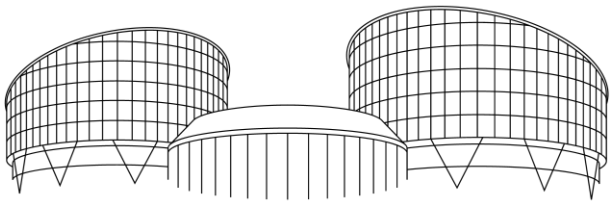

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VAKAYEVA AND OTHERS v. RUSSIA

(Application no. 2220/05)

JUDGMENT

STRASBOURG

10 June 2010

FINAL

04/10/2010

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

In the case of Vakayeva and Others v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 2220/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Russian nationals, listed below ("the applicants"), on 30 December 2004.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative ("SRJI"), an NGO registered in the Netherlands with a representative office in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 13 September 2007 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application, as well as to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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) Ms Shumist Vakayeva, born in 1953;
2) Ms Rovzat Tatayeva, born in 1956;
3) Ms Marina Otsayeva, born in 1980; and
4) Mr Daud Abdurazakov, born in 1951.

6. The first, second and third applicants live in the village of Duba-Yurt, the Shali District, in the Chechen Republic; the fourth applicant lives in the village of Chiri-Yurt, the Shashnskiy District, in the Chechen Republic.

7. The first applicant is married to Mr Shamsudi Vakayev, born in 1949; they are the parents of Mr Shamil Vakayev, born in 1976, and Mr Shamkhan Vakayev, born in 1975. The second applicant is the mother of Mr Salambek Tatayev, born in 1976. The third applicant is married to Mr Ramzan Dudayev, born in 1969. The fourth applicant is the father of Mr Yunus Abdurazakov, born in 1979.

A. Disappearance of five inhabitants of Duba-Yurt

1. The applicants' account

(a) Abduction of the five men

8. On 15 March 2001 Salambek Tatayev, Ramzan Dudayev, Yunus Abdurazakov, Shamil Vakayev and Shamkhan Vakayev were at the Vakayevs' house. Shamkhan Vakayev and his wife, Ms D., were in an upstairs bedroom; the other four men were downstairs.

9. At about 12.45 p.m. on 15 March 2001 two armoured personnel carriers ("APCs"), a Ural vehicle and a UAZ all-terrain vehicle arrived at the Vakayevs' house; their registration numbers were not clearly visible. Around thirty armed men wearing camouflage uniforms got out of the vehicles. The men were unmasked. They had Slavic features and spoke Russian with no accent.

10. The armed men opened fire and wounded Shamil Vakayev and Ms Ch., the Vakayevs' neighbour. The armed men gave an injection to the wounded Shamil Vakayev.

11. At some point one of the armed men was also wounded.

12. The third applicant was in her house nearby the Vakayevs' house. Having heard gunshots, she rushed outside to find out what was happening and saw the Ural vehicle and the APCs. The third applicant was frightened and went back inside her house.

13. The armed men beat up Salambek Tatayev, Ramzan Dudayev, Yunus Abdurazakov and Shamil Vakayev. Ramzan Dudayev started bleeding. The armed men also beat up Mr Kh., the Vakayevs' neighbour, who happened to be in their courtyard.

14. Meanwhile some of the armed men captured Shamkhan Vakayev in the upstairs bedroom in Ms D.'s presence. Then they took the five men outside. They put Shamil Vakayev in a UAZ vehicle and the four other men in one of the APCs. The vehicles drove away in the direction of the village of Dachu-Borzoy where the military base of the 34th brigade of the internal troops was located. Later someone saw a helicopter leaving the military base; for reasons which are not clear, the applicants concluded that the helicopter had transported their relatives to the Khankala military base.

(b) Media coverage of the abduction of the five men

15. On 19 March 2001 a spokesman for the Federal Security Service ("FSB") stated on the local television channel that five persons had been arrested in the village of Duba-Yurt and named the applicants' missing relatives.

16. On 14 May 2001 RTR television, a State-owned channel, aired a programme produced by Mr S., which contained a video recording of the abduction of the five applicants' relatives.

17. The applicants obtained a one-minute extract of Mr S.'s programme, which shows the journalist commenting on a special operation carried out by the FSB servicemen to detain an insurgent commander named Vakayev.

2. The Government's account

18. At about 1 p.m. on 15 March 2001 unidentified men in camouflage uniforms kidnapped Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev from the house at 175 Sheripov Street, in the village of Duba-Yurt.

19. Mr Kh. was not in the vicinity of the Vakayevs' house on the afternoon of 15 March 2001 as he was attending a funeral in another part of the village.

B. Investigation of the disappearance of the five men

1. The applicants' account

20. The applicants repeatedly complained about their relatives' disappearance to the local administration, the FSB, the Russian State Duma and the police. The applicants also visited several military bases to inquire about their relatives' whereabouts.

21. On 15 May 2001 the applicants complained about the abduction of their five relatives to prosecutors' offices at different levels.

22. On 18 May 2001 the military prosecutor's office of military unit no. 20116 forwarded the applicants' complaints about their relatives' disappearance to the prosecutor's office of the Chechen Republic pursuant

to the subject-matter jurisdiction rules, arguing that no implication of military personnel in the incident had been established.

23. On 19 June 2001 the prosecutor's office of the Shali District ("the district prosecutor's office") instituted an investigation into the abduction of the five inhabitants of Duba-Yurt under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned the number 23116.

24. On 15 October 2001 the district prosecutor's office replied to the applicants' letter of 15 May 2001, stating that the investigation into their relatives' kidnapping by unidentified men armed with machine-guns was under way.

25. On 26 November 2001 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint concerning the kidnapping of her sons to the district prosecutor's office.

