



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

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FIRST SECTION

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

*(Application no. 33264/04)*

JUDGMENT

STRASBOURG

11 June 2009

**FINAL**

*06/11/2009*

*This judgment may be subject to editorial revision.*



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

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 May 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 33264/04) 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 four Russian nationals listed below (“the applicants”), on 7 September 2004.

2. The applicants, who had been granted legal aid, were represented by lawyers of the International Protection Centre, an NGO based in Moscow. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2005 the Court decided to apply Rule 41 of the Rules of Court.

4. On 26 March 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- 1) Ms Nebist Khalitova, born in 1959;
- 2) Ms Zarema Almurzayeva, born in 1971;
- 3) Ms Zalina Chapayeva, born in 1982; and
- 4) Mr Maulat Achkhanov, born in 1929.

The first applicant lives in the village of Raduzhnoe. The second, third and fourth applicants live in the village of Pobedinskoe. The two villages are located a short distance one from another in the Groznenskiy District of the Chechen Republic.

7. The first applicant is the wife of Mr Ali Uspayev and the mother of Mr Amir Magomedov. The second applicant is the sister of Mr Aslan Dokayev. Aslan Dokayev was married to the third applicant. The fourth applicant is the father of Mr Rustam Achkhanov.

#### **A. Disappearance of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov**

##### *1. The applicants' account*

###### **(a) Amir Magomedov and Ali Uspayev**

8. On the night of 18 July 2001 the first applicant, her son and husband were sleeping in their house in Raduzhnoe. At about 5 a.m. around thirty unidentified armed men wearing camouflage uniforms broke into it. The men did not identify themselves. They had Slavic features and spoke Russian without an accent.

9. The first applicant looked out of the window and saw the armed men dragging Amir Magomedov, who had his legs in a plaster cast because of a previous trauma, to the gates. Ali Uspayev was lying on the ground in the courtyard with his arms handcuffed behind his back. Then one of the armed men hit the first applicant with a rifle butt and she lost consciousness. Having recovered a few minutes later, she saw that everyone had left the house.

10. According to her neighbours who witnessed the events, the armed men loaded Amir Magomedov and Ali Uspayev into one of two armoured personnel carriers ("APCs") parked next to the first applicant's house and drove away. Outside the village the two vehicles were joined by two more APCs.

**(b) Aslan Dokayev and Rustam Achkhanov**

11. On the morning of 18 July 2001 Rustam Achkhanov was driving his VAZ 2106 car. He was accompanied by his acquaintance, Aslan Dokayev.

12. At about 6 a.m., when they reached the village of Raduzhnoe, unidentified armed men in four APCs without registration numbers opened fire in the direction of the VAZ 2106 car. Aslan Dokayev and Rustam Achkhanov got out of the car and started running. The armed men continued shooting, wounded Aslan Dokayev and Rustam Achkhanov and loaded them into one of the APCs. Then they took the music player and some other valuable items from the VAZ 2106 car, poured petrol over it and then set it on fire. The car blew up. The four APCs drove away.

13. The second, third and fourth applicants did not see their relatives being taken away and obtained the description of the events from inhabitants of Raduzhnoe.

*2. Information submitted by the Government*

14. On 18 July 2001 units of the federal troops and the Internal Troops of the Russian Ministry of the Interior carried out a special operation in the village of Pobedinskoe with a view to arresting members of illegal armed groups and prosecuting them in accordance with the law in force. The servicemen of the Internal Troops had a right to carry and use arms when ensuring peace and order. Residents of the Chechen Republic were advised by officials to abstain from using cars or other vehicles at night because of the unlawful activities of illegal armed groups and the counter-attacks of federal troops.

15. At about 5 a.m. on 18 July 2001 Aslan Dokayev and Rustam Achkhanov were travelling in a VAZ 2106 car in the direction of the village of Pobedinskoe. At some point near the bridge on the Alkhanchurskiy canal servicemen participating in the counter-terrorism campaign flagged down the VAZ 2106 car. The servicemen intended to check the identities of those travelling in the car. Rustam Achkhanov stopped the car within seventy metres of the servicemen; Aslan Dokayev and Rustam Achkhanov left the car and started running. The servicemen fired warning shots in the air. The two men ignored the shots and continued running in the direction of civilians' houses in the village of Raduzhnoe. Aslan Dokayev and Rustam Achkhanov escaped the scene and their whereabouts were not established. The servicemen examined the VAZ 2106 car and the surrounding area. They found a RPG-26 hand-held grenade launcher (*«ручной гранатомет РПГ-26 «Муха»»*) lying next to the car and two shells for a RPG-7 hand-held grenade launcher (*«ручной гранатомет РПГ-7»*) in the car boot.

16. At about 5 a.m. on 18 July 2001 unidentified persons in camouflage uniforms abducted Amir Magomedov and Ali Uspayev in the village of Raduzhnoe. The whereabouts of the two men were not established.

## **B. The search for Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov and the investigation**

### *1. The applicants' account*

17. On 18 July 2001, shortly after Aslan Dokayev and Rustam Achkhanov were taken away, the second applicant discovered that Amir Magomedov and Ali Uspayev had been abducted as well. She was also told that the four APCs had headed to Solenaya Balka area where the 21<sup>st</sup> brigade of the Russian federal troops ("the Sophrino brigade") was stationed. The second applicant immediately communicated that information to the military commander's office of the Groznenskiy District, the Groznenskiy district department of the interior and the prosecutor's office of the Groznenskiy District ("the district prosecutor's office"). Some officials visited the headquarters of the Sophrino brigade and were informed that its officers had not been implicated in the abductions.

