



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

FIRST SECTION

CASE OF KADIROVA AND OTHERS v. RUSSIA

(Application no. 5432/07)

JUDGMENT

STRASBOURG

27 March 2012

FINAL

24/09/2012

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

In the case of Kadirova and Others v. Russia,

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

Peer Lorenzen, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 5432/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Russian nationals, listed in paragraph 6 below (“the applicants”), on 21 January 2007.

2. The applicants 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 G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 8 April 2009 the Court decided to apply Rule 41 of the Rules of Court, to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 3 May 2011, after having consulted the parties, the Court granted a request by Ms Yakha Yakhyayeva and allowed her to join the proceedings.

5. The Government objected to the joint examination of the admissibility and merits of the application and to the application of Rule 41 of the Rules of Court. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

- (1) Ms Maryam Kadirova (also spelled as Kadyrova), born in 1958;
- (2) Ms Zultmat Betilgiryeva, born in 1959;
- (3) Mr Khasan Kadyrov, born in 1957;
- (4) Mr Zelimkhan Kadyrov, born in 1987; and
- (5) Ms Yakha Yakhyayeva, born in 1978.

7. The applicants are relatives of Ms Aset Yakhyayeva, born in 1956, and Ms Milana Betilgiryeva, born in 1980. The first applicant is the stepmother of Milana Betilgiryeva and sister-in-law of Aset Yakhyayeva. The second applicant is the mother of Milana Betilgiryeva. The third applicant is the father of Milana Betilgiryeva and brother of Aset Yakhyayeva; he is married to the first applicant. The fourth applicant is the brother of Milana Betilgiryeva and nephew of Aset Yakhyayeva. The fifth applicant is Aset Yakhyayeva's daughter.

8. The applicants are Russian nationals. The first and fourth applicants reside in Grozny, the second applicant resides in the village of Dachu-Borzoy and the third and fifth applicants reside in the village of Duba-Yurt, all in the Chechen Republic.

A. Disappearance of Aset Yakhyayeva and Milana Betilgiryeva

1. The applicants' account

9. The account below is based on the information contained in the application form and written statements by Ms P.S., Ms M.I. and Ms G.S. dated 10 December 2006.

(a) Disappearance of Aset Yakhyayeva and Milana Betilgiryeva

10. In November 2001 Aset Yakhyayeva and Milana Betilgiryeva went to the village of Serzhen-Yurt to visit their relatives.

11. In the evening of 6 November 2001 Aset Yakhyayeva and Milana Betilgiryeva visited P.S. and stayed at her home overnight, together with other women, including M.I. and G.S. Aset Yakhyayeva and Milana Betilgiryeva slept in the kitchen. P.S., M.I., G.S. and two other women shared the remaining rooms.

12. At about 5 a.m. on 7 November 2001 five armed uniformed men broke into the house. It was not entirely clear how they had entered because

the doors had not been broken and the door lock had not been damaged. The intruders spoke unaccented Russian; one of them was masked. The women inferred that the intruders were servicemen.

13. One of the men pressed his machine gun against P.S.'s neck and told her to be quiet. He explained that they were "looking for the men". P.S. replied that there were no men in the house. He then ordered her to show him the other rooms and took some money and jewellery, despite her protests. At some point the man grabbed P.S. roughly and she fainted. One of the men threatened the women with gunning them all down and the other lifted a blanket with which the women had covered themselves and asked them "to show their legs and their beauty". The masked man immediately interrupted him and made him leave the room. He then ordered the women to lie on one couch and to be quiet and told them that the men would stay in the house until morning, when they would take the women to the military commander's office and "decide what to do with them". The men then left the room. All of the women obeyed the order and stayed there. P.S. heard the intruders shout in another room that they had found a gun. M.I. overheard a conversation, in which Aset Yakhyayeva and Milana Betilgiryeva were asked for their passports.

14. In the morning of 7 November 2001 M.I. went to the kitchen but did not find Aset Yakhyayeva and Milana Betilgiryeva there. She immediately told her father, Mr A.I., about their disappearance.

15. The applicants have had no news of Aset Yakhyayeva and Milana Betilgiryeva since 7 November 2001.

(b) The applicants' search for the missing women

16. On 7 November 2001, having been alerted by his daughter, A.I. went looking for the missing women. He learnt from his neighbours that Russian federal troops were carrying out a "sweeping" operation in Serzhen-Yurt and that the village had been besieged by military servicemen using armoured vehicles. The majority of the residents and the local administration knew about the sweeping operation.

17. In the morning on the same day, after having completed the sweeping operation, the military forces, headed by the military commander of the Shalinskiy District, Mr G.N., gathered in one part of Serzhen-Yurt, preparing to leave. At that point, A.I., the deputy head of the local administration Mr S. and several village residents complained to G.N. about the abduction of Aset Yakhyayeva and Milana Betilgiryeva. In reply, G.N. promised them that the passports of the women would be checked and that "should there be no problems they would be released". At the same time two armoured personnel carriers ("APCs") and a KAMAZ truck, driven by a resident of Serzhen-Yurt, passed by. In the submission of the driver of the Kamaz vehicle, the APCs drove to the grounds of the Russian military unit

“DON-2”, which was stationed at the material time between Serzhen-Yurt and the village of Shali.

