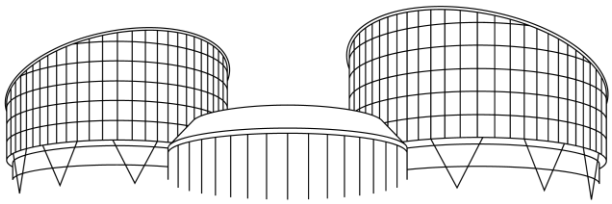

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MURTAZOVY v. RUSSIA

(Application no. 11564/07)

JUDGMENT

STRASBOURG

29 March 2011

FINAL

15/09/2011

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

In the case of Murtazovy v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyev,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 8 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 11564/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Russian nationals listed below ("the applicants"), on 2 March 2007.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative ("SRJI"), an NGO based in the Netherlands with a representative office in Russia. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 14 April 2009 the President of the First Section decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

1) Mr Vakha Murtazov, born in 1955;
2) Ms Kumset Murtazova, born in 1958;
3) Mr Alikhan Murtazov, born in 1990,
4) Mr Dzhakhar Murtazov, born in 1995,
5) Mr Aslan Murtazov, born in 1981, and
6) Mr Adam Murtazov, born in 1980.

6. The applicants live in the village of Naurskaya, Naurskiy District, in the Chechen Republic.

7. The first applicant is a brother of Mr Ayub Murtazov, born in 1952. The second applicant is Ayub Murtazov's wife; the couple are the parents of the third, fourth, fifth and sixth applicants.

A. Background events as described by the applicants

8. Prior to 2000 Ayub Murtazov was the head of the local administration of Naurskaya. In 2001 he sued his former employer for salary arrears.

9. At about 3 a.m. on 18 October 2001 fifteen or twenty armed men came to Ayub Murtazov's house. Most of them were wearing masks. The masked men identified themselves as servicemen of the Federal Security Service ("FSB"). There were also two unmasked persons; the FSB servicemen explained that those were attesting witnesses. The FSB servicemen's breath smelt of alcohol. Five or six of them forced Ayub Murtazov to the floor and started beating him. Meanwhile the others hid a package in the house, which later was "discovered" during a search. The package was full of a substance that looked like soap. The FSB servicemen said it was explosive material. They searched the house and the courtyard and left, taking Ayub Murtazov with them.

10. Later the same day the FSB servicemen transferred Ayub Murtazov to the police. He was kept in the temporary detention facility of the Naurskiy District department of the interior. The police opened a criminal investigation into the discovery of the explosive materials. At some point Ayub Murtazov was released, after signing an undertaking not to leave his place of residence. Later the criminal case against him was closed.

B. Abduction of Ayub Murtazov

1. The applicants' account

11. At about 3.30 a.m. on 19 November 2002 around twenty masked men wearing dirty camouflage uniforms and armed with machine guns burst inside Ayub Murtazov's house. They spoke Russian without an accent. The second applicant inferred that they were federal servicemen. She also observed that the men were either drunk or drugged.

12. The servicemen did not identify themselves. They forced the second applicant to the floor and went to Ayub Murtazov's room. When he asked them to explain their actions, the servicemen started swearing in Russian. They searched the house while some of them took the second applicant and her two minor sons into a room, tied them up with adhesive tape and left them there.

13. The servicemen left the house, taking Ayub Murtazov with them. The second applicant did not hear the sound of any vehicles. She was later told by her neighbours that several armoured personnel carriers had been seen in the village that night.

2. The Government's account

14. The Government submitted that it would be premature to give any information pertaining to the kidnapping prior to completion of the investigation in case no. 67061. They further asserted that the applicants' account of events did not in general contradict to the information collected in the course of the investigation.

C. Investigation into Ayub Murtazov's disappearance

15. Despite specific requests by the Court the Government did not disclose most of the materials from the investigation file in case no. 67061. Neither did they produce their account of the course of the investigation. They submitted copies of what they described as "main investigation file materials", some of which are barely legible. The account of the events below is based on those documents and information submitted by the applicants.

16. On 21 November 2002 the second applicant lodged a formal complaint about her husband's abduction with the district prosecutor's office.