18. On 18 July 2001 officials from a prosecutor's office visited the first applicant and questioned her about the circumstances of the abduction of her son and husband.

19. After 18 July 2001 the applicants repeatedly contacted various official bodies, both in person and in writing. In particular, they applied to prosecutors' offices at different levels, the Administration of the Chechen Republic, the Russian State Duma and the Special Envoy of the Russian President in Chechnya for Rights and Freedoms. The applicants retained copies of some of these complaints and submitted them to the Court. The official bodies forwarded the majority of the complaints to the various prosecutors' offices for investigation.

20. On 18 July 2001 the district prosecutor's office instituted an investigation into the murder of Aslan Dokayev and Rustam Achkhanov under Article 105 § 2 of the Russian Criminal Code (aggravated murder). The case file was given the number 19109.

21. On 20 July 2001 the investigation file in case no. 19109 was forwarded to the military prosecutor's office of military unit no. 20102 ("the unit prosecutor's office"). It appears that the case was then assigned the number 14/33/0405-01.

22. On 1 August 2001 the second applicant wrote to the prosecutor's office of the Chechen Republic describing in detail the circumstances of the abduction of Aslan Dokayev and Rustam Achkhanov and asking for help in establishing their whereabouts.

23. On 2 August 2001 the unit prosecutor's office summoned the second applicant for an interview.

24. On 13 August 2001 the unit prosecutor's office transferred the investigation file in case no. 14/33/0405-01 to the military prosecutor's office of the North Caucasian Circuit ("the circuit prosecutor's office").

25. On 16 August 2001 the unit prosecutor's office sent a request to the temporary department of the interior of the Staropromyslovskiy District ("the VOVD"), which stated that on 18 July 2001 a group of servicemen commanded by an officer of the Federal Security Service ("the FSB") had shot Aslan Dokayev and Rustam Achkhanov during an attempt to escape arrest and that their corpses had been transported by the APCs. The VOVD was instructed to verify whether the bodies of Aslan Dokayev and Rustam Achkhanov were among any unidentified corpses.

26. On 29 November 2001 the district prosecutor's office forwarded the second and fourth applicants' complaints to the unit prosecutor's office.

27. On 30 November 2001 the prosecutor's office of the Chechen Republic forwarded the fourth applicant's complaint to the district prosecutor's office.

28. On 14 December 2001 the unit prosecutor's office forwarded the fourth applicant's letter to the circuit prosecutor's office to be included in the investigation file in case no. 14/33/0405-01.

29. On 18 June 2002 the circuit prosecutor's office suspended the investigation in case no. 14/00/0019-01 for failure to identify the perpetrators.

30. On 13 November 2002 the second applicant complained to the prosecutor's office of the Chechen Republic that there had been no progress in the investigation in case no. 14/33/0405-01 and asked for assistance in establishing her brother's whereabouts.

31. On 17 July 2003 the district prosecutor's office issued the third applicant with a progress report on case no. 19109 which stated that the investigation had been opened on 18 July 2001 and that on 20 July 2001 the investigation file had been transferred to the unit prosecutor's office.

32. On 18 September 2003 the unit prosecutor's office informed the third applicant that the investigation file in case no. 14/33/0405-01 had been transferred to the circuit prosecutor's office on 13 August 2001.

33. On 10 November 2003 the second applicant requested the circuit prosecutor's office to update her on progress in the investigation in case no. 14/33/0405-01 and to send her a copy of the latest decision.

34. On 7 February 2004 the second applicant again wrote to the circuit prosecutor's office repeating her request of 10 November 2003.

35. On 5 March 2004 the circuit prosecutor's office forwarded the second applicant's complaint to the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office") and invited the second applicant to send any further queries to the UGA prosecutor's office or the prosecutor's office of the Chechen Republic.

36. On 8 March 2004 the UGA prosecutor's office forwarded the second applicant's letter to the prosecutor's office of the Chechen Republic and mentioned that the investigation file in case no. 34/33/0405-01 had been

transferred to the prosecutor's office of the Chechen Republic on 19 February 2003. A copy of the letter was sent to the second applicant.

37. On 26 March 2004 the UGA prosecutor's office forwarded the fourth applicant's complaint to the unit prosecutor's office.

38. On 26 April 2004 the unit prosecutor's office informed the prosecutor's office of the Chechen Republic that an inquiry had not established that federal servicemen were implicated in the kidnapping of Aslan Dokayev and Rustam Achkhanov, and forwarded the results of the inquiry.

39. On 27 April 2004 the prosecutor's office of the Chechen Republic forwarded the second applicant's complaint to the district prosecutor's office.

40. On 1 June 2004 the second and fourth applicants requested the district prosecutor's office to inform them of progress in case no. 34/33/0405-01 and to grant them victim status.

41. On an unspecified date in June 2004 the first, second and fourth applicants visited the district prosecutor's office and were served with a copy of the decision to suspend the investigation of 18 June 2002.