18. Meanwhile, G.N. took the passports of Aset Yakhyayeva and Milana Betilgiriyeveva and got in an APC, which drove in the direction of Shali. A.I. and Mr S. followed the APC in their car and saw it stop by two further APCs stationed at the outskirts of the village. After a conversation with the servicemen, G.N. returned the passports of the missing women to A.I. and instructed him to come to Shali to pick up Aset Yakhyayeva and Milana Betilgiriyeveva there. When A.I. and Mr S. arrived at the military commander of the Shalinskiy District’s office (“the military commander’s office”), G.N. handed them over a written note saying that they should pick the women up at the Temporary Office of the Interior for the Shalinskiy District (“the VOVD”).

19. At the VOVD, A.I., S. and some of the applicants gave G.N.’s note and the identity cards of the missing women to police officers. The police officers checked the identity cards in their database and told the relatives that they did not suspect the missing women of anything criminal and that they had no information on their whereabouts.

20. On 7 November 2001 the first applicant reported the abduction of Aset Yakhyayeva and Milana Betilgiriyeveva to the prosecutor’s office for the Shalinskiy District (“the district prosecutor’s office”). On the same date several investigators from the district prosecutor’s office came to Serzhen-Yurt to interview witnesses and inspect the crime scene. In the applicants’ submission, while being interviewed, some witnesses stated that on the night of 6 November 2001 several military servicemen had come to Serzhen-Yurt in an APC to get some water and had taken away Aset Yakhyayeva and Milana Betilgiriyeveva. The investigators discovered traces of an APC, as indicated by the witnesses, made the relevant records and left.

21. On an unspecified date relatives of Aset Yakhyayeva and Milana Betilgiriyeveva asked servicemen operating the roadblock located between Shali and Serzhen-Yurt whether they had any information on the abducted women. One of the servicemen allegedly told them that he had heard about the arrest of two women via the army’s internal communication channels. On the next day that serviceman was removed from the roadblock.

22. In the following days the applicants found out that the sweeping operation in Serzhen-Yurt on 7 November 2001 had been carried out jointly by: servicemen of the military commander’s office, under the direction of G.N.; police officers of the VOVD; servicemen of the “DON-2” military unit; servicemen of the 70th regiment of the Russian army, stationed at the material time on the outskirts of Shali; and officials of the Federal Security Service (“the FSB”) and the Main Intelligence Department of the Ministry of Defence (“the GRU”).

23. On several occasions the applicants met G.N. and asked him to release Aset Yakhyayeva and Milana Betilgiriyeveva. In reply, he denied having arrested them.

24. Three months after the disappearance of Aset Yakhyayeva and Milana Betilgiriyeveva the applicants met a resident of the village of Germenchuk who had been previously held on the grounds of the “DON-2” military unit. According to him, two women had been held in a pit on the grounds of the unit. The servicemen had thrown them a blanket and a sweater because it had been freezing. He had heard the women cry in the pit. However, he did not wish to repeat his statement before the investigators from the district prosecutor’s office because he feared for his life.

25. Subsequently, the applicants liaised with a person whom they identified as “a middleman”. According to him, Aset Yakhyayeva and Milana Betilgiriyeveva had been transferred from the “DON-2” military unit to the 70th regiment, and then to the Khankala military base. In Khankala FSB officials had tortured them with a view to making them confess to having participated in illegal armed groups. Milana Bitilgiriyeveva had ultimately been charged with participation in illegal armed groups. Similar charges had been fabricated against Aset Yakhyayeva. The “middleman” claimed that it was difficult “to get both women out from Khankala” and that the applicants should first to try to obtain the release of Milana Bitilgiriyeveva. He also requested that the applicants did not divulge the information he had given them. He stated that should he be interviewed by any State officials he would renounce his statements because he feared for his life. Subsequently, the applicants heard rumours that Aset Yakhyayeva and Milana Betilgiriyeveva were being held in a prison in Pyatigorsk, in the Stavropol Region.

2. Information submitted by the Government

26. The Government did not challenge most of the facts as presented by the applicants but claimed that the domestic investigation had obtained no evidence that the applicants’ relatives had been abducted by servicemen.

B. The investigation of the abduction of Aset Yakhyayeva and Milana Betilgiriyeveva

1. The applicants’ account

27. On 7 November 2001 the district prosecutor’s office instituted a criminal investigation into the abduction of Aset Yakhyayeva and Milana Betilgiriyeveva under Article 126 § 2 of the Criminal Code (aggravated

kidnapping). The case was assigned the number 24206. By a letter of the same date the first applicant was informed of that decision.

28. On an unspecified date the first applicant was granted victim status in connection with the proceedings in case no. 24206.

29. On 7 January 2002 the investigation was suspended because of its failure to establish the perpetrators.

30. By a letter of 13 March 2002 the Department of the Federal Security Service in the Chechen Republic (“the Chechen Department of the FSB”) informed the first applicant that the Department’s officials had not arrested Aset Yakhyayeva and Milana Betilgiryeva.

