CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF AKHMADOVA AND OTHERS v. RUSSIA

(Application no. 3026/03)

This version was rectified on 29 May 2009
under Rule 81 of the Rules of the Court

JUDGMENT

STRASBOURG

4 December 2008

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Akhmadova 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,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 3026/03) 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 20 October 2002.

2. The applicants, who had been granted legal aid, were represented by lawyers of the Stichting Russian Justice Initiative ("SRJI"), an NGO based in the Netherlands with a representative office in Russia. The Russian Government ("the Government") were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their relative had disappeared after being detained by servicemen in Chechnya on 6 March 2002. They complained under Articles 2, 3, 5, 6, 13 and 14.

4. On 22 July 2004 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. By a decision of 11 December 2007, the Court declared the application admissible.

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are:
(1) Mrs Medina[1] Bilalovna Akhmadova, born in 1954;
(2) Mr Magomed[2] Musayevich Akhmadov, born in 1979;
(3) Mr Kazbek Musayevich Akhmadov, born in 1982;
(4) Mr Turpal Musayevich Akhmadov, born in 1984.
8. They live in Grozny, Chechnya.

A. Detention and disappearance of Musa Akhmadov

9. The first applicant is the wife of Musa Mausurovich Akhmadov, born in 1951. The second, third and fourth applicants are their children. The first applicant is disabled and cannot work.

10. On 6 March 2002 Musa Akhmadov travelled to the village of Makhkety in Vedeno district in the south of Chechnya to see his ailing father. On that day between 2 and 3 p.m. he was detained at the military checkpoint in Kirov-Yurt village, Vedeno district. The applicants did not themselves witness the detention, and in their reconstruction of the events they relied on an affidavit by Alu S., the first applicant's cousin, who was travelling with Musa Akhmadov, as well as on information obtained by them from the residents of Makhkety and a senior officer of the checkpoint in Kirov-Yurt.

11. Alu S. submitted that he and Musa Akhmadov had arrived in the town of Shali, where they had hired a VAZ car with a driver to take them to Makhkety. In the village of Kirov-Yurt (also known as Tezvan) the car had been stopped at the permanent checkpoint of the Russian military, which had been installed in 2000 and remained there until early 2003. The military collected documents from the persons in the car and took them inside the checkpoint. Several minutes later they returned the passports of everyone except for Musa Akhmadov, who was ordered to get out of the car. The soldiers ordered the car to move away from the roadblock and took Mr Akhmadov into the checkpoint building. Alu S. got out of the car and tried to stop the soldiers but one of them threatened him with a machine gun and forbade him to approach.

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[1] Rectified on 29 May 2009: the text was "Mrs Madina Bilalovna Akhmadova …"

[2] Rectified on 29 May 2009: the text was "Mr Magomad Musayevich Akhmadov …"

12. Some time later the military serviceman who had accompanied Musa Akhmadov into the checkpoint building returned to the road, and Alu S. asked him what had happened. The serviceman said that Musa Akhmadov had been detained because his family name was on the list of wanted persons. He also said that they had called the headquarters of their regiment in the village of Khatuni and that someone would come from there and take him to that military unit for an identity check. All further questions should be directed to the regiment in Khatuni.

13. Later, a senior officer at the checkpoint who was known as "Arthur" (the applicants submitted that it was not his real name) told Musa Akhmadov's relatives that the latter had been taken on the same day to the military base in Khatuni by an armoured personnel carrier (APC) with hull number 719.

14. The applicants have had no news of Musa Akhmadov since his detention on 6 March 2002.

15. The Government in their observations did not challenge the facts as presented by the applicants. They stated that it had been established that on 6 March 2002 at the roadblock near Kirov-Yurt unidentified armed men had arrested Musa Akhmadov and taken him away to an unknown destination.

B. The search for Musa Akhmadov and the investigation

16. Immediately after Musa Akhmadov's detention the applicants and other family members started looking for him.

17. On the day of detention, on 6 March 2002, Musa Akhmadov's relatives went to the military base in Khatuni, but were not allowed to go through the gates. At about 6 p.m. the head of the temporary group of policemen from Samara on mission in Vedeno district, Mr Andrey K., came out to see them. He confirmed that he had seen Musa Akhmadov at the base and had talked to him. He assured the relatives that he had been detained by mistake, that in fact they were looking for another Akhmadov and that he would be released the next morning.

18. On the following morning, at about 10 a.m. on 7 March 2002, Mr K. again came out and told the relatives that Mr Akhmadov had been transferred by helicopter to the main military base in Khankala, where he would be released "according to his permanent registration [in Grozny]".

19. The applicants learnt of Musa Akhmadov's detention on 7 March 2002 and the first applicant immediately travelled to Khatuni. In the morning of 8 March 2002 she too went to the military base in Khatuni and talked to Mr Andrey K., who confirmed that her husband had been transferred to the Khankala military base the day before and who said that he had probably already been released in Grozny.

20. The applicants applied to numerous official bodies, both in person and in writing, trying to find out the whereabouts and the fate of Musa

Akhmadov. Among other authorities they applied to the departments of the Interior, to the military commanders, to the Federal Security Service (FSB), to the civil and military prosecutors of various levels, to administrative authorities and public figures, and to the OSCE mission in Chechnya. The first applicant also personally visited detention centres and military bases in Chechnya and elsewhere in the Northern Caucasus. She attempted to get access to the Khankala military base where her husband had allegedly been taken, but she was not permitted to enter.

21. The applicants received hardly any substantive information about the fate of their husband and father and about the investigation. On several occasions they were sent copies of letters by which their requests had been forwarded to different prosecutors' services. They submitted these documents to the Court, and these can be summarised as follows.

22. On 25 April 2002 the first applicant talked to "Arthur", the head of the checkpoint in Kirov-Yurt. The applicants submitted that at the time in question the roadblock had been manned by servicemen of the 51st airborne regiment from Tula (*51-й полк ВДВ г. Тула*). "Arthur" asked her if she had applied anywhere in connection with her husband's disappearance. The first applicant replied that her father-in-law had written a complaint to the local department of the FSB. "Arthur" told her that probably because of that he had received a visit by officers of the FSB, who had destroyed all entries relating to Akhmadov's detention and told him to keep quiet. In reply to "Arthur"'s question about the witnesses to the detention, the applicants allegedly told him that the witnesses would keep quiet too.

23. The first applicant submitted that she had talked on several occasions to the servicemen at the base in Khatuni, who used the names Sergey, Dima, Yarulin and Damir (the applicant believed these were not their real names) and that they had not denied her husband's detention there.

