction..."

2. The Court's assessment

114. The Court reiterates that the word "victim" in the context of Article 34 of the Convention denotes the person directly affected by the act or omission in issue (see *Lüdi v Switzerland*, 15 June 1992, § 34, Series A no. 238). The Convention institutions have always and unconditionally considered in their case-law that the parent, sibling or nephew of a person whose death is alleged to engage the responsibility of the respondent Government can claim to be the victim of an alleged violation of Article 2 of the Convention, even where closer relatives, such as the deceased person's children, have not submitted applications (see *Velikova v. Bulgaria* (dec.), no. 41488/98, 18 May 1999, with further references).

115. The Court also notes that in a number of cases in which an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing a wish to pursue the proceedings before the Court. It has done so most frequently in cases which primarily involved pecuniary, and, for this reason, transferable claims. However, the question of whether such claims are transferable to the individuals seeking to pursue an application is not the exclusive criterion. In fact, human rights cases before the Court generally also have a moral dimension, and people close to an applicant may have a legitimate interest in ensuring that justice is done, even after the applicant's death (see, among other authorities, *Horváthová v. Slovakia*, no. 74456/01, § 26, 17 May 2005, and *Ječius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX).

116. Having regard to the above, the Court accepts that the applicant's son has a legitimate interest in pursuing the application in her stead. It will therefore continue dealing with the case at his request.

B. Compliance with the six-month rule

1. The parties' submissions

(a) Government

117. In their observations in respect of all the applications, the Government submitted that the applicants had failed to comply with the six-month rule by lodging their applications with the Court after unreasonably long periods of time since the abductions and the institution of the criminal proceedings. Referring to the case of *Varnava and Others* v. Turkey [GC] (nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, ECHR 2009), they noted that a "certain amount of diligence and initiative" was required from those applying to the Court and that in the cases at hand the applicants had failed to provide explanations for their delay in applying to Strasbourg.

(b) The applicants

118. The applicants argued that they had complied with the six-month rule and there had been no excessive and unexplained delays in the submission of their applications to the Court.

119. The applicants stated that after the initiation of the criminal investigations they had had no reason to doubt their effectiveness. They pointed out that the armed conflict in Chechnya had led them to believe that delays in the investigation were inevitable. Moreover, owing to their poor command of Russian, their lack of legal knowledge and lack of funds to hire a lawyer, they had been unable to assess the effectiveness of the investigation in the absence of domestic provisions for free legal assistance to victims of enforced disappearances. As soon as the applicants had received legal aid, they had realised that the investigations were ineffective owing to the delays in their completion and they had applied to the Court. Also referring to the *Varnava* case, they argued that the six-month rule did not apply to continuing situations such as cases of enforced disappearances.

2. The Court's assessment

(a) General principles

120. The Court reiterates that the purpose of the six-month rule is to promote legal certainty, to ensure that cases are dealt with within a reasonable time and to protect the parties from uncertainty for a prolonged period of time. The rule also provides the opportunity to ascertain the facts

of the case before memory of them fades away with time (see *Abuyeva and Others v. Russia*, no. 27065/05, § 175, 2 December 2010).

121. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. In its absence, the period runs from the date of the acts or measures complained of. Where an applicant avails himself of an existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the six-month time-limit is calculated from the date when the applicant first became, or ought to have become, aware of those circumstances (see, among others, *Zenin v. Russia* (dec.), no. 15413/03, 24 September 2009).

122. In cases concerning disappearances, unlike in cases concerning ongoing investigations into the deaths of applicants' relatives (see, for example, *Elsanova v. Russia* (dec.), no. 57952/00, 15 November 2005, and *Narin v. Turkey*, no. 18907/02, § 50, 15 December 2009), the Court has held that taking into account the uncertainty and confusion typical of such situations, the nature of the ensuing investigations implies that the relatives of a disappeared person may be justified in waiting lengthy periods of time for the national authorities to conclude their proceedings, even if those proceedings are sporadic and plagued by problems. As long as there is some meaningful contact between families and the authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay will not generally arise. However, where there has been a considerable lapse of time, and there have been significant delays and lulls in investigative activity, there will come a time when the relatives must realise that no effective investigation has been, or will be, provided. When this stage is reached will depend, unavoidably, on the circumstances of the particular case. Where more than ten years have elapsed since the incident, the applicants have to justify such a delay in lodging their application with the Court (see *Varnava*, cited above, §§ 162-63).