31. Following a complaint by the first applicant, on 13 March 2002 higher-ranking prosecutors set aside the decision to suspend the investigation, finding that the investigators in charge of the case had not taken all relevant measures to identify the perpetrators and to establish the victims’ whereabouts. The investigation was to be resumed.

32. On 1 April and 25 May 2002 the first and third applicants filed complaints about the abduction of Aset Yakhyayeva and Milana Betilgiryeva with the Russian State Duma, the General Prosecutor’s Office, the prosecutor’s office of the Chechen Republic (“the republican prosecutor’s office”), the Government of the Chechen Republic and the FSB.

33. By letters of 4 and 5 June 2002 the republican prosecutor’s office and the Government of the Chechen Republic, respectively, forwarded the first and third applicant’s complaints to the district prosecutor’s office “for verification”.

34. By a letter dated 29 June 2002, in reply to the first applicant’s repeated complaint, the district prosecutor’s office informed her that the investigation in case no. 24206 had been suspended owing to its failure to identify those responsible. A letter along the same lines dated 8 August 2002 was sent to the second applicant.

35. On 5 January 2003 the district prosecutor’s office resumed the investigation and notified the first applicant accordingly.

36. By a letter of 28 January 2003 the republican prosecutor’s office informed the first applicant that the investigation of case no. 24206 was underway and that she could request that the district prosecutor’s office take further investigative measures, should she consider the measures undertaken insufficient.

37. By a letter dated 27 November 2003 the district prosecutor’s office notified the first applicant that the investigation had been suspended due to its failure to establish the perpetrators. On an unspecified date the investigation resumed but on 11 June 2004 it was again suspended for the same reason.

38. By a letter dated 26 June 2006 the republican prosecutor's office notified the second applicant that the investigation had resumed on 22 June 2006.

39. On 12 July 2006 the second applicant complained to the Government of the Chechen Republic that she had had no news about Milana Betilgiryeva since her abduction on 7 November 2001. It is unclear whether her complaint elicited any reaction.

40. On 22 July 2006 the investigation was suspended for failure to establish the perpetrators.

41. On 8 April 2010 the investigators dismissed the fifth applicant's request to be granted victim status in the proceedings in case no. 24206, noting that the third applicant had already been granted such status.

42. On 24 June 2010 the fifth applicant complained about the refusal to the Shali Town Court.

43. On 1 July 2010 the investigators recognised the fifth applicant as a victim in the proceedings concerning her mother's abduction, following which she withdrew her court complaint.

44. By a decision of 5 July 2010 the investigators ordered the taking of a DNA sample from the fifth applicant with a view to verifying Aset Yakhyayeva in the unidentified bodies' database.

2. Information submitted by the Government

45. Despite the Court's specific requests, the Government refused to produce an entire copy of criminal file no. 24206, submitting that they were enclosing "the basic documents" from it. They did not provide any explanation for their refusal to do so. Some of the documents furnished by the Government were partly illegible. The information contained in those documents, in so far as they are legible, may be summarised as follows.

(a) Opening of the investigation

46. On 7 November 2001 the district prosecutor's office instituted an investigation into the abduction of Aset Yakhyayeva and Milana Betilgiryeva under Article 126 § 2 of the Criminal Code (aggravated abduction). The case file was assigned the number 24206.

(b) Interviewing of witnesses

47. On 7 November 2001 the investigation interviewed A.I. as a witness. He stated that in November 2001 his relatives Aset Yakhyayeva and Milana Betilgiryeva had come to visit his family in Serzhen-Yurt. In the evening of 6 November 2001 they had stayed at P.S.'s home. A.I.'s daughter M.I., as well as L.S. and two other women, had joined them. At about 7 a.m. on 7 November 2001, M.I. had told A.I. that during the night five armed masked men had abducted Aset Yakhyayeva and Milana Betilgiryeva. The

intruders had threatened the women with their weapons and had asked them why there were no men in the house and where the family kept its valuables. On the morning of 7 November 2001, about 500 metres from the village, A.I. had seen fresh tracks made by an APC. While being re-interviewed as a witness, A.I. stated that in the morning after the abduction of the women he and Kh.S. had met military commander G.N. A.I. had given G.N. the identity papers of the missing women and had asked him for assistance in obtaining their release. G.N. had taken the passports and had told him to return an hour later, assuring him that he would clarify the issue. After that, G.N. had driven in an APC to the outskirts of the village. Half an hour later G.N. had told A.I. that the latter was to go to the VOVD to obtain all relevant information. G.N. had also compiled a written note for A.I. and had returned the women's passports to him. G.N. had gone to the VOVD but the missing women had not been there. When re-interviewed on 23 April 2002 and 12 July 2006, A.I. confirmed that account of the events.