42. On 7 July 2004 the unit prosecutor's office informed the fourth applicant that the investigation file in case no. 19109 had been forwarded to the circuit prosecutor's office.

43. In a letter of 7 September 2004 the unit prosecutor's office informed the Committee on the Constitutional Rights of Nationals of the Chechen Republic and the fourth applicant that the inquiry had established that federal servicemen had not been involved in the kidnapping of Aslan Dokayev and Rustam Achkhanov and that the file had been forwarded to the prosecutor's office of the Chechen Republic.

44. On 30 September 2004 the prosecutor's office of the Chechen Republic informed the second applicant that it had instructed the district prosecutor's office to reinvigorate the investigation, to take requisite measures to solve the crime and to examine the feasibility of the transfer of the file to a military prosecutor's office. The second applicant was invited to send further queries to the district prosecutor's office.

45. On 12 October 2004 the fourth applicant complained to the Main Military Prosecutor's Office of Russia that there had been no effective investigation into his son's disappearance.

46. On 29 October 2004 the second, third and fourth applicants requested the prosecutor's office of the Chechen Republic to inform them which prosecutor's office was in charge of the investigation and to report on its results.

47. On 9 November 2004 the second, third and fourth applicants complained to the district prosecutor's office and the prosecutor's office of the Chechen Republic that they had not been given any information about



the investigation into their relatives' deaths and requested that they be informed immediately of the outcome of the investigation.

48. On 9 November 2004 the district prosecutor's office forwarded the investigation file in case no. 19109 into the murder of Aslan Dokayev and Rustam Achkhanov and the kidnapping of Amir Magomedov and Ali Uspayev to the prosecutor's office of the Chechen Republic. The cover letter stated that "the investigation [had] established that the crimes had been committed by servicemen of military unit no. 3499". The prosecutor's office of the Chechen Republic was also asked to consider forwarding the file to the UGA prosecutor's office.

49. On 31 December 2004 the unit prosecutor's office informed the first, second and fourth applicants that the investigation in case no. 14/33/04-05 D had been commenced on 18 July 2001 and that the investigation file had been forwarded to the circuit prosecutor's office on 13 August 2001 and had not been returned to the unit prosecutor's office.

50. On 31 March 2005 the fourth applicant wrote to the Main Military Prosecutor's Office of Russia complaining of the abduction and disappearance of his son and Aslan Dakayev. In reply, on 11 April 2005, he was informed that the complaint had been forwarded to the UGA prosecutor's office.

51. It appears that the investigation into the disappearance and death of the applicants' relatives has not been completed to date.

## *2. Information submitted by the Government*

52. On 18 July 2001 the district prosecutor's office instituted a criminal investigation into the murder of Aslan Dokayev and Rustam Achkhanov under Article 105 § 2 of the Russian Criminal Code (aggravated murder). The case was assigned the number 19109. Later the case file was transferred to the unit prosecutor's office to verify the hypothesis of the involvement of servicemen of the Internal Troops in the crime and assigned the number 14/33/0405-01.

53. On 13 August 2001 the case was transferred to the circuit prosecutor's office and assigned the number 14/00/0019-01.

54. In February 2003 the case was returned to the district prosecutor's office under the number 19109 because the involvement of the servicemen of the Internal Troops in the crime had not been proven.

55. On 3 November 2004 the district prosecutor's office instituted a criminal investigation into Amir Magomedov and Ali Uspayev's disappearance following their abduction by unknown persons under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case was assigned the number 34113 and then joined to case no. 19109.

56. On 8 November 2004 case no. 19109 was transferred pursuant to the jurisdiction rules to the UGA prosecutor's office and then accepted for processing by the unit prosecutor's office under the number 34/33/0405-01.

On the same date the investigation was suspended for failure to identify those responsible.

57. On 19 January 2005 the unit prosecutor's office quashed the decision of 8 November 2004 and resumed the investigation in case no. 34/33/0405-01.

58. The circumstances in which Aslan Dokayev and Rustam Achkhanov were shot at were uncertain. Witnesses claimed that Aslan Dokayev and Rustam Achkhanov had either been wounded or killed by servicemen and that their bodies had then been put in the APCs. The servicemen who had been present at the scene of the incident denied the allegations and stated that they had fired warning shots in the air to stop Aslan Dokayev and Rustam Achkhanov who had been trying to run away.

59. The APCs used in the special operation were examined in the course of the investigation. No traces of blood were found on them.

60. The bullets and cartridges found at the scene of the incident had not been fired from the servicemen's weapons.

61. The investigation failed to prove the involvement of federal servicemen in the crime or to establish the whereabouts of the missing men. The criminal proceedings related to the disappearance of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov in case no. 34/33/0405-01 have been pending before a military prosecutor's office.

62. Despite specific requests by the Court, the Government did not disclose any documents from the investigation files in cases nos. 19109, 14/00/0019-01 and 34/33/0405-01, except for a copy of the decision of 19 January 2005 by the unit prosecutor's office. They stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure since the files contained information of a military nature and personal data concerning witnesses or other participants in criminal proceedings.

### **C. Proceedings against law-enforcement officials**

#### *1. The applicants' account*

63. On 7 March 2004 the fourth applicant lodged with the Military Court of the North Caucasus Circuit ("the circuit court") a complaint concerning the disappearance of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov and that there had been no effective investigation.