123. Applying the *Varnava* principles, the Court recently found in the case of *Er and Others v. Turkey* (no. 23016/04, §§ 55-58, 31 July 2012) that the applicants, who had waited for a period of almost ten years after the disappearance of their relative before lodging their application, had complied with the six-month rule because an investigation was being conducted at the national level. The Court reached a similar conclusion in another case, where the domestic investigation into the events had been pending for more than eight years and where the applicants were doing all that could be expected of them to assist the authorities (see *Bozkır and Others v. Turkey*, no. 24589/04, § 49, 26 February 2013).

124. By contrast, the Court has declared inadmissible applications where the applicants waited for more than ten years to lodge their applications with the Court, and where there had been, for a long time, no evidence allowing them to believe that the investigation would be effective. For instance, in the

case of *Yetişen and Others v. Turkey* ((dec.), no. 21099/06, 10 July 2012), the applicants waited for four years after the disappearance before lodging an official complaint with the competent investigating authorities and for eleven-and-a-half years before bringing their application to Strasbourg; in the case of *Findik and Omer v. Turkey* ((decs.), nos. 33898/11 and 35798/11, 9 October 2012), the applications were brought to Strasbourg more than fifteen years after the events; and in the case of *Taşçi and Duman v. Turkey* ((dec.), no. 40787/10, 9 October 2012), the applicants applied to Strasbourg twenty-three years after the disappearance. In those cases, as in the case of *Açış v. Turkey* (no. 7050/05, §§ 41-42, 1 February 2011), where the applicants complained to Strasbourg more than twelve years after the disapperance, the Court rejected their complaints under Article 2 of the Convention as out of time for failure to demonstrate any concrete advance in the domestic investigation that would justify their delay of more than ten years.

(b) Application of the principles to the present case

125. Turning to the circumstances of the cases at hand, the Court notes that the applicants lodged their complaints with the Court within a period ranging from four years and seven months after the disappearance in the case of *Kosumova and others* (no. 6659/09) to nine years and five months in the case of *Batariyeva* (no.63535/10). In each of the cases the investigations were formally pending at the time when the applications were lodged before the Court. The criminal proceedings in all the cases were suspended and resumed on several occasions at various time intervals throuhgout the periods concerned. Each and every time the investigations were suspended they were resumed by a supervising prosecutor, who criticised the conduct of the investigation and ordered necessary steps to be taken, and the applicants were often, although not always, informed thereof. They, in turn, maintained reasonable contact with the authorities, cooperated with the investigation and, where appropriate, took steps to inform themselves of the progress of the proceedings and to speed them up, in the hopes of a more effective outcome.

126. Having examined the documents submitted by the parties, the Court finds that the conduct of each of the applicants vis-à-vis the investigation has been determined not by their perception of the remedy as ineffective, but rather by their expectation that the authorities would, of their own motion, provide them with an adequate answer in the face of their serious complaints. They furnished the investigating authorities with timely and sufficiently detailed accounts of their relatives' abductions and cooperated with them. They thus reasonably expected further substantive developments from the investigation. It could not be said that they failed to show the requisite diligence by waiting for the pending investigation to yield results (see, *mutatis mutandis*, *Abuyeva and Others*, cited above, § 179).

127. The Court thus considers that an investigation, albeit a sporadic one, was being conducted during the periods in question in each of the five cases, and that the applicants did all that could be expected of them to assist the authorities (see *Varnava and Others*, cited above, § 166, and *Er and Others*, cited above, § 60). In the light of the foregoing, the Court dismisses the Government's objection as to the admissibility of these complaints based on the six-month time-limit.