24. On 13 May 2002 the Vedeno District Prosecutor's Office ("the district prosecutor's office") informed the applicant that on the same day they had opened criminal file no. 73023 "into the kidnapping of Musa Akhmadov, born in 1951, on 6 March 2002 at the roadblock in Kirov-Yurt".

25. On 21 May 2002 the first applicant submitted a complaint about her husband's detention and disappearance to the Chechnya Prosecutor's Office, identifying the witnesses to the detention.

26. On 22 and 23 May 2002 she submitted similar complaints to the military prosecutor of military unit no. 20102 in Khankala.

27. On 11 June 2002 the first applicant wrote to the Special Envoy of the Russian President in Chechnya for Rights and Freedoms. In that letter she referred to her conversation with "Arthur" on 25 April 2002, during which he had informed her of the destruction of documents related to her husband's detention.

28. On 23 June 2002 the head of the Oktyabrskiy District temporary department of the interior of Grozny (Oktyabrskiy VOVD) informed the applicant that her complaint had been forwarded to the Vedeno VOVD.

29. On 27 June 2002 the district prosecutor's office informed the first applicant that criminal case no. 73023, opened in relation to the kidnapping of her husband "by unknown persons", had been forwarded for investigation to the responsible military prosecutor of military unit no. 20116 in Shali.

30. On 28 June 2002 the military prosecutor for the Northern Caucasus Military Circuit forwarded the first applicant's complaint to the military prosecutor of military unit no. 20116 in Shali with a request to conduct a thorough investigation of the complaint and to inform the applicant and the circuit prosecutor of the results.

31. On 4 July 2002 the military prosecutor of military unit no. 20116 forwarded the documents related to the applicant's complaint to the Regional Counter-Terrorist Operations Headquarters in Khankala, with a copy to the applicant. The forwarding letter said that the applicant's husband had been detained in Kirov-Yurt on 6 March 2002 by unidentified persons, and that there were no reasons to suspect the involvement of military servicemen.

32. On 19 July 2002 the Chechnya Prosecutor's Office forwarded the applicant's complaint to the district prosecutor's office, instructing them to investigate the applicant's complaint that her husband had been detained on 6 March 2002 at the roadblock in Kirov-Yurt village by servicemen of the 45th regiment, who had been stationed in Khatuni and who had used an APC with hull number 719.

33. On 22 July 2002 the Chechnya Prosecutor's Office replied to the NGO Human Rights Watch, who had intervened on the applicants' behalf, that on 25 June 2002 investigation file no. 73023 had been forwarded to the Shali district military prosecutor.

34. On 15 August 2002 the Chechnya Prosecutor's Office informed the first applicant that the preliminary investigation carried out by the district prosecutor's office into the kidnapping of her husband had established the involvement of military servicemen of the 45th regiment. On 27 June 2002 criminal investigation file no. 73023-02 had been forwarded to the military prosecutor of military unit no. 20116 in Shali, where all further requests should be directed.

35. In August 2002 Musa Akhmadov's disappearance was reported by Anna Politkovskaya in the Moscow-based *Novaya Gazeta* in an article, 'Disappearing People'.

36. On 7 October 2002 a lawyer practising in Moscow wrote, on the first applicant's behalf, to the military prosecutor of military unit no. 20102 in Khankala. He inquired if a criminal case had been opened into Mr Akhmadov's kidnapping by the military servicemen, and asked for copies of any procedural decisions taken in the case.

37. On 11 October 2002 the Chechnya Prosecutor's Office replied to the OSCE mission in Chechnya about progress in several kidnapping cases, including that of Musa Akhmadov. The letter stated that "on 18 June 2002 the [district prosecutor's office] opened criminal investigation file no. 73039 under Article 126 part 2 of the Criminal Code. On 18 August 2002 the investigation was suspended under Article 208 part 1 of the Criminal Procedure Code [failure to identify the culprits]".

38. On 18 November 2002 the SRJI (Stichting Russian Justice Initiative), acting on the applicants' behalf, requested the military prosecutor of military unit no. 20116 in Shali and the district prosecutor to inform them of progress in criminal case file no. 73023.

39. On 30 December 2002 the Chechnya Prosecutor's Office informed the first applicant that "on 18 June 2002 the district prosecutor opened criminal case file no. 73039 into Musa Akhmadov's kidnapping. At present various steps are being taken in order to establish the whereabouts of the kidnapped person and to identify the culprits". The letter also recommended the first applicant to send further queries to the district prosecutor's office.

40. On 17 January 2003 the district prosecutor's office wrote to the SRJI that information concerning the investigation was confidential and could be disclosed only to the supervising prosecutor.

41. On 25 March 2003 the military prosecutor of military unit no. 20116 forwarded the first applicant's complaint "about the disappearance of her husband in the vicinity of Kirov-Yurt village" to the district prosecutor's office. The applicant was also informed that the search for missing persons was within the competence of the bodies of the Interior Ministry, where she should apply.

42. On 2 April 2003 the Chechnya Prosecutor's Office again informed the applicant that on 18 June 2002 the district prosecutor had opened case file no. 73039 into Musa Akhmadov's kidnapping. On 18 June 2002 [sic] the investigation had been suspended for failure to identify the culprits. The letter further stated that on 17 December 2002 the building of the district prosecutor's office had been shelled by an illegal armed group, and as a result of the ensuing fire the archives and all criminal case files had been destroyed. The letter concluded by saying that the prosecutor's office continued to take all possible steps to restore criminal case file no. 73039 and to solve the crime.

43. On 11 April 2003 an investigator of the Oktyabrskiy District Department of the Interior (ROVD) in Grozny issued a decision to grant the first applicant victim status in criminal case file no. 73023 instituted into her husband's kidnapping.

44. On 17 April 2003 the SRJI asked the military prosecutor of military unit no. 20116 to inform them whether the first applicant had been granted victim status in the criminal proceedings concerning her husband's kidnapping, and to forward them a copy of the relevant decision.

45. On 10 May 2003 the applicant wrote a detailed answer to the letter of 25 March 2003 from the military prosecutor. She stressed that her husband had not "disappeared in the vicinity of Kirov-Yurt", but that he had been detained by military servicemen at the roadblock. She gave them available information about the names and positions of the military and policemen who had been involved in his arrest and who had later confirmed to her the detention. She asked the prosecutor to obtain the lists of servicemen who were manning the roadblock at the time and to question them, to review the lists of the persons detained, to establish, with her help, the identity of the officers who had talked to her at the base in Khatuni and to question them, including Mr Andrey K., who worked as the senior investigator in the Leninskiy District Department of Interior in Samara, to question herself and other witnesses to her husband's detention, and to inform her of her husband's whereabouts.

