



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

FIRST SECTION

CASE OF MALIKA YUSUPOVA AND OTHERS v. RUSSIA

(Applications nos. 14705/09, 4386/10, 67305/10, 68860/10 and 70695/10)

JUDGMENT

STRASBOURG

15 January 2015

FINAL

01/06/2015

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

In the case of Malika Yusupova and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 December 2014,

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

PROCEDURE

1. The case originated in five applications (nos. 14705/09, 4386/10, 67305/10, 68860/10 and 70695/10) 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 in Appendix I.

2. The applicants were represented before the Court by Mr D. Itslyayev, a lawyer practising in Russia, Mr D. Bogaert, a lawyer practising in Belgium, lawyers from the NGO Stichting Russian Justice Initiative (SRJI) (in partnership with the NGO Astreya) and lawyers from the NGO Materi Chechni. 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 2001 and 2002 their six relatives had been abducted by State servicemen in the Chechen Republic and that the investigations into the matter had been ineffective.

4. On the dates indicated in Appendix I the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are Russian nationals who, at the material time, lived in various districts of the Chechen Republic. They are close relatives of

individuals who disappeared, allegedly after having been unlawfully detained by servicemen during special operations. In each of the applications the events concerned took place in areas under the full control of the Russian federal forces. The applicants have had no news of their missing relatives since the alleged arrests.

6. The applicants complained of the abductions to law-enforcement bodies, and official investigations were opened. However, the proceedings were repeatedly suspended and resumed, and have remained pending for several years without having achieved any tangible results. The investigations have mainly consisted of 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 reply 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. However, they stated that there was no evidence to prove beyond reasonable doubt that State agents had been involved in the incidents.

9. Summaries of the facts in respect of each individual application are set out below. Each account of the events is based on the statements provided by the applicants and their relatives and/or neighbours to the Court and to the domestic investigative authorities. The personal details of the applicants and their missing relatives, and some other key facts, are summarised in the attached table (Appendix I).

A. Application no. 14705/09, *Malika Yusupova and Others v. Russia*

10. The applicants are:

- (1) Ms Malika Yusupova, who was born in 1957,
- (2) Mr Ilman Yusupov, who was born in 1983, and
- (3) Ms Remisa Ependiyeva, who was born in 1978.

The applicants live in Gudermes, Chechnya. They were represented before the Court by lawyers from the SRJI/Astreya.

11. The first applicant is the mother, the second applicant is the brother and the third applicant is the sister of Mr Arbi Yusupov, who was born in 1973.

1. Abduction of Mr Arbi Yusupov

12. At about 8 a.m. on 23 March 2002 Mr Arbi Yusupov and the second applicant were driving in a Niva car in the center of Gudermes, Chechnya. The brothers were stopped at a bridge in the town centre by a group of about ten armed military servicemen, some of whom were wearing masks. Those

without masks were of Slavic appearance. The brothers were ordered to get out of the car and taken to an armoured personnel carrier (APC) parked nearby. The servicemen blindfolded the brothers and took them for a short ride in the APC to a checkpoint located about 500 metres away from the bridge. At that time the checkpoint was manned by a police unit from the Ivanovo Region of Russia. About ten minutes later, the brothers were taken from the checkpoint to an unidentified location in the centre of Gudermes; from there, they were taken by UAZ minivan to a basement.

13. In the basement the brothers were put in separate cells. The second applicant spent four days handcuffed to a metal pipe. He was not fed for several days and was questioned about members of illegal armed groups. On the fifth day the second applicant was taken to another basement where he was detained for one day and again questioned about members of illegal armed groups. On 27 March 2002, late at night, he was taken in a UAZ vehicle to the countryside near Isti-Su in the Gudermes district and released. The abductors, who throughout the detention had spoken unaccented Russian, returned his passport and ordered him not to complain about the incident.

14. The second applicant walked to the checkpoint located at the entrance to Gudermes where he was detained by servicemen. The latter called the Gudermes district department of the interior (“the Gudermes ROVD”). At about 7 p.m. on 27 March 2002 police officers arrived at the checkpoint and took the applicant to the ROVD, where he was questioned about the abduction. The second applicant returned home on 28 March 2002.

15. The applicants’ relative, Mr Arbi Yusupov, has not been seen since 23 March 2002.

2. Official investigation into the abduction

16. The Government submitted a few copies of documents from the criminal case file (no. 57041) concerning the abduction of Mr Arbi Yusupov and the second applicant. The relevant information may be summarised as follows.

17. On 27 March 2002 the second applicant and his relatives were questioned by investigators. They gave statements similar to the account the applicants submitted before the Court.

18. On 3 June 2002 the Gudermes district prosecutor’s office opened criminal case no. 57041 on Mr Arbi Yusupov’s abduction.

19. On 29 July 2002 the investigators requested the Ivanovo Region prosecutor’s office to question the commanding officer of the police unit which had been manning the checkpoint and other police officers who had witnessed the abduction. The relevant parts of the request read as follows:

“... The preliminary investigation established the following:

On 23 March 2002 at about 8.30 a.m. at the checkpoint [manned by] the composite police unit of the UVD [department of the interior] of the Ivanovo Region ... stopped a Niva car driven by [Mr Arbi Yusupov]. The driver and the passenger [the second applicant], were forced into an APC without a registration number and taken to an unknown destination ... The abduction took place in the presence of police officers from «Zmeyka-1» unit ...”

20. On 31 July 2002 the investigation was suspended. The applicants were not informed thereof.

21. On 17 September 2002 the prosecutor’s office of the Ivanovo Region informed the investigators about the results of the inquiry carried out by the Ivanovo Region police department following their request of 29 July 2002. The relevant part of the document reads as follows:

“... [Mr A.S.] acting deputy commanding officer of [the composite police unit] stated that on 23 March 2002 officers on duty at the checkpoint ... had reported that servicemen from the intelligence [branch] of the Gudermes district military commander’s office who had driven around in an APC, had stopped a red Niva car about a hundred metres from the bridge ... The men [from the Niva car] were put in the APC and taken away ...

... The officers on duty [at the checkpoint] had no reason to interfere with the actions of the servicemen from the Gudermes district military commander’s office as [the composite police unit] was under the operational authority of that military commander’s office ...”.

22. On 6 November 2002 the investigators resumed the proceedings and forwarded the investigation file to the military prosecutor’s office of military unit no. 20102 in Gudermes (“the military prosecutor’s office”) for further investigation in accordance with the rules of jurisdiction. The decision stated, amongst other things:

“... as [it has been established that] the Yusupov brothers had been unlawfully deprived of their liberty by military servicemen from the Gudermes military commander’s office, a further investigation into the crime should be conducted by investigators from the military prosecutor’s office ...”.