64. On 15 March 2004 the second applicant lodged a complaint with the circuit court about the disappearance of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov, also alleging an ineffective investigation,

65. On 2 April 2004 the circuit court forwarded the fourth applicant's complaint to the Military Court of the Grozny Garrison ("the Grozny court") for examination on the merits.

66. On 6 May 2004 the Grozny court returned the complaint about "the decision of the [circuit] prosecutor's office to suspend investigation in case no. 14/33/0405-01" to the second applicant for lack of jurisdiction. It explained that the complaint should be lodged with a district court of general jurisdiction.

67. On 1 June 2004 the Grozny court informed the fourth applicant that a hearing of his complaint would be held on 4 June 2004.

68. On 4 June 2004 the Grozny court, relying on the rules of territorial jurisdiction, decided to forward the fourth applicant's complaint to the Military Court of the Rostov-on-Don Garrison ("the Rostov court").

69. On 8 July 2004 the Rostov court summoned the fourth applicant to attend a hearing of 9 July 2004 to clarify his claims.

70. On 2 August 2004 the Rostov court informed the fourth applicant that it had requested the prosecutor's office of the Chechen Republic to report on the location of the case file and the progress in the investigation.

71. On 30 July 2004 the first, second and fourth applicants lodged a complaint with the Rostov court that the investigative authorities had taken no action and requested that the decision to suspend the investigation of 18 June 2002 be quashed.

72. On 8 September 2004 the Rostov court summoned the first, second and fourth applicants to attend a hearing scheduled for 10 September 2004.

73. On 22 November 2004 the fourth applicant was summoned to attend a hearing of the Rostov court on 24 December 2004. In reply the first, second and fourth applicants agreed to have the case examined in their absence and asked to be informed of the eventual outcome of the hearing.

## *2. The Government's account*

74. On 18 May 2004 the Grozny court received a complaint by the fourth applicant dated 15 March 2004 about the decision to suspend the investigation into the kidnapping of his son Rustam Achkhanov. In his complaint the fourth applicant reported the following. On 18 July 2001 the car in which Aslan Dokayev and Rustam Achkhanov had been riding had been fired at by servicemen in the village of Raduzhnoe. Aslan Dokayev and Rustam Achkhanov had been wounded and taken away to an unknown destination. On the same date servicemen had kidnapped Amir Magomedov and Ali Uspayev.

75. The Grozny court accepted the complaint, scheduled a hearing for 4 June 2004 and notified the fourth applicant accordingly. The latter failed to attend the hearing. On 4 June 2004 the Grozny court was informed that the investigation was pending before the circuit prosecutor's office and

transferred the fourth applicant's complaint to the Rostov court pursuant to procedural rules.

76. On 9 July 2004 the Rostov court accepted the fourth applicant's complaint for processing. The fourth applicant was notified accordingly and replied that he could not attend a hearing on a particular date.

77. The Rostov court requested the case file from the circuit prosecutor's office. It was revealed that on 22 November 2002 the Main Military Prosecutor's Office had been ordered to transfer the case file to the UGA prosecutor's office. Following an additional inquiry that had not proven the involvement of servicemen in the kidnappings of 18 July 2001 in the village of Raduzhnoe the case file was transferred to the prosecutor's office of the Chechen Republic on 19 February 2003. On 27 February 2003 the case file was sent to the district prosecutor's office. On 25 August 2004 the case was sent to the prosecutor's office of the Chechen Republic. On 19 November 2004 it was transferred to the UGA prosecutor's office.

78. On 30 August 2004 the Rostov court received a complaint by the first, second and fourth applicants challenging the decision of 18 June 2001 to suspend the investigation concerning their missing relatives.

79. On 19 January 2005 the unit prosecutor's office informed the Rostov court of the following. On 30 September 2004 the prosecutor's office of the Chechen Republic had quashed the decision of 18 June 2002. On 8 November 2004 the district prosecutor's office had again suspended the proceedings. On 19 January 2005 the unit prosecutor's office had quashed the decision of 8 November 2004 and resumed the investigation concerning both the presumed killing and the kidnapping of 18 July 2001.

80. On 20 January 2005 the Rostov court examined the materials before it and dismissed the applicants' complaint for the reason that the contested decision had already been quashed. On 24 January 2005 the first, second and fourth applicants were sent copies of the Rostov court's decision.

81. The decision of 20 January 2005 was not appealed against.

## II. RELEVANT DOMESTIC LAW

82. For a summary of relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007).

## THE LAW

### I. THE GOVERNMENT'S OBJECTION REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

#### A. The parties' submissions

83. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov had not yet been completed. They further argued that the applicants had not appealed against the decision of the Rostov court. It was also open to the applicants to complain of the inactivity of the investigators to higher prosecutors' offices or to lodge civil claims for damages, which they had failed to do.

84. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. Referring to the other cases concerning similar crimes reviewed by the Court, they alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in the Chechen Republic rendered any potentially effective remedies inadequate and illusory in their case.

#### B. The Court's assessment

85. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and further that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

86. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the

relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

87. The Court notes that the Russian legal system provides in principle two avenues of recourse for victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

88. As regards a civil action to obtain redress for damage sustained through alleged illegal acts or unlawful conduct on the part 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. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

89. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement agencies immediately after the disappearance of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov. The investigation into the murder of Aslan Dokayev and Rustam Achkhanov has been pending since 18 July 2001, while the investigation into the kidnapping of Amir Magomedov and Ali Uspayev has been under way since 3 November 2004. The applicants and the Government dispute the effectiveness of the investigation into the murder and kidnapping.