26. On 15 December 2001 the district prosecutor's office informed the first applicant that the investigation in case no. 23116 had been suspended for failure to identify those responsible and that investigative measures were being taken to solve the crime.

27. On 26 December 2001 the Department of the FSB of the Chechen Republic informed the first applicant that they had not carried out any special operations in Duba-Yurt between 14 and 17 March 2001. They stated that the video recording of the abduction of the applicants' relatives allegedly broadcast on national and local television could not have been subtitled "filmed by the Russian FSB".

28. On an unspecified date in March 2002 the commander of the North-Caucasus Group of the Internal Troops of the Russian Ministry of the Interior ("the NCG troops") informed the military prosecutor's office of military unit no. 20102 that on 15 March 2001 special operations had been carried out in the village of Duba-Yurt but the NCG troops had not apprehended Yunus Abdurazakov.

29. On an unspecified date the first applicant complained about the suspension of the investigation into her sons' kidnapping to the South Federal Circuit Department of the Prosecutor General's Office. On 25 April 2002 they replied that the complaint had been forwarded to the prosecutor's office of the Chechen Republic.

30. On 27 May 2002 the Department of the FSB of the Chechen Republic informed the first applicant that her complaint had been forwarded to the military prosecutor's office of military unit no. 20102 and that the FSB servicemen had not apprehended those mentioned in the complaint.

31. On 1 July 2002 the investigation in case no. 23116 was resumed.

32. On 6 July 2002 the military prosecutor's office of military unit no. 20116 forwarded the first applicant's complaint to the prosecutor's office of the Chechen Republic. They noted the following:

> "The arrest and kidnapping of those [missing] persons were most probably carried out by the servicemen of the Alpha unit of the Russian FSB rather than military intelligence, because as early as on 19 March 2001 the central television broadcast a report on this arrest by Mr [S.], which was commented on by the head of the Russian FSB press service Mr [Z.]. A videotape of that report is being kept in the file in criminal case no. 4-23116, which is being investigated by the prosecutor's office of the Shali District."

33. On 27 July 2002 the district prosecutor's office informed the applicants that their complaint concerning the alleged implication of the FSB officers in their relatives' kidnapping had been included in the case file and that the investigation had been resumed on 1 July 2002.

34. On 31 July 2002 the prosecutor's office of the Chechen Republic informed the applicants that the investigation into their relatives' kidnapping in case no. 23116 had been opened by the district prosecutor's office.

35. On 1 August 2002 the prosecutor's office of the Chechen Republic forwarded the applicants' complaint to the district prosecutor's office. They also informed the first applicant that they had repeatedly examined the case materials and that the investigation was pending.

36. On 9 August 2002 the district prosecutor's office informed the first applicant that on 6 August 2002 they had forwarded the investigation file in case no. 23116 to the prosecutor's office of the Chechen Republic for further transfer to the military prosecutor's office of military unit no. 20116.

37. On 14 August 2002 the prosecutor's office of the Chechen Republic informed the first applicant that the term of the investigation had been extended until 1 November 2002 and that the case would probably be transferred to the military prosecutor's office at a later date.

38. On 6 September 2002 the district prosecutor's office informed the first applicant that she had been granted victim status in case no. 23116.

39. On 13 September 2002 the prosecutor's office of the Chechen Republic transferred case no. 23116 to the military prosecutor's office of military unit no. 20102; in a cover letter they noted that the implication of military personnel in the kidnapping had been established.

40. On 7 October 2002 the military prosecutor's office of the North-Caucasus Circuit returned case no. 23116 to the prosecutor's office of the Chechen Republic, arguing that the investigation had been incomplete and that military personnel implication had not been proven.

41. On 13 October 2002 the district prosecutor's office took up the case.

42. On 10 March 2003 district prosecutor's office suspended the investigation.

43. On an unspecified date the investigation was resumed.

44. On 17 April 2003 the department of the interior of the Shali District informed the first applicant that operational and search measures were being taken to establish her sons' whereabouts.

45. On 29 July 2003 the investigation was again suspended.

46. On 16 October 2003 the prosecutor's office of the Chechen Republic informed the first applicant that numerous law-enforcement agencies had denied any implication in her sons' abduction and that the proceedings had been suspended for failure to identify the perpetrators.

47. On 1 December 2003 the first applicant requested the district prosecutor's office to resume the investigation.

48. On 11 December 2003 the prosecutor's office of the Chechen Republic informed the first applicant that, despite the suspension of the investigation in case no. 23116, the requisite measures were being taken to solve the crime. On 30 December 2003 they sent a similar letter to the fourth applicant.

49. On 23 March 2004 the district prosecutor's office granted the first applicant victim status.

50. On 1 April 2004 the investigation into the kidnapping of the applicants' relatives was again suspended.

51. On 16 November 2004 the SRJI, acting on the applicants' behalf, requested the district prosecutor's office to update them on the progress of the investigation. On 20 December 2004 the district prosecutor's office replied that the investigation was under way.

52. On 27 March 2006 the decision of 1 April 2004 was quashed and the investigation in case no. 23116 was resumed.

53. On 30 March 2006 the prosecutor's office of the Chechen Republic informed the fourth applicant that the investigation had been resumed and was pending before the district prosecutor's office under their supervision.

54. On 16 July 2006 the prosecutor's office of the Chechen Republic informed the fourth applicant that the investigation into the kidnapping of Yunus Abdurazakov and other men "by unidentified men in camouflage uniforms and masks" travelling in "two APCs and a UAZ vehicle without identification marks or registration plates" had been suspended on 27 April 2006 for failure to identify those responsible.