46. On 3 June 2003 the Oktyabrskiy District Court of Grozny, at the first applicant's request, declared Musa Akhmadov a missing person. The first applicant and two witnesses, Alu S. and Mr. R. M., testified that on 6 March 2002 Musa Akhmadov had been taken out of a car by servicemen at the roadblock near Kirov-Yurt and taken away. He has not been seen since. The court noted that the criminal investigation into Mr Akhmadov's kidnapping by unknown persons had been pending and had declared him a missing person since 6 March 2002.

47. On 16 June 2003 the military prosecutor of military unit no. 20116 informed the SRJI that criminal case file no. 73023 related to Mr Akhmadov's kidnapping had not been received by that office.

48. On 8 August 2003 the SRJI again requested the district prosecutor's office to inform them of the progress of the criminal investigation into Musa Akhmadov's kidnapping and to grant the first applicant victim status in the proceedings.

49. On 1 September 2003 the criminal investigation department of the Ministry of the Interior of Chechnya informed the first applicant that criminal case no. 73039 concerning the kidnapping of Musa Akhmadov had been investigated by the Chechnya Prosecutor's Office.

50. On 19 September 2003 the SRJI wrote to the district prosecutor and asked him to take a number of steps aimed at solving the applicant's husband's kidnapping. The letter stated that it had been established that at the relevant time the base in Khatuni, where Mr Akhmadov had last been seen, had been manned by servicemen of the 45th airborne regiment from Moscow. The SRJI asked the prosecutor to obtain a list of servicemen who had served at the base at the relevant time and to question them about Mr Akhmadov's whereabouts. The letter also suggested that a confrontation should be organised between the first applicant and other relatives and the servicemen of the regiment, in order to identify the persons who had talked to the relatives in the days following Mr Akhmadov's arrest. The first

applicant and other relatives would be prepared to travel to Moscow for such a confrontation. In addition, the SRJI again asked to question Mr Andrey K., who worked as the senior investigator in the Leninskiy District Department of the Interior in Samara.

51. As there was no reply to that letter, a similar letter was forwarded on 11 November 2003 to the Chechnya Prosecutor. The SRJI also requested the investigation to ask the commanders of the military base in Khatuni in writing whether Mr Akhmadov had been detained there.

52. On 18 November 2003 the Chechnya Prosecutor's Office informed the SRJI that in December 2002 the district prosecutor's office had been attacked and burnt down, and that at present action was being taken to restore documents relating to the criminal case of Mr Akhmadov's kidnapping.

53. On 18 December 2003 the military prosecutor of military unit no. 20116 informed the first applicant and the military prosecutor of the Tula garrison of the following. After 19 December 2003 their office had carried out an inquiry into the first applicant's statement, as a result of which it had been established that in March 2002 two regiments had been stationed in Khatuni, nos. 45 and 51. Servicemen of the military unit no. 28337 (45th airborne regiment) had not taken part in any special operations, they had not detained Mr Akhmadov and the military unit had no airborne combat vehicles (*боевая машина десанта*, *BMD*). The commander of military unit no. 28337, Lieutenant-Colonel V. T., and servicemen of the said military unit testified that in August 2002 (as in the text) Mr Akhmadov had not been detained or brought to the headquarters of the military unit in Khatuni, that no special operations had been carried out at the relevant time; and that their unit did not have BMDs. As to the 51st airborne regiment, at the end of November 2003 it had been transferred from Chechnya to its permanent base in Tula, and thus its involvement in Mr Akhmadov's detention could not be investigated.

54. On 28 January 2004 the first applicant submitted a letter to the military prosecutor of the United Group Alliance (UGA), asking to help her to obtain information from the servicemen of the 45th and 51st airborne regiments about the fate of her husband.

55. On 19 February 2004 the military commander of Chechnya requested the military commander of the Vedeno district, the district departments of the Interior and the FSB to investigate the facts as presented by the first applicant and to take steps to find Musa Akhmadov, who had been detained on 6 March 2002 at around 3 p.m. at the checkpoint in Kirov-Yurt by servicemen of the 51st airborne regiment and taken to the military base in Khatuni in a BMD, hull number 719.

56. On 26 February 2004 the military prosecutor of the Tula garrison informed the military unit no. 2116 in Shali and the first applicant that their office had carried out an inquiry, with the following results. On 6 March

2002 servicemen of the 3rd inter-service team of the Ministry of Justice had detained a resident of Grozny, M. M. Akhmadov, as a person involved in illegal armed groups. With the assistance of servicemen of the regiment's task team (military unit no 33842), whose names could not be established, the detained person had been transferred to the special field subdivision of the FSB (*специальный полевой отдел ФСБ*), located at the base camp of the regiment's task force (*базовый лагерь полковой тактической группы*), and transferred to its servicemen. The letter concluded that since the special field subdivision of the FSB had been located in territory under the jurisdiction of the military prosecutor of military unit no. 20116, this office should carry out further investigation. The letter listed eight pages of attachments, which were not copied to the first applicant.

57. On 2 April and 28 April 2004 the military prosecutor of military unit no. 20116 informed the first applicant that their office had found no information that servicemen of the military units under their jurisdiction had been involved in a crime. No special operations had been carried out at the relevant time, and no-one had been detained or delivered to the law-enforcement authorities by the military servicemen of the district. The applicant was advised to apply to the local bodies of the Interior Ministry.

58. On 15 May 2004 the military prosecutor of the UGA informed the first applicant that the whereabouts of her husband and the identity of the persons who had kidnapped him could not be established. She was instructed to seek further information about the investigation from the district prosecutor's office.

59. On 17 May 2004 the investigator of the district prosecutor's office granted the first applicant victim status in the criminal proceedings instituted in connection with the disappearance of her husband, who had been detained on 6 March 2002 at about 3 p.m. in the vicinity of Kirov-Yurt by unknown military servicemen using a BMD.

60. On 4 June 2004 the military prosecutor of military unit no. 20116 informed the first applicant that on 6 March 2002 servicemen of the 3rd inter-service team of the Ministry of Justice had detained a resident of Grozny, M. M. Akhmadov, as a person involved in illegal armed groups. With the assistance of servicemen of military unit no 33842 the detained person had been transferred to the special field subdivision of the FSB, located in the base camp of the regiment's task force in Khatuni, and transferred to its servicemen. However, it turned out to be impossible to identify the persons who had detained Mr Akhmadov or to whom he had been transferred. She was further instructed to apply to the local bodies of the interior responsible for searching for missing persons.

61. On 12 July 2004 the first applicant asked the head of the FSB to assist her in finding her husband, who had last been seen at the military base in Khatuni on 6 March 2002.