48. Kh.S., interviewed as a witness on 7 November 2001, stated that on the evening of 6 November 2001 Aset Yakhyayeva and Milana Betilgiriyeveva had stayed at his house with his daughters. At about 6.30 a.m. on 7 November 2001 Kh.S.'s daughter had told him that five armed masked men had burst into their house and had abducted Aset Yakhyayeva and Milana Betilgiriyeveva. Following that, Kh.S. and other residents of Serzhen-Yurt had gone to the ROVD's office and had learnt from police officers that during the night federal armed forces had conducted a special operation in the village. At about that time, a convoy of armoured vehicles had arrived from the southern outskirts of Serzhen-Yurt. The convoy had been headed by the military commander of the Shalinskiy district, G.N. Kh.S. and others had told G.N. about the abduction of Aset Yakhyayeva and Milana Betilgiriyeveva. G.N. had suggested that Kh.S. show him the location of the house from which they had been abducted on a map. Having seen it, G.N. had told Kh.S. that the servicemen should not have gone to that house and that they had been supposed to check a house located about two kilometres away from Kh.S.'s house. Having taken the passports of the missing women, G.N. had promised to clarify the matter and had got into his APC, which had then driven him in the direction of administrative buildings located on the road out of the village. G.N. had returned after a while and had directed Kh.S. and others to go to the VOVD office. When they had arrived at the VOVD office, he had given the women's passports to an FSB officer, who, after having checked them inside, had told Kh.S. that his service had not arrested the women and that they were not being held at the VOVD. Kh.S. and A.I. had then gone back to see G.N., who had given them a written note requesting that Aset Yakhyayeva and Milana Betilgiriyeveva be released. However, the FSB officer had denied having arrested the women. When re-interviewed as a witness on 2 April and 28 June 2002 and 10 July 2006, Kh.S. confirmed that account of the events.

49. On 12 November 2001 the first applicant was granted victim status in the proceedings in case no. 24206 and was interviewed. She stated that on 2 November 2001 Milana Betilgiriyeveva and Aset Yakhyayeva had gone to Serzhen-Yurt to visit their relatives. On 8 November 2001 the first applicant's relatives had told her that the two women had been abducted.

50. On 12 November 2001 the third applicant was granted victim status in the proceedings in case no. 24206.

51. F.S., interviewed as a witness on 15 November 2001, stated that on 6 November 2001 her mother had gone to another village and her father had worked a night shift in his shop. F.S. and her sisters had invited Aset Yakhyayeva and Milana Betilgiriyeveva to stay with them overnight. Besides F.S., Aset Yakhyayeva and Milana Betilgiriyeveva, there had been four other women at F.S.'s home: L.S., M.I., M.S. and Z.S. During the night F.S. had been woken up by an armed man in a camouflage uniform, a load bearing vest and a mask. There had been two other armed men, similarly attired, in the room. They had not put the lights on and had used their flashlights. They had asked her if there were men in the house, which she denied. The men had taken F.S. with some other women to the living room, whilst Aset Yakhyayeva and Milana Betilgiriyeveva had stayed in the kitchen. F.S. had seen two further armed camouflaged men there. From the living room F.S. had overheard one of the intruders shout: "Sasha, I found a pistol" and the other replying: "Vanya, where is it?", following which the intruders had burst into the living room and had started questioning her about the pistol's owner. F.S. had denied having used the pistol, after which the intruders had left the room, closing the door. Shortly thereafter F.S. had heard them shout: "Sasha, we should finish them off. Let's first kill two women and then take some of them with us and shoot down the others". Following that, a male voice had requested identity cards and a female voice had replied that she was a neighbour. After that, an armed man had again entered the living room and had asked the women to show their legs. However, another armed man had immediately followed him and had ordered him to leave. The armed men had then left the room, closing the door and ordering the women not to come outside. F.S. had asked the intruders if she could see Aset Yakhyayeva and Milana Betilgiriyeveva but they had refused. In the morning F.S. and the other women had discovered that the armed men had taken away Aset Yakhyayeva and Milana Betilgiriyeveva. F.S. had immediately told her father about their abduction.

52. On 2 December 2001 the investigators interviewed L.S. as a witness. She stated that Aset Yakhyayeva and Milana Betilgiriyeveva had stayed at her parents' home on the night of 7 November 2001. In the morning of 7 November 2001 L.S. and the other women had been woken up by a group of armed men in camouflage uniforms who had spoken unaccented Russian. The men had asked L.S. if there were other men in the house. After the

armed men had left, L.S. and the other women had discovered that the intruders had taken away Aset Yakhyayeva and Milana Betilgiriyeveva.

53. On 5 December 2001 the investigators interviewed T.A. as a witness. She stated that she was a neighbour of A.I. and that on 6 November 2001 she had left for Khasavyurt.

54. On 30 June 2002 the investigators re-interviewed F.S. and L.S. as witnesses. They confirmed their account of the events given previously to the investigation.

55. On an unspecified date in 2002 the investigators interviewed Z.A. as a witness. The Government did not furnish a copy of her interview record. When re-interviewed on 2 July 2002, Z.A. stated that on the night of 6 November 2001 she had been with F.S. and other women, that the abductors of Aset Yakhyayeva and Milana Betilgiriyeveva had used flashlights and that she could not describe their faces.