17. On 2 December 2002 the Naurskiy District prosecutor's office ("the district prosecutor's office") instituted an investigation into the disappearance of Ayub Murtazov under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping) in case no. 67061.

18. On 10 December 2002 the second applicant was questioned as a witness; on 18 December 2002 she was granted victim status.

19. On 10 December 2002 the Naurskiy district department of the interior informed the district prosecutor's office that they had not carried out any special operations in the Naurskiy District on 19 November 2002.

20. On 20 December 2002, as well as on 4 and 16 January 2003 the district prosecutor's office questioned three residents of Naurskaya who stated that they had merely heard about Ayub Murtazov's kidnapping and knew no further details.

21. On 24 December 2002 the Naurskiy district department of the FSB informed the district prosecutor's office that they had not carried out any special operations in Naurskaya on 19 November 2002 and that they had no information concerning Ayub Murtazov's kidnapping.

22. On an unspecified date the first applicant complained about his brother's abduction to the Special Envoy of the Russian President for Human Rights in the Chechen Republic. The complaint was forwarded to the prosecutor's office of the Chechen Republic. On 22 January 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office.

23. On 27 January 2003 the district prosecutor's office notified the Special Envoy of the Russian President for Human Rights in the Chechen Republic and the second applicant that the investigation into the kidnapping of Ayub Murtazov by unidentified armed men had been opened on 2 December 2002 and was under way.

24. In February 2003 the district prosecutor's office questioned as witnesses other residents of Naurskaya, but all of them merely stated that they had no information on the case.

25. On 2 April 2003 the district prosecutor's office suspended the investigation in case no. 67061 for failure to identify those responsible.

26. On 11 June 2003 the first applicant complained about his brother's kidnapping to the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office").

27. On 17 June 2003 the UGA prosecutor's office forwarded the first applicant's complaint to the military prosecutor's office of military unit no. 20111 ("the unit prosecutor's office").

28. On 21 June 2003 the unit prosecutor's office informed the first applicant that they had no information on Ayub Murtazov's whereabouts or any implication of the federal military in his kidnapping.

29. On 23 June 2003 the district prosecutor's office notified the first applicant that the investigation in case no. 67061 had been suspended for failure to identify those responsible on 2 April 2003.

30. On 29 May 2004 the FSB department of the Chechen Republic informed the first applicant that they had no information on Ayub Murtazov's whereabouts and were taking measures to find him.

31. On 4 August 2004 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office and ordered them to take more vigorous investigative measures.

32. On 11 August 2004 the district prosecutor's office quashed the decision of 2 April 2003 as unfounded, resumed the investigation in case no. 67061 and notified the first applicant accordingly.

33. On 12 August 2004 the district prosecutor's office questioned Ms A., the applicants' neighbour, as a witness. She stated that on 19 November 2002 she had seen five or six men in masks and camouflage uniforms armed

with machine guns running around her courtyard. They had entered her house and started inspecting it. They had not told Ms A. what they had been doing. At some point their superior had said that Ms A. could not go to her neighbours' because their house had been mined. She had found out later that Ayub Murtazov had been taken away.

34. In 2004 the district prosecutor's office sent requests for information on Ayub Murtazov to prosecutors' offices and police departments of the neighbouring districts. In reply, numerous State agencies submitted that they had not arrested Ayub Murtazov and did not have any information on his whereabouts.

35. On 11 September 2004 the district prosecutor's office suspended the investigation in case no. 67061.

36. On 11 July 2005 the district prosecutor's office, in reply to the first applicant's complaint informed him that the investigation in case no. 67061 had been suspended for failure to identify the perpetrators; the date of the decision on suspension was not mentioned.

37. On 18 April 2006 the district prosecutor's office quashed the decision of 11 September 2004 owing to incompleteness of the investigation and resumed the proceedings. They notified the first applicant accordingly.

38. On 26 April 2006 the first applicant was granted victim status.

39. On 18 May 2006 the district prosecutor's office again suspended the investigation in case no. 67061.

40. On 8 September 2006 the investigation was resumed because it had not been completed; on 11 October 2006 it was suspended again.