62. On 30 September 2004 the deputy head of the military counterintelligence department of the FSB informed the first applicant that the FSB had no information about the detention of Musa Akhmadov on 6 March 2002 in Kirov-Yurt. The letter further stated that the servicemen who had served in the said location in 2002 had either been transferred to other locations or dismissed from service, but that measures would be taken to identify and question them in relation to the first applicant's husband's fate. The first applicant would be kept informed of the results.

63. On 31 January 2005 the first applicant wrote to the President of Chechnya and asked him to find out how her husband's name had been included in a list of persons involved in illegal armed groups, in the absence of any such involvement.

64. On 3 February 2005 the first applicant wrote to the Prosecutor General. She complained that the military prosecutor and the civil prosecutor had been transferring her complaints from one to the other and that no proper investigation had taken place. She complained that the military prosecutor's office no. 20116 had failed to investigate the circumstances of her husband's disappearance.

65. On 3 February 2005 the first applicant wrote to the head of the military counterintelligence department of the FSB and asked him to help her find her husband, who had apparently been transferred to the military base in Khankala.

66. On 26 February 2005 the Chechnya military commander again instructed the Vedeno military commander to investigate the facts as submitted by the first applicant and to take measures in order to establish Mr Akhmadov's whereabouts.

67. On 18 and 19 April 2005 the military prosecutor of the UGA instructed the military prosecutor of military unit no. 22116 to inform the applicants of progress in the case concerning Mr Akhmadov's kidnapping and to submit all the relevant documents.

68. On 22 April 2005 the FSB Department for Chechnya informed the head of the State Council of Chechnya that they had no information about Musa Akhmadov and that the latter had not been detained by the FSB. The letter also stated that the servicemen of the Department had been instructed to carry out a search for the missing man and that the first applicant would be informed of any progress.

69. On 6 May 2005 the prosecutor of military unit no. 20116 informed the first applicant that in order to identify the persons who had detained her husband on 6 March 2002, they had sent an information request to a "competent body". The applicant would be informed if there was any progress. In the meantime, she should apply to the district prosecutor's office where the criminal case was pending.

70. On 18 May 2005 the head of the criminal investigation department of the Ministry of the Interior of Chechnya informed the first applicant that

they had taken a number of steps to find Mr Akhmadov; however, none of them had achieved any results. In particular, they had questioned the servicemen of the military units stationed in the district, forwarded requests for information to the district military commander's office, the headquarters of the 45th airborne regiment, and the pre-trial detention centre in Chernokozovo.

71. On 17 July 2005 the military prosecutor of the UGA informed the first applicant that the servicemen of the federal forces had not been involved in the kidnapping of her husband. The criminal investigation was pending with the district prosecutor's office.

72. On 6 September 2005 the head of the Vedeno ROVD informed the first applicant that their office had opened a search file on 23 December 2004. They had conducted house-to-house enquiries in Kirov-Yurt in order to find witnesses to the kidnapping, distributed information about the missing man to their officers, and sent information requests to the local authorities. Actions aimed at finding her husband would continue.

73. On several occasions higher-ranking prosecutor's offices forwarded the applicant's complaints to the district prosecutor's office and requested them to inform them and the applicant of the progress of the proceedings.

74. In November 2004 the first applicant submitted to the SRJI a written account of a public meeting which had taken place in June 2004 in front of the building of the Chechnya Government, attended mostly by women looking for their missing relatives. The first applicant submitted that on that day the gathering had been forcibly dispersed by the police and a number of participants, including herself, had been briefly detained. She had been questioned by several senior officers of the Chechen police, who had suspected her of organising the unauthorised rally and warned her that she should not continue the search for her husband.

75. On 2 November 2005 the district prosecutor's office informed the first applicant that on the same they had resumed investigation.

76. On 2 February 2006 the first applicant submitted a complaint about the inactivity of the investigative bodies to the Vedeno District Court. On 17 February 2006 the Vedeno District Court rejected the first applicant's complaint, in her absence, because at that time the investigation was pending. The first applicant submits that she was not aware of the consideration of her claim until October 2006, when she inquired with the district court about the fate of her application.

77. On 11 April 2006 the Chechnya Prosecutor's Office replied to the applicant's letter addressed to the head of Chechnya Parliament. The letter stated that the investigation had established that on 6 March 2002 at about 3 p.m. at the checkpoint in Kirov-Yurt unknown servicemen of the 51-st airborne regiment had detained and taken to an unknown destination Musa Akhmadov, born in 1951. His whereabouts have not been established. The investigation, pending with the district prosecutor's office since 13 May

2002, had failed to identify the culprits or to find the first applicant's husband. On 4 April 2006 the investigation had been resumed, because not all measures had been taken to solve the crime. The investigation was under supervision by the Chechnya Prosecutor's Office.

78. On 7 September 2007 the Military Prosecutor of the UGA replied to the first applicant that their office had established that military servicemen had not been involved in the kidnapping of her husband. She should direct her queries to the district prosecutor's office.

79. On 20 April 2007 the district prosecutor's office informed the first applicant that the investigation had been adjourned on 20 April 2007.

80. On 8 May 2007 the district prosecutor's office informed the first applicant of the resumption of the investigation as of the same day.

81. The first applicant also submitted that her health had deteriorated. In May 2005 a doctor confirmed that she was suffering from hypertension and a heart condition. On 4 June 2004 the first applicant had been examined by a doctor who had noted high blood pressure and administered treatment.

C. Information submitted by the Government about the investigation

82. In reply to the Court's requests, the Government submitted the following information concerning the progress of the investigation. They did not submit copies of any of the documents to which they referred.

83. On 13 May 2002 the district prosecutor's office opened a criminal investigation (file no. 73023) under Article 126, paragraph 2 (a) and (g), into the kidnapping of M. Akhmadov, upon receipt of information from the Vedeno ROVD.

84. At the same time, on 18 June 2002 the same district prosecutor's Office opened a criminal investigation (file no. 73039) on a complaint submitted by the first applicant about her husband's kidnapping.

85. On 21 June 2002 the investigation of both cases was joined under file number 73023.

86. On 27 June 2002 the said case file was forwarded to the military prosecutor of military unit no. 20116. However, since no involvement of military personnel in the crime could be established, the case file was returned to the district prosecutor's office on 13 July 2002.

87. On 13 July 2002 the investigation was adjourned under Article 208 part 1 of the Code of Criminal Procedure.

88. On 17 December 2002 the premises of the district prosecutor's office was shelled by unknown persons and caught fire. As a result, a number of documents were destroyed, including criminal case no. 73023. A criminal case was opened into the incident, and measures have been taken to restore the destroyed documents.