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

A. The parties' submissions

1. The Government

128. The Government did not contest the essential facts underlying each application. However, they noted that some of the applicants had not been consistent in describing details such as the abductors' uniforms or language and that the abductions had taken place on various dates and in different districts of the Chechen Republic. The Government further pointed out that other people who had been "apprehended" along with some of the applicants' relatives on the same dates had been released and returned home. At the same time, they claimed that none of the investigations had obtained information proving that the applicants' relatives had been detained by State agents. According to them, there was no evidence proving beyond reasonable doubt that State agents had been involved in the abductions and deaths. To this end the Government referred to the application *Ibragimova v. Russia* (no. 6647/09), where the security service had informed the investigators that until April 2006 the applicant's relative had been a member of illegal armed groups and, therefore, he could not have been abducted in 2003.

2. The applicants

129. The applicants submitted that it had been established "beyond reasonable doubt" that the men who had taken away their relatives had been State agents. In support of that assertion they referred to the ample evidence contained in their submissions and the criminal investigation files, in so far as they had been disclosed by the Government. They also submitted that they had each made a prima facie case that their relatives 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 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.

B. The Court's assessment

1. General principles

130. The Court shall examine the applications at hand in the light of the general principles applicable in cases where the factual circumstances are in dispute between the parties (see *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, §§ 151-53, ECHR-2012).

131. The Court has addressed a whole series of cases concerning allegations of disappearances in the Chechen Republic. Applying the above-mentioned principles, it has concluded that it if applicants make a prima facie case of abduction by servicemen, this is sufficient for them to show that their relatives fell 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, *Aslakhanova and Others*, cited above, § 99). If the Government fail to rebut that presumption, this would entail a violation of Article 2 of the Convention in its substantive part. Conversely, where applicants fail to make a prima facie case, the burden of proof cannot 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).

132. The Court has also found in many cases concerning disappearances in Chechnya that a missing person may be presumed dead. Having regard to the numerous cases of disappearances in the region which have come before it, the Court has found that in the particular context of the conflict in Chechnya, when a person has been 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 v. Russia*, no. 69480/01, ECHR 2006-VIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, 10 May 2007; *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007; and *Dubayev and Bersnukayeva v. Russia*, nos. 30613/05 and 30615/05, 11 February 2010).

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

2. Application of the principles to the present cases

(a) Application no. 61536/08 *Mikiyeva and Menchayeva v. Russia,*

134. A number of witness statements collected by the applicants, along with the documents from the investigation file furnished by the Government (see, for example, paragraphs 22 and 25 above), demonstrate that the applicants' relative, Mr Isa Mikiyev, was abducted on 3 May 2001 by a group of armed servicemen during a special operation in Tsa-Vedeno. In view of all the materials in its possession, the Court finds that the applicants have presented a prima facie case that their relative was abducted by State agents in the circumstances as set out by them.

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

136. Bearing in mind the general principles enumerated above, the Court finds that Mr Isa Mikiyev was taken into custody by State agents on 3 May 2001 in Tsa-Vedeno. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraph 132 above), the Court also finds that Mr Isa Mikiyev may be presumed dead following his unacknowledged detention.

(b) Application no. *6647/09 Ibragimova v. Russia*

137. Numerous witness statements collected by the applicant, along with the documents from the investigation file furnished by the Government (see, for example, paragraphs 37 and 39 above), demonstrate that the applicant's relative, Mr Artur Ibragimov, was abducted on 16 July 2003 by a group of armed servicemen in Shali. In view of all the materials in its possession, the Court finds that the applicant has presented a prima facie case that her relative was abducted by State agents in the circumstances as set out by her.