55. On 20 July 2006 the prosecutor's office of the Chechen Republic informed the first applicant of the following:

> "At about 1 p.m. on 15 March 2001 in the course of a special operation [carried out] in the village of Duba-Yurt of the Shali District unidentified men wearing camouflage uniforms and masks arrested and took away to an unknown destination Yu. Abdurazakov, R. Dudayev, S. Tatayev, Sh. Vakayev and Sh. Vakayev."

They further stated that the investigation in case no. 23116 had been repeatedly suspended and that there were no grounds for quashing the decision on its suspension of 27 April 2006.

56. On 19 March 2007 the Ministry of the Interior of the Chechen Republic sent the first applicant a letter, which, in particular, read:

> "It follows from the materials of criminal case [no. 23116] that the kidnapped men were arrested in the course of special operations carried out by officers of security services and servicemen of the Ministry of the Defence; however, it has been

impossible to establish the whereabouts of those kidnapped, or [the identities of] the persons implicated in this crime and their attachment to law enforcement agencies of the Russian Federation."

57. On 17 May 2007 the fourth applicant requested the district prosecutor's office to resume the investigation in case no. 23116. He stated that on 15 March 2001 in the course of the special operation a serviceman of the Russian troops had been wounded and requested that that serviceman be identified. He also stated that in May 2001 his son had been held at the Shali district temporary department of the interior and requested that the policemen from the Altay Region who had been on duty at that department at that time be questioned. Finally, he submitted that Yunus Abdurazakov had been held at the military prosecutor's office of the United Group Alignment and requested that information be sought from that body.

58. On 28 May 2007 the district prosecutor's office granted the fourth applicant's complaint in the part concerning requests for information but refused to resume the investigation. The decision read, in so far as relevant, as follows:

"At about 1 p.m. on 15 March 2001 in the course of the operation carried out by the special unit in the village of Duba-Yurt of the Shali District of the Chechen Republic unidentified persons wearing camouflage uniforms and masks arrested Mr Abdurzakov, Mr Dudayev, Mr Tatayev and Mr Vakayev and then drove them away in two APCs and a UAZ vehicle to an unknown destination.

...

Having examined [the fourth applicant's] request, the investigative authorities have reached the conclusion that it should be granted in the part regarding the sending of requests to the Altay Region and to the Prosecutor's Office of the United Group Alignment, as well as the sending of a request for the establishment of the identity of the serviceman of the Internal Troops of the Ministry of the Interior in the North Caucasus Region who was wounded in the course of the special operation of 15 March 2001 in the village of Duba-Yurt of the Shali District of the Chechen Republic."

59. On 10 April 2008 the Shali District Investigative Committee of the Russian Prosecutor's Office in the Chechen Republic informed the first applicant that the investigation in case no. 23116 had been suspended on 10 December 2007 for failure to identify those responsible for the crime.

2. The Government's account

60. After the events of 15 March 2001 the applicants complained about the abduction of their relatives to the district administration and the Administration of the Chechen Republic, special representative offices and public organisations.

61. On 26 June 2001 the applicants complained about the five men's abduction to the department of the interior of the Shali District.

62. On 29 June 2001 the district prosecutor's office instituted an investigation into the kidnapping of the five men in case no. 23116.

63. On 14 July 2001 the first and fourth applicants, as well as Mr D., Ramzan Dudayev's elder brother, were granted victim status, while the second applicant was granted victim status on 22 July 2001.

64. On an unspecified date the first applicant was questioned. She stated that in 1999 Shamil Vakayev had joined an illegal armed group but several months later returned home. He had not taken part in the insurgents' activities after that. At about 2 p.m. on 15 March 2001 the first applicant had learned from fellow villagers that her two sons, as well as Yunus Abdurazakov, Ramzan Dudayev and Salambek Tatayev, had been taken away by unknown persons travelling in APCs and UAZ vehicles and that Ms Ch. had been shot accidentally in the course of the abduction.

65. On an unspecified date the fourth applicant was questioned. He stated that on 15 March 2001 his son Yunus Abdurazakov had gone to Duba-Yurt to visit his grandmother. The fourth applicant had been told that at some point his son had noticed a group of servicemen and, to avoid meeting them, had entered the first house on his way. Then the servicemen had entered that house and taken away Yunus Abdurazakov and four other young men. The military commander of the Shali District had told the fourth applicant that no special operations had been carried out in Duba-Yurt. On 14 May 2001 the RTR channel had broadcast a footage picturing his son's arrest.

66. Mr D. was questioned and stated that on 15 March 2001 his brother had gone to visit distant relatives of theirs. Later Mr D. had learned that Ramzan Dudayev and other men had been arrested by servicemen and taken away in APCs. Two months later a report on the arrest of members of illegal armed groups by the Alpha special task force unit had been broadcast; one of the detainees shown was his brother.

67. On an unspecified date Ms Ch. was questioned and stated that at about 12 noon or 1 p.m. on 15 March 2001 servicemen in APCs and UAZ vehicles had arrived at a shop she had been working in and had started shooting in the air. One bullet had gone through her shoulder. Ms Ch. had seen the servicemen take the Vakayev brothers away from house no. 175.

68. Ms D., Shamkhan Vakayev's wife, was questioned as a witness and stated that at about 1 p.m. on 15 March 2001, while she had been inside their family house, armed and masked men in camouflage uniforms had burst inside, locked Ms D. in a room and searched the house. Afterwards Ms D. had heard shots coming from their courtyard, where her husband and his brother had been. When the unknown men had left, Ms D. had gone outside the house and learned from the neighbours that the Vakayev brothers had been taken away.

69. Mr Kh., the Vakayevs' neighbour, was questioned and stated that at about 6 p.m. on 15 March 2001 he had heard about the abduction of several residents of Duba-Yurt.