The applicants were informed of that decision on 11 November 2002.

23. On 5 December 2002 investigators from the military prosecutor’s office questioned four servicemen from the Gudermes district military commander’s office: Mr V.L., Mr M.G., Mr A.Sh. and Mr Yu.K. One of the officers, Mr V.L., stated that on 23 March 2002 their office had received information concerning explosives allegedly hidden in a red Niva car parked next to the bridge. Upon arrival at the site they had found the car without passengers; they had checked the vehicle and then brought it to the premises of the military commander’s office. The other three servicemen stated that on that day they had neither stopped a Niva car nor arrested any men.

24. On 6 December 2002 the military investigators suspended the investigation and returned the criminal case to the Chechnya prosecutor’s office, stating “the alleged involvement of military servicemen has not been confirmed”. The applicants were not informed thereof.

25. On 26 December 2002 the Chechnya prosecutor's office forwarded the investigation file to the Gudermes district prosecutor's office for investigation. The applicants were not informed thereof.

26. From the documents submitted it appears that between January 2003 and February 2008, that is, for five years and one month, the investigation was suspended and no steps were taken. According to the applicants, they were not informed of the suspension of the investigation. They stated that during that period the International Committee of the Red Cross had contacted the authorities on their behalf on fourteen occasions requesting assistance in establishing the whereabouts of Mr Arbi Yusupov. For instance, on 30 September 2004 the organisation contacted the Chechnya Ministry of the Interior and the Department for the Execution of Sentences and on various dates in 2005 it contacted the Federal Security Service and the Russian Ministry of the Interior.

27. On 21 May 2005 the first applicant obtained a character reference of Arbi Yusupov from the Gudermes Religious Board of Muslims and submitted it with her information requests to the State authorities.

28. On 6 February 2008 the first applicant requested that the Gudermes investigations department grant her victim status in the criminal case.

29. On 11 February 2008, following the first applicant's request, the investigation was resumed and she was granted victim status.

30. On 11 March 2008 the investigation was suspended. The applicants were informed thereof.

31. On 1 April 2008 the investigation was resumed again.

32. On 30 April 2008 the investigators questioned another of the applicants' relatives, the cousin of Mr Arbi Yusupov, Mr A.T., whose statement concerning the abduction was similar to the account the applicants submitted to the Court. In addition, he stated that the Yusupovs' Niva car, which had been left at the checkpoint by the abductors, had been subsequently impounded on the premises of the Gudermes military commander's office for about two weeks; a certain Mr A.Ya. who had worked at the military commander's office at the time, had taken the car and had refused to return it to the applicants.

33. On 3 May 2008 the investigation was suspended and the applicants were informed thereof.

34. On 8 May 2008 the first applicant complained to the Chechnya Minister of the Interior and requested assistance in the search for her son. She also stated that in spite of its resumption, the investigation had not produced any tangible results, and offered to assist the investigators in the criminal case.

35. On 22 May 2008 the investigation was resumed. The applicants were informed thereof.

36. On 11 June 2008 the investigators again questioned the applicants' relative, Mr A.T., who reiterated his previous statement. He added that at

some point in 2004 he and the applicants had obtained information that Mr Arbi Yusupov was allegedly being detained in a correctional facility in the Komi Republic of Russia.

37. On 12 June 2008 the investigators questioned the second applicant, who reiterated his previous statements.

38. On 16 June 2008 the investigators requested the Komi Department for the Execution of Sentences to inform them whether Mr Arbi Yusupov was being detained in one of their facilities. No reply was received to that request.

39. On 23 June 2008 the investigation was suspended again. The applicants were informed thereof.

40. On 13 October 2008 the first applicant's request for assistance in the search for her son, which she had submitted to the State Civic Chamber on 30 May 2008, was forwarded to the Gudermes prosecutor's office.

41. On 13 October 2008 the supervising prosecutor criticised the investigation's shortcomings and ordered that it be resumed. On 22 October 2008 the investigation was resumed and the applicants were informed thereof.

42. On 6 December 2008 the investigation was suspended. The applicants were informed thereof.

43. From the documents submitted it appears that the investigation is still pending.

B. Application no. 4386/10, *Khadzhiyeva and Others v. Russia*

44. The applicants are:

- (1) Ms Rauza Khadzhiyeva, who was born in 1957,
- (2) Ms Marina Idrisova, who was born in 1968,
- (3) Ms Madina Khadzhiyeva, who was born in 1995, and
- (4) Ms Kheda Khadzhiyeva, who was born in 1997.

The first applicant lives in Goyty in the Urus-Martan district, and the second, third and fourth applicants live in Grozny, the Chechen Republic. They were represented before the Court by Mr Dokka Itslayev.

45. The first applicant is the sister of Mr Khasan Khadzhiyev, who was born in 1969 (in the documents submitted his date of birth is also referred to as 1959), the second applicant is his wife and the third and fourth applicants are his daughters.

1. Abduction of Mr Khasan Khadzhiyev

46. At the material time the village of Goyty was under curfew. Checkpoints had been set up by the federal forces on the roads leading to and from the settlement. At about 4 a.m. on 30 October 2001 a group of ten masked and armed men in camouflage uniforms and bullet-proof vests broke into the applicants' house. The men, who spoke unaccented Russian,

had arrived in two APCs, a Ural lorry and two UAZ cars. They handcuffed Mr Khasan Khadzhiyev, checked his documents, took him to one of UAZ cars and forced him inside. Then one of the abductors reported via portable radio to someone with the code name “*Vostok*” that the operation was over, and the abductors drove away in the direction of Urus-Martan.

47. About seven days after the abduction the first applicant was informed that her brother was being detained on the premises of the Urus-Martan district military commander’s office and that he would be released after a check. However, he was never released.

48. The applicants have not seen Mr Khasan Khadzhiyev since 30 October 2001.

2. Official investigation into the abduction

49. The Government submitted copies of the documents from the second volume of the investigation file reflecting the proceedings only as of May 2008. The information concerning the proceedings as submitted by the parties may be summarised as follows.

50. On 6 January 2002 the Urus-Martan district prosecutor’s office opened criminal case no. 25191 into the abduction of Mr Khasan Khadzhiyev.

51. From the documents submitted it appears that on various dates in 2002 the applicants complained of the abduction to various law-enforcement agencies and military prosecutors’ offices.