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

139. As far as the Government's reference to the letter issued by the FSB is concerned, the Court notes the following. When in 2003 and 2004 the investigators asked the FSB whether it had any information concerning Mr Artur Ibragimov and his involvement in illegal activities (see paragraphs 42 and 47 above), the agency replied in the negative. It was only in November 2008 that they wrote to the investigation alleging that between 2003 and April 2006 Mr Artur Ibragimov had been involved in illegal armed groups. This information was subsequently verified by the investigation into the abduction but was not confirmed (see paragraphs 50-51 above). In such circumstances, the Court does not consider the Government's reference to this information to be a satisfactory and convincing explanation capable of shifting the burden of proof.

140. Bearing in mind the general principles enumerated above, the Court finds that Mr Artur Ibrahimov was taken into custody by State agents on 16 July 2003 in Shali. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraph 132 above), the Court also finds that Mr Artur Ibragimov may be presumed dead following his unacknowledged detention.

(c) Application no. 6659/09 *Kosumova and Others v. Russia*

141. Several witness statements collected by the applicants, along with the documents from the investigation file furnished by the Government (see, for example, paragraph 69 above), demonstrate that the applicants' relative, Mr Ramzan Shaipov, was abducted on 8 May 2004 by a group of armed servicemen in Chiri-Yurt. In view of all the materials in its possession, the Court finds that the applicants have presented a prima facie case that their relative was abducted by State agents in the circumstances as set out by them.

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

143. Bearing in mind the general principles enumerated above, the Court finds that Mr Ramzan Shaipov was taken into custody by State agents on 8 May 2004 in Chiri-Yurt. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraph 132 above), the Court also finds that Mr Ramzan Shaipov may be presumed dead following his unacknowledged detention.

(d) Application no. 63535/10 *Batariyeva v. Russia*

144. A number of witness statements collected by the applicant, along with the documents from the investigation file furnished by the Government (see, for example, paragraphs 86 and 90 above), demonstrate that the applicant's son, Mr Zelimkhan Batariyev, was abducted on 4 May 2001 by a group of armed servicemen during a special operation in Grozny. In view of all the materials in its possession, the Court finds that the applicant has presented a prima facie case that her son was abducted by State agents in the circumstances as set out by her.

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

146. Bearing in mind the general principles enumerated above, the Court finds that Mr Zelimkhan Batariyev was taken into custody by State agents on 4 May 2001 in Grozny. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraph 132 above), the Court also finds that Mr Zelimkhan Batariyev may be presumed dead following his unacknowledged detention.

(e) Application no.15695/11 *Esuyev v. Russia*

147. Numerous witness statements collected by the applicant, along with the documents from the investigation file furnished by the Government (see, for example, paragraph 102 above), demonstrate that the applicant's son, Mr Mansur Esuyev, was abducted on 11 January 2003 by a group of armed servicemen in Verkhniy Gerzel. In view of all the materials in its possession, the Court finds that the applicant has presented a prima facie case that his son was abducted by State agents in the circumstances as set out by him.

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

149. Bearing in mind the general principles enumerated above, the Court finds that Mr Mansur Esuyev was taken into custody by State agents on 11 January 2003 in Verkhniy Gerzel. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraph 132 above), the Court also finds that Mr Mansur Esuyev may be presumed dead following his unacknowledged detention.

3. Conclusions

150. The Court finds that in all of the cases presently before it the applicants' relatives were abducted by armed men in uniforms, displaying behaviour characteristic of security operations. Their behaviour and appearance, their ability to pass through roadblocks and to cordon off areas, along with their use of vehicles, lead the Court to conclude that, in all probability, they could be none other than State servicemen. The applicants' allegations are supported by the witness statements collected by them and by the domestic investigations. In their submissions to the authorities the applicants maintained that their relatives had been abducted by State agents. The domestic investigations accepted as fact the versions of events presented by the applicants and took steps to check whether State servicemen had been involved in the abductions.

151. In summary, the facts of all the applications contain sufficient evidence to enable the Court to make findings about the carrying out of security operations and thus about the State's exclusive control over the detainees (see, among many others, *Aslakhanova and Others*, cited above, § 114). The Government's arguments are in contradiction to the evidence reviewed by the Court and insufficient to discharge them of the burden of proof which has been shifted to them in such cases.