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

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

91. The applicants complained that Amir Magomedov and Ali Uspayev had been arrested by Russian servicemen and then disappeared and that Aslan Dokayev and Rustam Achkhanov had been shot and taken away by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation into these matters. They relied on Article 2 of the Convention, which reads:

“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. Arguments of the parties**

92. The Government argued that there was no convincing evidence that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov were dead. Neither was it proven that the four men had been arrested by State servicemen. The Government emphasised that Aslan Dokayev and Rustam Achkhanov had run away from servicemen who had intended to check their identities and that there had been weapons found in the VAZ 2106 car. The Government further argued that the investigation into the murder and kidnapping had been effective and was pending before an independent State agency. The applicants had been informed of progress in the investigation in due course. Repeated suspensions and resumptions of the investigation only showed that the proceedings had been ongoing and the requisite investigative measures had been taken.

93. The applicants maintained that it was beyond reasonable doubt that the men who had shot Aslan Dokayev and Rustam Achkhanov and arrested Amir Magomedov and Ali Uspayev had been State agents because the federal forces had carried out a special operation on 18 July 2001 and the perpetrators had been travelling in APCs, which could only be used by State agencies. They further complained that the investigation into the murder and kidnapping of their relatives had been protracted and ineffective.

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

### *1. Admissibility*

94. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court has already found that the Government's objection concerning the alleged non-exhaustion of criminal domestic remedies should be joined to the merits of the complaint (see paragraph 90 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

### *2. Merits*

#### **(a) The alleged violation of the right to life of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov**

##### *i. Establishment of the facts*

95. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002). Where the events in question lie wholly or in a large part within the exclusive knowledge of the authorities, as in the case of persons under their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

96. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-09, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

97. The Court notes that, despite its requests for a copy of the entire investigation file into the murder of Aslan Dokayev and Rustam Achkhanov and the kidnapping of Amir Magomedov and Ali Uspayev, the Government refused to produce the case materials except for one document, on the grounds that they were precluded from providing them by Article 161 of the



Code of Criminal Procedure. The Court observes that in previous cases it has found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

98. In view of the foregoing and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in this respect.

99. The applicants alleged that the persons who had taken Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov away on 18 July 2001 were State agents.

100. The Court notes at the outset that the Government accepted that a special operation had been carried out by unspecified units of the federal military troops and the Internal Troops of the Ministry of the Interior in the village of Pobedinskoe on 18 July 2001 (see paragraph 14 above). They also confirmed that unnamed State servicemen who had been taking part in the security operation had stopped the VAZ 2106 car near the village of Raduzhnoe and had opened fire when Aslan Dokayev and Rustam Achkhanov started running (see paragraph 15 above). It was also accepted that those servicemen had been travelling in APCs (see paragraph 59 above).

101. The Government nonetheless denied that the servicemen had shot Aslan Dokayev and Rustam Achkhanov and claimed that the two men had escaped and hidden somewhere in Raduzhnoe. They provided no explanation as to what happened to Amir Magomedov and Ali Uspayev since they had gone missing on 18 July 2001.

102. According to the Government, unnamed witnesses to the incident in which Aslan Dokayev and Rustam Achkhanov were shot at had stated before the domestic investigation that the two men had been either wounded or killed and then put into the APCs. The Government further claimed that the witnesses' depositions had been refuted by the unnamed servicemen who had claimed that they had fired into the air, not at Aslan Dokayev and Rustam Achkhanov (see paragraph 58 above). The Court points out that the Government did not produce any transcripts of the interviews of the witnesses in question. Neither did they provide any information on the identities of the servicemen who had been present at the scene of the incident or the units they belonged to. In such circumstances the Court is ready to draw inferences from the Government's failure to submit such information. In any event, the use of a plural form of a word "witness" in the Government's submissions indicates that there were at least two eyewitnesses to the shooting of Aslan Dokayev and Rustam Achkhanov who claimed to have seen the two men being wounded and put in the APCs. Furthermore, the applicants' hypothesis that Aslan Dokayev and Rustam Achkhanov had been shot by State servicemen on 18 July 2001 is supported

by the Government's admission that the servicemen had opened fire in the immediate vicinity of the two men who were allegedly attempting to escape.

103. The Court observes that those unnamed witnesses questioned by the investigators could not tell with certainty whether Aslan Dokayev and Rustam Achkhanov had died of the wounds received on the spot or had survived and remained in captivity for at least some time. Nonetheless, it follows from the depositions that they made, both before the domestic investigation and the applicants, that Aslan Dokayev and Rustam Achkhanov had been shot at and then taken away by armed men travelling in the APCs on the day of the special operation. This information combined with the fact that there has been no news from Aslan Dokayev and Rustam Achkhanov for nearly eight years confirms that those armed men were State servicemen.

104. Moreover, the applicants' allegation that the armed men travelling in APCs who had abducted Amir Magomedov and Ali Uspayev were State agents is plausible in view of the Government's statement that the special operation had been carried out in Pobedinskoe in the vicinity of Raduzhnoe on 18 July 2001. To assume the contrary would suggest that a group of insurgents had been able to travel unnoticed in highly visible vehicles such as APCs around a village where there were many federal troops.