70. Mr Ya., the head of the local administration of Duba-Yurt, was questioned and stated that Shamil Vakayev had been an insurgent in 1999-2000 and had probably been the leader of a local terrorist group.

71. The investigators requested the head of RTR Channel to provide the complete footage of the special operation in the Chechen Republic that had been broadcast in the news programme "Vesti" on 14 May 2001. It followed from the reply received that on 14 May 2001 the RTR Channel had broadcast a documentary film "Chechnya: Worries and Hopes" by Mr D.S., which had contained images filmed by the Vesti news programme crew and others provided by the public relations centre of the Russian FSB. The RTR Channel had not kept a copy of the footage in question as such material was normally stored for one year only.

72. On an unspecified date Mr D.S. was questioned. He stated that he had not witnessed the arrests in Duba-Yurt on 15 March 2001 and had no information about the special operation carried out at that time or on the identities of the servicemen in charge of it. The footage of the special operation had been sent to the RTR Channel via the official channels for the exchange of video material.

73. The head of the North-Caucasus Group of the Internal Troops of the Russian Ministry of the Interior and the deputy head of the temporary group of the Russian Ministry of the Interior sent the investigators letters on 17 March and 6 September 2002, respectively. They stated that on 15 March 2001 special operations had been carried out in Duba-Yurt, but Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev had not been arrested.

74. On 4 July 2001 and 29 July 2002 the investigators requested information on the applicants' relatives from the FSB Department of the Shali District. On 2 March 2002 they sent a similar request to the FSB Department of the Chechen Republic. In reply they were informed that no servicemen of either of the departments in question had arrested the five missing men and that investigative measures had been taken to identify the users of the APCs travelling in Duba-Yurt on that day, but to no effect.

75. The investigation in case no. 23116 was ongoing.

C. Disappearance of Shamsudi Vakayev and investigation into it

1. The first applicant's account

76. On 12 March 2005 a group of armed men allegedly belonging to the Russian military came to the first applicant's home. They talked to

Shamsudi Vakhayev and asked him why he was not yet in prison. Then they searched the house and left.

77. Between 3 and 4 a.m. on 2 April 2005 a group of armed masked men wearing camouflage uniforms burst into the Vakayevs' house. The men did not identify themselves but asked where Shamsudi Vakayev was. The first applicant told them that her husband slept in an annex to the house. The men went there, awakened Shamsudi Vakayev, told him to dress up warmly, took him into a UAZ vehicle parked outside and drove away in the direction of the village of Chishki where a federal checkpoint was located.

78. When the first applicant began to search for her husband, she found out that two other inhabitants of Duba-Yurt, Mr Said-Khuseyn Elmurzayev and Mr Suliman Elmurzayev, had been apprehended on the night of 2 April 2005 by armed men in three UAZ vehicles.

79. On the second day after the abduction the first applicant complained about her husband's arrest to the district prosecutor's office. Later an investigator of the district prosecutor's office accompanied by military servicemen visited the Vakayevs' house and that of the two apprehended men, interrogated witnesses and took pictures of the crime scene.

80. On 2 August 2005 the first applicant was granted victim status in case no. 46060.

81. On 9 February 2006 the prosecutor's office of the Chechen Republic issued, at the first applicant's request, a progress report in case no. 46060 stating that the investigation into the kidnapping of Shamsudi Vakayev and the Elmurzayevs had been opened on 14 June 2005 and then suspended on an unspecified date, that the whereabouts of those missing had not been established and that investigative measures were being taken to solve the crime.

82. On 20 February 2006 the district prosecutor's office suspended the investigation in case no. 46060 and notified the first applicant accordingly.

83. In a letter to the first applicant dated 20 February 2006 the district prosecutor's office stated that the investigation in case no. 46060 had been resumed on 2 March 2006.

84. The first applicant complained to the prosecutor's office of the Chechen Republic about the ineffectiveness of the investigation into her husband's kidnapping.

85. On 16 March 2006 the prosecutor's office of the Chechen Republic informed the first applicant that on 8 May 2005 Said-Khuseyn Elmurzayev's dead body had been discovered in the Groznenskiy District of the Chechen Republic and that an investigation into his murder had been opened by the prosecutor's office of the Groznenskiy District in case no. 44078. The whereabouts of Shamsudi Vakayev and Suliman Elmurzayev had not been established. Cases nos. 46060 and 44078 had been joined and were pending before the prosecutor's office of the Groznenskiy District under the supervision of the prosecutor's office of the Chechen Republic.

86. On 18 July 2006 the prosecutor's office of the Chechen Republic informed the first applicant that cases nos. 46060 and 44078 had been joined under the number 46060 and had been suspended on several occasions, as well as on 2 June 2006. On 18 July 2006 the decision of 2 June 2006 had been quashed and investigative measures were being taken.

87. On 21 August 2006 the prosecutor's office of the Groznenskiy District suspended the investigation.

88. On 11 February 2008 the Groznenskiy District Investigative Committee of the Russian Prosecutor's Office in the Chechen Republic quashed the decision of 21 August 2006 and resumed the investigation in case no. 46060.

89. On 22 February 2008 the investigators, having established that Said-Khuseyn Elmurzayev's dead body had no visible traces of a violent death and had not been autopsied, terminated the investigation into his murder for lack of evidence of a crime.

90. On 28 February 2008 the file concerning the investigation into the kidnapping of Shamsudi Vakayev, Said-Khuseyn Elmurzayev and Suliman Elmurzayev was transferred to the Shali District Investigative Committee of the Russian Prosecutor's Office in the Chechen Republic.

2. The Government's account

91. At about 4 a.m. on 2 April 2005 unidentified masked men armed with machine guns arrived in Duba-Yurt in three UAZ vehicles, abducted Shamsudi Vakayev and two other villagers and took them away to an unknown destination.