52. On 6 March 2002 the investigation was suspended and the applicants were informed thereof.

53. On an unspecified date in 2003 the investigation was resumed. The investigators examined the crime scene and questioned the first applicant, her sister and their neighbours. Their statements were similar to the account the applicants submitted to the Court.

54. On 1 April 2003 the first applicant was granted victim status.

55. On 30 April 2003 the investigation was suspended. The applicants were informed thereof in August 2003.

56. On 26 August 2003 and again on 29 April 2004 the applicants complained to the Urus-Martan district prosecutor, stating that the investigation had been ineffective and requesting that it be resumed.

57. On an unspecified date in August 2004 the investigation was resumed and on 20 September 2004 it was again suspended. The applicants were informed thereof.

58. On 28 April 2005 the applicants again complained to the Urus-Martan district prosecutor, stating that the investigation had been ineffective and requesting that it be resumed. In reply, on 1 June 2005 they were informed that the investigation had been suspended but that operational search measures were under way.

59. On 7 July 2005 the applicants complained of their relative's abduction to the Chechnya Minister of the Interior and asked for assistance in establishing his whereabouts.

60. On 20 December 2005 the applicants complained of their relative's abduction to the Urus-Martan district military commander and asked for assistance in establishing his whereabouts.

61. On an unspecified date in January or February 2006 the applicants complained to the Chechnya prosecutor that the investigation of the abduction had been ineffective.

62. On 7 March 2006, following the applicants' complaint the investigation was resumed. It was then suspended on 23 April 2006.

63. On 20 June 2006 and 25 January 2007 the applicants again complained to the Urus-Martan district prosecutor of the lack of information concerning the investigation and requested permission to access the investigation file.

64. On 28 January 2007 the applicants' request was partially allowed and they were provided with a copy of the last decision to suspend the investigation.

65. From the documents furnished by the Government it transpires that on various dates between 2004 and 2008 the investigators questioned the first and second applicants, their relatives and neighbours. Their statements were similar to the account the applicants submitted to the Court.

66. On an unspecified date in April or May 2008 the applicants again complained to the investigators that the investigation into the abduction had been ineffective.

67. On 27 June 2008 the investigators replied to the applicants that on an unspecified date in 2008 the investigation had been resumed. It was then suspended on 27 June 2008.

68. On 17 July 2008 the investigators questioned Mr Khasan Khadzhiyev's sister, Ms N.Kh., whose statement was similar to the account the applicants submitted to the Court.

69. On 19 July 2008 the investigators questioned the applicants' relative, Mr K.M., whose statement was similar to the account the applicants submitted to the Court.

70. On an unspecified date in March 2009 the applicants again complained to the investigators, requesting that the investigation be resumed.

71. On 6 June 2009 the applicants were informed that the investigation into the abduction was still in progress.

72. On various dates in October 2008 and then in February 2009 the investigators questioned a few of the applicants' neighbours and fellow villagers. No new information was obtained.

73. On 26 February 2009 the investigators questioned the first applicant, who stated that she had already been questioned on several occasions about

the circumstances of the abduction, that she wanted to reiterate her previous statements and that she had no new information.

74. On various dates in March 2009 the investigators again questioned several of the applicants' neighbours, all of whom reiterated their previous statements confirming the account the applicants submitted to the Court. No new information was received.

75. On 21 February 2011 the investigators refused to allow the first applicant's request that the investigation be resumed. The applicant appealed against the refusal to the Urus-Martan District Court. On 27 April 2011 the latter granted the applicant's request.

76. On 16 May 2011, following the District Court's decision, the investigators provided the first applicant with access to the investigation file.

77. On various dates in December 2011 the investigators questioned several of the applicants' relatives. No new information was received.

78. From the documents submitted it appears that the investigation is still pending.

C. Application no. 67305/10, *Dadayeva v. Russia*

79. The applicant, Ms Larisa Dadayeva, was born in 1976 and lives in Geraardsbergen, Belgium. She is the wife of Mr Mayrbek Shavanov, who was born in 1976, and the sister-in-law of Mr Aslambek Shavanov, who was born in 1977.

80. The applicant was represented before the Court by Mr Didier Bogaert.

1. Abduction of Mr Mayrbek Shavanov and Mr Aslambek Shavanov

81. On 24 September 2001 armed servicemen of the Russian federal forces carried out a special operation in Alkhazurovo. The applicant lived in the settlement on Sheripova Street with her husband, Mr Mayrbek Shavanov, their two minor sons and other relatives, including her brother-in-law, Mr Aslambek Shavanov, and their parents.

82. At around 4 a.m. on that date a group of armed men in camouflage uniforms broke into the Shavanovs' family house, beat up family members, including the applicant, and took away the applicant's husband, Mr Mayrbek Shavanov, and his brother, Mr Aslambek Shavanov. The intruders used an APC, a UAZ minivan, a Ural lorry and two Kamaz lorries from the local police station.

83. At some point, the Urus-Martan district military commander, Mr Gadzhiyev, unofficially acknowledged that the missing brothers were being held on the premises of the Urus-Martan district office of the Federal Security Service situated on the third floor of the military commander's office.

84. The applicant and her relatives have not seen Mr Mayrbek Shavanov and Mr Aslambek Shavanov since 24 September 2001.

85. At some point prior to 2010 the applicant moved to Belgium. She maintained contact with her relatives in Chechnya, who handled the correspondence with the authorities.

2. Official investigation into the abduction

86. The Government submitted copies of the documents from criminal case no. 25192 concerning the abduction of Mr Mayrbek Shavanov and Mr Aslambek Shavanov. The relevant information may be summarised as follows.

87. On 24 September 2001 the mother of the Shavanov brothers, Ms A.Sh., complained to the Urus-Martan ROVD that her sons had been abducted by military servicemen and taken away in a military vehicle.

88. On 24 September 2001 the investigator questioned the applicant, Ms A.Sh. and Aslambek's wife, Ms Z.A., all of whom stated that earlier that day, at about 4 a.m., armed masked men in camouflage uniforms arrived in an APC, a Ural lorry and a UAZ minivan, broke into their house and abducted Mr Mayrbek Shavanov and Mr Aslambek Shavanov.

89. On 24 September 2001 the investigators also questioned the applicant's neighbour (his initials were illegible in the documents submitted to the Court), whose statement was similar to the account the applicants submitted to the Court.

90. On 7 January 2002 the Urus-Martan district prosecutor's office opened criminal case no. 25192.

91. On 17, 18 and 29 January 2002 the applicant, Ms A.Sh. and Ms Z.A. respectively were granted victim status in the criminal case and questioned.

