



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

FIRST SECTION

CASE OF BATAYEV AND OTHERS v. RUSSIA

(Applications nos. 11354/05 and 32952/06)

JUDGMENT

STRASBOURG

17 June 2010

FINAL

22/11/2010

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

In the case of Batayev 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,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 May 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 11354/05 and 32952/06) 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 ten Russian nationals listed below (“the applicants”), on 15 March 2005 and 12 July 2006 respectively.

2. The applicants were represented by Ms L. Khamzayeva and Mr D. Itslyayev, lawyers practising in Moscow and in Nazran respectively. The applicants in application no. 11354/05 were granted legal aid. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new representative, Mr G. Matyushkin.

3. The applicants alleged that their seven male relatives had disappeared after their detention by the security forces in Grozny in 2000. They invoked Articles 2, 3, 5 and 13 of the Convention, as well as Article 1 of Protocol No. 1.

4. On 3 October 2007 and on 21 April 2009 respectively the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the applications, and to give notice of the applications to the Government. It also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3 of the Convention).

5. The Government objected to the joint examination of the admissibility and merits of application no. 11354/05. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants in application no. 11354/05 are:

1. Mr Khuseyn Batayev,
2. Mr Vakha Batayev,
3. Ms Razet Sambiyeva,
4. Ms Layla Ibragimova, born in 1950,
5. Ms Elisa Ibragimova, born in 1977,
6. Ms Baret Ilyasova,
7. Ms Luiza Temurkayeva, born in 1975,
8. Ms Zura Ismailova, born in 1955, and
9. Ms Brilliant Musayeva, born in 1951.

The applicant in application no. 32952/06 is:

10. Ms Zemfira Alayeva, born in 1973.

7. All applicants live in the Chechen Republic (Chechnya), Russia.

A. The applicants' relatives' disappearance

8. The applicants belong to six families. Their seven male relatives were detained in two separate incidents in 2000 in Grozny or the Grozny district and subsequently disappeared. None of the applicants had witnessed the detention of their family members and their account is based on the witnesses' accounts. The first nine applicants have been conducting the search for their relatives together.

1. Apprehension of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev

9. The second and third applicants are the parents of the first applicant and of Khasan Batayev, who was born in 1979. The fourth applicant is the mother of Zaur Ibragimov, who was born in 1975. The fifth applicant is his wife. The sixth applicant is the mother of Magomed Temurkayev, who was born in 1974 and is married to the seventh applicant. The eighth applicant is the mother of Rizvan Ismailov, who was born in 1974. The ninth applicant is the mother of Sayd-Ali Musayev, born in 1973, and Kharon Musayev, born in 1976.

10. On 18 September 2000 Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Khasan Batayev were at Khasan Batayev's home at 44 Vostochnaya Street, Grozny. Two

cars, a VAZ-21099 used by Magomed Temurkayev and a VAZ-2106 driven by Zaur Ibragimov, were parked in the courtyard.

11. At about 4 p.m. two armoured personnel carriers (“APCs”) and a UAZ vehicle with the registration number 480-20-RUS arrived at 44 Vostochnaya Street. A group of men wearing camouflage uniforms and armed with machine guns got out of the vehicles and burst inside. They seized Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev and took them away. The armed men also took the two VAZ cars. The men spoke unaccented Russian.

12. The applicants have had no news of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev since 18 September 2000.

13. The Government in their observations did not dispute most of the facts as presented by the applicants. They stated that on 18 September 2000 “unidentified persons wearing camouflage uniforms” had entered the house at 44 Vostochnaya Street in Grozny and taken away Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev, whose whereabouts remained unknown. The Government denied that the stolen cars had belonged to Magomed Temurkayev and Zaur Ibragimov. They also challenged certain aspects of the applicants' version of the events with reference to the documents from the criminal investigation file (see details below).

2. Apprehension of Usman Mavluyev

14. The tenth applicant is the wife of Usman Mavluyev, who was born in 1972.

15. In the autumn of 1999, during the counter-terrorist operation in Chechnya, she lived with her husband and their two sons at 81 Zabolotnogo Street in Grozny.

16. In November 1999, fearing for her sons' safety, the applicant went with them to stay with her mother, who lived in the village of Zakan-Yurt in the Achkhoy-Martan District. Her husband remained in Grozny.

17. On 7 January 2000 Ms Z.A., a friend and a remote relative of the Mavluyevs who also lived in Grozny, heard from other residents that, owing to the intensification of the military operations, on 8 January 2000 a “humanitarian corridor” would be arranged for civilians so as to let them escape from the fighting in Grozny. In the evening Ms Z.A. and Usman Mavluyev agreed to use that corridor and to leave for Zakan-Yurt.

18. At approximately 10 a.m. on 8 January 2000 Usman Mavluyev, Ms Z.A., Ms S., Ms R.G. and Ms L.G. walked towards the southern exit from Grozny through the village of Chernorechye. At a certain point they were joined by Mr V. At the checkpoint in Chernorechye they were stopped for a document inspection by servicemen of the Russian interior troops. At

that moment Usman Mavluyev and Mr V. were the only men in the group of civilians trying to leave Grozny. They presented their passports to the servicemen. After that the servicemen tied their hands, put bags on their heads and dragged them to an APC. The servicemen did not put any questions to them. Usman Mavluyev did not want to go and obeyed the servicemen reluctantly. Then they hit him with the butt of an assault rifle and forced him and Mr V. into the APC. Usman Mavluyev has never been seen again.

19. A few minutes after the APCs had left, bombing began. In panic, Ms Z.A., together with other residents, ran back to Grozny. On 12 January 2000 she managed to leave Grozny and arrive in Zakan-Yurt. There she related to the tenth applicant the circumstances of her husband's detention. Ms Z.A.'s written account dated 5 September 2006 was enclosed with the application. In her further submissions the tenth applicant also referred to Ms Z.A. as Ms A.A.

20. The tenth applicant has had no news of Usman Mavluyev since 8 January 2000.

21. The Government in their observations did not challenge most of the facts as presented by the applicant. They stated that on 8 January 2000 Usman Mavluyev had been apprehended by "unidentified persons" at the checkpoint in Chernorechye and taken away to an unknown destination. The Government disputed the involvement of State agents in Usman Mavluyev's disappearance.

B. Search for the applicants' relatives and the investigation

22. The accounts in this subsection are mainly based on the information provided by the applicants. It appears that all of them sent numerous letters to the prosecutors and other authorities, describing the circumstances in which their relatives had been detained and asking for assistance and details of the investigation. The first nine applicants submitted a significant number of replies from the authorities forwarding their requests to different prosecution services. They received hardly any substantive information from the official bodies about the investigation into the disappearances. As regards the tenth applicant, she received information on the subsequent course of the investigation in 2008, after her request to study the case file had been granted by the domestic courts (see paragraphs 147-156 below). Below is a summary of the letters kept by the applicants and the replies they received from the authorities, and of other relevant developments.

23. In their observations the Government submitted some additional important details on the progress of the investigation, which are summarised separately in part C below.

1. Search for Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev

24. It appears that shortly after the abduction of the six men their relatives started complaining about it and the theft of the two cars to various State officials.

25. On 2 October 2000 criminal investigation file no. 12199 into Khasan Batayev's kidnapping was opened under Article 126 § 2 of the Russian Criminal Code ("aggravated kidnapping") by the Grozny town prosecutor's office ("the town prosecutor's office").

26. On 11 November 2000 the town prosecutor's office instituted an investigation into Magomed Temurkayev's kidnapping under Article 126 § 2 of the Russian Criminal Code ("aggravated kidnapping"). The case was assigned number 12256.

27. On 16 November 2000 the town prosecutor's office launched criminal investigation file no. 12263 into Rizvan Ismailov's kidnapping.

28. In their observations the Government submitted that on 2 December 2000 the investigation in case no. 12199 had been suspended on account of the failure to identify the perpetrators. The Government submitted no relevant documents.

29. On 8 January 2001 the town prosecutor's office suspended the proceedings in case no. 12263 for the same reason.

30. On 9 January 2001 the town prosecutor's office opened criminal investigation file no. 11012 into Zaur Ibragimov's kidnapping.

31. On 1 February 2001 the prosecutor's office of the Chechen Republic ("the Chechnya prosecutor's office") forwarded the sixth applicant's complaint to the town prosecutor's office and commented that Magomed Temurkayev had been taken away by "unidentified military servicemen in masks".

32. On 9 February 2001 the Chechnya prosecutor's office forwarded to the town prosecutor's office the seventh applicant's complaint about the disappearance of her son, who had been apprehended by "unidentified military servicemen".

33. On 2 April 2001 the town prosecutor's office instituted a criminal investigation into the kidnapping of the ninth applicant's sons, Sayd-Ali Musayev and Kharon Musayev, under Article 126 § 2 of the Russian Criminal Code ("aggravated kidnapping"). The case was assigned number 11107.