89. On 26 February 2003 the investigation questioned Musa Akhmadov's sister, Z. A., about the circumstances of the crime.

90. According to the Government, the investigator forwarded requests to the Vedeno and the Oktyabrskiy [Grozny] District Departments of the Interior, asking these offices to take measures to solve the crime. He also requested information about the possible detention of Musa Akhmadov from the district department of the FSB. The latter office replied on 24 March 2003 that they had not detained Musa Akhmadov and had not carried out any search and operative measures in respect of him.

91. On 3 March 2003, and later again on 11 November 2005, the investigation questioned R. A., another of Musa Akhmadov's sisters, and a neighbour, M. T. On 14 November 2005 it questioned Mr Kh. M. The Government did not indicate what these witnesses had stated.

92. The Government also stated that no further information about the progress of the investigation was apparent from the case file.

93. On 12 May 2004 the acting district prosecutor reopened proceedings and informed the first applicant accordingly. On 13 May 2004 the investigation requested the district department of the FSB to take measures to identify persons responsible for Mr Akhmadov's kidnapping.

94. On 17 May 2004 the first applicant was granted victim status in the proceedings.

95. On 18 May 2004 the investigation sent information requests to all the district prosecutor's offices in Chechnya, to the head of the UGA and to the military commander of the republic. The Government did not indicate the contents of these requests or whether any replies had been received.

96. On 12 June 2004 the investigation was adjourned, of which the first applicant was informed.

97. On 17 September 2004 the acting district prosecutor reopened proceedings and informed the first applicant. On 17 October 2004 the investigation was adjourned.

98. On 2 November 2005 the investigation was reopened. From 3 to 6 November 2005 new information requests were sent to the "competent bodies". The Government did not give any further details about these requests.

99. In November 2005 the first applicant was questioned as a victim on two occasions. Seven other persons were also questioned, including Musa Akhmadov's sisters and Mr Kh. M. The Government did not indicate what they had stated.

100. On 16 November 2002 the deputy district prosecutor repeated the decision of 21 June 2002 to join criminal investigation files numbers 73023 and 73039, because the original had been lost.

101. On 2 December 2005 the investigation was suspended, and on 18 January 2006 it was reopened. The first applicant was informed of the reopening.

102. On 18 January 2006 the investigation was reopened. The victim and witnesses were additionally questioned and information requests were forwarded to various law-enforcement and military services. However, no new information about the fate of Musa Akhmadov had been obtained. On 20 April 2007 the investigation was adjourned, and on 29 January 2008 it was again reopened. The Government did not indicate any other details about the investigative actions taken within this round of proceedings.

103. Despite specific requests made by the Court on three occasions, the Government did not submit any documents from the file in criminal case no 73023. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings. At the same time, the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted, with the exception of documents disclosing military information and personal data of the witnesses, and without the right to make copies of the case file and transmit it to others.

II. RELEVANT DOMESTIC LAW

A. Arrest under the Code of Criminal Procedure of 1960, in force until July 2002

104. Article 11 (1) guaranteed the principle of personal inviolability and established that no one could be arrested other than on the basis of a judicial decision or a prosecutor's order.

105. Under Article 122, an investigating authority could apprehend a person suspected of having committed a criminal offence punishable by imprisonment on one of the following grounds:

(i) if the person was caught in the act or immediately after committing the offence;

(ii) if eyewitnesses, including victims, directly implicated the person as the one who had committed the offence;

(iii) if clear traces of the offence were found on the person's body or clothes, or with him or in his dwelling.

An investigating authority was required to draw up a report on any apprehension of a person suspected of having committed a criminal offence, indicating the grounds, motives, day and time, year and month of the apprehension, the explanations of the apprehended person and the time the report was drawn up, and to notify a prosecutor in writing within 24 hours.

Within 48 hours of being notified of the apprehension, the prosecutor had either to remand the apprehended person in custody or to release that person.

106. Article 89 (1) authorised imposition of preventive measures where there were sufficient grounds to believe that an accused could abscond from enquiries, preliminary investigation or trial, or obstruct the establishment of the truth in a criminal case or engage in criminal activity, as well as in order to secure the execution of a sentence. The investigator, prosecutor or the court could impose one of the following preventive measures on the accused: a written undertaking not to leave a specified place, a personal guarantee or a guarantee by a public organisation, or remand in custody.

107. Article 90 permitted, on an exceptional basis, a measure of restraint to be taken against a suspect who had not been charged. In such a case, charges had to be brought against the suspect within ten days of the imposition of the measure. If no charges were brought within the period specified, the measure of restraint was to be revoked.

108. Article 91 required the following circumstances to be taken into account in imposing a measure of restraint: the gravity of the charges and the suspect's or defendant's personality, occupation, age, health, family status and other circumstances.

109. Article 92 authorised an investigator, prosecutor, or a court to issue a ruling or finding as to a measure of restraint, provided it specified the offence of which the person was suspected or accused and the grounds for imposing such a measure. The person concerned had to be informed of the ruling or finding and at the same time provided with explanations concerning the appeal procedure. A copy of the ruling or finding had to be served immediately on the person against whom a measure of restraint had been taken.

110. Article 96 set out the grounds for arrest, and authorised public prosecutors, from the level of a district or town prosecutor to the Prosecutor General, to authorise detention.

B. The Code of Criminal Procedure of the Russian Federation (CCP) in force after 1 July 2002.

111. Article 161 of the new CCP establishes the rule of impermissibility of disclosure of data from the preliminary investigation. Under part 3 of the said Article, information from the investigation file may be divulged with the permission of a prosecutor or investigator and only so far as it does not infringe the rights and lawful interests of the participants of the criminal proceedings and does not prejudice the investigation. Divulging information about the private life of the participants in criminal proceedings without their permission is prohibited.

C. Administrative arrest

112. The Code of Administrative Offences of 30 December 2001 provides as follows:

Article 27.3. Administrative arrest (*administrativnoye zaderzhaniye*)

"1. Administrative arrest, that is a temporary restriction of liberty of an individual, may be ordered in exceptional circumstances where it is necessary for a correct and prompt examination of the administrative case..."

Article 27.5. Duration of administrative arrest

"1. The duration of administrative arrest must not exceed three hours, except for situations described in paragraphs 2 and 3 of the present Article...

3. Anyone who is subject to administrative proceedings concerning an offence punishable by administrative detention, may be placed under administrative arrest for a period not exceeding forty-eight hours."

46. Article 19.3 provides that disobedience of a lawful order or demand of a police officer is punishable by an administrative fine or by up to fifteen days' administrative detention (*administrativnyi arest*).

