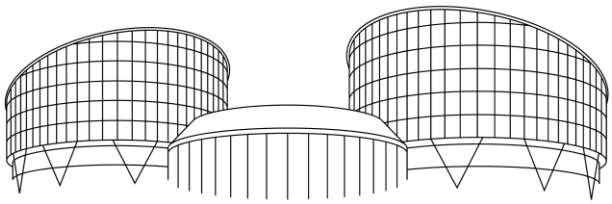

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DZHABIRAILOVA AND DZHABRAILOVA v. RUSSIA

(Application no. 15563/06)

JUDGMENT

STRASBOURG

2 December 2010

FINAL

11/04/2011

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

In the case of Dzhabirailova and Dzhabrailova v. Russia,

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges*,
and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 9 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 15563/06) 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 two Russian nationals, Ms Amynt (also spelled as "Aminat") Shamsudinovna Dzhabirailova and Mrs Zaynab (also spelled as "Zaynap") Shamsudinovna Dzhabrailova ("the applicants"), on 5 April 2006.

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

3. On 20 May 2008 the Court 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. Under the provisions of the former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 23 April 2010 the President of the First Section decided that the parties should submit further observations under Rule 54 § 2 (c) of the Rules of Court.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant is the mother of Mr Isa Aytamirov, born in 1983. The second applicant is her sister and Isa Aytamirov's aunt. The applicants were born in 1955 and 1960 respectively. The first applicant lives in the town of Argun and the second applicant lives in the village of Novy Tsentoroy, in the Chechen Republic.

A. Disappearance of Isa Aytamirov

1. The applicants' account

7. At the material time the first applicant lived with Isa Aytamirov in the town of Argun, in the Grozny district of Chechnya. The second applicant lived at 36 Gagarina Street, in the village of Novy Tsentoroy, in the Grozny district of Chechnya. Isa Aytamirov frequently stayed at his aunt's place in the village.

8. On the night of 19 February 2003 the second applicant, Isa Aytamirov and other relatives were sleeping in the house in Novy Tsentoroy. There was a power cut in the village that night. As a result of previous bombardments the windows of the second applicant's house were covered with sheets of plastic instead of glass.

9. At about 4 a.m. a group of about thirty Russian servicemen arrived at the second applicant's gate on three armoured personnel carriers (APCs). They climbed over the fence, took the entrance door off its hinges and broke into the house. The intruders were wearing masks and military uniforms; they spoke Russian and Chechen. Using their flashlights, they dispersed into different rooms, pointed their guns at the second applicant and her relatives and ordered them not to move. Then the intruders went into the room where Isa Aytamirov was. They woke him up, pointed their guns at him and took him outside. Isa Aytamirov, barefoot and in his underwear, was taken to a shed in the yard and placed with his hands up against the wall. Meanwhile, Ms M. Dzh., another aunt of Isa Aytamirov, tried to call for help from a window. One of the servicemen ordered her in Chechen to stay quiet.

10. The second applicant and her relatives asked the servicemen to let them go outside. Permission was given only to the second applicant. When she went into the yard, she saw her nephew standing with his hands up against the wall. The second applicant asked the servicemen if she could give them her nephew's passport so they could give it to him. When she had brought it to them they forced her back into the house. Then the second

applicant saw the servicemen put Isa Aytamirov into one of the APCs. She tried to follow her nephew and tried to climb on to the APC, but one of the servicemen hit her with a rifle butt and she fell on the ground and lost consciousness. The APCs drove away with Isa Aytamirov in an unknown direction. After that the applicants' relatives went outside and found the second applicant on the ground, unconscious and bleeding.

11. According to the second applicant, the following day she sought medical help at the military hospital in Grozny, where she underwent an X-Ray of both legs. Subsequently, the second applicant was examined in the Argun town hospital, where her legs were bandaged and then plastered.

12. The description of the events of the night of 19 February 2003 is based on the accounts given to the applicants' representatives by the following witnesses: an account by Ms M. Dzh. given on 23 September 2005; two accounts by the second applicant given on 1 December 2004 and 23 September 2005; an account by Ms T. Dzh. given on 23 September 2005; a joint account by Ms M. and Ms G. given on an unspecified date; a joined account by Ms A.I. and Ms M.K. given on 25 February 2006; and also on two hand-drawn maps of the premises in the Novy Tsentoroy village.

13. The applicants have had no news of Isa Aytamirov since 19 February 2003.

2. Information submitted by the Government

14. The Government did not challenge most of the facts as presented by the applicants. They submitted that on 19 February 2003 unidentified armed persons entered the house in Novy Tsentoroy, kidnapped Isa Aytamirov and took him away to an unknown destination. The same persons had caused injuries to the second applicant.

B. The search for Isa Aytamirov and the investigation

1. The applicants' account

15. Immediately after the abduction of Isa Aytamirov his relatives reported the incident to the authorities.

16. On 3 March 2003 the first applicant complained about the abduction of her son to the head of the Argun town administration and asked for assistance in establishing Isa Aytamirov's whereabouts.

17. On 12 March 2003 the first applicant complained about Isa Aytamirov's abduction to the head of the Argun Department of the Interior (the Argun OVD). In her letter she stated that her son had been abducted by a group of armed masked men in military uniforms and requested assistance in the search for him.