152. The detention in life-threatening circumstances of Mr Isa Mikiyev, Mr Artur Ibragimov, Mr Ramzan Shaipov, Mr Zelimkhan Batariyev and Mr Mansur Esuyev, together with the long absence of any news of them, leads the Court to conclude that they may be presumed dead.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

153. 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 effective investigations 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

154. The Government contended on one hand that Article 2 of the Convention was not applicable to the applicants' complaints concerning the disappearance of their relatives and that their complaints under this head must be examined under Article 5 of the Convention. To this end they referred to the case of *Kurt v. Turkey*, 25 May 1998, §§ 101-09, *Reports of Judgments and Decisions* 1998-III. On the other hand, they submitted that the complaints should be rejected as manifestly ill-founded, as the applicants had failed to substantiate their allegations before the Court. Further, the Government submitted that the domestic investigations had obtained no evidence that the applicants' relatives had been held under State control or that they were dead. They further noted that the mere fact that the investigative measures employed had not produced any specific results, or had given only limited ones, did not mean that there had been any omissions on the part of the investigative authorities. They claimed that all necessary steps were being taken to comply with the obligation to conduct an effective investigation.

155. The applicants maintained their complaints.

B. The Court's assessment

1. Admissibility

156. 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. It also

decides to join to the merits the issue of applicability of Article 2 of the Convention (see *Khadayeva and Others v. Russia*, no. 5351/04, § 114, 12 March 2009). The complaints 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

157. The Court notes at the outset that it is undisputed by the parties that the whereabouts of the applicants' relatives had been unaccounted for periods ranging between four-and-a-half and nine years from the events to the lodging of the applications with the Court. The question arises whether, as the Government submit, Article 2 of the Convention is applicable to the applicants' situations at hand.

158. The Court has previously held that Article 5 imposes an obligation on the State to account for the whereabouts of any person taken into detention and who has thus been placed under the control of the authorities (see the *Kurt* judgment cited above, § 124). Whether a failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on specific evidence, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV, and *Ertak v. Turkey*, no. 20764/92, § 131, ECHR 2000-V).

159. In this connection, the Court notes that the Government denied that the applicants' relatives had been detained by State agents or had been under the control of the authorities after abduction. Therefore, the Government's argument concerning the applicability of Article 5 of the Convention instead of Article 2 is inconsistent. However, leaving aside the contradictory nature of the Government's position in this regard and assuming that the applicants' abducted relatives were under the control of State agents after abduction, then the period of time which has elapsed since the person was placed in detention, although not decisive in itself, is a relevant factor to be taken into account. It must be accepted that the more time that goes by without any news of the detained person, the greater the likelihood that he or she has died. The passage of time may, along with other elements of circumstantial evidence before the Court, provide grounds to conclude that the person concerned is to be presumed dead. In this respect the Court considers that such a situation gives rise to issues which go beyond a mere irregular detention in violation of Article 5. Such an interpretation is in keeping with the effective protection of the right to life as afforded by Article 2, which ranks as one of the most fundamental

provisions in the Convention (see, among other authorities, *Çakıcı* cited above, § 86, and *Timurtaş v. Turkey*, no. 23531/94, § 83, ECHR 2000-VI). Accordingly, the Court finds that Article 2 of the Convention applies and that the Government's objection in this respect should be rejected.

160. Based on the above and noting that it has been already found that in all of the applications under examination that the applicants' relatives may be presumed dead, following their unacknowledged detention by State agents, the Court finds, in the absence of any justification put forward by the Government, that their deaths can be attributed to the State and that there has been a violation of the substantive aspect of Article 2 of the Convention in respect of Mr Isa Mikiyev, Mr Artur Ibragimov, Mr Ramzan Shaipov, Mr Zelimkhan Batariyev and Mr Mansur Esuyev.