D. The Suppression of Terrorism Act

113. The Suppression of Terrorism Act (*Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом»*) provides as follows:

Section 3. Basic Concepts

"For purposes of the present Federal Law the following basic concepts shall be applied:

... 'suppression of terrorism' shall refer to activities aimed at the prevention, detection, suppression and minimisation of the consequences of terrorist activities;

'counter-terrorist operation' shall refer to special activities aimed at the prevention of terrorist acts, ensuring the security of individuals, neutralising terrorists and minimising the consequences of terrorist acts;

'zone of a counter-terrorist operation' shall refer to an individual terrain or water surface, means of transport, building, structure or premises with adjacent territory where a counter-terrorist operation is conducted; ..."

Section 6. Authorities carrying out the suppression of terrorism

"...2. Federal bodies of the executive authority take part in the suppression of terrorism within the limits of their competencies, as set up by federal laws and other legal acts of the Russian Federation.

3. Authorities directly involved in the suppression of terrorism within the limits of their competencies, are:

- the Federal Security Service, ...

- the Ministry of Defence of the Russian Federation ..."

Section 11. Forces and measures for the carrying out of a counter-terrorist operation

"For the carrying out of a counter-terrorist operation the operative headquarters ... has the right to employ necessary forces and measures of the federal executive authorities that are involved in the fighting with terrorism in accordance with Section 6 of the present Act. ..."

Section 13. Legal regime in the zone of an anti-terrorist operation

"1. In the zone of an anti-terrorist operation, the persons conducting the operation shall be entitled:

... (2) to check the identity documents of private persons and officials and, where they have no identity documents, to detain them for identification;

(3) to detain persons who have committed or are committing offences or other acts in defiance of the lawful demands of persons engaged in an anti-terrorist operation, including acts of unauthorised entry or attempted entry to the zone of the anti-terrorist operation, and to convey such persons to the local bodies of the Ministry of the Interior of the Russian Federation;

(4) to enter private residential or other premises ... and means of transport while suppressing a terrorist act or pursuing persons suspected of committing such an act, when a delay may jeopardise human life or health;

(5) to search persons, their belongings and vehicles entering or exiting the zone of an anti-terrorist operation, including with the use of technical means; ..."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

114. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Musa Akhmadov had not yet been completed and the applicants failed to obtain judicial review of the actions of the investigation. They noted that the first applicant had failed to appeal against the decision of the Vedeno District Court of 17 February 2006 which dismissed her complaint about the actions of the investigation. They also argued that it was open to the applicants to pursue civil complaints which they had failed to do.

115. The applicants contested that objection. With reference to the Court's practice, they argued that they had not been obliged to apply to civil courts in order to exhaust domestic remedies. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect, including the application to the court, had been futile.

B. The Court's assessment

116. In the present case, the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will now proceed to examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

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

118. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, 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, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The preliminary objection in this regard is thus dismissed.

119. As regards criminal law remedies, the Court observes that an investigation into the disappearance has been pending since May 2002. The applicants and the Government dispute its effectiveness.

120. The Court considers that this limb of the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicants' complaints. Thus, it considers that these matters fall to be examined below under the substantive provisions of the Convention.

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

A. The parties' arguments

121. The applicants maintained that it was beyond reasonable doubt that the men who had detained Musa Akhmadov had been State agents. The applicants stressed that the unacknowledged detention had occurred at the checkpoint manned by servicemen of the federal troops, which was not denied by the Government. No plausible explanation had been forthcoming from the authorities to explain what had happened to Mr Akhmadov after his unacknowledged detention. The applicants submitted that, since their relative had been missing for a very lengthy period, it could be presumed that he was dead. That presumption was further supported by the circumstances in which he had been detained, which should be recognised as life-threatening.

122. The Government submitted that the circumstances of Mr Akhmadov's disappearance were under investigation. They stated that it had been established that on 6 March 2002 unidentified armed men had arrested Musa Akhmadov at the roadblock near Kirov-Yurt and taken him away to an unknown destination. It had not been established that that State agents had been involved in his abduction. They further argued that there was no convincing evidence that the applicants' relative was dead, given that his whereabouts had not been established and his body had not been found.

B. Article 38 § 1 (a) and consequent inferences drawn by the Court

123. The Court has on many occasions reiterated that the Contracting States are required to furnish all necessary facilities to the Court and that a failure on a Government's part to submit information which is in their hands, without a satisfactory explanation, may reflect negatively on the level of compliance by a respondent State with its obligations under

Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI).

124. In the present case the applicants alleged that their relative had been illegally arrested by servicemen and then disappeared. They also alleged that no proper investigation has taken place. In view of these allegations, the Court asked the Government to produce documents from the criminal investigation file opened in relation to the kidnapping. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the present case.

125. The Government confirmed principal facts as presented by the applicants. They refused to disclose any of the documents from the criminal investigation file, relying on Article 161 of the Code of Criminal Procedure. The Government also argued that the Court's procedure contained no guarantees of the confidentiality of documents, in the absence of sanctions for applicants in the event of a breach of the obligation not to disclose the contents of such documents to the public. They cited, by way of comparison, the Rome Statute of the International Criminal Court of 17 July 1998 (Articles 70 and 72) and the Statute of the International Criminal Tribunal for the former Yugoslavia (Articles 15 and 22) and argued that these documents provided for personal responsibility for a breach of the rules of confidentiality and laid down a detailed procedure for the pre-trial examination of evidence.

126. The Court notes that Rule 33 § 2 of the Rules of Court permits a restriction on the principle of the public character of documents deposited with the Court for legitimate purposes, such as the protection of national security, the private life of the parties or the interests of justice. The Court cannot speculate as to whether the information contained in the criminal investigation file in the present case was indeed of such nature, since the Government did not request the application of this Rule and it is the obligation of the party requesting confidentiality to substantiate its request.

127. Furthermore, the statutes of the two international courts cited by the Government operate in the context of international criminal prosecution of individuals, where the tribunals in question have been granted jurisdiction over offences against their own administration of justice. The Court observes that it has previously stated that criminal law liability is distinct from international law responsibility under the Convention. The Court's competence is confined to the latter and is based on its own provisions, which are to be interpreted and applied on the basis of the objectives of the Convention and in the light of the relevant principles of international law (see, *mutatis mutandis*, *Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII).

128. The Court lastly notes that it has already found on a number of occasions that the provisions of Article 161 of the Code of Criminal Procedure do not preclude the disclosure of documents from a pending

investigation file, but rather set out a procedure for, and limits to, such disclosure (see *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006, and *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII). For these reasons the Court considers the Government's explanation insufficient to justify the withholding of the key information requested by it.