92. On 10 January 2002 the investigators requested the Urus-Martan district department of the interior (the Urus-Martan ROVD) to assist them with the identification of eyewitnesses, the examination of the crime scene and establishing which military units were stationed in Alkhazurovo. In reply the police department informed the investigators that the witnesses had refused to give statements as they had been afraid to give evidence against servicemen of the federal forces and that it was impossible to identify the military units stationed in Alkhazurovo.

93. On 7 March 2002 the investigation was suspended and then resumed several weeks later.

94. On 29 March 2002 the investigators questioned the applicant's relatives, Ms L.D. and Mr M.Sh., whose statements concerning the abduction were similar to the account the applicants furnished to the Court.

95. The investigation was suspended between April 2002 and June 2006.

96. On an unspecified date in June 2006 the investigation was resumed and then suspended again in July 2006.

97. On 17 June 2007 the investigators questioned the applicant's neighbours, Ms T.Kh., Mr N.A. and Ms A.S., whose statements concerning the abduction were similar to the account the applicant submitted before the Court.

98. On 18 January 2010 the mother of the abducted brothers, Ms A.Sh., complained to the investigators that the proceedings had been protracted and asked for access to the investigation file. Her request was refused. On 26 March 2010, following the complaint of Ms A.Sh, the Urus-Martan District Court ordered the investigators to allow her request.

99. On 14 December 2010 Ms A.Sh. complained to the Urus-Martan Town Court, requesting that the criminal proceedings be resumed and the investigation be carried out effectively.

100. On 23 December 2010 the investigation was resumed and then suspended on the following day.

101. On 27 January 2011 the court dismissed the complaint of 14 December 2010 as unsubstantiated. The applicant appealed to the Chechnya Supreme Court and on 9 March 2011 the latter forwarded the complaint for a fresh examination.

102. On 29 March 2011 the investigation was resumed again and then suspended on 29 April 2011.

103. From the documents submitted it appears that the investigation is still pending.

D. Application no. 68860/10, *Dzhabrailov v. Russia*

104. The applicants are:

- (1) Ms Kisa Dzhabrailova, who was born in 1951,
- (2) Mr Adlan Dzhabrailov, who was born in 1987, and
- (3) Mr Suleyman Dzhabrailov, who was born in 1974.

The applicants live in Achkhoy-Martan, Chechnya. The first applicant is the mother of Mr Ibragim Dzhabrailov, who was born in 1976; the second and third applicants are his brothers.

105. The applicants were represented before the Court by the NGO Materi Chechni.

1. Abduction of Mr Ibragim Dzhabrailov

106. Between 5 a.m. and 6 a.m. on 5 November 2002 a group of armed men in camouflage uniforms broke into the applicants' house in Achkhoy-Martan. Those who were unmasked were of Slavic appearance. They spoke Russian. The men locked the first applicant, her husband and their relatives in one room. Then, after searching the house, they dragged Mr Ibragim Dzhabrailov outside in his underwear, put him in an APC and drove away. The APC was accompanied by a UAZ minivan and a Ural lorry.

107. Later that morning the applicants informed the Achkhoy-Martan district military commander's office, the local administration and the police of the abduction. The military commander's office acknowledged that they had detained Mr Ibragim Dzhabrailov and promised to release him later the same day. However, he was not released.

108. The applicants were later told that Mr Ibragim Dzhabrailov had been taken away by servicemen from Grozny.

109. The applicants have not seen Mr Ibragim Dzhabrailov since 5 November 2002.

2. Official investigation into the abduction

110. The Government submitted copies of the documents from criminal case no. 63090 concerning the abduction of Mr Ibragim Dzhabrailov. The relevant information may be summarised as follows.

111. On 11 November 2002 the Achkhoy-Martan district prosecutor's office opened criminal case no. 63090 and examined the crime scene. No evidence was collected.

112. On 12 November 2002 the first applicant was granted victim status and questioned.

113. On 20 November 2002 Mr T.A., a police officer from the Achkhoy-Martan ROVD, reported to the investigators, amongst others, as follows:

“... as a result of the operative search steps taken to investigate the abduction of Mr Ibragim Dzhabrailov ... it was established that between 1999 and 2000 Mr Ibragim Dzhabrailov and his brother [I. Dzh.] ... had been members of illegal armed groups ... in the night between 13 and 14 January 2000 the Dzhabrailov brothers ... launched a grenade at an APC-80 of the federal forces in Achkhoy-Martan; on 24 November 2000 criminal case no. 26213 was opened to investigate the incident ...”

114. On 11 January 2003 the investigation was suspended.

115. On 2 June 2005 the first applicant complained to the Chechnya prosecutor of her son's abduction by military servicemen and asked for assistance in the search for him.

116. On 10 June 2008 the investigation was resumed following the supervising prosecutor's criticism of the investigation and his order to that effect.

117. On 7 July 2008 the first applicant asked the investigators to grant her the status of civil plaintiff in the criminal proceedings. Her request was granted on the same date.

118. On 10 July 2008 the investigation was suspended. The applicants were informed thereof.

119. On 28 April 2009 the first applicant complained to a number of authorities, including the Chechnya investigations department, of the abduction and the absence of results in the authorities' search. On 28 May

2009 the investigators replied to the applicants that the investigation was in progress.

120. On 5 June 2009 and again on 16 February 2010 the first applicant requested that the investigators, amongst other things, resume the proceedings and inform her of their progress. In reply she was informed that operational search measures were under way.

121. On 21 June 2010 the investigation was resumed.

122. On 23 June 2010 the applicants' relative, Ms R. Dzh., was questioned about the circumstances of the abduction of her nephew, Mr Ibragim Dzhabrailov. Her statement was similar to the account the applicants submitted to the Court.

123. On 24 June 2010 the investigators questioned the applicants' neighbour, Mr I.A., whose statement did not yield any new information.

124. On 1 July 2010 the proceedings were suspended.

125. From the documents submitted it appears that the investigation is still pending.

E. Application no. 70695/10, *Minayevy v. Russia*

126. The applicants are:

- (1) Ms Madina Minayeva, who was born in 1974,
- (2) Mr Suleyman Minayev, who was born in 1993, and
- (3) Ms Zaira Minayeva, who was born in 1994.

The applicants live in Urus-Martan, Chechnya. They were represented before the Court by Mr Dokka Itslayev.

127. The first applicant is the wife of Mr Mayrbek (also spelt as Mairbek) Minayev, who was born in 1972. The second and third applicants are their children.

1. Abduction of Mr Mayrbek Minayev

128. In September 2002 the town of Urus-Martan was under curfew and surrounded by Russian military checkpoints. A number of law-enforcement and administrative authorities, including a military commander's office, were situated in the town.