18. On 24 March 2003 the first and second applicants complained to the head of the administration of the Chechen Republic and the Envoy of the President of the Russian Federation for Ensuring Human Rights and Freedoms in the Chechen Republic (the Envoy) that at about 4 a.m. on 19 February 2003 a group of servicemen in camouflage uniforms, who had arrived on three APCs, had abducted Isa Aytamirov from their house in Novy Tsentoroy.

19. By a letter of the same date the Envoy forwarded the applicants' complaint about the abduction of Isa Aytamirov to the military prosecutor of the Chechen Republic.

20. On 21 April 2003 the second applicant wrote to the Grozny district prosecutor's office. She complained that her nephew had been abducted by a group of about thirty Russian military servicemen who were speaking Russian and Chechen and had arrived on three APCs. She also stated that the servicemen had refused to give a reason for Isa Aytamirov's abduction, that they had behaved rudely and had beaten her and that she had lost consciousness as a result of the beating. The applicant pointed out that her numerous complaints about the events to various law-enforcement agencies had not produced any results and requested the authorities to institute an investigation into the abduction of Isa Aytamirov.

21. On 30 May 2003 the military prosecutor's office of the United Group Alignment (the UGA military prosecutor's office) forwarded the first applicant's complaint about her son's abduction to the military prosecutor's office of military unit no. 20102 for examination.

22. On 23 March 2004 the military prosecutor's office of the UGA informed the second applicant that the examination of her complaint concerning her nephew's abduction had not established any involvement of Russian military servicemen in the crime. According to the letter, on an unspecified date the Argun town prosecutor's office had instituted an investigation into Isa Aytamirov's abduction under Article 126 § 2 of the Criminal Code (aggravated kidnapping) and the case file had been given number 42023.

23. On 12 May 2004 the criminal search division of the Chechnya Ministry of the Interior informed the second applicant that on 20 February 2003 the Grozny district prosecutor's office (“the district prosecutor's office”) had instituted an investigation into the abduction of Isa Aytamirov and the criminal case file had been given number 42027. According to the letter, operational search measures aimed at establishing the whereabouts of Isa Aytamirov and the identities of the perpetrators were under way.

24. On 8 June 2004 the district prosecutor's office wrote to the department of the interior of the Grozny district (the Grozny ROVD) requesting the attendance of the second applicant at the prosecutor's office on 14 July 2004.

25. On 17 June 2004 the applicants' relative, Ms M.DzH., another aunt of the disappeared Isa Aytamirov, was granted the status of a victim in criminal case no. 42027. The decision stated, in particular, that at about 4 a.m. on 19 February 2003 a group of unidentified armed persons in camouflage uniforms, travelling in three APCs and two UAZ vehicles, had abducted Isa Aytamirov from 36 Gagarina Street, Novy Tsentoroy.

26. On an unspecified date the district prosecutor's office summoned the second applicant for an unspecified investigative measure on 14 July 2004. It is unclear whether any investigative measures were carried out on that date.

27. According to the seizure record of 15 July 2004, on that date investigator T. of the district prosecutor's office seized from the second applicant a medical certificate and two X-rays.

28. On 30 July 2004 the UGA military prosecutor's office forwarded the second applicant's request for assistance in the search for her nephew to the military prosecutor's office of military unit no. 20102 for examination.

29. On 20 September 2004 the military prosecutor's office of military unit no. 20102 informed the second applicant that the examination of her complaint had not established any implication of Russian servicemen in the abduction of Isa Aytamirov. The letter also stated that, in addition, the case file materials of criminal case no. 42027 did not contain any information suggesting the involvement of Russian servicemen in the abduction. The second applicant was advised to obtain further information about the criminal investigation from the district prosecutor's office.

30. On 21 February 2005 the military commander of the Chechen republic forwarded the second applicant's complaint about her nephew's abduction to the Grozny district military commander's office. The letter instructed the district military commander's office to examine the complaint together with the Grozny ROVD and the local department of the Federal Security Service and to undertake unspecified measures to establish the whereabouts of Isa Aytamirov.

31. On 17 May 2005 the applicants' representatives wrote to the district prosecutor's office describing in detail the circumstances of Isa Aytamirov's abduction by Russian servicemen. They pointed out that the investigation into Isa Aytamirov's abduction had been initiated more than two years ago and at the time of writing it had failed to produce any results. They also complained about the lack of information concerning the proceedings. The applicants' representatives requested, among other things, information on the following points: whether any special operations had been conducted between 19 and 21 February 2003 in the Grozny district; whether the area had been under curfew at the material time and whether there had been any Russian military checkpoints in the vicinity of Novy Tsentoroy village and if so, what military vehicles had been at their disposal; whether the authorities had examined the suggestion that Russian servicemen were

involved in the abduction of the applicants' relative; and what investigative measures had been undertaken to that end.

32. On 27 May 2005 the UGA military prosecutor's office informed the second applicant that the district prosecutor's office had instituted an investigation into the abduction of her nephew; that the criminal case file had been given number 42027; and that all information was to be obtained from the latter office.

33. On 8 June 2005 the prosecutor's office of the Chechen Republic forwarded the second applicant's complaint about her nephew's abduction to the district prosecutor's office for examination. The latter was to inform her, as well as the republican prosecutor's office, about the results.