129. Reiterating the importance of a respondent Government's cooperation in Convention proceedings, the Court finds that there has been a breach of the obligation laid down in Article 38 § 1 (a) of the Convention to furnish all necessary facilities to assist the Court in its task of establishing the facts.

C. The Court's evaluation of the facts

130. The Court 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, §§ 103-109, 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*, cited above, pp. 64-65, § 161). In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relative can be presumed dead and whether his death can be attributed to the authorities.

131. The applicants alleged that servicemen had taken Musa Akhmadov away on 6 March 2002 and then killed him. The Government did not dispute any of the factual elements underlying the application and did not provide another explanation of the events.

132. On the basis of the parties' submissions and the materials in the case file, including eyewitness statements and official documents, the Court considers it established that on 6 March 2002 Musa Akhmadov was detained by a group of servicemen at the road block in the vicinity of village Kirov-Yurt, delivered to the headquarters of the 51-st airborne regiment in the village of Khatuni and there transferred to the field subdivision of the FSB based at the same camp. The Court takes special notice of the letters of the military prosecutor of the military unit no. 20116 of 18 December 2003 and of 4 June 2004 and of the military prosecutor of the Tula garrison of 26 February 2004 (paragraphs 53, 56 and 60 above), which contained detailed conclusions in this respect.

133. The letters of 26 February 2004 and of 24 June 2004 cited "involvement in illegal armed groups" as the reason for detention, though no formal charge has been ever brought. No formal records were drawn up

in relation to the detention or any other actions carried out in respect of Mr Akhmadov. He has not been seen since 6 March 2002 and his family has had no news of him. In June 2003 a district court, acting upon the first applicant's request, declared Musa Akhmadov a missing person as of 6 March 2002 (see paragraph 46 above). The investigation failed to establish what had happened to him or to charge anyone with kidnapping.

134. The Court notes with great concern that a number of cases have come before it which suggest that the phenomenon of "disappearances" is well known in Chechnya (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007). The Court has already found that, in the context of the conflict in Chechnya, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Musa Akhmadov or of any news of him for over six years supports this assumption. For the above reasons the Court considers that it has been established that he must be presumed dead following unacknowledged detention by State servicemen.

135. The Court has already noted above that it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose any documents from the file. Nevertheless, it is clear that the investigation not only failed to identify the perpetrators of the kidnapping, but as late as September 2007 continued to deny the involvement of military servicemen in the kidnapping, despite ample presence of the information to the contrary in the materials of the case (see paragraph 78 above). Such a stance on the part of the prosecutor's office and the other law-enforcement authorities played a pivotal role in the disappearance, as no necessary steps were taken in the crucial first days and weeks after the arrest, or later. The authorities' behaviour in the face of the applicants' well-substantiated complaints gives rise to a strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation.

136. For the above reasons the Court considers that it has been established that Musa Akhmadov must be presumed dead following his unacknowledged detention by State servicemen. The Court also finds it established that no proper investigation of the abduction has taken place, which contributed to the eventual disappearance.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

137. The applicants complained under Article 2 of the Convention that their relative had disappeared after having been detained by Russian

servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 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. The alleged violation of the right to life of Musa Akhmadov

138. The Government referred to fact that the investigation had obtained no evidence to the effect that this person was dead, or that representatives of the federal power structures had been involved in his abduction or killing.

139. 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, to which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar*, cited above, § 391).

140. The Court has already found it established that the applicants' relative must be presumed dead following unacknowledged arrest by State servicemen and that the death can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Musa Akhmadov.

B. The alleged inadequacy of the investigation of the abduction

141. The applicants argued that the investigation had not met the requirements to be effective and adequate, as required by the Court's case-law on Article 2. They noted that the investigation had been opened belatedly, that it had been adjourned and reopened a number of times and

thus the taking of the most basic steps had been protracted, and that the applicants had not been informed properly of the most important investigative steps. They argued that the fact that the investigation had been pending for such a long period of time without producing any known results had been a further proof of its ineffectiveness. The applicants invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

142. The Government claimed that the investigation of the disappearance of the applicants' relative met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

143. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of 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. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

144. In the present case, an investigation of the abduction was carried out. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

145. The Court notes at the outset that the documents from the investigation were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

146. Turning to the facts of the case, it has already established that no proper investigation has taken place into the disappearance of Musa Akhmadov. In particular, the investigation had been opened with a delay of more than two months after the abduction, on 13 May 2002. The first applicant had been granted victim status in April 2003, or in May 2004 (see paragraphs 43 and 94 above). The relevant military units had been identified in December 2003 (see paragraph 53 above). Information about the questioning of the military servicemen of the 51st airborne regiment involved in the detention was collected in February 2004 (see paragraph 56 above). These delays in themselves were liable to affect the investigation of a crime such as abduction in life-threatening circumstances, where crucial action has to be taken in first days after the event. While accepting that some explanation for these delays can be found in the precarious security situation that prevailed in Chechnya at the relevant time, as illustrated by the shelling of the district prosecutor's office in December 2002, in the present case they clearly exceeded any acceptable limitations on efficiency that could be tolerated in dealing with such a serious crime.

147. However, the Court finds it even more striking that after obtaining in early 2004 rather detailed information about the circumstances, reasons and the military units involved in Musa Akhamdov's detention, the investigation failed to advance to the slightest extent. The Court finds incomprehensible the position of the military prosecutors' offices, who continued to bluntly deny the servicemen's involvement in the events. The investigation failed to identify and question any of the officers of the FSB and of the Ministry of Justice, mentioned in the official documents, and to carry out confrontations in order to resolve the inconsistencies between the FSB denial of any knowledge of Mr Akhmadov's detention and the submissions of the servicemen of the 51st regiment that he had been delivered to the field subdivision of the FSB. The investigation also inexplicably failed to identify, question and, if necessary, carry out confrontations between the relatives of the disappeared man and the individual officers who had confirmed to them Musa Akhmadov's detention in Kirov-Yurt and then in Khatuni.

148. The Court also notes that even though the first applicant was eventually granted victim status, she was only informed of the adjournment and reopening of the proceedings, and not of any other significant developments. Accordingly, 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.

149. Finally, the Court notes that the investigation was adjourned and resumed a number of times and that on several occasions the supervising prosecutors criticised deficiencies in the proceedings and ordered remedial measures, but it appears that these instructions were not complied with. It is also worth noting that the justification for the transfers of the case between the district prosecutor's office and the military prosecutors' offices remained opaque and created an impression of shifting responsibility between authorities rather than of genuine cooperation.