105. The fact that the proceedings related to the disappearance of the applicants' relatives were – and apparently still are – pending before military prosecutors' offices empowered to deal with criminal cases attributable to military personnel implies that the domestic investigators accepted the applicants' factual assumptions of servicemen's implication in the crimes. Furthermore, on 9 November 2004 the district prosecutor's office stated in affirmative terms that military involvement in the murder of Aslan Dokayev and Rustam Achkhanov and the kidnapping of Amir Magomedov and Ali Uspayev had been proven (see paragraph 48 above).

106. The Court observes that where the applicants make out a prima facie case and the Court is prevented from reaching factual conclusions owing to a lack of documents, it is for the Government to show conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

107. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that Amir Magomedov and Ali Uspayev were abducted and that Aslan Dokayev and Rustam Achkhanov were shot and then taken away by State servicemen. The Government's statement that the investigation did not find any evidence to support the

involvement of the special forces in the shooting and kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Amir Magomedov and Ali Uspayev were abducted and that Aslan Dokayev and Rustam Achkhanov were shot and then taken away by State servicemen during the security operation of 18 July 2001.

108. There has been no reliable news of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov since 18 July 2001. Their names have not been found in any official detention facilities' records. The Government did not submit any explanation as to what had happened to them after that day.

109. The Court is not in a position to establish with certainty whether Aslan Dokayev and Rustam Achkhanov died on 18 July 2001 of the wounds received or not. At any rate, having regard to the previous cases concerning disappearances of people in the Chechen Republic which have come before the Court (see, for example, *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... ), it considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov or any news of them for almost eight years corroborates this assumption.

110. Accordingly, the Court finds it established that on 18 July 2001 Amir Magomedov and Ali Uspayev were abducted and that Aslan Dokayev and Rustam Achkhanov were shot and then abducted by State servicemen and that the four men must be presumed dead following these events.

*ii. The State's compliance with Article 2*

111. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324).

112. The Court has already found it established that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov must be presumed dead (see paragraph 110 above). Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by State servicemen, it considers that responsibility for their deaths lies with the respondent Government.

113. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in respect of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov.

**(b) The alleged inadequacy of the investigation**

114. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

115. In the present case, the murder of Aslan Dokayev and Rustam Achkhanov and the kidnapping of Amir Magomedov and Ali Uspayev were investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

116. The Court notes at the outset that all but one of the documents from the investigation remain undisclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicants and the sparse information on its progress presented by the Government.

117. The Court first notes that the authorities were immediately made aware of the murder of Aslan Dokayev and Rustam Achkhanov and the kidnapping of Amir Magomedov and Ali Uspayev through the applicants' submissions (see paragraphs 17 and 18 above). The investigation into the murder was instituted in a timely fashion on 18 July 2001. However, the Government produced no explanation for the fact that the investigation into the kidnapping of Amir Magomedov and Ali Uspayev was instituted on 3 November 2004, that is, three years, three months and eighteen days after their abduction. Such an appallingly lengthy delay was in itself liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

118. The Court further points out that the information on the course of the investigation into the murder of Aslan Dokayev and Rustam Achkhanov and the kidnapping of Amir Magomedov and Ali Uspayev at its disposal is highly inadequate. It observes that the applicants, who themselves were not

updated on progress in the case could not provide it with a list of investigative measures taken by the domestic authorities.

119. The Government, in their turn, vaguely referred to certain investigative steps taken to solve the murder of Aslan Dokayev and Rustam Achkhanov, such as inspecting the scene of the incident, examining the APCs and the questioning of witnesses (see paragraphs 58 – 60 above). However, they did not mention when such steps had taken place and did not provide any further details enabling the Court to assess their effectiveness.

120. Furthermore, the Government did not inform the Court if any investigative steps had been taken to solve the kidnapping of Amir Magomedov and Ali Uspayev at all. For instance, it is not clear whether such basic measures as conducting witness interviews and inspecting the crime scene have ever been taken.

121. Accordingly, the Court considers that the domestic investigative authorities demonstrably failed to act of their own motion and breached their obligation to exercise exemplary diligence and promptness in dealing with such serious crimes as murder and kidnapping (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

122. The Court also notes that the applicants were not promptly informed of significant developments in the investigation and considers therefore that the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings (see *Oյur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

123. Lastly, the Court notes that the investigation into the murder of Aslan Dokayev and Rustam Achkhanov and the kidnapping of Amir Magomedov and Ali Uspayev was on numerous occasions transferred from a civilian prosecutor's office to a military prosecutor's office. Moreover, it was repeatedly suspended and then resumed, which led to lengthy periods of inactivity on the part of the investigators when no proceedings were pending. Such handling of the investigation could not but have had a negative impact on the prospects of identifying the perpetrators and establishing the fate of the applicants' relatives.

124. Having regard to the limb of the Government's objection that was joined to the merits of the application, in so far as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for almost eight years and has produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection in this part.