34. On 9 June 2005 the district prosecutor's office replied to the applicants' representatives. The letter stated that the district prosecutor's office had instituted an investigation in criminal case no. 42027; that they had forwarded requests for information to a number of unspecified authorities and had questioned an unspecified number of witnesses; that they had undertaken operational and search measures to identify the perpetrators, but those measures had failed to produce any results. Lastly, the letter stated that the investigation in criminal case no. 42027 had been suspended on 10 August 2004 pursuant to Article 208 § 1 (1) of the Criminal Procedure Code, namely for failure to establish the identity of the perpetrators.

35. On 15 June 2005 the district prosecutor's office informed the applicants' relative that on 20 February 2003 they had instituted a criminal investigation into the abduction of Isa Aytamirov and the case file had been given the number 42027. According to the letter, unspecified operational and search measures aimed at identifying the perpetrators were under way.

36. On 22 September 2005 the applicants' representatives wrote to the district prosecutor's office. They stated that the authorities' response to their letter had failed to provide them with the requested information and complained of a lack of information about the investigation. They requested, among other things, that the investigation be conducted in an effective manner and that it be reopened if it had been suspended and asked for permission to have access to the documents in the criminal case file.

37. On 27 December 2005 the district prosecutor's office informed the first applicant that on 10 August 2004 they had suspended the investigation in criminal case no. 42027 for failure to establish the identity of the perpetrators. The operational and search measures aimed at solving the crime were under way.

38. On 29 December 2005 the applicants' representatives wrote to the district prosecutor's office, averring that the authorities' responses to their letters had failed to provide the requested information, and complained of a lack of access to the investigation. They asked for information concerning the status of the investigation and requested that the proceedings be resumed

and conducted in an effective and thorough manner. Lastly, they asked for permission to make copies of the documents from the criminal case file. They forwarded a copy of that letter to the prosecutor's office of the Chechen Republic. It is unclear whether the applicants or their representatives received any response to this letter.

39. On 8 July 2008 the Groznenskiy Interdistrict investigating department of the Investigating Department with the Prosecutor's office of the Chechen Republic (the investigating department) informed the applicants' relative that on an unspecified date it had resumed the investigation in the criminal case concerning the abduction of Isa Aytemirov.

40. By a letter of 8 August 2008 the investigating department informed the applicants' relative that on an unspecified date the investigation in case no. 42027 had been suspended.

41. On 25 August 2008 the investigating department wrote to the applicants' relative that on the same date they had resumed the investigation of the criminal case concerning the abduction of Isa Aytemirov.

42. By a letter of 25 September 2008 the investigating department notified the second applicant that on the same date the investigation in case no. 42027 had been suspended for failure to identify the perpetrators.

2. Information submitted by the Government

43. On 19 February 2003 the district prosecutor's office received Isa Aytamirov's relatives' complaint, saying that at about 4 a.m. on 19 February 2003 a group of armed men, who had arrived on three APCs and two UAZ vehicles, had abducted Isa Aytamirov from his relatives' house at 36 Gagarina Street, Novy Tsentoroy. Furthermore, the kidnappers had inflicted bodily injuries on the second applicant, as a result of which she had been admitted to hospital.

44. On 20 February 2003 the district prosecutor's office opened criminal case no. 42027 into the abduction of Isa Aytamirov under Article 126 § 2 of the Criminal Code (aggravated abduction).

45. M.Dzh., interviewed as a witness on 20 February 2003, stated that at about 4 a.m. on the previous day a group of seven to eight persons in camouflage uniforms had burst into the house where she had been staying together with her mother, two sisters and nephew Isa Aytamirov. The intruders were armed and were speaking Russian and Chechen. They had come to the room where Isa Aytamirov had been sleeping and had taken him, barefoot, outside. There were numerous other persons in camouflage uniforms in the yard. Isa Aytamirov had been put into one of the two APCs parked at the gate and the vehicles had taken off in the direction of Argun. She had not noticed their licence plate numbers. Later on, she had learnt that there had been another APC and two UAZ vehicles on the other side of the street; she did not know anything about their licence plates. When Isa

Aytamiro had been put in the APC, the second applicant had rushed to it but had been pushed away; she had fallen down and broken her leg.

46. On 25 February 2003 the district prosecutor's office requested the Grozny ROVD to take operational and search measures aimed at identifying witnesses to the kidnapping and its perpetrators. It also requested from unspecified bodies a description of Isa Aytamirov and information on any involvement on his part in criminal activities. From the replies received, it followed that the operational and search measures had not made it possible to identify the perpetrators.

47. On 25 March 2003 the investigation requested the Chechen Department of the FSB to provide information whether Isa Aytamirov had ever been involved in illegal military groups. From that authority's reply of 1 April 2004 it followed that they did not have information in that respect.

48. On 10 June 2004 the investigation requested the Ministry of the Interior to search for the perpetrators of Isa Aytamirov's kidnapping, establish his whereabouts and submit any incriminating material (*компрометирующий материал*) on him. From the Ministry's reply it followed that they had no incriminating material on him and that the Ministry's officers had been instructed to take the necessary steps to search for him.

49. On the same date the investigation requested an unspecified authority to identify and interview the relatives and close acquaintances of Isa Aytamirov, as well as obtaining a character reference from unspecified authorities.According to an unspecified source of information, apparently received in reply to the request, Isa Aytamirov had a positive character reference from his place of residence.