41. On 11 January 2007 the proceedings in case no. 67061 were resumed.

42. On 20 January 2007 the second applicant was questioned.

43. On 23 January 2007 the district prosecutor's office requested the Naurskiy district department of the interior to submit the personal details of the servicemen who had been on duty at four checkpoints (code names for those points mentioned) on the night between 18 and 19 November 2002.

44. On 24 January 2007 the Naurskiy district department of the interior informed the district prosecutor's office that they had not kept the logs of vehicles passing by the Naurskiy District checkpoints.

45. On 14 February 2007 the district prosecutor's office questioned in the course of the proceedings in case no. 67061 Mr S., a resident of the village of Mekenskaya, Naurskiy District. He submitted that on the night of 18-19 November 2002 his neighbour Mr O. had been taken from his house by armed men in camouflage uniforms and taken away. Those men had travelled in a grey UAZ vehicle and a Niva vehicle.

46. On 15 February 2007 the investigation in case no. 67061 was again suspended.

47. On 23 August 2007 the investigation was resumed. On the same date the district prosecutor's office sent requests for information concerning

Ayub Murtazov to the police departments of various districts. On 24 August 2007 similar requests were sent to the prosecutors' offices of various districts. No relevant information was received in reply.

48. On 6 September 2007 the investigation was transferred to the Naurskiy investigating unit of the investigating department of the Investigating Committee of the Russia Prosecutor's Office ("the investigating unit").

49. On 23 September 2007 the investigating unit suspended the investigation.

50. On 3 March 2008 the investigating unit quashed the decision of 23 September 2007 as unfounded and resumed the investigation.

51. In March 2008 requests for information concerning Ayub Murtazov's kidnapping were sent to various police departments and the FSB department.

52. On 8 March 2008 the investigation was suspended.

53. On 4 June 2009 the applicants were informed that the investigation had been resumed.

54. On 30 August 2009 the applicants were notified that the investigation had been suspended.

55. In the Government's submission, the investigation was pending.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

57. The Government submitted that the applicant could not be considered to have exhausted available domestic remedies, since the investigation into Ayub Murtazov's kidnapping had not yet been completed. They further argued that it had been open to the first and second applicants, who had been granted victim status, as well as to the other applicants, to challenge in court any acts or omissions on the part of the investigating

authorities. They also submitted that the applicants could have brought civil claims for damages but had failed to do so.

58. The applicants contested that objection and stated that the remedies referred to by the Government were ineffective.

B. The Court's assessment

59. 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).

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

61. As regards a civil action to obtain redress for damage sustained as a result of illegal acts or unlawful conduct on the part of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see, among many other authorities, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

62. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that an investigation into the kidnapping of Ayub Murtazov has been pending since 2 December 2002. The applicants and the Government disputed the effectiveness of the investigation in question.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

64. The applicants complained under Article 2 of the Convention that their relative had been deprived of his life by the servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Submissions by the parties

1. The Government

65. The Government argued that the domestic investigation had obtained no evidence that State agents had been involved in the abduction of Ayub Murtazov.

66. They claimed that it had not been proved that the applicants' relative was dead. The applicants' submissions that he had been kidnapped by servicemen were unfounded. The fact that the abductors had been wearing camouflage uniforms and had been armed did not prove that they were servicemen, because camouflage uniforms could be freely purchased everywhere in Russia and the weapons could have been stolen or obtained illegally. Witnesses to the kidnapping had not stated that the armed men had any military insignia. UAZ vehicles could be freely purchased by any natural or legal person. The investigation had not established whether or not the kidnappers had been travelling in APCs.

67. The Government further submitted that the investigation into the abduction of Ayub Murtazov conducted by the domestic authorities had satisfied the Convention requirements. The investigation had been opened nine days after the second applicant had complained to the prosecutor's office, which was compatible with domestic law requirements. A number of witnesses had been questioned, the scene of the incident inspected and measures taken to establish Ayub Murtazov's whereabouts. The mere fact that the applicants had not been provided with detailed information on the course of the investigation did not render the investigation ineffective. Suspension of the investigation did not indicate its ineffectiveness. An important number of requests for information had been directed to various State bodies, and further investigative steps were being taken. The

Government stressed that the obligation to investigate was not an obligation of result, but of means.