125. The Government also mentioned that the applicants had the opportunity to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies and to

complain to higher prosecutors. The Court observes that the applicants indeed did institute court proceedings, although they did not appeal against the first-instance judgment. Nonetheless, the court complaint did not impel the investigators to investigate the applicants' allegations thoroughly. The applicants also complained on several occasions to higher prosecutors such as the prosecutor's office of the Chechen Republic and the UGA prosecutor's office, but in vain. Moreover, owing to the time that had elapsed since the events complained of, certain investigative steps that ought to have been carried out much earlier could no longer be usefully conducted. The Court finds therefore that it is highly doubtful that the remedies relied on by the Government would have had any prospects of success and considers that they were ineffective in the circumstances of the case. It thus rejects the Government's objection in this part as well.

126. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov, in breach of Article 2 in its procedural aspect.

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

127. The applicants complained that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov had probably been ill-treated while in the hands of Russian servicemen following their abduction. They further submitted that, as a result of their relatives' disappearance and the State's failure to investigate it properly, they had endured severe mental suffering. The applicants relied on Article 3 of the Convention, which reads:

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

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

128. The Government disagreed with these allegations and argued that neither the applicants nor Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

129. The applicants maintained their complaints.

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

##### *1. Admissibility*

**(a) The complaint concerning Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov**

130. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161 in fine).

131. The Court has found it established that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov were taken away on 18 July 2001 by Russian federal forces and that no reliable news of them has been received since. It has also found that, in view of all the known circumstances, they can be presumed dead and that the responsibility for their deaths lies with the State authorities (see paragraph 112 above). However, questions remain as to the exact way in which they died and whether they were subjected to ill-treatment following their abduction. The Court considers that the materials at its disposal do not enable it to find beyond all reasonable doubt that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov were ill-treated in detention. It thus finds that this part of the complaint under Article 3 of the Convention has not been substantiated.

132. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

**(b) The complaint concerning the applicants’ mental suffering**

133. The Court notes that this part of the complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

*2. Merits*

134. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise

that the essence of such a violation does not mainly lie 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. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002).

135. The Court further reiterates that while a family member of a “disappeared person” can claim to be a victim of treatment contrary to Article 3 (see *Kurt v. Turkey*, 25 May 1998, §§ 130-34, *Reports* 1998-III), the same principle would not usually apply to situations where the person taken into custody has later been found dead (see *Tanly v. Turkey*, no. 26129/95, § 159, ECHR 2001-III (extracts)). The Court observes in this respect that Aslan Dokayev and Rustam Achkhanov were thought to be dead, not merely kidnapped, as the investigation into their disappearance was opened under the head of “murder”. Nonetheless, their dead bodies have never been found and their fate after 18 July 2001 has not been elucidated. In such circumstances the Court readily accepts that the second, third and fourth applicants have sustained uncertainty, anguish and distress characteristic to the specific phenomenon of disappearances.

136. Furthermore, the Court points out that the second applicant, Aslan Dokayev’s sister, actively participated in the search for her brother and lodged numerous complaints with the authorities (see, for example, paragraphs 22, 28 and 33 above). In such circumstances the Court does not consider it necessary to distinguish in the present case the second applicant as a person who could not have standing as a victim for the purposes of Article 3 (see *Luluyev and Others v. Russia*, no. 69480/01, §§ 112-13, ECHR 2006-... (extracts)).

137. The Court notes that the applicants have not had any reliable information on the fate of their close relatives for nearly eight years. During this period the applicants have applied to various official bodies with enquiries about their family members, both in writing and in person. Despite these attempts, they have never received any plausible explanation or information as to what became of their family members. The Court’s findings under the procedural aspect of Article 2 of the Convention are also of direct relevance here.

138. In view of the above, the Court finds that the applicants suffered distress and anguish as a result of the disappearance of their close relatives and their inability to find out what happened to them. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

139. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the applicants.



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

140. The applicants further stated that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

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

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

...

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

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

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

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

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

141. In the Government's opinion, no evidence was obtained by the investigators to confirm that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov had been deprived of their liberty in breach of the guarantees set out in Article 5 of the Convention.

142. The applicants reiterated the complaint.

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

###### *1. Admissibility*

143. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

## 2. *Merits*

144. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev*, cited above, § 122).

145. The Court has found it established that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov were abducted by State servicemen on 18 July 2001 and have not been seen since. Since it is impossible to establish whether Aslan Dokayev and Rustam Achkhanov were killed before their bodies were loaded into the APCs, the Court assumes that there might have been an undetermined period of time during which these two men were kept alive under the control of State servicemen.

146. The detention of the four relatives of the applicants was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of records noting such matters as the name of the detainee, the date, time and location of detention, reasons for it and the name of the person effecting it must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

147. In view of the foregoing, the Court finds that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

148. The applicants complained that they had been deprived of the right of access to court in relation to their complaints against the investigative authorities. They relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

149. The Court finds that Article 6 § 1 of the Convention is, in principle, inapplicable to the proceedings in question, as they clearly have not

involved the determination of the applicants' civil rights or obligations or a criminal charge against the applicants, within the Convention meaning (see *Akhmadov and Others v. Russia* (dec.), no. 21586/02, 3 May 2007).

150. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

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

151. The applicants complained that they had been deprived of effective remedies in respect of the alleged violations above, contrary to Article 13 of the Convention, which provides:

“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

152. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had challenged the actions of the investigators in court, but had not appealed against the first-instance decision. They could also have complained to higher prosecutors or claimed damages, but failed to do so. In sum, the Government submitted that there had been no violation of Article 13.