50. On 17 June 2004 the investigation granted M. Dzh. victim status in the proceedings in case no. 42027 and interviewed her. M. Dzh. stated that her mother, Isa Aytamirov and the second applicant had been living with her in the village of Novy Tsentoroy. At about 4 a.m. on 19 February 2003 a group of armed men had broken down the entrance door and had burst into her house. They had headed to the room where Isa Aytamirov had been sleeping, had taken him outside and driven him away. When he had been brought outside, there had been an APC there. The intruders had been speaking mostly Russian; only one of them had been speaking Chechen. Isa Aytamirov had been unemployed but had wanted to apply for a job in the Ministry of the Interior. He had mostly stayed at home.

51. On the same date the investigation interviewed M.A. Dzh., Isa Aytamirov's great-uncle. He stated that he was M. Dzh.'s neighbour. In the morning on 19 February 2003 he had learnt that on the previous night a group of armed men had burst into her house and had kidnapped Isa Aytamirov. M.A.Dzh did not know the reason for his kidnapping. Isa Aytamirov had gone frequently to Grozny and had always been checked at the checkpoints on the way there, however, he had never had any problems.

52. On unspecified dates the investigation requested all the district prosecutor's offices in the Chechen Republic to indicate to the local departments of the interior that they should search for Isa Aytamirov, find out whether he had been arrested during any special operation conducted by the military or law-enforcement authorities, whether he was being held in any detention centre and whether his body could be found among bodies which had not been identified.

53. All replies to those questions from the above-mentioned authorities were in the negative.

54. On 15 July 2004 the second applicant was interviewed as a witness. She stated that she lived with her mother and M. Dzh. and that Isa Aytamirov had been staying with them until his abduction on 19 February 2003. On that day at about 4 a.m. a group of armed men burst into their house, where her other sister was staying, as well as the people mentioned. The intruders had gone straight away to the room where Isa Aytamirov was, as if they had known where he was sleeping. They had woken him and taken him outside. After that one of the armed men had told her to fetch Isa Aytamirov's passport, which she had done. In the street she had seen three APCs and several UAZ vehicles. Isa Aytamirov had been put into one of the APCs. A minute or two later the intruders left. The second applicant had tried to climb on to an APC and had even managed to get on to it for a moment but one of the armed men had struck her on the right shoulder with a rifle butt and pushed her to the ground and she had lost consciousness. When she woke she was at home. She had pain in the right arm and her left leg was swollen and covered with blood. On the same morning she was admitted to Argun town hospital where they applied a splint to her injured leg. On the same day she had been taken to the military hospital. She wore the splint for two weeks. The second applicant had kept a medical certificate from the hospital and two X-rays.

55. On 15 July 2004 the investigation seized the medical certificate and the X-rays from the second applicant.

56. On 19 July 2004 the investigation ordered an expert medical examination of the second application. It appears that it was not carried out.

57. On 9 July 2008 investigator K. ordered, yet again, the second applicant's to be examined with a view to establishing the origin of her injury, the date of its infliction and the level of damage to her health. He enclosed the two X-rays seized from the second applicant on 15 July 2004. it appears that he did not enclose the medical certificate seized from the second applicant.

58. On 28 July 2008 the Forensic Medical Assessment Office of the Chechen Republic (“the forensic assessment office”) refused to comply with the request because the investigative department had failed to furnish the second applicant's medical record and that of her subsequent health

problems, which had made it impossible to carry out the required examination.

59. According to the Government, the investigation in case no. 42027 is pending.

60. Despite specific requests by the Court the Government did not disclose most of the contents of criminal case no. 42027, providing only copies of the decision of 20 February 2003 to institute an investigation; the applicants' relatives' complaint of 19 February 2003 about the abduction of Isa Aytamirov; the record of interview of M. Dzh. of 20 February 2003; the decision to grant M. Dzh. victim status of 17 June 2004 and her interview record of the same date; the interview record of M.A. Dzh. of 17 June 2004; the interview record of the second applicant of 15 July 2004; the decision of 9 July 2008 ordering the second applicant's medical examination, and the reply from the forensic office of 28 July 2008.

61. They submitted that the copies provided were the only documents which could be submitted to the Court "without damage to legally protected interests", without providing any further details. Subsequently, they clarified that they could not furnish the documents because it might prejudice the interests of the State and also of the participants to the criminal proceedings. They referred to Article 161 of the Code of Criminal Procedure.

II RELEVANT DOMESTIC LAW

62. 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

63. The Government contended that the applicants' complaint concerning the disappearance of their relative should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Isa Aytamirov had not yet been completed. They further argued that the applicants could have requested to be granted victim status in the domestic proceedings but had failed to do so.

If they had had that status they would have been entitled to participate more actively in the investigation. In any event, it was open to them to complain to the prosecutor's office or courts. Lastly, the Government stated that the applicants could have applied to civil courts for compensation under Articles 151 and 1069 of the Civil Code.

64. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect had been futile. They also submitted that the effectiveness of the investigation had been undermined in its early stages by the authorities' failure to take the relevant steps in due time. With reference to the Court's practice, they argued that they were not obliged to apply to civil courts in order to exhaust domestic remedies.