129. Between 2 and 3 a.m. on 5 September 2002 an APC and two Ural lorries arrived at the applicants' block of flats. Some forty men in masks and camouflage uniforms got out of the vehicles. Up to fifteen of them entered the applicants' flat. They spoke unaccented Russian. After locking Mr Mayrbek Minayev's father, Mr A.M., in the kitchen and threatening his brother with a machinegun, the men checked the identity documents of the other family members. They searched Mr Mayrbek Minayev, asked for his passport and told his relatives that they were taking him to the military commander's office.

130. Through the windows the applicants saw the men beating Mr Mayrbek Minayev while dragging him, with a plastic bag over his head, to Lenina Street, where they forced him into one of the vehicles and drove away.

131. On the same morning the first applicant went to the Urus-Martan district prosecutor's office and the Urus-Martan ROVD to complain about the abduction. Mr Mayrbek Minayev's parents contacted the local administration.

132. The applicants have not seen Mr Mayrbek Minayev since 5 September 2002.

2. Official investigation into the abduction

133. The Government submitted copies of the documents from the criminal case file (no. 61138) concerning the abduction of Mr Mayrbek Minayev. The relevant information may be summarised as follows.

134. On 5 September 2002 Mr A.M. complained to the Urus-Martan district prosecutor's office about his son's abduction by military servicemen.

135. In October 2002 the investigators questioned Mr A.M., whose statement concerning the abduction was similar to the account the applicants submitted to the Court.

136. On 7 November 2002 the Urus-Martan district prosecutor's office opened criminal case no. 61138.

137. On 8 November 2002 the first applicant was granted victim status in the criminal case.

138. On 7 January 2003 the investigation was suspended. The applicants were not informed thereof.

139. On 21 November 2003 at the first applicant's request the Urus-Martan District Court declared Mr Mayrbek Minayev a missing person.

140. It appears that on an unspecified date in June 2007 the proceedings were resumed, as on 14 June 2007 the investigators again questioned Mr A.M., who reiterated his previous statement concerning his son's abduction. In addition, he stated that for some time after the abduction he and his wife had visited the military commander's office daily searching for information on their son's whereabouts, but to no avail.

141. On an unspecified date in 2007 the investigation was again suspended. The applicants were not informed thereof.

142. On 1 February 2010 the first applicant requested that the investigators grant her permission to access the investigation file. On 2 February 2010 her request was rejected.

143. On 2 February 2010 the investigation was resumed.

144. On 5 and 8 February 2010 the investigators questioned two of the applicants' neighbours, Ms Kh.K. and Ms S.M., whose statements corroborated the applicants' account.

145. On 10 February 2010 the investigators again questioned Mr A.M., who reiterated his previous statements.

146. On 15 February 2010 the investigators questioned the brother of Mr Mayrbek Minayev, Mr Akh.M. His statement was similar to the account the applicants submitted before the Court.

147. On 16 February 2010 the first applicant was again granted victim status in the criminal case and questioned. Her statement was similar to the account submitted to the Court.

148. On an unspecified date in 2010 the investigation was again suspended.

149. On 14 December 2011 the investigation was resumed and then suspended again on 12 January 2012.

150. From the documents submitted it appears that the investigation is still pending.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. JOINDER OF THE APPLICATIONS

152. 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. COMPLIANCE WITH THE SIX-MONTH RULE

A. The parties' submissions

1. Government

153. In their observations in respect of all the applications the Government submitted that in the absence of final domestic decisions concerning the applicants' complaints, the six-month rule did not apply.

2. *The applicants*

154. 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.

155. The applicants stated that after the opening 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 – there were no domestic provisions for free legal assistance to victims of enforced disappearances – they had been unable to assess the effectiveness of the investigation. As soon as the applicants had been able to procure legal advice, they had realised that the investigations were ineffective owing to the delays in their completion and shortly thereafter they had applied to the Court. Referring to *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 argued that the six-month rule did not apply to continuing situations such as cases of enforced disappearances.

B. The Court's assessment

1. *General principles*

156. 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). The Court has jurisdiction to apply the rule of its own motion, even if the Government have not raised that objection (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012).

157. 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).

158. In cases concerning disappearances the Court has held that 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 that 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 and Others*, cited above).

159. 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).

160. 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 investigative 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 disappearance, the Court rejected as out of time their complaints under Article 2 of the Convention for failure to demonstrate any concrete advance in the domestic investigation that would justify their delay of more than ten years.

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

161. Turning to the circumstances of the cases at hand, the Court notes that the criminal investigation in each of them was pending when the applicants lodged their complaints with the Court. Furthermore, the Court notes that the applicants in the application *Malika Yusupova and Others* (no. 14705/09) lodged their application with the Court about seven years after the abduction perpetrated in March 2002. From the documents submitted it transpires that at the initial stage of the proceedings, that is, up until December 2002, the investigators from the prosecutor's office took a number of steps before suspending the investigation and transferring it to the military prosecutor's office. The applicants were not informed of the suspension or of the transfers of the investigation between the prosecutors' offices until February 2008 (see paragraph 28 above). Thus for a period of five years the proceedings lay dormant, whereas the applicants kept lodging complaints with the authorities, trying to obtain information and expedite the proceedings (see paragraphs 26-27 above). Noting the lengthy period of inactivity on the part of the investigative authorities, the Court observes that the applicants, for their part, took an active stance and a clear interest in pursuing the proceedings during the above period.

162. As for the application *Khadzhiyeva and Others* (no. 4386/10) lodged with the Court about eight years after the abduction and the institution of criminal proceedings, the Court notes that the applicants maintained contact with the investigative authorities by providing them with eyewitness evidence, requesting information and asking for permission to access the investigation file.

163. In respect of the applications *Dadayeva* (no. 67305/10) and *Dzhabrailovy* (no.68860/10), the Court observes that the applicants lodged their applications within nine and eight years of the incidents respectively. In *Dadayeva* (no.67305/10) there was a lull in the proceedings of about four years and three months, and in *Dzhabrailovy* (no. 68860/10) there was a lull of about five years when the investigations were suspended and the authorities did not take any active steps. Noting with concern the authorities' inaction for such significant periods of time, the Court observes that the applicants and their relatives, for their part, expressed their interest in pursuing the proceedings by providing statements to the authorities and requesting information on the progress of the investigation.