56. On 20 May 2004 the investigators interviewed Kh.M. as a witness. He stated that he was the neighbour of Kh.S. and that on the night of 7 November 2001 he had gone outside his house, had seen a number of armed people in camouflage uniforms and had immediately returned back home. On the morning of 7 November 2001 he had learnt about the abduction of Aset Yakhyayeva and Milana Betilgiriyeveva.

57. On 20 May 2004 the investigators interviewed R.I. as a witness. He stated that on the morning of 7 November 2001 he had been woken up by noise coming from the street and had learnt about the abduction of Aset Yakhyayeva and Milana Betilgiriyeveva from his neighbours.

58. Kh.D., interviewed on 20 May 2004, gave an account of the events of 7 November 2001 similar to that given by R.I.

59. On 3 June 2004 the investigators interviewed military commander G.N. as a witness. He stated that in November 2001 the security forces had received information that members of illegal armed groups had been seen in Serzhen-Yurt. At about 6.30 a.m. on an unspecified date in November 2001 military units under G.N.'s command had entered Serzhen-Yurt. Before entering the village the artillery had fired several shots at it. Three projectiles had hit the village; one of them had hit a house. The special operation had been brought to a close, after which the participating military forces had gathered at one of the houses on the outskirts of the village. There being a large number of village residents gathered at the same time, G.N. had not verified how many people had been arrested during the sweeping operation and had ordered the military units to return to Shali. At some point G.N. had been approached by a man who had handed him the passports of two women who had been arrested during the operation. G.N. had told him to apply to the military commander's office, which the man had done. At about 11 a.m. on 7 November 2001 G.N. had inquired about the women with FSB officers and had told the man that the women he was looking for had not been arrested. G.N. submitted, in addition, that the

group of servicemen who had participated in the sweeping operation in the area covering the house from which the two women had been abducted had driven an APC belonging to the 70th regiment. G.N. had subsequently talked to the servicemen from the APC and they had told him that “they had not placed anyone in their APC during the sweeping operation”.

60. When re-interviewed on 21 June 2004, G.N. confirmed his previous account of the events. He stated, in addition, that on 6 November 2001 the military commander’s office had received information that about thirty members of illegal armed groups had come to Serzhen-Yurt to get food supplies. On the night of 6 November 2001 the military forces led by G.N. had blockaded the village. At about 6.30 a.m. on 7 November 2001 G.N., leading a convoy of three units of military forces, had approached the village. When the special operation had commenced, gunfire and shelling had been opened. Three projectiles had hit the village, following which G.N. had given an order to stop the operation.

61. On 26 June 2006 the investigators interviewed A.M. as a witness. He stated that on 7 November 2001 he had been woken up by the noise of shelling. Once the shelling had ceased, A.M. had gone outside. There he had seen a large number of servicemen from the federal military forces which had carried out a special operation in the village. Shortly thereafter the head of the local administration, Kh.S., had arrived and had informed the residents that federal troops were carrying out a sweeping operation and that several houses had been damaged by the shelling. A.M. had also learnt from Kh.S. that two women had been arrested during the sweeping operation. A.M. and Kh.S. had gone to the military prosecutor’s office to obtain information on the detained women. They had been received there by commander G.N., who denied having arrested the women and told them that he had already returned the passports of Aset Yakhyayeva and Milana Betilgiryeva to A.I. G.N. had also given A.M. a written note addressed to the FSB, asking officials of that body to take steps to establish the whereabouts of the women. When A.M. and the others with him had handed G.N.’s note to an FSB officer stationed in Shali and had asked him if he could find the women, the officer had told them that they had not been arrested by the FSB.

62. On 26 January 2007 the investigators granted the second applicant victim status in the proceedings in case no. 24206. Being interviewed on the same date, she stated that she had learnt about the abduction of Milana Betilgiryeva from her relatives and that her daughter had been kidnapped by a group of armed men in camouflage uniforms who had spoken unaccented Russian and who had arrived in an APC and a Ural vehicle.

(c) Further investigative steps

63. On 8 November 2001 investigators inspected the crime scene. According to a crime scene inspection report of the same date, no objects of

interest to the investigation were found, except for a shoe imprint detected inside the house. The report also stated that tracks made by an APC had been discovered about 100 metres from the house.

64. On 13 February 2007 the investigators granted the second applicant's request to join the proceedings as a civil party.

(d) Information concerning the decisions to suspend and resume the investigation

65. It follows from the documents submitted by the Government that the investigation in case no. 24206 was suspended, owing to its failure to identify the perpetrators, on the following dates: 17 January 2002, 30 April 2002, 25 July 2002, 27 November 2003, 18 April 2004, 17 June 2004, 22 July 2006, 29 January 2007, 14 February 2007 and 11 January 2010.

66. It follows from the materials available to the Court that the investigation of the abduction of the applicants' missing relatives was resumed on the following dates: 12 March 2002, 5 January 2003, 18 March 2004, 7 May 2004, 22 June 2006, 26 January 2007 and 13 February 2007.

67. On 5 March 2007 the investigators dismissed the second applicant's request that the investigation be resumed and that she be provided with access to the case file materials.