B. The Court's assessment

65. 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).

66. 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.

67. As regards a civil action to obtain redress for damage sustained through alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

68. As regards criminal law remedies, the Court observes that the applicants complained to the law-enforcement authorities immediately after the kidnapping of Isa Aytamirov and that an investigation has been pending since 20 February 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

69. 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

70. 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

71. The Government argued that the domestic investigation had obtained no evidence that State agents had been involved in the abduction of Isa Aytamirov or that any special operations had been conducted in the village of Novy Tsentoroy on the night of his kidnapping. The applicants' relative had not been implicated in activities of illegal armed groups, he had planned to apply for a job with the law-enforcement bodies and no State authority had acknowledged his detention. Isa Aytamirov's body had not been discovered. The applicants' submissions that he had been kidnapped by servicemen were unfounded. In particular, they had stated before the domestic investigation authorities that the abductors had been speaking both Russian and Chechen and that, although they had not been wearing masks, the applicants would not be able to identify them. They had likewise been unable to indicate in which direction the military vehicles had left and to describe their licence plates. The fact that the abductors had been wearing camouflage uniforms and had been armed also did not prove that they were servicemen.

72. The Government further submitted that the investigation into the abduction of Isa Aytamirov conducted by the domestic authorities had satisfied the Convention requirements. They stressed that the obligation to investigate was not an obligation of result but of means. The investigation in the applicants' case had been promptly launched and had been conducted by an independent authority. An important number of requests for information

had been directed to various State bodies and further investigative steps were being taken.

73. 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. They submitted that the Government had not disputed that Isa Aytamirov had been detained on 19 February 2003 by a group of armed men in camouflage uniforms, who had arrived on APCs and in UAZ vehicles. As to camouflage uniforms, after the beginning of the armed conflict in the Chechen Republic in 1999 and throughout 2003 they could not be sold to civilians. Persons found in possession of uniforms would be arrested and the uniforms confiscated. They further stressed that in 2003 only State agents deployed APCs in the Chechen Republic. The UAZ vehicles were also part of the usual equipment of the Russian military.

74. The applicants further submitted that they could not be blamed for not remembering the licence numbers of the vehicles and the direction in which they had left, regard being had to the fact that the abduction had taken place in the early morning and the applicants had been blinded by the abductors' flashlights. Moreover, one of the witnesses, to whose deposition the Government referred in their observations, explicitly stated that they vehicles went towards Argun. In the same vein, in her statement to the investigation, a copy of which had been enclosed by the Government, the second applicant also stated that the military convoy had gone in the direction of Argun or Khankala. The applicants also stressed that throughout 2003 the village had been under the State authorities' full control and that the authorities had maintained manned checkpoints around it. Moreover, at the material time the village had been under curfew and only State agents had been exempt from it. Lastly, the applicants invited the Court to draw inferences from the Government's refusal to provide a copy of the entire case file on the abduction of Isa Aytamirov at the Court's request.

75. As to the investigation, the applicants argued that it had been ineffective because the authorities had failed to take the necessary investigative steps. In particular, they had never inspected the crime scene, had failed to question any State agents and had limited their efforts to sending them written requests. The applicants had not been provided with sufficient access to the investigation and had not been properly informed about any significant developments in it.

B. The Court's assessment

1. Admissibility

76. 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 69 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 Isa Aytamirov

(i) General principles

77. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of 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

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

79. The applicants alleged that at about 4 a.m. on 19 February 2003 their relative, Isa Aytamirov, had been abducted by servicemen and had then disappeared. They invited the Court to draw inferences as to the well-foundedness of their allegations from the Government's failure to provide the documents requested from them. They submitted that several persons, as well as the second applicant, had witnessed Isa Aytamirov's abduction and enclosed their written statements to support that submission.

80. The Government conceded that Isa Aytamirov had been abducted on 19 February 2003 by unidentified armed camouflaged men, who had arrived in three APCs and two UAZ vehicles. However, they denied that the abductors had been servicemen, referring to the absence of conclusions from the ongoing investigation.

81. The Court notes that despite its requests for a copy of the investigation file into the abduction of Isa Aytamirov, the Government refused to produce most of the documents from the case file. It finds their vague reference to "legally protected interests" of unspecified subjects utterly unconvincing and, as to their argument concerning Article 161 of the Criminal Procedure Code, it notes that it has already held that it is insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

82. 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.

83. Having regard to the applicants' submissions, their hand-drawn sketches of the premises and statements by witnesses enclosed by them, the Court considers that they presented an overall coherent and convincing picture of Isa Aytamirov's abduction on 19 February 2003 by a group of armed and camouflaged men driving a number of military vehicles, including APCs. It observes that the applicants' account was consistent both throughout the domestic investigation and before this Court (see paragraphs 8 - 10, 18 and 54 above). It also cannot but note that the witness' statements referred to by the Government appear to confirm the applicants' account of the events surrounding their relative's abduction (see paragraphs 45, 50 and 51 above).

84. The Court further takes note of the fact that the Government did not dispute the applicants' submission that their relative had been abducted from the area which had been under curfew at the material time and that the abductors must have passed freely through the checkpoints situated there. Moreover, the functioning of the checkpoints in the area at the material time appears to be confirmed by a witness' statement referred to by the Government (see paragraph 51 above).