92. On 14 June 2005 the district prosecutor's office instituted an investigation into the kidnapping of the three men in case no. 46060.

93. Shamsudi Vakayev's whereabouts were not established. The investigation in case no. 46060 was under way.

D. Investigation files in cases nos. 23116 and 46060

94. Despite specific requests by the Court, the Government did not disclose any documents of the investigation files in cases nos. 23116 and 46060, except for a copy of the decision of 22 July 2001 by the district prosecutor's office's to grant the second applicant victim status and a transcript of her interview of the same date. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation in both cases was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure since the files contained information of a military nature and personal data concerning witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

95. For a summary of 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

96. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation in cases nos. 23116 and 46060 had not yet been completed. It was also open to the applicants to complain about inaction on the part of the investigators to courts under Article 125 of the Code of Criminal Procedure, as well as to lodge civil claims for pecuniary and non-pecuniary damage, which they had failed to do.

97. The applicants contested that objection. They stated that the criminal investigation in cases nos. 23116 and 46060 had been pending for a long time without producing any meaningful results and had thus proved to be ineffective. Moreover, they pointed out that a complaint about inaction on the part of investigators lodged with a court could not produce any positive results, as domestic courts were not allowed to order investigative measures directly. They referred to a number of examples of unsuccessful litigation in complaints brought by residents of the Chechen Republic against prosecutors' offices.

B. The Court's assessment

98. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. 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 and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

99. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which an applicant has not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

100. 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.

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

102. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that the investigating proceedings in cases nos. 23116 and 46060 have been pending since June 2001 and June 2005 respectively. The applicants and the Government dispute the effectiveness of the investigation in both cases.

103. 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 VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

104. The applicants complained that Salambek Tatayev, Ramzan Dudayev, Yunus Abdurazakov, Shamil Vakayev and Shamkhan Vakayev, and Shamsudi Vakayev, had been arrested by Russian servicemen and then disappeared and that the domestic authorities had failed to carry out an effective investigation of the crimes in question. They relied on Article 2 of the Convention, which 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. Arguments of the parties

1. The Government

105. The Government contested the applicants' submissions. They doubted that on 15 March 2001 the abductors had opened fire immediately upon arrival at the Vakayevs' house as Ms D. had submitted that she had heard gunshots after the men had entered her home. Ms D. had not eye-witnessed the kidnapping because she had been locked in a room. Mr Kh. had not eye-witnessed the kidnapping and had not been beaten up, as he had confirmed in the course of the domestic investigation that he had been away.

106. The Government further claimed that the hypothesis concerning a visit to a sick grandmother was implausible and suggested that the five men had gathered in the Vakayevs' home to pursue certain illegal goals and had been hiding from the State authorities. Moreover, in the Government's submission it was probable that Shamil Vakayev had run away to avoid prosecution for his involvement in illegal armed groups.

107. The whereabouts of the applicants' five missing relatives remained unknown. There were no reasons to assume that they were dead because no corpses had been found.

108. The wording of the letter by the Ministry of the Interior of the Chechen Republic, in the Government's view, did not confirm the military officers' implication in the events of 15 March 2001 and merely reflected a hypothesis that had been looked into in the course of the investigation.

109. Shamsudi Vakayev's kidnapping was being investigated. Neither the involvement of State officials in the crime nor the fact of the missing man's death had been proven.

110. The investigations into the kidnappings had been effective. Their length could be explained by the complexity of the cases in question. The delay in commencement of the proceedings in case no. 23116 was attributable to the applicants because they had not promptly contacted the competent authorities. The domestic authorities had taken all the requisite measures to solve the crimes. Three of the applicants had been granted victim status and would be able to study the entire case files upon completion of the investigations. The investigations were ongoing.

2. The applicants

111. The applicants maintained their complaints. They argued that Mr Kh. had in fact been in the Vakayevs' house on 15 March 2001 and had lied to the investigators out of fear of persecution. The applicants further pointed out that they had lodged a complaint with the military prosecutor's office before 18 May 2001. The reasons for the gathering in the Vakayevs' house on 15 March 2001, as well as the timing of the shooting were, in the applicants' view, irrelevant to the examination of their complaints.

112. The applicants also pointed out that in March 2001 checkpoints manned by the federal troops had been located on each of the two roads in and out of their village.

113. The first applicant submitted that in April 2005 there had been a checkpoint manned by Russian officers from Buryatia on the way out of the village.

114. The applicants further alleged that the investigations in cases nos. 23116 and 46060 had been ineffective and futile.

B. The Court's assessment

1. Admissibility

115. 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. The Court has already found that the Government's objection concerning the alleged non-exhaustion of criminal law domestic remedies should be joined to the

merits of the complaint (see paragraph 103 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) General principles

116. 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 *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).

117. In cases in which there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information capable of corroborating or refuting an applicant's allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of those allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

118. The Court points out that a number of principles have been developed in its case-law when it is faced with the task of establishing facts on which the parties disagree. As to the facts that are in dispute, the Court refers to its jurisprudence in which the standard of proof "beyond reasonable doubt" has been applied in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others*, cited above, § 160).

119. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.),

no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

120. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, 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 *Tomasi v. France*, 27 August 1992, pp. 40-41, §§ 108-11, Series A no. 241-A, *Ribitsch*, cited above, § 34, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

121. The Court further 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 *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, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

(b) The alleged violations of Article 2 in respect of Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev

i. Establishment of the facts

122. The Court notes that the circumstances of the kidnapping of the applicants' five relatives were disputed between the parties.

123. The applicants alleged that the armed men who had abducted their close relatives Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev had been State agents. Their

account of the events was supported by written statements by Ms D. and the third applicant.