34. On 26 April 2001 the investigation in criminal case no. 12199 was resumed. On the same day cases nos. 12256, 12263 and 11012 were joined to it.

35. On 16 July 2002 the Chechnya prosecutor's office informed the applicants, including the ninth applicant, that the investigation in case no. 12199 had been suspended and then resumed and that the case file had been transferred to the town prosecutor's office.

36. On 19 August 2002 the Chechen Department of the Ministry of the Interior, pursuant to the rules on territorial jurisdiction, forwarded the eighth applicant's complaint about Rizvan Ismailov's apprehension "by military servicemen" to the department of the interior of the Leninskiy District of Grozny.

37. On 5 November 2002 the applicants' counsel requested the Main Department for the Execution of Sentences to inform him whether Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev had been in detention since September 2000. On 29 November 2002 the Main Information Centre of the Ministry of the Interior replied that it had no information concerning the six missing men.

38. On 25 November 2002 the town prosecutor's office granted victim status to the ninth applicant in case no. 11107 in relation to her sons' kidnapping.

39. On 19 December 2002 the town prosecutor's office suspended the proceedings in case no. 11107 on account of the failure to identify the perpetrators and ordered the police to pursue more actively the search for Sayd-Ali Musayev and Kharon Musayev.

40. On 15 October 2003 the prosecutor's office of the Leninskiy District of Grozny ("the district prosecutor's office") granted victim status in case no. 12199 to the following five applicants: the second, eighth and ninth applicants in relation to their sons' kidnapping; and the fourth and sixth applicants in relation to their sons' kidnapping and the theft of their cars. The decision referred to the registration number of the car which had belonged to Zaur Ibragimov, but only referred to the type of vehicle – VAZ-21099 – used by Magomed Timurkayev. The first, third, fifth and seventh applicants were not granted victim status.

41. On 24 October 2003 the district prosecutor's office suspended the proceedings in case no. 12199 because the term of the preliminary investigation had expired and ordered the police to pursue more actively the search for the disappeared men. According to the decision, the six men had been apprehended by "unidentified persons" wearing camouflage uniforms and armed with machine guns.

42. In their observations the Government submitted that on 7 April 2005 case no. 11107 had been joined to case no. 12199.

43. On 14 December 2005 the district prosecutor's office resumed the investigation in case no. 12199.

44. On 15 January 2006 the district prosecutor's office stayed the investigation in case no. 12199 on account of the failure to identify the perpetrators and establish their whereabouts.

45. On 12 November 2007 the district prosecutor's office resumed the investigation in case no. 12199.

46. It appears that the investigation in criminal case no. 12199 has remained pending thereafter.

2. Search for Usman Mavluyev

(a) Criminal proceedings

47. On 13 January 2000 the tenth applicant went to Gudermes, since all administrative and law-enforcement agencies were located there during the hostilities in Grozny. She submitted written applications concerning her husband's unlawful detention to the military prosecutor, the department of the interior and the department of the Federal Security Service ("the FSB"). She was promised that necessary measures would be taken.

48. The tenth applicant has not enclosed copies of her applications. She enclosed a certificate of 6 June 2000 issued by the Achkhoy-Martan district department of the FSB stating that in January 2000 she had applied to that department in connection with her husband's disappearance. The certificate also stated that, according to the check that had been conducted, Usman Mavluyev had been a missing person since 8 January 2000. The Government in their observations disputed the authenticity of this document.

49. According to the tenth applicant, since January 2000 she went to Gudermes approximately every three days to find out whether there was any news about her husband. Several times she met the Deputy Prosecutor of the Chechen Republic, who each time asked her to submit a written application, which she did. He also took from the applicant her husband's photo and copies of their children's birth certificates.

50. In the end of March 2000 and in February 2001 the tenth applicant went to prisons in Pyatigorsk and in Voronezh since she had heard that detainees from Chechnya were held there. However, prison officials told the applicant that her husband was not being held there.

51. Since the tenth applicant submitted numerous applications to State authorities concerning her husband's disappearance and then regularly met with State officials in this connection, she believed that an official investigation was under way. However, when in January 2004 she applied in person to the prosecutor's office of the Zavodskoy District of Grozny – the district where her husband's detention had taken place – she found out that no criminal investigation had been initiated. She then lodged a request for the institution of criminal proceedings.

52. On 16 April 2004 the Zavodskoy District Prosecutor's Office ("the district prosecutor's office") instituted criminal investigation no. 31036 into Usman Mavluyev's abduction under Article 126 § 2 of the Russian Criminal Code ("aggravated kidnapping").

53. On 18 April 2004 the tenth applicant was granted victim status in the criminal proceedings.

54. The applicant received information on the subsequent course of the investigation in 2008, after her request to study the case file had eventually been granted by the domestic courts (see paragraphs 147-156 below).

55. On 19 April 2004 Ms A.A., also referred to by the tenth applicant as Ms Z.A., was questioned. She submitted that when she had been trying to leave Grozny with other civilians on 8 January 2000, servicemen at the checkpoint in Chernorechye had apprehended Usman Mavluyev and Mr V.

56. On 1 May 2004 the district prosecutor's office requested the military commander of the Urus-Martan district to provide information about the military units deployed in Chernorechye in January 2000. Similar requests were sent to other military commanders in the Chechen Republic, the head of the Operational Search Bureau no. 2 ("the ORB-2") and the head of the Chechnya FSB Department.

57. On the same date the district prosecutor's office requested the head of the Achkhoy-Martan district department of the interior (ROVD) to identify close relatives of Usman Mavluyev residing in Zakan-Yurt and to check whether he had been a member of an illegal armed group. At the same time the head of the Zavodskoy ROVD was requested to establish which units of the federal forces had been deployed at the checkpoint in Chernorechye, which officers had been on duty at the checkpoint on 8 January 2000, to identify close relatives of Usman Mavluyev and witnesses to his abduction and to summon them to the district prosecutor's office.

58. On 8 May 2004 the district prosecutor's office sent requests to the heads of remand prisons in the Northern Caucasus for information as to whether Usman Mavluyev was detained in any of their detention facilities.

59. In May and June 2004 the military commanders of the Zavodskoy and Urus-Martan districts and the Chechnya FSB department replied that their offices had no information about Usman Mavluyev's involvement in an illegal armed group. They also had no information about his abduction by federal servicemen or about the deployment of the federal forces in Chernorechye on 8 January 2000.

60. On 25 May 2004 Ms R.G. and Ms L.G. were questioned. Their statements corroborated that of Ms A.A.

61. On 1 June 2004 Ms S. was questioned. Her statement corroborated those of other witnesses.

62. On 16 June 2004 the district prosecutor's office suspended the investigation on account of the failure to identify the perpetrators.

63. On 22 June 2004 the head of the ORB-2 replied that officers of the ORB-2 had not detained Usman Mavluyev.

64. On 10 August 2004 the assistant to the head of the United Group Alignment ("the UGA") replied that he had no information about Usman Mavluyev's detention and whereabouts and that documents concerning the

UGA's activities in 2000 were stored in the archives of the Ministry of Defence.

65. In September 2004 the applicant went to the FSB headquarters in Moscow. She left a written application addressed to the head of the FSB in which she set out the circumstances of her husband's detention. She received no reply.

66. On 26 April 2006 the Achkhoy-Martan District Court declared Usman Mavluyev a missing person as from 9 January 2000. It noted that a criminal investigation into his abduction had been pending since April 2004.

67. On 20 November 2006 the district prosecutor's office resumed the proceedings and ordered certain investigative measures. The decision stated, in particular:

“In the course of the preliminary investigation it has been established that on 8 January 2000 [Mr] Usman Mavluyev, born in 1972, was apprehended at the checkpoint of the federal forces at the exit from the village of Chernorechye and taken to an unknown destination...”

68. On 30 November 2006 the district prosecutor's office requested the FSB department in the Southern Federal Circuit to conduct a search for Usman Mavluyev. Requests for information as to Usman Mavluyev's whereabouts were also sent to the district military commanders in Grozny and the FSB departments in Grozny and in the Chechen Republic.

69. On the same date the district prosecutor's office requested the penitentiary service departments in the Southern Federal Circuit to provide information as to whether Usman Mavluyev had ever been admitted to custodial facilities in these regions. The heads of remand prisons in the region were also requested to provide information as to whether Usman Mavluyev had been held in any such facilities at any time after January 2000. The requests specified that he had been detained at the checkpoint of the federal forces.

70. Also on 30 November 2006 the district prosecutor's office requested the Zavodskoy ROVD to identify witnesses to Usman Mavluyev's abduction and to establish which units of the federal forces had been deployed at the checkpoint in Chernorechye on 8 January 2000. Requests were also sent to all district and town prosecutors' offices to check whether criminal proceedings had been instituted into the discovery of an unidentified body resembling Usman Mavluyev. At the same time the heads of the district departments of the interior in Chechnya were requested to check whether any unidentified bodies resembling Usman Mavluyev had been found within their departments' jurisdiction after 8 January 2000.