153. The applicants reiterated the complaint.

### B. The Court's assessment

#### 1. Admissibility

154. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the complaint concerning the alleged ill-treatment of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov, the Court notes that this part of the complaint under Article 3 was found unsubstantiated in paragraph 132 above. Accordingly, the applicants did not have an “arguable claim” of a violation of a substantive Convention provision and, therefore, Article 13 of the Convention is inapplicable.

155. Given that the applicants' complaint under Article 6 of the Convention has been declared incompatible *ratione materiae* in paragraph 150 above, the Court considers that the applicants did not have an “arguable claim” of a violation of a substantive Convention provision and, therefore, Article 13 of the Convention is inapplicable.

156. It follows that these parts of the complaint under Article 13 of the Convention are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

157. The Court notes that the remaining complaints under Article 13 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

## 2. Merits

158. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as "arguable" in terms of the Convention (see *Halford v. the United Kingdom*, 25 June 1997, § 64, *Reports* 1997-III).

159. As regards the complaint of the lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

160. In view of the Court's above findings with regard to Article 2, this complaint is clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

161. It follows that in circumstances where, as here, the criminal investigation into the disappearance of the applicants' close relatives has been ineffective and the effectiveness of any other remedy that may have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

162. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention.

163. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the complaint concerning the applicants' mental suffering, the Court notes that it has found a violation of Article 3 on this account. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in conjunction with Article 3 of the Convention.

164. As regards the applicants' reference to Article 5 of the Convention, the Court reiterates that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of the above findings of a violation of Article 5 of the Convention resulting in unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 in conjunction with Article 5 of the Convention.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

165. 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. Pecuniary damage

166. The applicants claimed damages in respect of the lost wages of their relatives. Although the latter had been unemployed, the applicants assumed that eventually each of them would have earned at least 100 euro (EUR) per month. The first applicant claimed in total EUR 12,420, the second and third applicants claimed EUR 6,210 each and the fourth applicant claimed EUR 7,200. Moreover, the fourth applicant claimed EUR 4,700 as compensation for his son's VAZ 2106 car that had been incinerated by Russian servicemen. He did not provide any documents to substantiate his claims in this regard.

167. The Government regarded these claims as unfounded.

168. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

169. The Court first notes that the pecuniary damage may be awarded in respect of loss of earnings. However, it is not persuaded that Aslan Dokayev would have necessarily supported his sister financially and rejects her claims in this respect. The Court considers that there is a direct causal link between the violation of Article 2 in respect of the applicants’ close relatives and the loss by the first, third and fourth applicants of the financial support which they could have provided. The Court finds it reasonable to assume that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov would eventually have had some earnings. Having regard to the applicants’ submissions and the fact that Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov were not employed at the time of their disappearance, the Court awards EUR 3,000 to the first applicant and EUR 1,500 to the third and fourth applicants each in respect of pecuniary damage, plus any tax that may be chargeable on these amounts.

170. The Court further notes that the fourth applicant failed to substantiate his pecuniary damage claims as regards the destroyed car of his son and thus makes no award in this respect.

## **B. Non-pecuniary damage**

171. The applicants claimed compensation in respect of non-pecuniary damage for the suffering they endured as a result of the loss of their family members and the indifference shown by the authorities towards them. The first applicant claimed EUR 40,000, while the second, third and fourth applicants claimed EUR 20,000 each.

172. The Government found the amounts claimed exaggerated.

173. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the disappearance of the applicants’ relatives. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards therefore the first applicant EUR 40,000 and the second, third and fourth applicants EUR 20,000 each, plus any tax that may be chargeable thereon.

### C. Costs and expenses

174. The applicants also claimed a total of EUR 7,900 to be paid to five lawyers of the International Protection Centre who had prepared their application form and observations on the admissibility and merits of the case. They failed to produce any documents or invoices to confirm that the amounts claimed had been paid to the representatives.

175. The Government indicated that the applicants had not shown that the expenses claimed for legal representation had actually been incurred and that three of the five lawyers mentioned by the applicants had not been named in the powers of attorney.

176. The Court may make an award in respect of costs and expenses in so far as they were actually and necessarily incurred (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V). Given that the applicants failed to submit any evidence to justify their costs and expenses related to the legal representation, it makes no award under this head.

### D. Default interest

177. The Court considers it appropriate that the default interest 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 to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2 and 5 of the Convention, the complaint under Article 3 concerning the applicants' mental suffering, the complaints under Article 13 in conjunction with Articles 2 and 5, as well as the complaint under Article 13 in conjunction with the complaint concerning the applicants' mental suffering admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the

circumstances in which Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov had disappeared;

5. *Holds* that there has been a violation of Article 3 in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Amir Magomedov, Ali Uspayev, Aslan Dokayev and Rustam Achkhanov;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Articles 3 and 5 of the Convention;
9. *Holds*
  - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
    - (i) EUR 3,000 (three thousand euros) to the first applicant and EUR 1,500 (one thousand five hundred euros) to the third and fourth applicants each in respect of pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;
    - (ii) EUR 40,000 (forty thousand euros) to the first applicant and EUR 20,000 (twenty thousand euros) to the second, third and fourth applicants each in respect of non-pecuniary damage to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable thereon;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President