124. The Government conceded that the five men had been abducted by unidentified armed men on 15 March 2001. However, they denied that the abductors were servicemen, referring to the absence of conclusions from the ongoing investigation. They also suggested that Shamil Vakayev could have run away to join the insurgents.

125. The Court notes that despite its requests for a copy of the entire investigation file in case no. 23116, the Government refused to produce any documents from the file except for the first applicant's interview transcript, on the grounds that they were precluded from providing them by Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006- XIII (extracts)).

126. In view of the foregoing and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in this respect.

127. The Court considers that the applicants presented a clear and coherent picture of the events of 15 March 2001. It does not accord important weight to the inconsistencies in Ms D.'s description as regards the timing of the shooting. Furthermore, it is not necessary to assess the value of Mr Kh.'s statement since the applicants' account of events is supported by other elements.

128. The hypothesis of the State agents' involvement in the abduction of the five men appears to be plausible in the light of the following. The abductors – heavily armed men in camouflage uniforms – arrived at the Vakayevs' house in military and paramilitary vehicles during daylight hours. The fact that they were able to pass freely through the checkpoints to enter the village supports the assumption that they belonged to the federal troops or other State agencies.

129. Furthermore, the domestic investigative authorities themselves suggested on several occasions that the applicants' relatives were detained in the course of a special operation. For instance, in July 2002 military prosecutors relinquished jurisdiction over the case to civilian prosecutors for the reason that the men had "most probably" been arrested by FSB servicemen, not the military (see paragraph 32 above). In September 2002 the case file was transferred back to the military prosecutors for the reason that military implication in the crime had been established (see paragraph 39 above). The Ministry of the Interior of the Chechen Republic acknowledged in their letter of 19 March 2003 that the applicants' relatives had been arrested by unidentified State agents (see paragraph 56 above). The Court is not satisfied with the Government's explanation that the letter in question merely described one of the theories to be looked at since its wording rather

strongly suggests that the investigation collected at the very least some evidence of military involvement in the crime. Lastly, the district prosecutor's office explicitly stated that the five men had been arrested in the course of a special operation and acceded to the fourth applicant's request to take steps to identify the wounded serviceman (see paragraph 58 above).

130. The Court takes note of the applicants' submission that the first applicant recognised her son in the one-minute extract of the RTR programme that they had obtained. It observes in this respect that the Government did not dispute the fact that the RTR television channel broadcast a programme concerning the Chechen Republic showing a certain special operation (see paragraph 71 above). As follows from the letter of 6 July 2002 from the military prosecutor's office, the district prosecutor's office had the tape with the footage in question at their disposal (see paragraph 32 above). However, the Government stated that the investigation was unable to obtain a copy of the recording (see paragraph 71 above). In any event, the Court does not deem it necessary to establish whether the footage showed the first applicant's son being arrested since it is satisfied that the applicants have made a *prima facie* case that their five relatives were arrested by State agents.

131. 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)).

132. The Court considers that in the present case the Government have not provided any plausible explanation for the events in question. Their assertion that Shamil Vakayev could have left his home to join an illegal armed group does not account in any way for what happened to the other missing men and therefore is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession, the Court finds that Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev were arrested on 15 March 2001 by State servicemen during an unacknowledged security operation.

133. There has been no reliable news of the five missing men since the date of the kidnapping. Their names have not been found in any official

detention facility records. Finally, the Government have not submitted any explanation as to what happened to them after their arrest.

134. Having regard to the previous cases concerning disappearances which have come before it (see, among others, *Bazorkina*, cited above, *Imakayeva*, cited above, and, more recently, *Vagapova and Zubirayev v. Russia*, no. 21080/05, 26 February 2009), 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 Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev or of any news of them for more than nine years strongly supports this assumption.

135. Accordingly, the Court finds that the evidence available permits it to establish that Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev must be presumed dead following their unacknowledged detention by State servicemen.

ii. The State's compliance with Article 2

136. The Court reiterates that 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 (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324).

137. The Court has already found that Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev must be presumed dead following their unacknowledged detention by State servicemen (see paragraph 135 above). Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, it considers that responsibility for these deaths lies with the respondent Government.

138. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in respect of Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev.

iii. The alleged inadequacy of the investigation into the abduction

139. The Court will now assess whether the investigation into the kidnapping of Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev met the requirements of Article 2 of the Convention.

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

141. Turning to the facts of the present case, the Court observes that the date on which the investigation into the kidnapping of the applicants' relatives was opened is disputed between the parties. In the absence of a copy of the district prosecutor's office's decision at its disposal it is unable to establish when exactly the investigation commenced. In any event, it is clear that no official proceedings were opened until 19 June 2001, that is, three months after the kidnapping. It remains unclear, furthermore, when the applicants lodged their first complaint concerning their relatives' kidnapping with the domestic authorities. However, the Government have not contested the applicants' submission that they complained to the military prosecutor's office on 18 May 2001 (see paragraph 22 above). It follows that no less than a month lapsed between the date on which a domestic investigative body was informed of a serious crime and the moment of commencement of an investigation into the matter.

142. The Court disagrees with the Government that the applicants were responsible for the delay in opening the investigation. In its view, once the military prosecutor's office became aware of the crime allegedly committed, it was for them to report the incident to a civilian prosecutor's office via the official channels of communication that should exist between various law enforcement agencies (see *Khalidova and Others v. Russia*, no. 22877/04, § 93, 2 October 2008). In such circumstances the Court cannot but conclude that a delay of at least one month in opening the investigation was attributable to the domestic authorities. Such a postponement *per se* is liable to affect an investigation of a kidnapping in life-threatening circumstances, where crucial action has to be promptly taken.