71. On the same date the district prosecutor's office requested the ORB-2 to take steps to establish the perpetrators of Usman Mavluyev's abduction. The Leninskiy ROVD in Grozny was requested to take measures to establish Usman Mavluyev's whereabouts and to check whether any unidentified bodies that resembled him had been discovered.

72. On 20 December 2006 the district prosecutor's office again suspended the investigation on account of the failure to identify the perpetrators.

73. In January and February 2007 the Gudermes and Kurchaloy district law-enforcement authorities replied to the district prosecutor's office that they had no information concerning Usman Mavluyev and that no criminal proceedings had been instituted in connection with the discovery of unidentified bodies resembling him.

74. On 15 January 2007 the head of the Federal Penitentiary Service department in Kalmykiya replied that registers of custodial facilities in the republic contained no information about Usman Mavluyev's detention after 8 January 2000.

75. On 24 July 2009 Special Investigation Unit No. 2 (*Отдел по расследованию особо важных дел № 2*) of the Chechnya Prosecutor's Office ("the SIU-2") was entrusted with the investigation in case no. 31036. On the same day the SIU-2 reopened the investigation.

76. On 28 July 2009 the SIU-2 amended the surname of the tenth applicant's husband for investigation purposes and indicated his correct surname to the Chechnya prosecutor's office (his name was spelled "Movluyev" in some of the documents).

77. On 24 November 2009 the SIU-2 suspended the investigation because the term of the preliminary investigation had expired and ordered the district prosecutor's office to pursue the search for the perpetrators.

(b) Leave to study the investigation file, request for legal aid and the grant of the status of a civil claimant

78. On 14 September 2006 the tenth applicant applied to the district prosecutor's office, seeking leave to study the investigation file and to make copies of it.

79. On 26 September 2006 she applied to the same prosecutor's office with a request for legal aid.

80. On 3 November 2006 the tenth applicant again applied to the district prosecutor's office, this time seeking leave to be granted the status of a civil claimant.

81. On 30 November 2006 the district prosecutor's office granted the tenth applicant the status of a civil claimant in case no. 31036 but refused her leave to study the case file until the completion of the investigation.

82. On 1 December 2006 the district prosecutor's office issued a formal decision to grant the tenth applicant the status of a civil claimant.

83. On 8 December 2006 the applicant requested a copy of the decision of 1 December 2006.

84. On 14 December 2006 the applicant asked the district prosecutor's office about the outcome of the examination of her request for legal aid.

85. On 28 December 2006 the district prosecutor's office informed her that the reply had been sent to her on 28 September 2006. It appeared that the request had been refused.

C. Information about the investigation submitted by the Government

1. Investigation into the kidnapping of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev

86. Despite specific requests by the Court the Government did not disclose most of the contents of the criminal investigation files. Thus, they submitted 50 pages from criminal investigation files nos. 11012, 11107, 12199, 12256 and 12263. The documents submitted included decisions to open, suspend and resume the investigations and to grant victim status, as well as letters to the relatives informing them of the adjournment and reopening of the proceedings. No other documents, such as witness statements or expert reports, were produced by the Government.

87. 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 Code of Criminal Procedure, since the files contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

88. The documents, as well as the Government's submissions with regard to the investigation, can be summarised as follows.

89. The Government did not dispute the information provided by the applicants as regards most of the starting dates of the investigation into the applicants' relatives' abduction by "unidentified men in camouflage uniforms" on 18 September 2000. The Government submitted that the investigation had started with the opening of case no. 12199 in respect of Khasan Batayev on 2 October 2000; of case no. 12256 in respect of Magomed Temurkayev on 11 November 2000; and of case no. 12263 in respect of Rizvan Ismailov on 16 November 2000.

90. At the same time, the Government stated that the criminal investigation in case no. 11012 in respect of Zaur Ibragimov had been opened on 9 November 2000 and not on 9 January 2001 as the applicants asserted. It also follows from the documents produced by the Government, in particular from the town prosecutor's reply to the fourth applicant dated 27 April 2001, that criminal investigation no. 11012 was instituted on 9 November 2000 in respect of both Rizvan Ismailov and Zaur Ibragimov. The Chechnya prosecutor's reply to the eighth applicant dated 20 November 2001 states that investigation no. 12263 had been launched on 8 November 2000.

91. The Government further submitted that on 2 April 2001 the town prosecutor's office had opened criminal investigation no. 11107 into the kidnapping of Sayd-Ali Musayev and Kharon Musayev. On 26 April 2001 cases no. 11012, 12256 and 12263 had been joined to case no. 12199. On 7 April 2005 case no. 11107 was joined to case no. 12199.

92. On 15 October 2003 the second, eighth and ninth applicants were granted victim status in relation to their sons' kidnapping. On the same day the fourth and sixth applicants were granted victim status in relation to their sons' kidnapping and the theft of the cars. The first, third, fifth and seventh applicants were not granted victim status. The Government submitted that after October 2003 only the applicants who had victim status had been duly informed of all decisions taken during the investigation.

93. The Government stated that after October 2003 the applicants and a number of witnesses were questioned by the investigation. The Government provided a brief outline of their accounts, without appending copies of the transcripts or specifying the dates of the questioning. Their submissions can be summarised as follows.

94. The second applicant was questioned as a victim. He testified that his son, Khasan Batayev, had not participated in illegal armed groups. He had been involved in oil-extraction activities. On 18 September 2000 Khasan had gone to the Oktyabrskiy District of Grozny, in order to search for oil. The second applicant had not seen him thereafter. On 19 September 2000 an unknown boy had come to the applicant's house and said that on the previous day a group of armed men had seized seven or eight persons, including his son, at 44 Vostochnaya Street in Grozny and had driven them away. Some time later the applicant learnt that a certain Ms Mosha had let the house to young police officers. The applicant did not know his son's friends. He was unaware of why his son had gone to their home.

95. The eighth applicant gave a similar account of the events.

96. It appears that the ninth applicant was questioned at least twice, once as a witness and once as a victim. As a witness, she testified that her sons, Sayd-Ali Musayev and Kharon Musayev, had left the family residence in September 2000. She had not seen them thereafter. On 19 September 2000 the special police force unit (*OMON*) had informed her that on the previous day her sons had been apprehended by masked men wearing camouflage uniforms at 44 Vostochnaya Street in Grozny. She also found out that a certain Ms Mosha had let the house to the police officers, who, together with her son, had been apprehended and taken away that day.

97. The sixth applicant's statements corroborated those of the ninth applicant.

98. Further questioned as a victim, the ninth applicant mentioned that her sons had worked as law-enforcement officers and rented the house at 44 Vostochnaya Street in Grozny, close to their workplace. On 18 September 2000 two or three APCs and a UAZ vehicle had arrived at

their place of residence. A group of armed men had got out of the cars and burst into the house. The men had seized her sons and some other persons, put them in one of the APCs and driven them away.

99. The fourth applicant testified that on 18 September 2000 her son, Zaur Ibragimov, had been at Sayd-Ali Musayev's home at 44 Vostochnaya Street, together with Magomed Temurkayev, Kharon Musayev, Rizvan Ismailov and Khasan Batayev. An APC and three other vehicles (a VAZ, a grey UAZ and a white Zhiguli – all without registration numbers) arrived at the house. A group of masked men wearing military uniforms got out of the cars, entered the house and seized the above-mentioned persons, forcing them out blindfolded with their hands tied.

100. The investigation also questioned Ms Ma. (also referred to as “Ms Mosha” by the applicants) as a witness. She testified that house no. 44 in Vostochnaya Street belonged to her brother, who had lived abroad. In the summer of 2000 she had let the house to a young man called “Kharon”. He had settled in together with his family. On 18 September 2000 neighbours had told her that some young men had been apprehended at the house by a group of armed persons in two APCs and several UAZ vehicles. The armed persons had then driven them to an unknown destination. A car had also been taken away.

101. The Government also referred to the testimony of Ms Mu., a neighbour residing at 39 Vostochnaya Street. Ms Mu. stated that in the middle of September 2000 she had seen servicemen arrive and encircle houses nos. 44 and 46 in Vostochnaya Street. They had ordered the persons outside to return to their houses. Some time later she had looked down the street and seen persons being forced out from house no. 44 and into an APC and a UAZ vehicle.

102. According to the Government, the investigation also questioned another ten relatives and neighbours of the disappeared persons, including the fifth applicant and Rizvan Ismailov's cousin. None of them had witnessed the abduction and they had learnt about the events several days later. Rizvan Ismailov's cousin submitted that in 2000 Rizvan had worked as a security agent for the mayor of Grozny. The Government submitted that the criminal investigation file contained Rizvan Ismailov's record of employment, according to which he had served as a security agent of the Deputy Envoy of the President of the Russian Federation in the Southern Federal Circuit.