85. In the Court's view, the fact that a large group of armed men in uniforms, driving in a convoy of military vehicles, including three APCs, was able to pass freely through checkpoints during curfew hours and proceeded to arrest the applicants' relative in a manner similar to that of State agents strongly supports the applicants' allegation that they were State servicemen and that they were conducting a special operation in Novy Tsentoroy on the night of Isa Aytamirov's abduction.

86. The Court notes that in their applications to the authorities the applicants consistently maintained that Isa Aytamirov had been detained by

unknown servicemen and requested the investigating authorities to look into that possibility. It further notes that after more than seven years the investigation has produced no tangible results.

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

88. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their relative was abducted by State servicemen. The Government's statement that the investigation had not found any evidence to support the involvement of servicemen in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents, which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Isa Aytamirov was arrested on 19 February 2003 by State servicemen during an unacknowledged security operation.

89. There has been no reliable news of Isa Aytamirov 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.

90. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among many others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-VIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Isa Aytamirov or of any news of him for more than seven years supports this assumption.

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

(iii) The State's compliance with Article 2

92. 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)).

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

94. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Isa Aytamirov.

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

95. 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).

96. The Court notes at the outset that the Government refused to produce most of the documents from case file no. 420237 and furnished only copies of the missing person's relatives' complaint; the decision to open the

investigation; two interview records, and a decision to grant victim status to M. Dzh. It therefore has to assess the effectiveness of the investigation on the basis of the very sparse information submitted by the Government and the few documents available to the applicants that they provided to the Court.

97. Turning to the facts of the present case, the Court observes that the applicants notified the authorities of the abduction immediately after it had occurred. The investigation was opened on 20 February 2003, that is on the day following the abduction. Thus, the Court is satisfied that it was instituted with sufficient promptness.

98. The Court has further to assess the scope of the investigative measures taken. From the documents furnished by the Government it follows that on 20 February 2003 the investigating authorities interviewed M. Dzh. as a witness and that more than a year later they granted her victim status. It further transpires that more than a year after the opening of the investigation they interviewed as a witness the applicants' neighbour M.A.Dzh. and the second applicant. In the Government's submission, the investigating authorities took an important number of other investigative steps. However, in view of their refusal to provide most of the documents, not only is it impossible for the Court to establish how promptly those measures were taken, but whether they were taken at all.

99. Even assuming that those steps were taken and having regard to the documents submitted, the Court is perplexed by the inexplicable delays of the investigation in taking the investigative steps enumerated by the Government. In particular, it is very difficult to understand why it took the authorities more than a year to interview the second applicant and neighbour M.A. Dzh., although those persons' identities and places of residence must have been clearly identifiable to the investigation. In the same vein, it is not entirely clear why the first instructions for Isa Aytamirov's search were given to various law-enforcement authorities only more than a year after his abduction (see paragraph 48 above).

100. Furthermore, it appears that a number of crucial steps were never taken. In particular, there is no indication that the crime scene was inspected or that any attempts were made to identify witnesses to the abduction other than the three persons interviewed by the investigation. It also does not appear that the investigation attempted to identify the owners of the APCs and other vehicles by establishing which military units or other law-enforcement authorities were equipped with APCs, where those vehicles had been located at the time of the abduction and on whose orders they had been used. It does not appear that any attempts have been made to establish the itinerary of the vehicles, although, contrary to the Government's assertion, the witnesses indicated the direction in which they had left. There is likewise no indication that the investigation had tried to identify and interview the servicemen at the checkpoints.

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

102. The Court further notes that none of the applicants was granted victim status in the proceedings in case no. 47027. It also transpires from the applicants' repeated and mostly unanswered requests for information addressed to the investigating authorities that they were hardly informed of any developments in the investigation. 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

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

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

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

106. In the Court's opinion, the Government also failed to demonstrate how the fact of the applicants' having victim status could have improved the above-described situation. In any event, given that the authorities were clearly aware of the applicants' kinship to Isa Aytamirov and even interviewed the second applicant as a witness, the Court cannot accept the Government's submission that the applicants should have taken additional steps and specifically requested the authorities to grant them victim status.

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

108. 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 Isa Aytamirov, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

109. The applicants relied on Article 3 of the Convention, submitting that, as a result of their relative's disappearance and the State's failure to investigate it properly they had endured psychological distress in breach of Article 3 of the Convention. The second applicant also complained under this Convention provision that she had been subjected to ill-treatment by the servicemen who had abducted Isa Aytamirov and that the authorities had not carried out an effective investigation of the alleged ill-treatment. Article 3 reads:

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

A. The parties' submissions

110. The Government argued that the investigation had not established that Russian servicemen had been implicated in the infliction of bodily injuries to the second applicant. They further stated that she had not exhausted domestic remedies because she had not complained to the domestic authorities about the alleged ill-treatment. In particular, the issue of the alleged ill-treatment had only been raised in the complaint about Isa Aytamirov's abduction lodged by his relatives immediately after the incident and during the second applicant's interview as a witness on 15 July 2004.

111. As regards the applicants' alleged mental suffering, the Government submitted that the investigation had not established that they had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention

112. The second applicant submitted that she had exhausted domestic remedies in respect of the ill-treatment complaint. In particular, the authorities had been immediately informed about her ill-treatment and the fact that she had had to seek medical assistance in that connection. She had given the investigating authority a detailed description of the ill-treatment, and the latter body had at its disposal all the relevant medical evidence, which it had seized from the second applicant.