143. The Court further has to assess the scope of the investigative measures taken. The Government submitted that the investigating authorities checked various versions of the abduction, interviewed several witnesses and made numerous requests for information. However, owing to the lack of access to the investigation file, it is impossible not only to establish how promptly those measures were taken but whether they were taken at all. At the same time it is striking that until 28 May 2007 the district prosecutor's office made no attempts to interview servicemen from the checkpoints blocking entry to and exit from the village.

144. Furthermore, it appears that a number of crucial steps were never taken. In particular, it is not clear from the materials at the Court's disposal whether the investigators took any steps to examine the logbooks kept at the checkpoints with a view to obtaining information on the vehicles used by the abductors or their owners.

145. 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).

146. The Court also notes that even though the first, second and fourth applicants, as well as Mr D., Ramzan Dudayev's brother, were granted victim status in the criminal case, it does not appear that they were informed of any significant 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 (see *Oÿur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

147. Finally, the investigation was adjourned and resumed several times. There were lengthy – up to two years – periods of inactivity on the part of the investigating authorities when no investigative measures were taken.

148. 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, having been repeatedly suspended and resumed and plagued by inexplicable delays, it has been pending for nine years with no tangible results. Furthermore, the applicants, having no access to the case file and not having been properly informed about the progress of the investigation, could not have effectively challenged acts or omissions on the part of the investigating authorities before a court. Moreover, owing to the time which has elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier can no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospect of success. Accordingly, the Court finds that that the criminal law remedies relied on by the Government were ineffective in the circumstances of the case and rejects their objection as regards the applicants' failure to exhaust them.

149. 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 Yunus Abdurazakov, Ramzan Dudayev, Salambek Tatayev, Shamil Vakayev and Shamkhan Vakayev, in breach of Article 2 in its procedural aspect.

(c) The alleged violations of Article 2 in respect of Shamsudi Vakayev

150. The Court notes that despite its requests for a copy of the investigation file on the kidnapping of Shamsudi Vakayev, the Government refused to produce the documents from the case file, referring to Article 161 of the Code of Criminal Procedure. The Court reiterates that this explanation is insufficient to justify the withholding of key information requested by it (see paragraph 125 above). Having regard to the above principles concerning establishment of the facts which are in dispute

between the parties, the Court finds that it can draw inferences from the Government's conduct in this respect.

151. The Court points out that the first applicant, a witness to her husband's abduction, presented a clear and coherent picture of the events of 2 April 2005. It considers that the fact that a group of armed men in camouflage uniforms were able to move freely around the village at night in paramilitary vehicles and to take three villagers away from their homes strongly supports the hypothesis that they were State agents.

152. Referring to the above-mentioned principles (see paragraph 131 above), the Court considers that the first applicant has made a *prima facie* case as regards the alleged involvement of State agents in her husband's kidnapping and that, accordingly, it is for the Government to provide a satisfactory and convincing explanation of how the events in question occurred, which they have failed to do.

153. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession, the Court finds that Shamsudi Vakayev was arrested on 2 April 2005 by State servicemen during an unacknowledged security operation.

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

155. Furthermore, the Court finds that the assumption that the first applicant's husband was in a life-threatening situation following his unacknowledged detention is unfortunately even more credible given that Mr Elmurzayev, who had been abducted together with Shamsudi Vakayev, was found dead five weeks after the kidnapping. The Government's assertion that his dead body bore no visible marks of a violent death is, in its view, irrelevant given that no autopsy was carried out.

156. Accordingly, the Court finds that the evidence available permits it to establish that Shamsudi Vakayev must be presumed dead following his unacknowledged detention by State servicemen. Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, the Court considers that responsibility for Shamsudi Vakayev's death lies with the respondent Government.

157. There has therefore been a violation of Article 2 of the Convention in respect of Shamsudi Vakayev.

158. The Court will now assess whether the investigation into Shamsudi Vakayev's kidnapping met the requirements of Article 2 of the Convention.

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

160. The Court observes that the first applicant reported her husband's abduction to the district prosecutor's office shortly after the events (see paragraph 79 above). However, the investigation was opened only on 14 June 2005, that is, more than two months later (see paragraph 92 above). Such a postponement *per se* is liable to affect the investigation of a kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

161. Furthermore, owing to the Government's refusal to produce any materials from the investigation file in case no. 46060, the Court is unable to establish whether, at least, the most crucial investigative measures were, taken to solve the first applicant's husband's kidnapping promptly, if at all.

162. The Court also observes that the first applicant had no effective assess to the case file and that there were lengthy periods of inactivity on the part of the investigators, when the investigation was suspended.

163. The Court further notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for five years with no tangible results. It reiterates its above doubts concerning the effectiveness of the criminal law remedies referred to by the Government (see paragraph 148 above) and rejects their objection as regards the first applicant's failure to exhaust them.

164. 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 Shamsudi Vakayev, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

165. The applicants complained that at the moment of their abduction and after it Salambek Tatayev, Ramzan Dudayev, Yunus Abdurazakov, Shamil Vakayev and Shamkhan Vakayev were subjected to ill-treatment. They further claimed that as a result of the disappearance of their relatives and the State's failure to investigate the crimes properly, they had endured profound mental suffering. They 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

166. The Government disagreed with these allegations and argued that the investigation in case no. 23116 had not established that Salambek Tatayev, Ramzan Dudayev, Yunus Abdurazakov, Shamil Vakayev and

Shamkhan Vakayev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. They further argued that the applicants' mental suffering could not be imputable to the State.

167. In their observations on admissibility and merits of the case dated 7 May 2008 the applicants withdrew their complaint concerning the alleged ill-treatment of their relatives and maintained their complaint concerning their moral suffering.

B. The Court's assessment

1. Admissibility

(a) The complaint concerning the applicants' relatives' ill-treatment

168. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character affecting respect for human rights as defined in the Convention, which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005; and *Khadzhialiyev and Others v. Russia*, no. 3013/04, § 143, 6 November 2008).