2. The applicants

68. The applicants claimed that they had made out a prima facie case that their relative had been detained by State agents and that he must be presumed dead following his unacknowledged detention.

69. They submitted that in late 2002 only State agents had been allowed to carry weapons, wear camouflage uniforms and use military vehicles in the Chechen Republic. At that time the village of Naurskaya had been under the total control of the federal military. There had been checkpoints at the entrance and exit of the village.

70. The applicants also submitted three written depositions by their neighbours, stating that they had seen two APCs in Naurskaya on the night of Ayub Murtazov's kidnapping.

71. The applicants further stated that their family member must be presumed dead, because several years had elapsed since he had been abducted in life-threatening circumstances.

72. As to the investigation, the applicants argued that it had been ineffective, because the authorities had failed to take the necessary investigative steps. For instance, they had not questioned the neighbours who had allegedly seen the APCs. The applicants had not been provided with sufficient access to the investigation.

B. The Court's assessment

1. Admissibility

73. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 63 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Ayub Murtazov

(i) General principles

74. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the

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

(ii) Establishment of the facts

75. The Court observes that it has developed a number of general principles relating to the establishment of the facts when matters are disputed, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

76. The Court notes that despite its requests for a copy of the entire investigation file into the abduction of Ayub Murtazov, the Government did not produce most of the documents from the case file. Instead they sent copies of what they described as "the main case file materials" without giving any reasons for withholding the remaining documents. Considering that the Government failed to specify the nature of the documents and the grounds on which they could not be disclosed, the Court considers that they did not justify their unwillingness to submit key information specifically requested by the Court.

77. 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.

78. The applicants alleged that the persons who had taken Ayub Murtazov away on 19 November 2002 were State agents.

79. The Court takes note of the Government's assertion that the witnesses questioned in the course of the domestic investigation did not claim to have seen any APCs on the night of the abduction. However, it does not deem it necessary to establish whether the villagers indeed noticed those vehicles or not. In its view, the mere lack of proof that the armed men were travelling in APCs does not in itself render the applicants' hypothesis that those men belonged to the military implausible.

80. It follows from the materials submitted by the Government that at least four checkpoints manned by State agents existed at the material time around the village of Naurskaya (see paragraph 43 above). Indeed, UAZ vehicles, SUV-type cars quite regularly used by State agencies which could be described as "paramilitary", could probably be purchased by civilians, however, they would normally attract the close attention of security forces manning those checkpoints if they were travelling at night.

81. The Court takes note of the Government's submission that camouflage uniforms could be bought by anyone and that weapons could be stolen. However, it considers it extremely unlikely that insurgents dressed up as servicemen and armed with machine guns could go through a manned checkpoint in a paramilitary vehicle unnoticed and unimpeded.

82. The Court therefore considers that the fact that a large group of armed men in uniform equipped with paramilitary vehicles was able to move freely through Naurskaya at night and to arrest the man at his home strongly supports the applicants' version, that State servicemen were involved in their relative's kidnapping.

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

84. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their family member was abducted by State servicemen. The Government's statement that the investigation had not uncovered any evidence to support the theory that servicemen were involved in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents, which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Ayub Murtazov was arrested on 19 November 2002 by State servicemen during a special security operation.

85. There has been no reliable news of Ayub Murtazov since the date of the kidnapping. His name has not been found in any official detention facility records. Lastly, the Government have not submitted any explanation as to what happened to him after his arrest.

86. Having regard to the previous cases concerning disappearances of people in the Chechen Republic which have come before the Court (see, for example, *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII), it

considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Ayub Murtazov or any news of him for almost eight years corroborates this assumption, even though his body has not been found.

87. Accordingly, the Court finds it established that on 19 November 2002 Ayub Murtazov was abducted by State servicemen and that he must be presumed dead following his abduction.

(iii) The State's compliance with Article 2

88. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

89. The Court has already found it established that the applicants' family member must be presumed dead following unacknowledged detention by State servicemen (see paragraph 87 above). Noting that the authorities do not rely on any ground of justification in respect of any use of lethal force by their agents, it follows that liability for his presumed death is attributable to the respondent Government.

90. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Ayub Murtazov.