103. The investigation also questioned some officials. Officer D., who at the time had worked at the OMON, testified that on 18 September 2000 an unknown woman at a checkpoint had told him that she had heard machine-gun firing in Vostochnaya Street. A group of police officers went there. Upon arrival, they had learnt about the six men's disappearance. Zaur Ibragimov and Sayd-Ali Musayev had been trainee police officers at the

special police force unit. They had been dismissed during probation for unsatisfactory performance.

104. The Government submitted that the investigation had taken steps to establish the whereabouts of Mr B., the former head of the FSB in the Chechen Republic, and Mr D., his deputy, in order to question them about the circumstances surrounding the kidnapping.

105. The Government also stated that on an unspecified date an investigator had inspected the scene of the crime. No relevant record was produced by the Government.

106. The Government submitted that a number of queries had been sent to various State bodies by those investigating the six men's disappearance. No copies thereof were provided by the Government.

107. The Government referred to information provided by the "ORB-2", according to which there was no information about any special operations having taken place in Grozny on 18 September 2000. This document was not included in the case file.

108. The Government also submitted that the law-enforcement authorities of Chechnya had not arrested or detained Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev on 18 September 2000, and that their whereabouts remained unknown. With reference to documents provided by the Chechnya FSB department and the ORB-2, the Government stated that there was no "discrediting information" about the six men. Copies of these documents were not produced by the Government.

109. According to the Government, the head of the Road Safety Department in the Chechen Republic failed to establish the provenance of the UAZ vehicle with the registration number "480-20", since the department archives collected before 2000 had been destroyed during the counter-terrorist operation.

110. The documents and additional information provided by the Government indicate that between October 2000 and November 2007 the investigation was adjourned on several occasions, and that it has so far failed to identify who was guilty.

2. Investigation into the kidnapping of Usman Mavluyev

111. Further to the Court's request, the Government provided about 300 pages of documents from criminal investigation file no. 31036, including copies of the decisions to open, suspend and resume the investigation and to grant victim status to the tenth applicant; letters informing her of the course of the proceedings; witness statements; and copies of requests for information sent by the investigating authorities to various State bodies. The Government also submitted documents from the court proceedings relating to the decision to grant her access to the case file and legal aid (see

paragraphs 147-156 below). These documents and the Government's observations can be summarised as follows.

112. The Government contested that prior to April 2004 the tenth applicant had submitted any applications concerning her husband's disappearance. They in particular denied that in January 2000 she had lodged written applications with the prosecutor and the department of the interior, or with the FSB departments in the Gudermes and Achkhoy-Martan districts. The Government insisted that no copies of those documents had been produced by the tenth applicant. They referred to information provided by the Ministry of the Interior on 15 April 2004, according to which from 2000 to 2003 no applications in connection with Usman Mavluyev's disappearance had been registered. They also appended a letter from the Achkhoy-Martan district FSB department dated 11 August 2009, which stated that it was unable to establish whether the applicant had lodged such an application in 2000 because the relevant archives had been destroyed following the expiry of their storage limit.

113. The Government also challenged the authenticity of the certificate issued by the Chechnya FSB department on 6 June 2000, which stated that in January 2000 the tenth applicant had applied to the FSB district department in Achkhoy-Martan in connection with her husband's disappearance. The Government pointed out that the certificate was written on plain paper and did not contain information as to the name and surname of the issuing officer. If the tenth applicant had really submitted such an application, it would have been transferred to the competent authorities for a check.

114. The Government thus submitted that the tenth applicant had first filed a written request for the institution of criminal proceedings on 16 April 2004. On the same day the Zavodskoy ROVD of Grozny forwarded her application to the Zavodskoy district prosecutor's office. Thereafter the district prosecutor's office instituted criminal investigation no. 31036 into Usman Mavluyev's abduction under Article 126 § 2 of the Russian Criminal Code ("aggravated kidnapping").

115. On 16 April 2004 the tenth applicant and Ms A.A., also referred to by the applicant as Ms Z.A., submitted written statements as witnesses. The Government provided copies of the transcripts.

116. The tenth applicant testified that in autumn 1999, during the counter-terrorist operation in Chechnya, she had lived with her husband at 81 Zabolotnogo Street in Grozny. On 20 October 1999, when heavy bombing had started, they had moved to her parents to the Achkhoy-Martan district. On 4 January 2000 Usman Mavluyev had gone to Grozny in order to check their dwellings. On 10 January 2000 Ms Z.A. had visited the tenth applicant's family in Zakan-Yurt. She had told the applicant that on 8 January 2000 Usman Mavluyev and herself had left Grozny for Zakan-Yurt on foot. Servicemen had stopped them at the Chernorechye

checkpoint for a document check. Once the check had been completed, they had let Ms Z.A. go but retained the tenth applicant's husband.

117. Ms A.A. submitted that she had been the Mavluyevs' neighbour in the Voykovo settlement in Grozny before the military operations had started in Chechnya. On 8 January 2000 she had walked through the humanitarian corridor from Grozny together with Usman Mavluyev. At the checkpoint in Chernorechye they had been stopped for a document check by servicemen. Ms A.A. had shown her passport. Usman had been arrested. She and the other women had waited for Usman. Some time later a serviceman had told the women to return to Grozny and threatened to open fire if they did not. In panic, Ms A.A. and the other women had left the place.

118. On 18 April 2004 the tenth applicant was granted victim status in the criminal proceedings. Questioned as a victim on 18 April 2004 and on 1 December 2006, she provided the same description of the events as in her submissions given on 16 April 2004.

119. The tenth applicant was further questioned on 28 July 2009. She clarified that Ms A.A. had informed her of her husband's abduction. She submitted that a twenty-year-old man called "Arbi" had been detained together with her husband. Both of them had had bags put on their heads, and, flailed with a rifle butt, had been forced into an APC and taken away. The tenth applicant emphasised that she had started complaining to the authorities about her husband's abduction at the end of January 2000, when she had lodged applications with different authorities located in Gudermes, including the prosecutor's office, the FSB department and the Department of the Interior.

120. On 19 April 2004 Ms A.A. had been questioned as a witness. She submitted that on 8 January 2000 she had left Grozny together with Usman Mavluyev, Ms R.G., Ms L.G., a woman called "Khadizhat" and a young man. At 9 a.m. they had been stopped by servicemen at the Chernorechye checkpoint for a document inspection. Once the check had been completed, they had been told that a bus from the Ministry of Emergency Situations would soon bring them to Zakan-Yurt. Usman and the young man had been ordered to stay for a computerised identity check. The women had asked the servicemen to let the two men go; they had offered money to them. The women had been waiting for the bus for the next six hours but it had not come. The women had then gone to the Voykovo settlement. On the following day they had returned to the checkpoint and asked the servicemen to release the two men. A serviceman called "Igor" had told them that the men had been released the day before. He was wearing a chevron embroidered "VV MVD RF" (the abbreviation for Internal Troops of the Ministry of the Interior of the Russian Federation). Ms A.A. recalled that "Igor" had been among the servicemen who had stopped them for a document inspection on 8 January 2000. On 11 January 2000 Ms A.A. had gone to Zakan-Yurt, where she had related the events to the tenth applicant.

Ms A.A. also provided a detailed physical description of “Igor” and the tenth applicant's husband, as well as of the clothes they had been wearing that day.

121. With reference to Ms Z.A.'s written statements of 5 September 2006 appended to the tenth applicant's application to the Court, the Government submitted that it bore the signature of Ms Z.A., and not that of A.A. They also questioned the credibility and veracity of Ms Z.A.'s written statements since they contrasted with the statements given by Ms A.A. as a witness on 16 and 19 April 2004. Ms Z.A. in particular testified that once apprehended, Usman Mavluyev and the young man had had their hands tied by the servicemen, who had then put bags on their heads and dragged them to an APC. As Usman Mavluyev had been reluctant to go, the servicemen had hit him with the butt of an assault rifle and forced the two men into the APC.

122. On 21 October 2009 Ms A.A. was questioned again. Contrary to her previous submissions, she stated that on 8 January 2000 she had not noticed any details of the servicemen's clothes or any specific names they had used between themselves. Neither had she recalled whether the servicemen had put something on Usman Mavluyev's and the young man's heads or whether the servicemen had used violence against them, including while getting them into the APC. Ms A.A. finally communicated “Khadizhat”'s address to the investigator.

123. On 15 May and 25 May 2004 respectively the investigation questioned witnesses Ms L.G. and Ms R.G. Their statements corroborated those of Ms A.A. given on 16 and 19 April 2004.