113. On the merits, she argued that she had been beaten and thrown down from the APC by the two servicemen who had participated in the abduction of Isa Aytamirov and that this had been witnessed by the eyewitnesses mentioned in the Government's observations. She had

provided a detailed account of the events and the existence of her injuries was confirmed by medical certificates proving that she had had to undergo a medical examination and had been treated in hospital as a result of the ill-treatment. However, the domestic authorities had seized those documents and the Government had refused to submit them to the Court. Accordingly, she invited the Court to draw inferences from the Government's conduct and to find that she had been subjected to treatment in breach of Article 3 of the Convention in respect of the events described by her and that the authorities had refused to investigate her related complaints. She relied on the case of *Aziyevy v. Russia* (no. 77626/01, 20 March 2008).

114. The applicants maintained their submissions concerning their psychological suffering as a result of their relative's disappearance and the authorities' reaction to it.

B. The Court's assessment

1. Admissibility

(a) The complaint concerning the alleged ill-treatment of the second applicant and the lack of investigation

115. The Government argued that the second applicant had not exhausted domestic remedies in respect of her complaint about the alleged ill-treatment.

116. The Court reiterates that the rule of exhaustion of domestic remedies set out in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

117. In the Court's opinion, the Government contradict themselves in saying that the second applicant did not complain about the alleged ill-treatment to the domestic authorities and stating at the same time that the ill-treatment issue was raised in the complaint about Isa Aytamirov's abduction, lodged with the district prosecutor's office immediately after the incident, and during the second applicant's interview as a witness (see paragraph 110 above).

118. In so far as they may be understood to challenge the avenue or the legal basis chosen by the second applicant in complaining about the ill-treatment, they failed to specify either the authority to which she should have complained or the type of the complaint she should have used. In any event, in the Court's opinion, the fact that the investigator seized from the second applicant medical documents relating to her injuries and made several attempts to order a medical examination with a view to establishing the origin and the date of infliction of those injuries can only mean that the domestic authorities were clearly and sufficiently aware of the ill-treatment complaint, which they did not regard as merely additional submissions concerning the circumstances of Isa Aytamirov's abduction.

119. In sum, the Court is satisfied that the authorities were made aware of the second applicant's alleged ill-treatment immediately after it had occurred. In the Court's view, given that the circumstances of the ill-treatment were closely interconnected to the disappearance of the second applicant's relative, it cannot be considered unreasonable that the ill-treatment complaint was raised together with the complaint concerning his kidnapping.

120. Having regard to these considerations, the Court dismisses the Government's objection concerning the second applicant's alleged failure to exhaust domestic remedies. It further 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.

(b) **The complaint concerning the applicants' psychological distress**

121. 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

(a) The complaint under Article 3 concerning the second applicant

(i) The alleged ill-treatment

122. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted

presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

123. It further notes that in order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, cited above. § 162, and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006 IX). The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV, and *Ramirez Sanchez v. France* [GC], no. 59450/00, § 118, ECHR 2006-IX). Treatment has been held to be "degrading" when it is such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Jalloh*, cited above, § 68).

124. Turning to the circumstances of the case, the Court notes at the outset that the Government did not dispute the existence of medical documents enumerated by the second applicant and concerning the injuries sustained by her on the night of the kidnapping of her relative. Neither did they dispute that the domestic investigation had seized those documents from her. It is further observed that, despite its specific requests, the Government refused to furnish those documents to the Court, without providing any explanation for their refusal. In this connection it is also significant for the Court that after the seizure of those documents the applicant was unable to submit them to it.

125. In the light of the principles mentioned above, the Court considers that it can draw inferences from the Government's conduct in respect of the well-foundedness of the second applicant's allegations.

126. The Court further notes that the second applicant's submissions concerning her ill-treatment by the same servicemen who had abducted Isa Aytemirov remained detailed and consistent throughout the domestic proceedings and the proceedings before it (see paragraphs 10, 11 and 54 above). Moreover, her ill-treatment and need to apply subsequently for medical assistance in that connection had been confirmed by other witnesses (see paragraphs 12 and 45 above). Having regard to these elements and drawing inferences from the Government's refusal to provide the medical documents attesting to the second applicant's injuries, which were in their exclusive possession, the Court finds it established that the second applicant was beaten and injured in the way described by her by the same persons who had abducted Isa Aytamirov, and whom it has found to be State agents (see, mutatis mutandis, *Aziyevy*, cited above, § 105). It further finds that this treatment can only be qualified as "inhuman" and "degrading".

127. Accordingly, it finds that there has been a violation of Article 3 of the Convention under its substantive limb.

(ii) The alleged inadequacy of the investigation

128. The Court reiterates its settled case-law to the effect that where an individual raises an arguable claim that she or he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible.

129. Turning to the circumstances of the present case and having regard to its findings concerning the substantive limb of Article 3, the Court considers that the complaint of 19 February 2003, the second applicant's and M. Dzh.'s submissions during their interviews at the district prosecutor's office, as well as the medical documents the second applicant had obtained after the incident, amounted to an "arguable claim" of ill-treatment at the hands of State agents and warranted investigation by the authorities in conformity with the requirements of Article 3 of the Convention.