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

91. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family and carried out with reasonable promptness and expedition. It should also be effective in the

sense that it is capable of leading to a determination of whether or not the force used in such cases was lawful and justified in the circumstances, and should afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

92. In the present case, the kidnapping of Ayub Murtazov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

93. The Court notes at the outset that the Government refused to produce the complete file in case no. 67061. It thus has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties.

94. It is common ground between the parties that the investigation in case no. 67061 was opened on 2 December 2002, that is almost two weeks after the abduction of the applicants' family member. The Court observes in this connection that the Government have not disputed that the second applicant officially reported her husband's kidnapping for the first time no later than 21 November 2002 (see paragraph 16 above). It follows that the investigators remained passive for eleven days after the kidnapping in life-threatening circumstances had been reported to them, which is in itself regrettable and was liable to adversely affect the proceedings.

95. The Court observes that a number of important investigative steps were significantly delayed. For example, such a crucial measure as an attempt to establish the identities of servicemen on duty at the checkpoints was taken for the first time on 23 January 2007, that is more than four years after the events, which obviously could not have made the task of identifying and questioning them any easier. Moreover, by then all the logs of registration of vehicles going through the checkpoints had been destroyed. If the district prosecutor's office had acted less tardily and interviewed the servicemen and studied the registration logs shortly after the kidnapping, it would have been possible to obtain valuable information capable of shedding light on Ayub Murtazov's disappearance. The Government advanced no explanation for those delays.

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

97. Moreover, the majority of investigative measures taken by the district prosecutor's office were limited to sending requests to other State

agencies. It is noteworthy in this respect that the decisions to resume the investigation at all times referred to the incomplete nature of the measures already taken as a ground for quashing the previous decisions to suspend the proceedings.

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

99. Lastly, the Court notes that the investigation in case no. 67061 was repeatedly suspended and then resumed, which led to lengthy periods of inactivity on the part of the investigators. Most notably, no proceedings were pending between 11 September 2004 and 18 April 2006 (see paragraphs 35 and 37 above). Such handling of the investigation could only have had a negative impact on the prospects of identifying the perpetrators.

100. Having regard to the limb of the Government's objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays and omissions, has been pending for many years with no tangible results.

101. The Government also mentioned that the applicants had the opportunity to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that, owing to the time that had elapsed since the events complained of, certain investigative steps that ought to have been carried out much earlier could no longer usefully be taken. The Court finds therefore that it is highly doubtful that the remedies relied on by the Government would have had any prospects of success.

102. In the Court's opinion, the Government also failed to demonstrate how the first and second applicants' having victim status could have improved the above-described situation.

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

104. 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 Ayub Murtazov, in breach of Article 2 of the Convention in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

105. The applicants complained that as a result of their brother, husband and father's disappearance and the State's failure to investigate it properly they had endured severe mental suffering. The applicants relied on Article 3 of the Convention, which reads:

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

A. The parties' submissions

106. The Government disagreed with these allegations and argued that the applicants had not been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

107. The applicants maintained their complaints.

B. The Court's assessment

1. Admissibility

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

2. Merits

109. The Court observes that the question whether a member of the family of a "disappeared person" is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002).

110. In the present case the Court notes that the first applicant is the brother of the missing person, the second applicant is his wife and the four other applicants are his sons. It observes that Ayub Murtazov's wife and children belong to his immediate family, and so does his brother. Moreover, the first applicant was closely involved in the search for Ayub Murtazov. The Court thus does not consider it necessary to distinguish in the present case any family members who could not have standing as victims for the purposes of Article 3 (see *Luluyev and Others*, cited above, §§ 112-13).

111. The Court notes that for almost eight years the applicants have had no news of their family member. During this period they have applied to various official bodies with enquiries about him. Despite all their efforts, the applicants have never received any plausible explanation or information as to what became of Ayub Murtazov following his arrest. The responses received by the applicants mostly denied that the State was responsible or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

114. The applicants further stated that Ayub Murtazov 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

115. The Government asserted that no evidence had been obtained by the investigators to confirm that Ayub Murtazov had been deprived of his liberty by State agents.

116. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

117. 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

118. 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).