124. On 1 June 2004 the investigation questioned Ms S., who had been trying to leave Grozny on 8 January 2000 together with Usman Mavluyev, the young man, Ms A.A., Ms L.G. and Ms R.G. She noted that at the Chernorechye checkpoint they had met an elderly woman called “Galina”, who had arrived there before them. At around 3 p.m. four servicemen had asked Usman Mavluyev and the young man to show their passports. The servicemen had promised to release the two men as soon as they checked the computer database. Shortly afterwards the four women had gone home, whereas “Galina” had remained there together with the two men. Ms S. had met “Galina” a week after the events. “Galina” had told her that after the four women had left, the servicemen had driven her, Usman Mavluyev and the young man in the direction of Urus-Martan. “Galina” had submitted that the two men had bags on their heads. She had unsuccessfully pleaded with the servicemen to release them. The servicemen had dropped “Galina” off at the Alkhan-Kala settlement and taken the two men to an unknown destination. Ms S. submitted that she knew where “Galina” lived and could identify her.

125. On 29 July 2009 witness “Galina” was questioned. She related that on 8 January 2000 she had left Grozny together with Mr Ta. and Mr E. They

had arrived at the Chernorechye checkpoint at about 9 a.m. There had been a large number of civilians. By the end of the day, many of them had gone. "Galina" recalled that only Mr Ta., Mr E., two other men and a woman had remained waiting. Between 5 and 7 p. m. she had noticed an APC arrive. She had not seen the number plate. Four masked servicemen wearing camouflage uniforms had got out of the APC. One of them had checked "Galina"'s, Mr Ta.'s, Mr E.'s and the other woman's passports and after ten or fifteen minutes had handed them back. Thereafter another two servicemen had put bags on the heads of the two men and put them into the APC. The servicemen had pointed guns in their direction, without using violence against them. The servicemen had offered "Galina", Mr Ta., Mr E. and the other woman a lift in the same APC. They had dropped the four of them off on the Rostov-Baku road in the vicinity of the village of Goyty, promising to release the two men after an identity check. Thereafter the servicemen had driven in the direction of the village of Mesker-Yurt.

126. Mr Ta., questioned on 4 August 2009, confirmed the statements given by the witness "Galina". He added that Ms U. had also accompanied them from Grozny to the village of Goyty. He did not remember whether the woman whom they had met in Chernorechye had been with them in the APC.

127. Mr E., questioned on 28 August 2009, corroborated "Galina"'s and Mr Ta.'s statements. He submitted that Ms U., who had accompanied them from Grozny to Goyty, had died some two years before. He also stated that, apart from him, the APS had transported "Galina", Ms U., Mr Ta. and the two men. No other women had been present.

128. On 8 June 2004 the investigation had questioned Mr M., Usman Mavluyev's brother. He gave a similar account of the events to that given by the tenth applicant on 16 and 18 April 2004. He added that Usman Mavluyev had not been involved in military action in Chechnya and had no enemies.

129. On 28 July 2009 Mr M. was questioned again. He gave some new details concerning his brother's disappearance. He submitted in particular that on 8 January 2000 the 15th regiment of the internal troops of the Russian Ministry of the Interior had been on duty at the Chernorechye checkpoint. In the spring of 2001 Mr M. had found out that between April and July 2000 his brother had been detained in cell no. 161 of the remand prison at 56 Zhelyabova Street in Voronezh. His inmate, Mr To., had told Mr M. that Usman Mavluyev had previously been detained in Pyatigorsk, in the Stavropol Region. Mr M. provided the investigator with Mr To.'s contact details and those of the family of the second disappeared person, whom he had referred to as Mr Sh. and not Mr V. as submitted by the tenth applicant. Mr M. lastly specified that the Mavluyevs' family had submitted requests for information to the detention facilities of Pyatigorsk and Voronezh but this had not yielded tangible results.

130. On 29 May and on 16 September 2009 the investigation questioned Mr Sh.'s sister. She had heard about Mr Sh.'s disappearance from eyewitnesses whose names she did not recall. Mr Sh.'s family had never requested the prosecuting authorities to investigate his disappearance.

131. In November 2009 the investigation questioned Mr To.'s sister and a local police officer at Mr To.'s former place of residence in the Voronezh Region. They stated that Mr To. had moved to Voronezh some three or five years before. They had had no news of him thereafter.

132. The Government also submitted three testimonies by the Mavluyevs' neighbours in Grozny, collected in December 2006. Two of them denied having had any information about Usman Mavluyev's abduction. The third neighbour confirmed having heard about his disappearance from residents of the Voykovo settlement.

133. On 20 and 21 November 2009 the investigator asked Ms A.A., Mr Ta. and Mr E. to identify Mr Sh. on a photograph. Neither of the witnesses identified Mr Sh.

134. The investigation was unable to establish the whereabouts of other witnesses.

135. On 20 April 2004 an investigator had inspected the scene of the crime, namely a section of the Rostov-Baku road between the exit from Grozny and the entry to the village of Chernorechye.

136. In June 2004 Usman Mavluyev was described by the Zakan-Yurt police as a law-abiding person who had not taken part in illegal armed groups and had no "discrediting connections".

137. The Government stated that the investigating authorities had sent queries to various State bodies, asking them to provide information concerning Usman Mavluyev's apprehension, detention, any requests for medical assistance or any "discrediting" information about him, as well as information on the deployment of federal forces in Chernorechye on 8 January 2000. In their letters the prosecutor's office stated that "it has been established that on 8 January 2000 Usman Mavluyev was apprehended at the federal checkpoint in Chernorechye and then taken away". The Government produced copies of these requests and the replies to them, which can be summarised as follows.

138. In 2004 and in 2007 the military commanders of the Zavodskoy and Staropromyslovskiy districts of Grozny and of the Urus-Martan district stated that they had neither any "discrediting" information about Usman Mavluyev, including his alleged involvement in illegal armed groups, nor any information on the deployment of federal forces in Chernorechye in January 2000. Similar replies were received from the Special Unit on Counter-terrorist Operations in the Northern Caucasus.

139. In June and July 2004, January 2007 and August 2009 the Chechnya FSB department stated that that it had no information about Usman Mavluyev's whereabouts and his alleged involvement in illegal

armed groups. The office also submitted that no special operation had been carried out in Chernorechye on 8 January 2000 and that it had been unable to establish which federal units had been deployed there. In September, October and November 2009 the Ministry of the Interior, the Ministry of Defence, the FSB Headquarters and the Federal Penitentiary Service replied that a search of their archives had revealed no information about the deployment of military units in Chernorechye in January 2000, any special operation conducted by “power structures” (*силовые структуры*) in the Zavodskoy District of Grozny or any servicemen who could have participated in Usman Mavluyev's abduction.

140. The investigating authorities were unable to establish the whereabouts of Usman Mavluyev. In June and July 2004, January 2007 and August 2009 the Chechnya FSB department had informed the investigators that it had no information relevant to the case. FSB departments in the Southern Federal Circuit produced similar replies. The local bodies of the Ministry of the Interior and the prosecutor's offices had never detained Usman Mavluyev on criminal or administrative charges and had not carried out any criminal investigation in respect of him. A number of operational-search measures had been taken to establish his whereabouts. Thus, in January 2007 house-to-house enquiries were conducted in Voykovo and Chernorechye, and several persons were summoned for questioning in connection with Usman Mavluyev's disappearance. In September 2009 internal databases were checked for information concerning his prospects of leaving the Chechen Republic and the Russian Federation by any means of transport. The prosecutor's offices had not instituted any criminal proceedings in connection with the discovery of any unidentified bodies resembling Usman Mavluyev. Finally, in May and June 2004 as well as in January 2007 the remand centres in the Southern Federal Circuit and local departments of the Federal Penitentiary Service informed the investigation that Usman Mavluyev had never been detained there. In May 2004 and in January 2007 several hospitals in the Southern Federal Circuit submitted that he had never been admitted for treatment.

141. The Government further submitted that the tenth applicant had been duly informed of the decisions taken during the investigation.

142. According to the documents submitted by the Government, between April 2004 and November 2009 the investigation was suspended on three occasions and reopened twice upon the orders of the supervising prosecutors on account of the “incomplete nature of the investigative measures”. As appears from the SIU-2 investigation plan dated 28 July 2009, the investigators considered three possible versions of Usman Mavluyev's abduction. According to the first version, the crime had been committed by servicemen deployed in the Chernorechye settlement. According to the second version, it had been committed by members of

special units deployed there. Thirdly, the crime could have been committed by members of an illegal armed group.

143. The investigation in case no. 31036, last adjourned on 24 November 2009, has so far failed to identify who was guilty.

D. Proceedings against law-enforcement officials

1. Court proceedings instituted by the first nine applicants

144. On an unspecified date the first nine applicants filed a claim against the Russian Ministry of Finance, seeking compensation for the non-pecuniary damage caused by their relatives' abduction by Russian servicemen. The claim contained no mention of the fourth and sixth applicants' property claims.

145. On 30 March 2004 the Basmannyy District Court of Moscow dismissed the claims on the ground that “the evidence in the case file [had] not proved that there [had been] a causal link between [the applicants'] loss of their sons and any unlawful acts of the State agencies of Russia”.

146. On 8 December 2004 the Moscow City Court upheld the first-instance judgment, reproducing its reasoning verbatim.

2. Court proceedings instituted by the tenth applicant

147. On 8 February 2007 the tenth applicant appealed to the Zavodskoy District Court of Grozny against the refusals of her requests for legal aid and access to the case file (see paragraphs 78- 85 above).