164. Turning to the application *Minayevy* (no.70695/10), the Court notes that the applicants lodged their application eight years after the abduction perpetrated in September 2002. From the documents submitted it appears that they complained to the authorities immediately after the incident and that within the following several months the authorities took a number of steps. In January 2003 the investigation was suspended until June 2007 when the authorities obtained eyewitness evidence (see paragraph 140 above). The Court notes that there was a significant gap in the proceedings

of more than four years and four months, when no steps were taken by the authorities and that the applicants did not seek information from the investigation either. However, it also notes that the investigation was resumed in February 2010 as a result of the applicants' requests, following which a number of measures were taken (see paragraphs 142-47 above). In view of those circumstances, and bearing in mind the specific context of disappearance cases, the Court is unable to conclude that the periods of inactivity in this case were such that the applications should be rejected for failure to comply with the six-month rule.

165. Having examined all the applications, the Court finds that the conduct of the applicants in respect of the investigations was determined not by a perception that there was no effective remedy, but rather by their expectation that the authorities would, of their own motion, provide them with an adequate response in the face of their serious complaints. For their part, they furnished the investigative authorities with timely and sufficiently detailed accounts of their relatives' abductions, assisted them with finding witnesses and other evidence, and fully cooperated in other ways. It was thus reasonable for them to expect further substantive developments from the investigations. It cannot be said that they failed to show the requisite diligence in waiting for the pending investigations to yield results (see, by contrast, *Açış*, cited above, §§ 41-42).

166. To sum up, all the applicants demonstrated that there had been no unexplained delays in bringing their applications to the Court. They 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 hope of a more effective outcome.

167. The Court considers that investigations were actually being conducted, albeit sporadically, during the periods in question and that the applicants did all that could be expected of them to assist the authorities and maintain contact with them (see *Varnava and Others*, cited above, § 166, and *Er and Others*, cited above, § 60). In the light of the foregoing, the Court finds that the applicants have complied with the six-month time-limit.

III. COMPLIANCE WITH THE EXHAUSTION RULE

A. The parties' submissions

1. Government

168. The Government argued that the applicants had failed to exhaust domestic remedies as the investigations into the disappearances were still in progress. In addition, the applicants had failed to lodge appeals against the investigators' decisions with the domestic courts or to claim civil damages.

2. *The applicants*

169. The applicants, referring to the Court's case law, submitted that they were not obliged to pursue civil remedies and that lodging complaints against the investigators under Article 125 of the Criminal Procedure Code would not have remedied the investigations' shortcomings. They submitted that the only effective remedy—the criminal investigation—had proved to be ineffective.

B. The Court's assessment

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

171. As regards criminal-law remedies, the Court observes that in a recent judgment it concluded that the ineffective investigation of disappearances that had occurred in Chechnya between 2000 and 2006 constituted a systemic problem and that criminal investigations were not an effective remedy in this regard (see *Aslakhanova and Others*, cited above, § 217).

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

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

A. The parties' submissions

1. The Government

173. The Government did not contest the essential facts underlying each application. However, they submitted that the applicants' allegations were based on assumptions as there was no evidence proving beyond reasonable doubt that State agents had been involved in the alleged abductions, or that the applicants' relatives were dead. Conversely, in respect of *Dadayeva* (application no. 67305/10), the Government stated that the applicant had presented evidence of the possible involvement of State representatives in

her relatives' abduction and that as that theory was the most probable one, it was being verified by the investigative authorities.

2. *The applicants*

174. 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 the latter 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 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*

175. The Court will 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).

176. 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 is sufficient for the applicants to make a prima facie case of abduction by servicemen, showing that their relatives fell within the control of the authorities, and it is then 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 will 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).

177. 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 disappearance 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, the situation can be regarded as life-threatening (see, among many others, *Bazorkina v. Russia*, no. 69481/01, 27 July 2006; *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).

178. The Court has made findings of presumption of death 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 above principles to the present case

(a) Application no. 14705/09, *Malika Yusupova and Others v. Russia*

179. Numerous witness statements collected by the applicants, along with the documents from the investigation file furnished by the Government, confirm that their relative, Mr Arbi Yusupov, was abducted in the centre of Gudermes on 23 March 2002 by a group of servicemen during a special operation (see, for example, paragraphs 17, 19, 21 and 22 above). In view of all the material 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 set out by them.

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

181. Bearing in mind the general principles enumerated above, the Court finds that Mr Arbi Yusupov was taken into custody by State agents on 23 March 2002. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraph 177 above), the Court also finds that Mr Arbi Yusupov may be presumed dead following his unacknowledged detention.

(b) Application no. 4386/10, *Khadzhiyeva and Others v. Russia*

182. Numerous witness statements collected by the applicants, along with the documents from the investigation file furnished by the Government, confirm that their relative, Mr Khasan Khadzhiyev, was abducted from his home in Goyty on 30 October 2001 by a group of servicemen during a special operation (see, for example, paragraphs 51, 53, 65 and 68-69 above). In view of all the material 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 set out by them.

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

184. Bearing in mind the general principles enumerated above, the Court finds that Mr Khasan Khadzhiyev was taken into custody by State agents on 30 October 2001. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraph 177 above), the Court also finds that Mr Khasan Khadzhiyev may be presumed dead following his unacknowledged detention.

(c) Application no. 67305/10, *Dadayeva v. Russia*

185. The witness statements collected by the applicant, along with the documents from the investigation file furnished by the Government, confirm that her two relatives, Mr Mayrbek Shavanov and Mr Aslambek Shavanov, were abducted from their home in Alkhazurovo on 24 September 2001 by a group of servicemen during a special operation (see, for example, paragraphs 87-89 and 91-92 above). In view of all the material in its possession, the Court finds that the applicant has presented a prima facie case that her relatives were abducted by State agents in the circumstances set out by her.

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

187. Bearing in mind the general principles enumerated above, the Court finds that Mr Mayrbek Shavanov and Mr Aslambek Shavanov were taken into custody by State agents on 24 September 2001. In view of the absence of any news of them since that date and the life-threatening nature of such detention (see paragraph 177 above), the Court also finds Mr Mayrbek Shavanov and Mr Aslambek Shavanov may be presumed dead following their unacknowledged detention.

(d) Application no. 68860/10, *Dzhabrailov v. Russia*

188. Numerous witness statements collected by the applicants, along with the documents from the investigation file furnished by the Government, demonstrate that their relative, Mr Ibragim Dzhabrailov, was abducted from his home in Achkhoy-Martan on 5 November 2002 by a group of armed servicemen during a special operation (see, for example, paragraphs 113, 115 and 119 above). In view of all the material 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 set out by them.