(b) Alleged inadequacy of the investigations into the abductions

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

162. In the light of the foregoing, the Court finds that the authorities failed to carry out effective criminal investigations into the circumstances of the disappearances and deaths of Mr Isa Mikiyev, Mr Artur Ibragimov, Mr Ramzan Shaipov, Mr Zelimkhan Batariyev and Mr Mansur Esuyev. Accordingly, there has been a violation of Article 2 of the Convention in its procedural aspect.

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

163. The applicants complained of a violation of Articles 3 and 5 of the Convention on account of the mental suffering caused to them by the disappearance of their relatives and the unlawfulness of their relatives' detention. They also argued that, contrary to Article 13 of the Convention, there had been no available domestic remedies in respect of 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."

A. The parties' submissions

164. The Government contested the applicants' claims.

165. The applicants reiterated their complaints.

B. The Court's assessment

1. Admissibility

166. 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.

2. Merits

167. The Court has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of the close relatives of the victim. The essence of such a violation does not lie mainly in the fact of the "disappearance" of the family member, but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164). Where news of the missing person's death is preceded by a sufficiently long period in which he or she may be deemed disappeared, there exists a distinct period during which an applicant sustains uncertainty, anguish and distress characteristic to the specific phenomenon of disappearances (see *Luluyev and Others*, cited above, § 115).

168. 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 *Aslakhanova and Others*, cited above, §132).

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

170. The Court furthermore 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.

171. The Court reiterates its findings of the general ineffectiveness of criminal investigations in cases such as those under examination. In the absence of results from a criminal investigation, any other possible remedy becomes inaccessible in practice.

172. The Court thus finds that the applicants in these cases did not have an effective domestic remedy at their disposal for their grievances under Articles 2 and 3, in breach of Article 13 of the Convention (see, for example, *Aslakhanova and Others*, cited above, §157).

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

173. The Court has examined the other complaints submitted by the applicant in the case of *Esuyev* (no. 15695/11) under Articles 3, 6, 7 and 8 of the Convention. However, having regard to all the material in its possession, and in so far as those complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

174. 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. Damages

(a) Application no. 61536/08 *Mikiyeva and Menchayeva v. Russia*

175. In respect of pecuniary damage, the first and second applicants claimed 146,174 Russian roubles (RUB) (approximately 3,400 euros (EUR)) and RUB 464,862 (approximately EUR 10,820) respectively for the loss of financial support of their family breadwinner. The applicants based their calculations on the subsistence level provided for by domestic law and the Ogden Actuarial Tables.

176. In respect of non-pecuniary damage, the applicants jointly claimed EUR 100,000.

(b) Application no. 6647/09 *Ibragimova v. Russia*

177. The applicant claimed EUR 100,000 in respect of non-pecuniary damage.

(c) Application no. 6659/09 *Kosumova and Others v. Russia*

178. In respect of pecuniary damage, the applicants claimed EUR 30,618, EUR 29,646, EUR 30,684 and EUR 33,176 respectively for the loss of financial support of their family breadwinner. The applicants based their calculations on the subsistence level provided for by domestic law.

179. In respect of non-pecuniary damage, the applicants asked the Court to award them an amount that the Court would find appropriate and reasonable in the circumstances of the case.

(d) Application no. 63535/10 *Batariyeva v. Russia*

180. In respect of non-pecuniary damage, the applicant asked the Court to award an amount that the Court would find appropriate and reasonable in the circumstances of the case.

(e) Application no.15695/11 *Esuyev v. Russia*

181. The applicant claimed EUR 1,000,000 in respect of non-pecuniary damage.

2. Costs and expenses

(a) Application no. 61536/08 *Mikiyeva and Menchayeva v. Russia*

182. The applicants were represented by SRJI/Astreya. Their aggregate claim in respect of costs and expenses related to their legal representation amounted to EUR 4,445, which included the drafting of legal documents, translation services, and administrative and postal costs. They submitted copies of a legal representation contract and an invoice with a breakdown of the costs incurred.