148. On 5 March 2007 the Zavodskoy District Court dismissed the complaint. According to the applicant, she had not been notified of the hearing and, therefore, was not present in the courtroom. Furthermore, the court's decision was not sent to her either.

149. Since the applicant was not aware of the hearing of 5 March 2007, on 14 June 2007 she complained to the Supreme Court of the Chechen Republic about the failure to examine her complaint of 8 February 2007.

150. On 1 October 2007 the applicant was provided with a copy of the Zavodskoy District Court's decision of 5 March 2007.

151. On 2 October 2007 the applicant appealed against the decision of 5 March 2007 and requested that the time-limits for appeal be restored.

152. On 6 February 2008 the Supreme Court of the Chechen Republic quashed the decision of 5 March 2007 on the ground that the applicant had not been summoned to the hearing.

153. On 21 February 2008 the Zavodskoy District Court re-examined the complaint. The applicant was not present at the hearing, but she was represented by her counsel. The court again dismissed the complaint. The applicant appealed.

154. On 26 March 2008 the Supreme Court of the Chechen Republic quashed the decision of 21 February 2008 and remitted the complaint for a fresh examination. It found that the applicant had the right to study the case file, whereas her request for legal aid was unsubstantiated.

155. On 8 April 2008 the Zavodskoy District Court upheld the applicant's complaint in the part relating to the refusal to grant her access to the case file, but dismissed it in the part relating to the refusal to grant her legal aid.

156. On 16 September 2008 the applicant's counsel studied the investigation file and made copies of the material in the case file, which have been provided to the Court.

II. RELEVANT DOMESTIC LAW

157. 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. JOINDER OF THE APPLICATIONS

158. In accordance with Rule 42 § 1 of the Rules of Court, the Court decided to join the applications, given their similar factual and legal background.

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

A. The parties' submissions

159. The Government contended that the complaints should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Usman Mavluyev had not yet been completed. They further argued that it had been open to the applicants to lodge court complaints about the allegedly unlawful detention of their relatives or to challenge in court any acts or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of that remedy.

160. The applicants contested that objection. They stated that the criminal investigations had proved to be ineffective and that their complaints to that effect had been futile. Any other remedies in such a situation would be ineffective. The first nine applicants referred to the decision of the Basmannyy District Court of Moscow of 2004, as confirmed on appeal, by which their civil claim against the State had been dismissed as manifestly ill-founded, in the absence of any conclusions from the criminal investigation.

B. The Court's assessment

161. 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).

162. The Court first notes, having regard to the Government's objection concerning the applicants' failure to complain about the detention of their relatives, that the authorities denied responsibility for the missing persons. In such circumstances, and in particular in the absence of any proof to confirm the very fact of the detention, even assuming that the remedy referred to by the Government was accessible to the applicants, it is more than questionable whether a court complaint would have had any prospects of success. Moreover, the Government have not demonstrated that the remedy indicated by them would have been capable of providing redress in the applicants' situation, namely that it would have led to the release of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Usman Mavluyev and the identification and punishment of those responsible (see *Musayeva and Others v. Russia*, no. 74239/01, § 69, 26 July 2007). Accordingly, the Government's objection in the part concerning non-exhaustion of domestic remedies must be dismissed.

163. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that criminal investigations were opened upon the applicants' complaints and are currently pending. The parties dispute the effectiveness of those investigations.

164. 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.

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

A. The parties' arguments

1. In respect of the disappearance of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev

(a) The applicants' account

165. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev had been State agents. In support of their complaint they referred to the following facts. The men who had abducted their relatives had arrived in military vehicles – APCs – which could not have been available to anyone except State servicemen. They had acted in a manner similar to that of special forces carrying out identity checks. They had been wearing camouflage uniforms and had been armed with automatic weapons. All the information disclosed from the criminal investigation file supported their assertion as to the involvement of State agents in the abduction. Since their relatives had been missing for a very lengthy period, they could be presumed dead. That presumption was further supported by the circumstances in which they had been arrested, which should be recognised as life-threatening.

(b) The Government's account

166. The Government submitted that unidentified armed men had kidnapped Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev. They further contended that the investigation of the incident was pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relatives were dead.

167. The Government raised a number of objections to the applicants' presentation of the facts. Relying on the testimonies given to the domestic criminal investigation, of which no copies have been submitted to the Court, they argued that the statements made by the applicants and other witnesses were contradictory and inconsistent. The applicants had not been eyewitnesses to the abduction. They had failed to indicate the exact number

of abductors and to explain the reason for their relatives gathering together at 44 Vostochnaya Street on 18 September 2000. The Government further argued that the testimonies as to the number of the cars seen parked at the house in question differed to some extent.

168. The Government questioned the weight of the statements by Ms Mu., who had witnessed the abduction of the six men. She had failed to specify the names of those abducted and the exact date of their abduction. She had not indicated why she thought that the APCs and the UAZ vehicles had been driven by servicemen. Finally, she had not recalled that the abductors had spoken Russian, whereas the applicants had insisted on that point.

169. The Government further contended that various weapons, camouflage uniforms without insignia and even military vehicles had been stolen or unlawfully obtained by members of illegal paramilitary structures in the Northern Caucasus in the 1990s and should therefore not be taken as proof that these were State servicemen.

170. The Government concluded that the applicants' allegations that the abductors had belonged to State agencies could not be confirmed. The applicants had not recalled any details of the clothes, weapons or markings on the abductors' uniforms. With reference to Zaur Ibragimov's and Sayd-Ali Musayev's service at the OMON prior to 18 September 2000, the Government asserted that they could have been aware of the abduction if it had indeed been organised by State agencies. The Government lastly argued that the applicants' relatives could have been abducted by illegal armed groups. Alternatively, they could have staged the kidnapping themselves.

2. In respect of the disappearance of Usman Mavluyev

171. The tenth applicant insisted that the State was responsible for the disappearance and death of her husband, Usman Mavluyev. She pointed out that all the witness testimonies clearly stated that he had been detained by servicemen who had manned the checkpoint in Chernorechye on 8 January 2000 and placed inside an APC. The servicemen had been wearing camouflage uniforms and insignia of the Russian military forces and had been armed with automatic weapons. Since her husband had been missing for a very lengthy period, he could be presumed dead. That presumption was further supported by the circumstances in which he had been arrested, which should be recognised as life-threatening.

172. The Government disputed the State's responsibility for Usman Mavluyev's abduction and the fact that he was dead, since none of this had been established in the domestic proceedings. The reference by the investigators in some documents to the fact that Usman Mavluyev had been detained by servicemen was attributed by the Government to the officials' negligence, since it had only been established that he had been abducted by unidentified armed persons. The Government drew the Court's attention to

the discrepancies in the submissions made by the witness A.A. (Z.A.) and argued that the Court should not rely on her testimony dated 5 September 2006 which was attached to the tenth applicant's application form.

B. The Court's evaluation of the facts

1. In respect of the disappearance of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev

173. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearances 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).

174. The Court notes that despite its requests for a copy of the file on the investigation into the abduction of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev, the Government produced hardly any documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has found this explanation insufficient to justify the withholding of key information requested by it (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

175. 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' relatives can be presumed dead and whether their deaths can be attributed to the authorities.

176. The applicants alleged that the persons who had taken Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev away on 18 September 2000 and then killed them had been State agents.

177. The Government suggested in their submissions that the abductors of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev might have been members of paramilitary groups. However, this allegation was not specific and the Government did not submit any material to support it. The Court takes note of the Government's allegation that the military vehicles, firearms

and camouflage uniforms had probably been stolen by insurgents from Russian arsenals in the 1990s. Nevertheless, it considers it very unlikely that several military vehicles, such as APCs and UAZ vehicles, unlawfully in the possession of members of illegal armed groups could have moved freely through Russian military checkpoints in Grozny without being noticed. In the absence of any information about the investigation of such an event, the Court is unable to attribute this occurrence to unlawful paramilitaries. The Court would further stress in this connection that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

178. The Court notes that little evidence has been submitted by the applicants, which is quite understandable in the light of the investigators' reluctance to provide the relatives of the missing men with copies of important documents from the investigation. Nevertheless, it observes that the applicants' allegation is supported by all the available evidence. It finds that the fact that a large group of armed men in uniform, equipped with military vehicles, was able to move freely through military roadblocks in broad daylight and apprehended several persons at their home strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their applications to the authorities the applicants consistently maintained that Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev had been detained by unknown servicemen and requested the investigation to look into that possibility. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies had been involved in the kidnapping. The investigation was unable to establish which precise military or security units had carried out the operation, but it does not appear that any serious steps were taken to that end.

179. The Government questioned the credibility of the applicants' statements in view of certain discrepancies relating to the exact circumstances of the arrest. The Court notes in this connection that no essential elements underlying the applicants' submissions as to the facts have been disputed by the Government. In any event, the Government did not provide to the Court the witness statements to which they referred in their submissions.

180. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their

arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

181. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relatives were apprehended by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of the special forces in the kidnapping or their general reference to the possibility of illegal insurgents' involvement in the crime is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and 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 Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev were arrested on 18 September 2000 by State servicemen during an unacknowledged security operation.

182. There has been no reliable news of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev since the date of the kidnapping. Their names have not been found in any official detention facility records. Finally, the Government have not submitted any explanation as to what happened to them after their arrest.

183. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among other authorities, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that 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 Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev or of any news of them for many years supports this assumption.

184. Accordingly, the Court finds that the evidence available permits it to establish that Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev must be presumed dead following their unacknowledged detention by State servicemen.

2. *In respect of the disappearance of Usman Mavluyev*

185. The applicants alleged that Usman Mavluyev had been arrested by the servicemen at the checkpoint in Chernorechye on 8 January 2000 and then killed. The Government did not dispute any of the factual elements

underlying the applications and did not provide any other explanation of the events.

186. It clearly follows from the evidence submitted by the parties and uncontested by them that on 8 January 2000 Usman Mavluyev was detained by armed men at the checkpoint in Chernorechnye in Grozny, placed inside an APC and driven away (see, for example, paragraphs 21, 55, 60, 61, 67, 120 and 125-127 above). The domestic investigation also accepted factual assumptions as presented by the tenth applicant and took steps to check whether law-enforcement agencies had been involved in the kidnapping. He has not been seen since that day and his family have had no news of him. In such circumstances the Government's reference to the absence of final conclusions from the criminal investigation is insufficient to absolve the Government from their responsibility to account for the fate of detainees last seen alive in their hands (see *Akkum and Others*, cited above, § 211).

187. The Government questioned the credibility of certain testimonies in view of discrepancies relating to the exact circumstances of the arrest. The Court notes in this connection that no other elements underlying the applicant's submissions as to the facts have been disputed by the Government. In the Court's view, the fact that over a period of several years the witnesses' recollection of an event differed in rather insignificant details does not in itself suffice to cast doubt on the overall veracity of their statements.

188. The Court observes that the situation in which Usman Mavluyev was arrested should be regarded as life-threatening (see paragraph 183 above). The absence of Usman Mavluyev or of any news of him for ten years supports this assumption. The Court also remarks that, as follows from the documents contained in the file, the fate of another man who had been detained together with the tenth applicant's husband was investigated and remains unknown (see paragraph 130 above). This sequence of events strongly suggests that the two men were treated together.

189. Accordingly, the Court finds that the evidence available permits it to establish that Usman Mavluyev must be presumed dead following his unacknowledged detention by State servicemen.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

190. The applicants complained under Article 2 of the Convention that their relatives had been deprived of their lives 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 parties' submissions

1. In respect of the disappearance of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev

191. The Government contended that the domestic investigation had obtained no evidence to the effect that Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev were dead or that any servicemen of the federal law-enforcement agencies had been involved in their kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants' relatives met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible.

192. The applicants argued that Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. The applicants also argued that the investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law. They also 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.

2. In respect of the disappearance of Usman Mavluyev

193. The Government referred to the absence of conclusions from the domestic investigation as to the fate and whereabouts of Usman Mavluyev. They further contested that prior to April 2004 the tenth applicant had filed any applications concerning her husband's disappearance. They in particular denied that in January 2000 she had lodged written applications with the Gudermes military prosecutor and the department of the interior, or with the FSB departments in the Gudermes and Achkhoy-Martan districts. The Government insisted that no copies of those documents had been produced

by the tenth applicant. The Government also challenged the authenticity of the certificate issued by the Chechnya FSB department on 6 June 2000 (see paragraph 113 above).

194. The tenth applicant reiterated her claims. She insisted that she had travelled to Gudermes and submitted her complaints in person by the end of January 2000. She also maintained that the document issued to her by the Achkhoy-Martan district FSB department on 6 June 2000 had been valid proof of this, despite the Government's challenge to its validity. She pointed out that it had borne the stamp of the district department and the signature of the deputy head of that department. It had been included in the criminal investigation file. In any event, she argued that the investigation had been ineffective and that after April 2004 it had failed to take the steps necessary to identify the perpetrators of the crime and to establish the whereabouts of her husband.

B. The Court's assessment

1. Admissibility

195. The Court considers, in the light of the parties' submissions, that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. 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. The complaints under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) Alleged violation of the right to life of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Usman Mavluyev

196. The Court has already found that the applicants' relatives must be presumed dead following their unacknowledged detention by State servicemen and that the deaths 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 Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Usman Mavluyev.

(b) Alleged inadequacy of the investigation of the kidnapping

(i) As regards Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev

197. 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).

198. In the present case, the kidnapping of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

199. The Court notes at the outset that most of 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 produced by the parties and the information about its progress submitted by the Government.

200. The Court notes that the authorities were immediately made aware of the abduction through the applicants' submissions. The investigation in case no. 12199 concerning Khasan Batayev was initiated on 2 October 2000, that is, two weeks after the abduction. It then took between one and six months to open criminal investigations into the disappearance of the other five men. Such a postponement *per se* was liable to affect the investigation of a kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were seriously delayed. The files concerning one criminal act were not joined until April 2001 in respect of the first four files, and in April 2005 in respect of the criminal investigation into the abduction of Said-Ali and Kharon Musayev. While it is unclear when the applicants and other witnesses were questioned, the granting of victim status took place only on 25 November 2002 and 15 October 2003. It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, 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 crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

201. A number of essential steps were never taken. Most notably, it does not appear that the investigation tried to find out whether any special

operations had been carried out at 44 Vostochnaya Street, Grozny, on the day in question, or identified and questioned any of the servicemen who had carried them out.

202. The Court also notes that even though the applicants were eventually granted victim status in the investigation concerning the abduction of their relatives, they were only informed of the suspension and resumption 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.

203. Lastly, the Court notes that the investigation was adjourned and resumed on several occasions and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending.

204. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years without producing any tangible results. The Government argued that the applicants could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. However, the Court notes that the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures. The investigation was repeatedly suspended and resumed, but it appears that no significant investigative measures were taken to identify those responsible for the kidnapping. Nor were the applicants properly informed of the progress of the proceedings. In such circumstances, the Court considers that the applicants could not be required to challenge in court every single decision of the district prosecutor's office. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

205. 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 Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev, in breach of Article 2 in its procedural aspect.

(ii) As regards Usman Mavluyev

206. Firstly, the Court notes that the parties disagreed as to when the crime had been brought to the authorities' attention. Having regard to the material in its possession, the Court is satisfied that the tenth applicant immediately brought the information about her husband's arrest and

disappearance to the attention of the State authorities. The Court notes the tenth applicant's consistent statements to that effect, including those made to the domestic investigation authorities (see paragraph 119 above). The Court further notes that the document of 6 June 2000 bears the stamp of the FSB department for the Achkhoy-Martan district and the signature of an official of that department, that it has not been subjected to any expert examination which has found it invalid and that it has been included as part of the criminal investigation file; therefore it is unable to support the Government's challenge to its authenticity.

207. In view of this, the Court finds that the investigation into Usman Mavluyev's abduction was opened after a delay of over four years since the relevant information had been submitted to the competent authorities. The Court reiterates its above conclusions about the significance of delays in the investigation of a crime as serious as the present one (see paragraph 200 above).

208. The Court further notes that despite the delay in opening the investigation, the investigative authorities collected a sizeable body of evidence attesting to the involvement of servicemen in the crime. However, the district prosecutor's office failed to take steps to identify the military units that had been deployed at the checkpoint in question, such as, for example, contacting the archives of the Ministry of Defence (see paragraph 64 above), or taking other relevant actions to pursue this lead, such as identifying and questioning senior military or security officers who had been in charge of the operation in Grozny on the day in question.

209. The Court also notes the numerous decisions to adjourn and resume the investigation, resulting in periods of inactivity when no proceedings were pending. For the same reasons as above (see paragraph 204), the Court finds that the Government's objection as to non-exhaustion of domestic remedies in the context of the criminal investigation should be dismissed.

210. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding Usman Mavluyev's disappearance, in breach of Article 2 in its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

211. 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

212. The Government disagreed with these allegations and 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.

213. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

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

2. Merits

215. 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).

216. In the present case the Court notes that the applicants are close relatives of the disappeared persons. For ten years they have not had any news of the missing men. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing relatives. Despite their attempts, the applicants have never received any plausible explanation or information about what became of them following their detention. The responses they received mostly denied State responsibility for their relatives' 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.

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

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

218. The applicants further stated that Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Usman Mavluayav 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

219. The Government asserted that no evidence had been obtained by the investigators to confirm that Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Usman Mavluyev had been deprived of their liberty. They were not listed among the persons held in detention centres and none of the regional law-enforcement agencies had any information about their detention.

220. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

221. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

222. 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 and Others*, cited above, § 122).

223. The Court has found that Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev were apprehended by State servicemen on 18 September and Usman Mavluyev on 8 January 2000 and that they have not been seen since these dates. Their detention was not acknowledged and was not logged in any custody records, and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of 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).

224. 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 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.

225. In view of the foregoing, the Court finds that Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Usman Mavluyev 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.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

226. 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.”

A. The parties' submissions

227. 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 an 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 and, in one instance, the prosecutor's office. In sum, the Government submitted that there had been no violation of Article 13.

228. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

230. The Court reiterates that in circumstances where, as here, a criminal investigation into the 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 v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

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

232. 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 those two Articles (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VIII. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

233. The fourth and sixth applicants contended that their disappeared family members had been deprived of their property, in violation of Article 1 of Protocol No. 1. This provision reads, in the relevant part:

“1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. ...”

234. The fourth and sixth applicants argued that on 18 September 2000 the armed men who had taken away their sons, Zaur Ibragimov and Magomed Temurkayev, had also taken away two VAZ cars which had belonged to them.

235. The Government argued that the applicants had failed to submit any proof of their relatives' ownership of the cars in question. They further disputed that the alleged wrongdoing had been committed by State agents.

236. The Court notes that even though the fourth and sixth applicants complained about the loss of two vehicles, they failed to produce any documents or other evidence supporting their claim of ownership. The sixth applicant could not even indicate the registration number of the car which had been used by her son on the day of his abduction (see paragraph 39 above). At the same time, the Court notes that, since all vehicles are subject to registration in the relevant State authorities, it should have been relatively simple to obtain such evidence. The applicants failed to indicate whether such proof existed or to furnish an explanation as to why it was unavailable to them. The Court further notes that in the civil proceedings brought by the applicants in relation to the disappearance of their relatives they had not claimed any damages in connection with the vehicles allegedly stolen on that day (see paragraph 144 above). In such circumstances, the Court is unable to find that the applicants had any property rights over the two cars in question.

237. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

238. 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

1. The parties' submissions

239. All the applicants, except for the first applicant, claimed damages in respect of loss of earnings by their relatives after their arrest and subsequent disappearance.

240. The second to ninth applicants claimed that Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev would have supported them and their other dependants. They submitted that Zaur Ibragimov and Magomed Temurkayev each had three minor children. They claimed that their relatives had been unemployed at the time of their arrest, or that they were unable to obtain salary statements for them, and that in such cases the calculation should be made on the basis of the subsistence level established by national law. They calculated their earnings for the period. Taking the average life expectancy in Russia to be 70 years, the applicants assumed that they could have been financially dependent on Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev and Kharon Musayev for periods ranging between ten and forty-seven years. The applicants assumed that the parents could have counted on 10% of that sum and the wives with dependent children on 80%. Based on these calculations, they claimed sums ranging from 745 to 30,000 euros (EUR).

241. In addition, the fourth applicant claimed EUR 4,000 and the sixth applicant EUR 1,000 in compensation for the two cars stolen on 18 September 2000.

242. The tenth applicant claimed that in 2000 Usman Mavluyev had been employed as a driver and that the monthly wage of a driver in Chechnya amounted to 15,000 Russian roubles (RUB). She had two sons with him, born in 1993 and 1995. She estimated that she, until reaching the age of retirement, and her children, until they reached the age of majority, could have received a substantial part of his earnings. She claimed a total of EUR 55,289 under this heading.

243. The Government regarded these claims as based on suppositions and unfounded. They also pointed to the existence of domestic statutory

machinery for the provision of a pension for the loss of the family breadwinner, which the tenth applicant had applied for and obtained.

2. *The Court's assessment*

244. 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. The Court further finds that the loss of earnings also applies to dependent children and, in some instances, to elderly parents and that it is reasonable to assume that their missing relatives would eventually have had some earnings from which the applicants would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' sons and husbands and the loss by the applicants of the financial support which they could have provided. Having regard to the parties' submissions and the absence of any conclusive evidence as to the applicants' missing relatives' earnings, Court awards the following sums to the applicants in respect of pecuniary damage, plus any tax that may be chargeable on these amounts:

- (i) EUR 745 to the second and third applicants jointly;
- (ii) EUR 1,490 to the fourth applicant;
- (iii) EUR 12,000 to the fifth applicant;
- (iv) EUR 745 to the sixth applicant;
- (v) EUR 12,000 to the seventh applicant;
- (vi) EUR 1,865 to the eighth applicant;
- (vii) EUR 3,130 to the ninth applicant;
- (viii) EUR 11,000 to the tenth applicant.

245. In so far as the fourth and sixth applicants sought compensation for the two cars, the Court observes that it has concluded that this complaint is manifestly ill-founded, in the absence of any proof of the applicants' property rights. This part of the claim is therefore dismissed.

B. Non-pecuniary damage

246. The applicants (except for the first applicant) claimed amounts ranging from EUR 100,000 to EUR 500,000, depending on the closeness of their family ties with the missing men, in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives.

247. The Government found the amounts claimed exaggerated.

248. 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. It awards the following amounts to the applicants, plus any tax that may be chargeable thereon:

- (i) EUR 60,000 to the second and third applicants, jointly;
- (ii) EUR 60,000 to the fourth and fifth applicants jointly;
- (iii) EUR 60,000 to the sixth and seventh applicants jointly;
- (iv) EUR 60,000 to the eighth applicant;
- (v) EUR 120,000 to the ninth applicant; and
- (vi) EUR 60,000 to the tenth applicant.

C. Costs and expenses

249. The first nine applicants claimed EUR 7,800 jointly for the costs and expenses incurred before the domestic authorities and the Court. They submitted that the lawyer had charged EUR 150 per hour of legal work. Her fees included EUR 3,900 for the time spent on the preparation of legal submissions for the Court and EUR 3,900 for the criminal and civil proceedings conducted in Russia.

250. The tenth applicant claimed under this heading EUR 9,037 for 60.25 hours of legal work, also at a rate of EUR 150 per hour. She submitted a detailed breakdown of the time spent by her representative. In addition, she claimed reimbursement of postal and administrative costs in the amount of EUR 155 and of translation costs in the amount of EUR 440, as certified by an invoice. She also submitted a copy of the legal representation agreement of 1 February 2008. She requested the Court to order the payment of the fees awarded under this heading directly into the representative's account in Chechnya, Russia.

251. The Government contested those claims.

252. The Court may make an award in respect of costs and expenses in so far that they were actually and necessarily incurred and were reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V, and *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). Making its own estimate based on the information available, the Court awards the first nine applicants the total sum of EUR 5,000, less the sum of EUR 850 received in legal aid from the Council of Europe, and the tenth applicant the sum of EUR 3,500, together with any value-added tax that may be chargeable to the applicants. The net award to the tenth applicant made under this heading is to be paid into the representative's bank account in Russia, as identified by that applicant.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and dismisses it;
3. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the applications inadmissible;
4. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Usman Mavluyev;
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 Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Usman Mavluyev 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 Khasan Batayev, Zaur Ibragimov, Magomed Temurkayev, Rizvan Ismailov, Sayd-Ali Musayev, Kharon Musayev and Usman Mavluyev;
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;

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, to be converted into Russian roubles at the date of settlement:

(i) in respect of pecuniary damage:

α. EUR 745 (seven hundred and forty-five euros) to the second and third applicants jointly;

β. EUR 1,490 (one thousand four hundred and ninety euros) to the fourth applicant;

γ. EUR 12,000 (twelve thousand euros) to the fifth applicant;

δ. EUR 745 (seven hundred and forty-five euros) to the sixth applicant;

ε. EUR 12,000 (twelve thousand euros) to the seventh applicant;

ζ. EUR 1,865 (one thousand eight hundred and sixty-five euros) to the eighth applicant;

η. EUR 3,130 (three thousand one hundred and thirty euros) to the ninth applicant; and

θ. EUR 11,000 (eleven thousand euros) to the tenth applicant;

(ii) in respect of non-pecuniary damage:

α. EUR 60,000 (sixty thousand euros) to the second and third applicants jointly;

β. EUR 60,000 (sixty thousand euros) to the fourth and fifth applicants jointly;

γ. EUR 60,000 (sixty thousand euros) to the sixth and seventh applicants jointly;

δ. EUR 60,000 (sixty thousand euros) to the eighth applicant;

ε. EUR 120,000 (one hundred and twenty thousand euros) to the ninth applicant; and

ζ. EUR 60,000 (sixty thousand euros) to the tenth applicant;

(iii) EUR 4,150 (four thousand one hundred and fifty euros) to the first nine applicants jointly and EUR 3,500 (three thousand five hundred euros) to the tenth applicant, plus any tax that may be chargeable to the applicants, in respect of costs and expenses; the net award to the tenth applicant made under this heading is to be paid into the representative's bank account in Russia, as identified by the applicant;

(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 17 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President