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

190. Bearing in mind the general principles enumerated above, the Court finds that Mr Ibragim Dzhabrailov was taken into custody by State agents on 5 November 2002. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraph 177 above), the Court also finds that Mr Ibragim Dzhabrailov may be presumed dead following his unacknowledged detention.

(e) Application no. 70695/10, *Minayevy v. Russia*

191. Numerous witness statements collected by the applicants, along with the documents from the investigation file furnished by the Government, confirm that their relative, Mr Mayrbek Minayev, was abducted from his home in Urus-Martan on 5 September 2002 by a group of servicemen during a special operation (see, for example, paragraphs 134, 140, 144 and 146 above). In view of all the material 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 set out by them.

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

193. Bearing in mind the general principles enumerated above, the Court finds that Mr Mayrbek Minayev was taken into custody by State agents on 5 September 2002. In view of the absence of any news of him since that date and the life-threatening nature of such detention (see paragraph 177 above), the Court also finds that Mr Mayrbek Minayev may be presumed dead following his unacknowledged detention.

3. Conclusions

194. The Court finds that in all the cases presently before it 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 investigative authorities accepted as fact the primary versions of events presented by the applicants and took steps to check whether State servicemen had been involved in the abductions.

195. 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 stand in contradiction to the evidence reviewed by the Court and are insufficient to discharge them of the burden of proof which has been shifted to them in such cases.

196. The detention in life-threatening circumstances of Mr Arbi Yusupov, Mr Khasan Khadzhiev, Mr Mayrbek Shavanov, Mr Aslambek Shavanov, Mr Ibragim Dzhabrailov and Mr Mayrbek Minayev, together

with the long absence of any news of them, leads the Court to conclude that they may be presumed dead.

V. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

197. 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

198. The Government contended that the complaints should be rejected as manifestly ill-founded, as the applicants had failed to substantiate their allegations before the Court. The Government also 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 pointed out that the mere fact that the investigative measures employed had not produced any specific results, or had yielded only limited results, 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.

199. The applicants maintained their complaints.

B. The Court’s assessment

1. Admissibility

200. The Court considers, in the light of the parties’ submissions, that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The 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**

201. The Court has already found that in all of the applications under examination, the applicants' relatives may be presumed dead, following their unacknowledged detention by State agents. In the absence of any justification put forward by the Government, the Court finds 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 Arbi Yusupov, Mr Khasan Khadzhiev, Mr Mayrbek Shavanov, Mr Aslambek Shavanov, Mr Ibragim Dzhabrailov and Mr Mayrbek Minayev.

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

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

203. In the light of the foregoing, the Court finds that the authorities failed to carry out effective criminal investigations into the circumstances of the disappearance and death of Mr Arbi Yusupov, Mr Khasan Khadzhiev, Mr Mayrbek Shavanov, Mr Aslambek Shavanov, Mr Ibragim Dzhabrailov and Mr Mayrbek Minayev. Accordingly, there has been a violation of the procedural aspect of Article 2 of the Convention.

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

204. 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,

they had had no available domestic remedies against the alleged violations, in particular those under Articles 2 and 3. Those 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

205. The Government contested the applicants' claims.

206. The applicants reiterated their complaints.

B. The Court's assessment

1. Admissibility

207. 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

208. 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 v. Russia*, no. 7615/02, § 164, ECHR 2006-XIII (extracts)). Where the news about the missing person's death was preceded by a sufficiently long period when he or she had been deemed to have disappeared, there exists a distinct period during which the applicants sustained uncertainty, anguish and distress characteristic of the specific phenomenon of disappearances (see *Luluyev and Others*, cited above, § 115).

209. 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, and *Luluyev*, cited above, § 122).

210. The Court reiterates its findings regarding the State's responsibility for the abductions and the failure to carry out a meaningful investigation into the fates of the disappeared persons. It finds that the applicants, who are 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.

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

212. The Court reiterates its findings of the general ineffectiveness of the criminal investigations in cases such as those under examination. In the

absence of the results of the criminal investigation, any other possible remedy becomes inaccessible in practice.

213. The Court thus finds that the applicants in these cases did not dispose of an effective domestic remedy for their grievances under Articles 2 and 3, in breach of Article 13 of the Convention.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

214. The Court has examined the other complaints submitted by the applicant in *Dadayeva* (no. 67305/10) under Articles 6 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.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

215. Article 41 of the Convention provides:

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

A. Damage

1. Malika Yusupova and Others v. Russia (application no. 14705/09)

216. The first applicant, the mother of Mr Arbi Yusupov, claimed 738,749 Russian roubles (RUB) (about 19,000 euros (EUR)) in respect of pecuniary damage for the loss of financial support by the breadwinner. She based her calculations on the subsistence level provided for by domestic law and the Ogden Actuary Tables.

217. The applicants claimed EUR 100,000 jointly in respect of non-pecuniary damage.

218. The Government submitted that the first applicant's claim for pecuniary damage was unsubstantiated and that there was a domestic mechanism for compensation in respect of pecuniary damage resulting from the loss of a breadwinner. As for the claim for non-pecuniary damage, the Government stated that the amount of compensation should be determined on an equitable basis.

2. *Khadzhiyeva and Others v. Russia (application no. 4386/10)*

219. The applicants did not submit a claim for pecuniary damage. As for non-pecuniary damage, they left the Court to determine the amount to be awarded.

220. The Government stated that the amount of compensation should be determined on an equitable basis.

3. *Dadayeva v. Russia (application no. 67305/10)*

221. The applicant did not submit a claim for pecuniary damage. As for non-pecuniary damage, she claimed the sum of EUR 400,000.

222. The Government stated that the amount of compensation should be determined on an equitable basis.

4. *Dzhabrailovy v. Russia (application no. 68860/10)*

223. The applicants did not submit a claim for pecuniary damage. As for non-pecuniary damage, they claimed the sum of EUR 80,000 jointly.

224. The Government stated that the amount of compensation should be determined on an equitable basis.

5. *Minayevy v. Russia (application no. 70695/10)*

225. The applicants did not submit a claim for pecuniary damage. As for non-pecuniary damage, they left the Court to determine the amount to be awarded.

226. The Government stated that the amount of compensation should be determined on an equitable basis.

B. Costs and expenses

227. The applicants in *Malika Yusupova and Others v. Russia* (no. 14705/09) were represented by the Stichting Russian Justice Initiative/Astreya. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 4,700. The claim included the drafting of legal documents submitted to the Court, and administrative and postal expenses. The applicants submitted copies of their legal representation contract and invoices with a breakdown of the costs incurred.