130. However, from the documents and information at its disposal it follows that most of the defects identified by the Court in respect of the breach of the procedural limb of Article 2 of the Convention are fully applicable in the context of the second applicant's complaints about the quality of the investigation into her alleged ill-treatment.

131. The Court cannot but add, nonetheless, that it is perplexed by the fact that, apart from the seizure of the medical documents and an unsuccessful attempt to order a medical examination, the district prosecutor's office appears to have taken no measures whatsoever to establish the circumstances pertaining to the second applicant's ill-treatment. Moreover, even those two steps were taken with delays which clearly compromised their usefulness in establishing the relevant circumstances.

132. In this respect the Court is struck that, whilst the investigation seized the second applicant's medical documents in July 2004, which was already more than a year after the incident (see paragraph 55 above), and ordered a medical examination shortly thereafter (see paragraph 56 above), no further steps were taken in that connection until four years later. And it appears that even after the investigator's second request the impugned medical examination was never carried out, for reasons which remain not particularly clear to the Court (see paragraph 57 above).

133. In sum, the Court considers that the investigation carried out into the second applicant's allegations of ill-treatment was not thorough, adequate or effective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

(b) The complaint concerning the applicants

134. 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).

135. In the present case the Court notes that the applicants are close relatives of the disappeared person, the second applicant having, moreover, witnessed his abduction. For more than seven years they have not had any news of the missing man. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing relative. Despite their attempts, the applicants have never received any plausible explanation or information about what became of their relative following his detention. The responses they received mostly denied State responsibility for their relative's 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.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

137. The applicants further stated that Isa Aytamirov 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

138. The Government asserted that no evidence had been obtained by the investigators to confirm that Isa Aytamirov had been deprived of his liberty. He was not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

139. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

140. 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

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

142. The Court has found that Isa Aytamirov was abducted by State servicemen on 19 February 2003 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his 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).

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

144. In view of the foregoing, the Court finds that Isa Aytamirov 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

145. 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

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

147. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

148. 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

149. The Court reiterates that in circumstances where, as here, a criminal investigation into the disappearance and the 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*, cited above, § 183).

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

151. As regards the applicants' reference to Article 3 of the Convention, 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, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

152. The applicants complained that they had been discriminated against in the enjoyment of their Convention rights because the violations of which they complained had taken place due to the fact that they resided in Chechnya and their ethnic background as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

> "The enjoyment of the right and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

153. The Court observes that no evidence has been submitted to it that suggests that the applicants were treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated.

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

155. 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

156. The applicants claimed that they had sustained damage in respect of the loss of Isa Aytamirov's earnings following his abduction and disappearance. The first applicant claimed a total of 319,517.60 Russian roubles (RUB) under this head (approximately 9,153 euros (EUR)). The second applicant claimed RUB 331,803.02 (approximately EUR 9,505).

157. The applicants submitted that at the material time Isa Aytamirov had been unemployed and 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 Actuary Department in 2008 ("the Ogden tables"), the applicants calculated Isa Aytamirov's earnings with an adjustment for 10% yearly inflation and submitted that the applicants should each be entitled to 15% of the total amount of his earnings.

158. The Government argued that the applicants' claims were unsubstantiated and that they had not made use of the domestic avenues for obtaining compensation for the loss of their breadwinner.

159. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, 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 applicants' relative and the loss to them of the financial support which he could have provided.

160. Having regard to the applicants' submissions and the fact that Isa Aytamirov was not employed at the time of his abduction, the Court awards EUR 5,000 to the first applicant and EUR 4,000 to the second applicant in respect of pecuniary damage plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

161. The applicants claimed EUR 40,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards him and the failure to provide any information about the fate of their close relative. The second applicant's non-pecuniary claim also referred to the suffering endured by her as a result of her ill-treatment and the authorities' failure to investigate it.

162. The Government found the amounts claimed exaggerated.

163. 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 their mental suffering endured as a result of the disappearance of their relative and the authorities' attitude to that fact. Moreover, the second applicant was found to have been a victim of the breach of the procedural and substantive limb of Article 3 of the Convention on account of her ill-treatment and the authorities' failure to investigate it. 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 first applicant EUR 40,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her. It further awards EUR 25,000 to the second applicant, plus any tax that may be chargeable to her.

C. Costs and expenses

164. 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 6,949.51, to be paid into the applicants' representatives' account in the Netherlands.

165. 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).

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

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

168. 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

169. Having regard to the details of the claims submitted by the applicants, the Court awards them EUR 5,500 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

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Isa Aytamirov;

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 Isa Aytamirov disappeared;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the ill-treatment of the second applicant;

6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the ill-treatment of the second applicant;

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

8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Isa Aytamirov;

9. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;

10. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Article 3;

11. *Holds*

(a) that the respondent State is to pay, within three months of 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 on the date of settlement, save in the case of the payment in respect of costs and expenses:

(i) EUR 5,000 (five thousand euros) to the first applicant and EUR 4,000 (four thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 40,000 (forty thousand euros) to the first applicant and EUR 25,000 (twenty-five thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage ;

(iii) EUR 5,500 (five thousand five hundred 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;

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

Done in English, and notified in writing on 2 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President