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

(b) The complaint concerning the applicants' mental suffering

170. 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

171. 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, and *Imakayeva*, cited above, § 164).

172. In the present case the Court notes that the applicants are close relatives of the five missing persons. For nine years they have not had any news of their loved ones. Furthermore, the first applicant has not heard from her husband for over five years. The applicants have applied to various official bodies with enquiries about their relatives, both in writing and in person. Despite their attempts, they have never received any plausible explanation or information as to what became of the missing men following their kidnappings. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

174. 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

175. The applicants further stated that their six relatives had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within

a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. The parties' submissions

176. In the Government's opinion, no evidence was obtained by the investigators to confirm that the applicants' relatives had been deprived of their liberty in breach of the guarantees set out in Article 5 of the Convention.

177. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

178. 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

179. 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).

180. The Court has found it established that Salambek Tatayev, Ramzan Dudayev, Yunus Abdurazakov, Shamil Vakayev and Shamkhan Vakayev were abducted by State servicemen on 15 March 2001 and that Shamsudi Vakayev was abducted by State agents on 2 April 2005. Their respective detentions were not acknowledged, were not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore,

the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

181. In view of the foregoing, the Court finds that Salambek Tatayev, Ramzan Dudayev, Yunus Abdurazakov, Shamil Vakayev, Shamkhan Vakayev and Shamsudi Vakayev were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

182. 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

183. 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 any actions or omissions on the part of the investigating authorities in court or before higher prosecutors, as well as to claim damages through civil proceedings.

184. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

185. 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

186. The Court reiterates that in circumstances where, as here, a criminal investigation into the disappearance has been ineffective and the

effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

189. 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

190. The first and third applicants claimed damages in respect of the loss of their husbands' earnings after their disappearance. The third applicant also pointed out that Ramzan Dudayev would have provided for their two minor children. They based their calculations on the subsistence level applicable in Russia and applied the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department ("the Ogden tables") and the provisions of the Russian legislation. The first applicant claimed 62,421.61 Russian roubles (RUB) (1,700 euros (EUR)) and the third applicant claimed RUB 551,500.80 (EUR 15,000) in respect of pecuniary damage. The second and fourth applicants made no claims under this head.

191. 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 a breadwinner.

192. 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 first and third applicants' husbands and the loss to those applicants of the financial support which they could have provided.

193. Having regard to the applicants' submissions and the materials in its possession and accepting that it is reasonable to assume that Shamsudi Vakayev and Ramzan Dudayev would eventually have had some earnings resulting in financial support for their families, the Court awards EUR 800 to the first applicant and EUR 3,000 to the third applicant in respect of pecuniary damage.

B. Non-pecuniary damage

194. The first applicant claimed EUR 150,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her husband and two sons. The second, third and fourth applicants claimed EUR 50,000 each in respect of non-pecuniary damage caused by the disappearance of their family members.

195. The Government found the amounts claimed exaggerated.

196. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relatives. The applicants themselves have been found to have been victims of a violation of Articles 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It thus awards EUR 150,000 to the first applicant and EUR 50,000 to the second, third and fourth applicants each, plus any tax that may be charged thereon.

C. Costs and expenses

197. The applicants were represented by the SRJI. They submitted an itemised list 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 SRJI lawyers and EUR 150 per hour for 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' legal representation amounted to EUR 7.426.89 to be paid into the applicants' representatives' account in the Netherlands.

198. The Government pointed out that the applicant should be entitled to the reimbursement of her costs and expenses only in so far as it has been shown that they were actually incurred and are reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They also submitted that the applicants' claims for just satisfaction had been signed by six lawyers, whereas two of them had not been mentioned in the powers of attorney issued by the applicants. They also doubted that it had been necessary to send the correspondence to the Registry via courier mail.

199. The Court points out that the applicants had given authority to act to the SRJI and its five lawyers. The applicants' observations and claims for just satisfaction were signed by six persons in total. The names of four of them appeared in the powers of attorney, while two other lawyers worked with the SRJI. In such circumstances the Court sees no reason to doubt that the six lawyers mentioned in the applicants' claims for costs and expenses took part in the preparation of the applicants' observations. Moreover, there are no grounds to conclude that the applicants were not entitled to send their submissions to the Court via courier mail.

200. The Court now 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 v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

201. 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.

202. 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 the case files. Furthermore, due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that the case involved the amount of research claimed by the applicants' representatives

203. Lastly, the Court notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicants' representatives' accounts (see, for example, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII, and *Imakayeva*, cited above).

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

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 3 of the Convention of ill-treatment of their relatives;

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

3. *Declares* the complaints under Article 2, Article 3 in respect of the applicants' mental suffering, Article 5 and Article 13 admissible and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Salambek Tatayev, Ramzan Dudayev, Yunus Abdurazakov, Shamil Vakayev, Shamkhan Vakayev and Shamsudi Vakayev;

5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Salambek Tatayev, Ramzan Dudayev, Yunus Abdurazakov, Shamil Vakayev, Shamkhan Vakayev and Shamsudi Vakayev disappeared;

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

7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Salambek Tatayev, Ramzan Dudayev, Yunus Abdurazakov, Shamil Vakayev, Shamkhan Vakayev and Shamsudi Vakayev;

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

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

10. *Holds*

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

(i) EUR 800 (eight hundred euros) to the first applicant and EUR 3,000 (three thousand euros) to the third applicant in respect of pecuniary damage, to be converted into Russian roubles at the

rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

(ii) EUR 150,000 (one hundred and fifty thousand euros) to the first applicant and EUR 50,000 (fifty thousand euros) to the second, third and fourth applicants each in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

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

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

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

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President