68. According to the Government, the investigation of case no. 24206 is pending.

II RELEVANT DOMESTIC LAW

69. For a summary of the 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

70. 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 Aset Yakhyayeva and Milana Betilgiryeva had not yet been completed. They further argued that the first, second and third applicants had been granted victim status and could have

actively participated in the investigation. Moreover, it had been open to the applicants to complain of omissions or ineffectiveness of the investigation to the courts or to pursue civil complaints but they had failed to do so.

71. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. With reference to the Court's practice, they argued that they had not been obliged to apply to the civil courts in order to exhaust domestic remedies.

B. The Court's assessment

72. The Court will 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).

73. 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.

74. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

75. As regards criminal law remedies, the Court observes that the applicants complained to the law-enforcement authorities immediately after the disappearance of Aset Yakhyayeva and Milana Betilgiryeva and that an investigation has been pending since 7 November 2001. The applicants and the Government dispute the effectiveness of the investigation of the abduction.

76. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the 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

77. The applicants complained under Article 2 of the Convention that their relatives had been deprived of their lives by 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. Submissions by the parties

78. The Government argued that, although servicemen of the military commander’s office had conducted a special operation in Serzhen-Yurt on 7 November 2001, the domestic investigation had obtained no evidence that Milana Betilgiriyeva and Aset Yakhyayeva had been detained in the course of that special operation or that they were dead. The fact that the abductors of the two women had worn camouflage uniforms and masks and had been armed did not prove that they were servicemen. The bodies of the missing women had not been found. According to G.N., the military forces under his command had arrived at the village at about 6.30 a.m. on 7 November 2001. Thus, the special operation had started at that time and not earlier. Moreover, in his statements to the investigation G.N. had never stated that the house from which the women disappeared had been near the house which had been checked by servicemen of the 70th regiment at the time of the abduction of Milana Betilgiriyeva and Aset Yakhyayeva.

79. As regards the investigation, the Government submitted that it had been promptly instituted and was being conducted by an independent authority. The investigators had carried out a substantial number of investigative measures which had included, amongst other things, sending out enquiries about the whereabouts of the missing women, interviewing a large number of witnesses and inspecting the crime scene in due time. In the Government’s submission, the investigation into the abduction of the applicants’ relatives had satisfied the Convention requirements.

80. The applicants submitted that there existed evidence “beyond reasonable doubt” that their relatives had been abducted by State agents during a security operation and that they should be presumed dead following their unacknowledged detention. In particular, it followed from the statements of commander G.N. that on the night of the abduction of their relatives the authorities had conducted a special operation in the village of Serzhen-Yurt, involving a significant number of servicemen and military

vehicles. The village had been under the full and effective control of the federal forces at the time of the abduction. Tracks made by military vehicles had been discovered in the close vicinity of the house from which Milana Betilgiriyeveva and Aset Yakhyayeva had been abducted. Moreover, there was an indication that a particular unit using a particular military vehicle had been responsible for the operation in the area from which the two women had been kidnapped. There were witness statements confirming the fact of a special operation conducted by the federal military forces.

81. The applicants further argued that the investigation into the kidnapping of their relatives had been neither prompt nor effective. It had been pending for over seven years without producing any tangible results. A considerable number of investigative steps had been taken with delay. The interviewing of crucial witnesses, such as commander G.N., had been superficial. Except for G.N., the investigators had not interviewed any other servicemen who had participated in the operation. It was unclear what had become of the footprints found in the house from which the women had been abducted and the tracks made by the APC discovered near it.

B. The Court's assessment

1. Admissibility

82. 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. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 76 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 Milana Betilgiriyeveva and Aset Yakhyayeva

(i) General principles

83. 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, among other authorities, *Orhan*

v. *Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of people 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).

(ii) *Establishment of the facts*

84. 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, §§ 103-109, 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*, 18 January 1978, § 161, Series A no. 25).

85. The applicants alleged that at about 5 a.m. on 7 November 2001 their relatives, Milana Betilgiryeva and Aset Yakhyayeva, had been abducted by servicemen and that they had then disappeared. They invited the Court to draw inferences as to the well-founded nature of their allegations from the Government's failure to provide the entire copy of the criminal case file materials requested from them. They submitted that several people, as well as the second applicant, had witnessed their relatives' abduction.

86. The Government conceded that the applicants' relatives had been abducted on 7 November 2001 by unidentified armed camouflaged men. However, they denied that the abductors had been servicemen, referring to the absence of conclusions from the ongoing investigation.

87. The Court notes that despite its requests for a copy of the investigation file into the abduction of Milana Betilgiryeva and Aset Yakhyayeva, the Government refused to produce an entire copy of the case file, without providing an explanation for their failure to do so, which the Court finds unacceptable (compare *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

88. 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-founded nature of the applicants' allegations.

89. Having regard to the applicants' submissions, the Court considers that they presented a coherent and convincing picture of their relatives' abduction on 7 November 2001 by a group of armed and camouflaged men during a security operation conducted by the federal forces. It observes that the applicants' account was consistent both throughout the domestic investigation and before this Court (see paragraphs 9-22, 49 and 62 above).

It was moreover confirmed by numerous witness statements, as reflected, among other things, in the selection of the materials from the criminal case file that the Government agreed to disclose.