228. The applicants in *Khadzhiyeva and Others v. Russia* (no. 4386/10) and *Minayevy v. Russia* (no. 70695/10) were represented by Mr D. Itslyayev. The aggregate claim in respect of costs and expenses related to their legal representation amounted to EUR 4,399 and EUR 4,914 respectively, which included the drafting of legal documents, translation services and administrative costs. They submitted a copy of the legal representation contract.

229. The applicant in *Dadayeva v. Russia* (no. 67305/10) did not submit a claim under this head.

230. The applicants in *Dzhabrailovy v. Russia* (no. 68860/10) were represented by Materi Chechni. The aggregate claim in respect of costs and expenses related to their legal representation amounted to EUR 7,800. No documents substantiating the amount were enclosed.

231. In respect of each claim for costs and expenses the Government submitted that the amount claimed was excessive and unreasonable, and that the claim should be rejected as unsubstantiated.

C. The Court's assessment

232. 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 loss of earnings applies to close relatives of the disappeared persons, including spouses, elderly parents and minor children (see, among other authorities, *Imakayeva*, cited above, § 213).

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

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

235. Having regard to the conclusions and principles set out 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

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints under Articles 2, 3, 5 and 13 admissible, and the remainder of the applications inadmissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of the applicants' relatives Mr Arbi Yusupov, Mr Khasan Khadzhiyev, Mr Mayrbek Shavanov, Mr Aslambek Shavanov, Mr Ibragim Dzhabrailov and Mr Mayrbek Minayev;
4. *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;
5. *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;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of the applicants' relatives on account of their unlawful detention;
7. *Holds* there has been a violation of Article 13 of the Convention in conjunction with Articles 2 and 3 of the Convention;
8. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts as indicated in Appendix II, plus any tax that may be chargeable to the applicants. The 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 the currency of the respondent State in respect of the applicants represented by Mr D. Itslayev and Materi Chechni;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President

APPENDIX I
Details of the applications

No.	Application no.	Case details Date of introduction	Applicants' details (family relations, date of birth, place of residence)	Persons abducted, year of birth, date and place of abduction	Investigation of the disappearance
1	14705/09 Malika Yusupova and Others v. Russia	Lodged on 03/03/2009 Communicated on 08/06/2011 Represented by SRJI/ Astreya	(1) Ms Malika YUSUPOVA (1957), mother, Gudermes, the Chechen Republic; (2) Mr Ilman YUSUPOV (1983), brother, idem; (3) Ms Remisa EPENDIYEVA (1978), sister, idem.	Mr Arbi YUSUPOV (1973), abducted on 23 March 2002 in Gudermes, the Chechen Republic.	On 3 June 2002 the Gudermes district prosecutor's office opened criminal case no. 57041. The investigation is still pending.
2	4386/10 Khadzhiyeva and Others v. Russia	Lodged on 31/12/2009 Communicated on 31/08/2011 Represented by Mr D. Itslayev	(1) Ms Rauza KHADZHIYEVA (1957), sister, Goyty, the Chechen Republic; (2) Ms Marina IDRISOVA (1968), wife, Grozny, the Chechen Republic; (3) Ms Madina KHADZHIYEVA (1995), daughter, idem; (4) Ms Kheda KHADZHIYEVA (1997), daughter, idem.	Mr Khasan KHADZHIYEV (1969, also referred to as 1959), abducted on 30 October 2001 in Goyty, the Chechen Republic.	On 6 January 2002 the Urus-Martan district prosecutor's office opened criminal case no. 25191. The investigation is still pending.
3	67305/10 Dadayeva v. Russia	Lodged on 08/11/2010 Communicated on 31/08/2011 Represented by Mr D. Bogaert	Ms Larisa DADAYEVA (1976), wife of Mr Mayrbek Shavanov and sister-in-law of Mr Aslambek Shavanov, Belgium.	Two brothers abducted on 24 September 2001 in Alkhazurovo, the Chechen Republic: 1) Mr Mayrbek SHAVANOV (1976) and 2) Mr Aslambek SHAVANOV (1977)	On 7 January 2002 the Urus-Martan district prosecutor's office opened criminal case no. 25192. The investigation is still pending.
4	68860/10 Dzhabrailov v. Russia	Lodged on 28/10/2010 Communicated on 31/08/2011 Represented by Materi Chechni	(1) Ms Kisa DZHABRAILOVA (1951), mother, Achkhoy-Martan, the Chechen Republic; (2) Mr Adlan DZHABRAILOV (1987), brother, idem; (3) Mr Suleyman DZHABRAILOV (1974), idem.	Mr Ibragim DZHABRAILOV (1976), abducted on 5 November 2002 in Achkhoy-Martan, the Chechen Republic.	On 11 November 2002 the Achkhoy-Martan district prosecutor's office opened criminal case no. 63090. The investigation is still pending.

5	70695/10 Minayevy v. Russia	Lodged on 10/11/2010 Communicated on 31/08/2011 Represented by Mr D. Itslyev	(1) Ms Madina MINAYEVA (1974), wife, Urus-Martan, the Chechen Republic; (2) Mr Suleyman MINAYEV (1993), son, idem; (3) Ms Zaira MINAYEVA (1994), daughter, idem.	Mr Mayrbek MINAYEV (1972), abducted on 5 September 2002 in Urus-Martan, the Chechen Republic.	On 7 November 2002 the Urus-Martan district prosecutor's office opened criminal case no. 61138. The investigation is still pending.
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APPENDIX II

Awards made by the Court under Article 41 of the Convention

	Application number and name	Represented by	Pecuniary damage	Non-pecuniary damage	Costs and expenses
1	14705/09 Malika Yusupova and Others v. Russia	SRJI/Astreya	EUR 10,000 (ten thousand euros) to the first applicant	EUR 60,000 (sixty thousand euros) to the applicants jointly	EUR 3,000 (three thousand euros)
2	4386/10 Khadzhiyeva and Others v. Russia	Mr D. Itsleyev	-	EUR 60,000 (sixty thousand euros) to the applicants jointly	EUR 3,000 (three thousand euros)
3	67305/10 Dadayeva v. Russia	Mr D. Bogaert	-	EUR 120,000 (one hundred and twenty thousand euros)	-
4	68860/10 Dzhabrailovy v. Russia	Materi Chechni	-	EUR 60,000 (sixty thousand euros) to the applicants jointly	EUR 1,000 (one thousand euros)
5	70695/10 Minayevy v. Russia	Mr D. Itsleyev	-	EUR 60,000 (sixty thousand euros) to the applicants jointly	EUR 3,000 (three thousand euros)