(b) Application no. 6647/09 *Ibragimova v. Russia*

183. The applicant was represented by SRJI/Astreya. Her aggregate claim in respect of costs and expenses related to her legal representation amounted to EUR 4,536, which included the drafting of legal documents, translation services, and administrative and postal costs. She submitted copies of a legal representation contract and an invoice with a breakdown of the costs incurred.

(c) Application no. 6659/09 *Kosumova and Others v. Russia*

184. The applicants were represented by Mr D. Itslayev, a lawyer practising in Grozny. Their aggregate claim in respect of costs and expenses related to their legal representation amounted to EUR 7,936, which included the drafting of legal documents, translation services and administrative costs. They submitted copies of a legal representation contract and an invoice for translation services.

(d) Application no. 63535/10 *Batariyeva v. Russia*

185. The applicant was represented by Mr D. Itslayev, a lawyer practising in Grozny. Her aggregate claim in respect of costs and expenses related to her legal representation amounted to EUR 6,471, which included

the drafting of legal documents, translation services and administrative costs. She submitted copies of a legal representation contract and an invoice for translation services.

(e) Application no.15695/11 *Esuyev v. Russia*

186. The applicant did not make any claims under this head.

B. The Government

187. The Government submitted in respect of each application that the applicants' claims for damages were unsubstantiated. They further maintained that a finding of a violation would constitute sufficient just satisfaction for the applicants.

188. The Government further stated in respect of each application that the applicants' claims for costs and expenses were unsubstantiated, as it had not been shown that the expenses claimed had actually been incurred. They also noted that the application forms and observations submitted by the applicants' representatives were very similar to each other and therefore, the time and effort spent on the preparation of the documents did not correspond to the amounts claimed.

C. The Court's assessment

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

190. Whenever 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 finding of the violation, and make a financial award.

191. As to costs and expenses, the Court first has to establish whether the costs and expenses indicated by the applicants' 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).

192. Having regard to the foregoing conclusions, the principles enumerated above and the parties' submissions, the Court awards the amounts to the applicants as detailed in Appendix II, plus any tax that may be chargeable to the applicants on those amounts. The awards in respect of

costs and expenses are to be paid into the representatives' bank accounts, as identified by the applicants.

D. Default interest

193. 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. *Dismisses* the Government's objection regarding *locus standi* in respect of application Batariyeva v. Russia (no. 63535/10);

3. *Decides* to join to the merits the Government's objection as to the applicability of Article 2 of the Convention and rejects it;

4. *Declares* the complaints under Articles 2, 3, 5 and 13 admissible, and the remainder of the applications inadmissible;

5. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of the applicants' relatives Mr Isa Mikiyev, Mr Artur Ibragimov, Mr Ramzan Shaipov, Mr Zelimkhan Batariyev and Mr Mansur Esuyev;

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

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

8. *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;

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

10. *Holds*

(a) that the respondent State is to pay the applicants (in relation to application no. 63535/10, to Mr Bekkhan Batariyev), within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts as indicated in Appendix II, plus any tax that may be chargeable to the applicants. The payments in respect of costs and expenses to the applicants' representatives are to be made to the representatives' bank accounts as indicated by the applicants; the payments are to be made in euros in respect of the applicants represented by SRJI/Astreya, and to be converted into Russian roubles in respect of the applicants represented by Mr D. Itslayev;

(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;

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

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	Isabelle Berro-Lefèvre
Registrar	President