90. Besides the fact that the Government acknowledged that at the material time the military forces had conducted a large-scale security operation in Serzhen-Yurt involving a significant number of servicemen and the presence of armoured military vehicles, such as APCs, and accompanied by shelling of the village, it follows from the witness statements and other documents available to the Court that the abductors wore camouflage uniforms and spoke unaccented Russian, that they proceeded to check the missing persons' passports, told them they would bring them to the military commander's office and that tracks left by APCs were found in the close vicinity of the house from which Aset Yakhyayeva and Milana Betilgiriyeva had been abducted (see paragraphs 47, 48, 51-52, 54-61 and 63 above).

91. In so far as the Government can be understood to argue that the women might have been abducted before the military forces had entered the village, it follows from G.N.'s statement that by 6.30 a.m. the village had already been sealed off for several hours (see, for example, paragraph 60 above). Hence, the Court cannot accept their submission as convincing.

92. In the Court's view, the fact that the applicants' relatives had been abducted from a sealed-off area during a large-scale special operation by armed and camouflaged men who spoke unaccented Russian, and who proceeded to check the victims' identity documents, mentioning that they would be brought to the local military commander's office, strongly supports the applicants' allegation that the abductors were servicemen.

93. The Court notes that in their applications to the authorities the applicants consistently maintained that their relatives had been detained by unknown servicemen and that they had requested that the investigating authorities look into that possibility. It further notes that after more than ten years the investigation has produced no tangible results.

94. The Court observes that where an applicant makes out a prima facie case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, 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 (extracts)).

95. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their relatives were abducted by servicemen. The Government's statement that the investigation had not found any evidence to support the involvement of servicemen in the

kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents, which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Milana Betilgiryeva and Aset Yakhyayeva were arrested on 7 November 2001 by servicemen during a security operation.

96. There has been no reliable news of the two women since the date of the kidnapping. Their names have not been found in any official detention facility records. Lastly, the Government have not submitted any explanation as to what happened to them after their arrest.

97. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among many others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006 VIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007; and *Taymuskhanovy v. Russia*, no. 11528/07, 16 December 2010), the Court finds that in the context of the conflict in the Chechen Republic, 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 Milana Betilgiryeva or Aset Akhyayeva or of any news of them for more than ten years supports this assumption.

98. Accordingly, the Court finds that the evidence available permits it to establish that Milana Betilgiryeva and Aset Yakhyayeva must be presumed dead following their unacknowledged detention by State servicemen.

(iii) *The State's compliance with Article 2*

99. 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. 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*, 27 September 1995, §§ 146-147, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

100. The Court has already found it established that the applicants' relatives must be presumed dead following their unacknowledged detention by State servicemen. Noting that the authorities do not rely on any ground of justification in respect of any use of lethal force by their agents, it follows that liability for their presumed deaths is attributable to the respondent Government.

101. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Milana Betilgiryeva and Aset Yakhyayeva in its substantive aspect.

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

102. 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, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 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 and carried out with reasonable promptness and expedition. It should also be effective in the sense that it is capable of leading to a determination of whether or not the force used in such cases was lawful and justified in the circumstances, and should afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

103. The Court notes at the outset that the Government refused to produce an entire copy of case file no. 24206 and furnished only copies of some of the documents from it. It therefore has to assess the effectiveness of the investigation on the basis of the very sparse information submitted by the Government and the few documents available to the applicants that they provided to the Court.

104. Turning to the circumstances of the present case, the Court observes that the applicants immediately notified the authorities about the abduction of Milana Betilgiryeva and Aset Yakhyayeva. The investigation into their abduction was opened on the same day – that is, on 7 November 2001. Hence, it is satisfied that it was promptly instituted.

105. The Court now has to assess the scope of the investigative measures taken.

106. In this respect, the Court notes in the first place that a number of investigative steps were taken with considerable delay, for which the Government offered no explanation. In particular, it is unclear why the investigating authorities waited for more than three years before interviewing commander G.N., although in their initial reports of the abduction the applicants clearly mentioned his name, rank and role in the

special operation. The Court is also surprised by the superficial character of his interviews. Amongst other things, it remains unexplained why the investigators did not obtain from him more specific information as to the military units which had participated in the operation and other details concerning its conduct which might have been relevant for the establishment of the circumstances in which the two women had been abducted. It is also not entirely clear why it took the investigators so long to identify and interview the neighbours of F.S. who had been present during the security operation (see, for example, paragraphs 56 and 61 above).

107. It further transpires that a number of crucial investigative steps were never taken. Amongst other things, there is no indication, despite the presence of information on the conduct of the special operation, that the investigators attempted to identify the military units which participated in it or to interview the servicemen involved. It appears that no serious efforts have been made to establish which military vehicles were used in the operation and where the people eventually arrested in the course of it were held. This is particularly striking, given that G.N. had explicitly acknowledged that the military forces had arrested a number of people (see paragraph 59 above). It is also unclear what has become of the information concerning the tracks made by the APC discovered near the house from which the applicants' relatives were abducted.