150. The Government raised the possibility for the applicants to make use of the judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions of investigating authorities before a court. Furthermore, the investigation has been resumed by the prosecuting authorities themselves a number of times due to the need to take additional investigative steps. However, they still failed to investigate properly the applicants' allegations. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

151. In the light of the foregoing, the Court dismisses the Government's preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation, and holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Musa Akhmadov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

152. The applicants further relied on Article 3 of the Convention, submitting that as a result of their relative's disappearance and the State's failure to investigate those events properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

153. The Government disagreed with these allegations and argued that in the absence of any evidence suggesting that the applicants' relative had been abducted by representatives of the State, there were no grounds for alleging a violation of Article 3 of the Convention on account of the applicants' mental suffering

154. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. 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 (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

155. In the present case the Court notes that the applicants are the wife and children of the individual who had disappeared. For more than six years they have not had any news of him. During this period the applicants have applied to various official bodies with enquiries about their family member, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of him following his detention. The responses received by the applicants mostly denied that the State was responsible for his arrest or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

157. The applicants further stated that Musa Akhmadov 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."

158. In the Government's opinion, no evidence was obtained by the investigators to confirm that Musa Akhmadov was detained in breach of the guarantees set out in Article 5 of the Convention. He was not listed among the persons kept in detention centres. As general safeguards against arbitrary detention, the Government relied on domestic legal provisions related to arrest and detention contained in the CCP and the Code of Administrative Offences in force in the material time. They also referred to Sections 11 and 13 of the Suppression of Terrorism Act, which established legal grounds for the involvement of military servicemen in counter-terrorist operations and authorised them to carry out identity checks and detain persons in order to convey them to the local bodies of the Interior (Sections 11 and 13 of the Act).

159. 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).

160. The Court has found it established that Musa Akhmadov was detained by servicemen on 6 March 2002 and has not been seen since. The Court notes with concern the patent disregard of the rules governing the detention of persons in the present case, as in a number of other cases that have come before it (see paragraph 134 above). Although the prosecutors' offices on several occasions invoked Mr Akhmadov's alleged involvement with illegal armed groups as the reason of detention (see, for example, paragraphs 56 and 60 above), none of the existing criminal or administrative procedures has been activated in his case. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. The Government's reference to the Suppression of Terrorism Act is far from being sufficient to explain why after detention he was delivered to the headquarters of a military unit, and not to the local department of the interior, as the Act stipulates, and the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it. Such practice must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

161. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relative had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

162. Consequently, the Court finds that Musa Akhmadov was 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.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

163. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, 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."

164. 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. They referred to Article 125 of the Code of Criminal Procedure, which allowed participants in criminal proceedings to complain to a court about measures taken during an investigation. The applicants had never made use of this possibility, which required the initiative of the participants in criminal proceedings, and thus the absence of court action could not constitute a violation of Article 13.

165. The Court reiterates that in circumstances where, as here, the criminal investigation into the violent death was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183)

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

167. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arise in respect of Article 13 in connection with Articles 3 and 5 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VII. ALLEGED VIOLATION OF ARTICLE 3 IN RESPECT OF MUSA AKHMADOV, OF ARTICLES 6 AND 14 OF THE CONVENTION

168. In their initial application form the applicants also complained about ill-treatment of Musa Akhmadov, about lack of access to court and about discrimination in the enjoyment of the Convention rights, contrary to Articles 3, 6 and 14 of the Convention.

169. In their subsequent observations on admissibility and merits the applicants stated that they no longer wished these complaints to be examined.

170. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character affecting respect for human rights as defined in the Convention which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

171. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

VIII APPLICATION OF ARTICLE 41 OF THE CONVENTION

172. 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

173. The first and fourth applicants claimed damages in respect of the lost wages of their relative after his arrest and subsequent disappearance. The first applicant submitted that she was disabled and financially dependent on her husband; the fourth applicant expected to receive financial support from his father until reaching the age of majority. The first applicant claimed a total of 112,858 Russian roubles (RUR) (3,079 euros (EUR)) under this heading; and the fourth applicant RUR 1,176 (EUR 32).

174. They claimed that Musa Akmadov was unemployed at the time of his arrest and that in such cases the calculation should be made on the basis of the subsistence level established by national law. They calculated his earnings for the period, taking into account an average 14% inflation rate, and argued that the first applicant could count on 30% until September 2008 and the fourth applicant on 15% of the total until August 2002. Their further calculations were based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2004 ("Ogden tables").

175. The Government regarded these claims as based on suppositions and unfounded. In particular, they noted that in the national proceedings the applicant have never claimed compensation for the loss of a breadwinner, although such a possibility was provided for.

176. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. 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, "failing which the Chamber may reject the claim in whole or in part". Having regard to the above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' husband and father and the loss by the applicants of the financial support which he could have provided. The Court further finds that the loss of earnings also applies to the dependent children and that it is reasonable to assume that Musa Akhmadov would eventually have had some earnings from which the applicants would

have benefited (see, among other authorities, *Imakayeva,* cited above, § 213).

177. Having regard to the applicants' submissions, the Court awards EUR 3,101 to the first and the fourth applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

178. The first applicant claimed EUR 50,000, and the second, third and fourth applicants claimed EUR 40,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member and the indifference shown by the authorities towards him.

179. The Government found the amounts claimed exaggerated.

180. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. 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 to the applicants jointly EUR 35,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

181. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour for the work in the area of exhausting domestic remedies and of EUR 150 per hour for the drafting of submissions to the Court. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 10,899.

182. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. They questioned, in particular, whether all the lawyers working for the SRJI had been involved in the present case and whether it had been necessary for the applicants to rely on courier mail.

183. The Court has to establish first whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary (see *McCann and Others*, cited above, § 220).

184. Having regard to the details of the information submitted and the contracts for legal representation concluded between the SRJI and the first, third and sixth applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

185. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that these cases were rather complex and required a certain amount of research and preparation. It notes, however, that the applicants' representatives did not submit any additional observations on the merits and that the case involved little documentary evidence, in view of the Government's refusal to submit any documents from the case files. The Court thus doubts that research was necessary to the extent claimed by the representatives.

186. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 9,000, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

187. 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 strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the ill-treatment of Musa Akhmadov under Article 3 of the Convention, the applicants access to court under Article 6 and discrimination under Article 14 of the Convention;

2. *Dismisses* the Government's preliminary objection;

3. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Musa Akhmadov;

5. *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 Musa Akhmadov had disappeared;

6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;

7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Musa Akhmadov;

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

9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5 of the Convention;

10. *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 3,101 (three thousand one hundred and one euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of pecuniary damage to the first and fourth applicants jointly;

(ii) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage to the applicants jointly;

(iii) EUR 8,150 (eight thousand one hundred fifty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;

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

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

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President