APPENDIX I

Details of the applications

No.	Application no., date of introduction	Applicant's name, year of birth, relation to the disappeared person, place of residence	Represented by	Abducted person(s) (name, year of birth, date and place of the alleged abduction)	Investigation
1.	**61536/08 Mikiyeva and Menchayeva v. Russia** 09/12/2008	**(1) Ms Khedi MIKIYEVA** (1981), daughter, Tsa-Vdedeno, Vedeno district, the Chechen Republic **(2) Ms Lyubov MENCHAYEVA** (1961), wife, idem	STICHTING RUSSIAN JUSTICE INITIATIVE/ ASTREYA	**(1) Mr Isa MIKIYEV** (1955), abducted from home on 3 May 2001 at around 7 a.m., Tsa-Vedeno	Criminal case no. 37061 opened on 25 November 2001 by the Vedeno district prosecutor's office.
2.	**6647/09 Ibragimova v. Russia** 23/01/2009	**(1) Ms Deshi IBRAGIMOVA** (1947), aunt, Shali, Shali district, the Chechen Republic	STICHTING RUSSIAN JUSTICE INITIATIVE/ ASTREYA	**(1) Mr Artur IBRAGIMOV** (1983), abducted on 16 July 2003 at 5 p.m., Shali	Criminal case no. 22109 opened on 28 July 2003 by the Shali district prosecutor's office.
3. n	**6659/09 Kosumova and Others v. Russia** 30/12/2008	**(1) Ms Ayshat KOSUMOVA** (1981), wife, Chiri-Yurt, Shali district, the Chechen Republic **(2) Mr Islam SHAIPOV** (2000), son, idem **(3) Mr Rakhman SHAIPOV** (2002), son, idem **(4) Mr Deni SHAIPOV** (2004), son, idem	Mr Dokka ITSLAYEV, a lawyer practising in Nazran, Ingushetia	**(1) Mr Ramzan SHAIPOV (**also spelled as **SHOIPOV)** (1974), abducted late at night on 8 May 2004 or in the early hours of 9 May 2004, Chiri-Yurt	Criminal case no. 36046 opened on 21 May 2004 by the Shali district prosecutor's office.

4.	**63535/10** **Batariyeva v. Russia** 28/10/2010	**(1) Ms Roza BATARIYEVA** (1960), mother, Urus-Martan, Urus-Martan district, the Chechen Republic On 15 April 2012 the applicant died, the applicant's son Mr Bekkhan Batariyev pursued the proceedings.	Mr Dokka ITSLAYEV, a lawyer practising in Grozny, the Chechen Republic	**(1) Mr Zelimkhan BATARI-YEV** (1982), abducted from his flat on 4 May 2001 at night, Grozny, the Chechen Republic	Criminal case no. 50113 opened on 31 July 2002 by the Grozny prosecutor's office.
5.	**15695/11** **Esuyev v. Russia** 07/02/2011	**(1) Mr Batyr ESUYEV** (1952), father, Verkhniy Gerzel, Gudermes district, the Chechen Republic	Mr Magomed Magomedov, a lawyer practising in Khasavyurt, the Republic of Dagestan	**(1) Mr Mansur ESUYEV** (1980), abducted from home on 11 January 2003 at around 4 a.m., Verkhniy Gerzel	Criminal case no. 32133 opened on 6 November 2003 by the Gudermes district prosecutor's office.

APPENDIX II

Awards made by the Court under Article 41 of the Convention

	Application number and name	**Represented by**	**Pecuniary damage**	**Non-pecuniary damage**	**Costs and expenses**
1	**61536/08** **Mikiyeva and Menchayeva v. Russia**	SRJI/Astreya	EUR 2,000 (two thousand euros) to the first applicant; EUR 7,000 (seven thousand euros) to the second applicant	EUR 60,000 (sixty thousand euros), jointly	EUR 2,500 (two thousand five hundred euros)
2	**6647/09** **Ibragimova v. Russia**	SRJI/Astreya	-	EUR 60,000 (sixty thousand euros)	EUR 2,500 (two thousand five hundred euros)
3	**6659/09** **Kosumova and Others v. Russia**	D. Itslayev	EUR 25,000 (twenty-five thousand euros), jointly	EUR 60,000 (sixty thousand euros), jointly	EUR 2,500 (two thousand five hundred euros)
4	**63535/10** **Batariyeva v. Russia**	D. Itslayev	-	EUR 60,000 (sixty thousand euros)	EUR 2,500 (two thousand five hundred euros)
5	**15695/11** **Esuyev v. Russia**	M. Magomedov	-	EUR 60,000 (sixty thousand euros)	-