108. It is obvious that, if they were to produce any meaningful results, these investigative measures should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. The delays and omissions, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious matter (see *Öneriyıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

109. The Court further notes that although the first and third applicants were granted victim status shortly after the opening of the proceedings in case no. 24206, it was only in January 2007, over five years after the institution of the investigation, that the second applicant was also granted victim status. Furthermore, having regard to the applicants' unanswered requests for information on the progress of the investigation (see, for example, paragraph 39 above), the Court has serious doubts that the investigators ensured that the investigation received the required level of public scrutiny, or safeguarded the interests of the next of kin in the proceedings.

110. Lastly, the Court notes that the investigation was adjourned and resumed on numerous occasions. It also transpires that there were lengthy periods of inactivity on the part of the prosecuting authorities when no investigative measures were being taken.

111. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch 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 and omissions, has been pending for many years with no tangible results.

112. Furthermore, the applicants, who had no access to the case file and who were not properly informed of the progress of the investigation, could not have effectively challenged any acts or omissions of the investigating authorities before a court. Moreover, owing to the time elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier can no longer be usefully conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospect of success.

113. In the Court's opinion, the Government also failed to demonstrate that the fact of the applicants' having victim status improved the above-described situation.

114. In sum, the Court finds that the remedies relied on by the Government were ineffective in the circumstances and dismisses their preliminary objection.

115. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Milana Betilgiryeva and Aset Yakhyayeva, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

116. The applicants relied on Article 3 of the Convention, submitting that as a result of their relatives' disappearance and the State's failure to investigate it 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."

A. The parties' submissions

117. The Government argued that the investigation had not established that the applicants had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

118. The applicants maintained the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

120. 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*, cited above, § 358, and *Imakayeva*, cited above, § 164).

121. In the present case, the Court notes that the applicants are close relatives of the disappeared women. For more than ten years they have not had any news of their relatives. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about Milana Betilgiryeva and Aset Yakhyayeva. Despite their attempts, the applicants have never received any plausible explanation or information about what became of their relatives following their detention. The responses they received mostly denied State responsibility for their arrest or simply informed them that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

122. 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

123. The applicants further stated that Aset Yakhyayeva and Milana Betilgiryeva had been detained in violation of the guarantees contained in 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

124. The Government asserted that no evidence had been obtained by the investigators to confirm that Aset Yakhyayeva and Milana Betilgiriyeveva had been deprived of their liberty. They had not been listed among the people kept in detention centres and none of the regional law-enforcement agencies had had information about their detention.

125. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

127. 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).

128. The Court has found that Aset Yakhyayeva and Milana Betilgiriyeveva were arrested by State servicemen on 7 November 2001 and

have not been seen since. Their detention was not acknowledged, was not logged in any custodial 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 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, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

129. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' reports that their relatives 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 them against the risk of disappearance.

130. In view of the foregoing, the Court finds that Aset Yakhyayeva and Milana Betilgiryeva 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 13 OF THE CONVENTION

131. The applicants further complained that they had been deprived of effective remedies in respect of the aforementioned violations of the Convention, 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

132. 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 had the opportunity to challenge the acts or omissions of the investigating authorities in court. They added that participants in criminal proceedings could also claim damages in civil proceedings, and referred to cases where victims in criminal proceedings had been awarded damages

from state bodies. In sum, the Government submitted that there had been no violation of Article 13.

133. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

135. The Court reiterates that in circumstances where, as here, a criminal investigation into a disappearance has been ineffective and the effectiveness of any other remedy that might 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 (see *Khashiyev and Akayeva*, cited above, § 183).

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

137. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction 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).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

138. Article 41 of the Convention provides:

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

A. Damage

139. The applicants did not submit any claims for pecuniary damage. They claimed non-pecuniary damage for the suffering they had endured as a result of the loss of their relatives, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives, leaving the determination of its amount to the Court.

140. The Government submitted that, should the Court find a violation of the applicants' Convention rights, such finding of a violation would constitute a sufficient just satisfaction.

141. 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' 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. Accordingly, it awards the applicants jointly 120,000 euros (EUR), plus any tax that may be chargeable to them.

B. Costs and expenses

142. The applicants were represented by the SRJI. They submitted an agreement between the third applicant and SRJI for the representation of the applicants before the Court, an itemised schedule of costs and expenses that included the drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 8,036.

143. The Government pointed out that the applicants should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had actually been incurred and are reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005).

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

145. Having regard to the details of the information and legal representation contracts submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

146. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time that, due to the application of former Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. Moreover, the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that research was necessary to the extent claimed by the representatives. The Court notes that

the applicants did not submit any documents in support of their claim for administrative costs.

147. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 4,500, together with any value-added tax that may be chargeable to the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Aset Yakhyayeva and Milana Betilgiryeva;
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 Aset Yakhyayeva and Milana Betilgiryeva disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Aset Yakhyayeva and Milana Betilgiryeva;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
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, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:

(i) EUR 120,000 (one hundred twenty thousand euros) to the applicants jointly, in respect of non-pecuniary damage;

(ii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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 27 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Peer Lorenzen
President