119. The Court has found that Ayub Murtazov was abducted by State servicemen on 19 November 2002 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and no official trace exists of his subsequent whereabouts or fate. In accordance with the Court's practice circumstances of this nature must be considered to disclose a most serious failing, since they enable 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).

120. In view of the foregoing, the Court finds that the applicants' relative was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

121. The applicants complained that they had been deprived of effective remedies in respect of the alleged violations of Articles 2 and 3, 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

122. The Government contended that the applicants 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 an opportunity to challenge any acts or omissions on the part of the investigating authorities in court, which they had deliberately refused to do. In sum, the Government submitted that there had been no violation of Article 13.

123. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

124. 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

125. The Court reiterates that in circumstances where, as here, a criminal investigation into a disappearance and ill-treatment 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).

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

127. As regards the applicants' mental suffering, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction with Article 3 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

128. 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

129. The second, third and fourth applicants claimed that they had sustained damage in respect of the loss of Ayub Murtazov's earnings following his abduction and disappearance. They submitted that they could not provide documents pertaining to Ayub Murtazov's income prior to the abduction and thus suggested that in such cases the calculation should be made on the basis of the subsistence level established by national law. With reference to the relevant provisions of the Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government's Actuary Department in 2008 ("the Ogden tables"), the second applicant claimed a total of 138,869.35 Russian roubles (RUB) under this head (approximately 3,215 euros (EUR)), while the third applicant claimed RUB 22,614.27 (approximately EUR 523) and the fourth applicant claimed 46,289.78 (approximately EUR 1,070).

130. The Government argued that the question of compensation for the loss of a breadwinner could be solved at the national level, and claimed that the applicants had not substantiated their claims.

131. The Court reiterates that there must be a clear causal connection between damage claimed by an applicant and a violation of the Convention, and that this may, in appropriate cases, include compensation in respect of loss of earnings. Having regard to its conclusions above, it finds that there is a direct causal link between the violation of Article 2 in respect of the

second, third and fourth applicants' husband and father and the loss to them of the financial support which he could have provided.

132. Taking into account the applicants' submissions and the fact that Ayub Murtazov was not employed at the time of his abduction, the Court finds it appropriate to award EUR 3,000 to the second applicant, EUR 500 to the third applicant and EUR 1,000 to the fourth applicant in respect of pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Non-pecuniary damage

133. The applicants claimed EUR 300,000 jointly in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relative.

134. The Government found the amounts claimed exaggerated.

135. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention on account of the mental suffering they endured as a result of the disappearance of their relative and the authorities' attitude to that fact. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award in respect of non-pecuniary damage EUR 40,000 to the second applicant and EUR 4,000 to the first, third, fourth, fifth and sixth applicants each, plus any tax that may be chargeable on these amounts.

C. Costs and expenses

136. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for the SRJI lawyers and EUR 150 for the SRJI senior staff, as well as administrative expenses, translation and courier delivery fees. The aggregate claim in respect of costs and expenses related to the applicants' representation amounted to EUR 6,149.98, to be paid into the applicants' representatives' account in the Netherlands.

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

138. The Court has to establish first whether the costs and expenses indicated by the applicant were actually incurred, and secondly whether they were necessary (see *McCann and Others*, cited above, § 220).

139. Having regard to the detailed information and legal representation contracts submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred.

140. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes, however, that the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that the case involved the amount of research claimed by the applicants' representatives.

141. Having regard to the details of the claims submitted by the applicants, the Court awards them EUR 4,000, together with any value-added tax that may be chargeable to the applicants; the net award is to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Ayub Murtazov;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Ayub Murtazov disappeared;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;

6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ayub Murtazov;

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

8. *Holds* that no separate issue arises under Article 13 of the Convention in conjunction with Article 3 of the Convention;

9. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 3,000 (three thousand euros) to the second applicant; EUR 500 (five hundred euros) to the third applicant; EUR 1,000 (one thousand euros) to the fourth applicant in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(ii) EUR 40,000 (forty thousand euros) to the second applicant and EUR 4,000 (four thousand euros) to the first, third, fourth, fifth and sixth applicants each in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(iii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;

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

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

Done in English, and notified in writing on 29 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President