



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

FIRST SECTION

CASE OF KHUTSAYEV AND OTHERS v. RUSSIA

(Application no. 16622/05)

JUDGMENT

*This version was rectified on 9 November 2010
under Rule 81 of the Rules of Court*

STRASBOURG

27 May 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 Khutsayev 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,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 16622/05) 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 ten Russian nationals listed below (“the applicants”), on 26 April 2005.

2. The applicants were represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their new representative, Mr G. Matyushkin.

3. On 7 March 2008 the Court decided 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 applications at the same time as their admissibility. The President of the Chamber acceded to the Government's request not to make publicly accessible the documents from the criminal investigation file deposited with the Registry in connection with the applications (Rule 33 of the Rules of Court).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- 1) Mr Isa Khutsayev, born in 1956,
- 2) Ms Birlant Khutsayeva, born in 1961,
- 3) Ms Maryam Khutsayeva, born in 1989,
- 4) Mr Aslan Khutsayev, born in 1988,
- 5) Mr Ibragim Khutsayev, born in 1993,
- 6) Ms Marina Turasheva, born in 1983,
- 7) Ms Aynat Sugaipova, born in 1957,
- 8) Mr Amsady Didayev, born in 1953,
- 9) Ms Ayshat Sugaipova, born in 1986,
- 10) Ms Milana Sugaipova, born in 1987.

6. They belong to two families who live in the village of Gekhi, in the Urus-Martan district, Chechnya.

7. The first applicant family consists of six persons (the first to sixth applicants). The first applicant is married to the second applicant. They are the parents of Beslan Khutsayev, born in 1981, and Movsar Khutsayev, born in 1984. The third applicant is the daughter of the first and second applicants; the fourth and fifth applicants are their sons and the sixth applicant is their daughter-in-law.

8. The second applicant family consists of four persons (the seventh to tenth applicants). The seventh applicant is married to the eighth applicant. They are the parents of Adam Didayev, born in 1977. The ninth and the tenth applicants are their daughters.

A. Disappearance of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev

1. Apprehension of Beslan and Movsar Khutsayev

9. On the night of 16 December 2001 the first applicant family, together with Movsar and Beslan Khutsayev, stayed at their house at 40 Sportivnaya Street, in the village of Gekhi, Chechnya. The family were not sleeping as they were preparing for the celebration of a Muslim holiday. Between 2 and 3 a.m. on 16 December 2001 a group of about ten armed masked men in camouflage uniforms rushed into the house. The men neither introduced themselves nor produced any documents. They spoke Russian without an accent. The applicants thought that they were Russian military servicemen. At some point the first applicant heard one of the officers calling somebody

on his portable radio set and saying: “Fog, Fog, go out. We are ready. We are leaving.” (“Туман, Туман, выходите. Мы уже все. Выходим”)

10. One of the servicemen put a gun to the second applicant's head and shouted: “Everybody lie down or we will blow up the house and shoot your wife”. The first applicant asked what was wrong. He was told that the group had arrived to carry out an identity check. The leader of the group ordered the first applicant and Movsar Khutsayev to lie down on the floor. The servicemen bound their hands. One of the servicemen swore at the first applicant, repeatedly kicked him in the face, broke his jaw and said: “Any Chechen is a natural-born bandit”. The serviceman stopped the beatings only after his commander ordered him to do so. Movsar Khutsayev was laid on the floor next to the first applicant. He received several blows from the servicemen in the presence of the first applicant.

11. The servicemen searched the house and seized the applicants' possessions, in particular money (12,000 roubles), clothes, a tape recorder, a vacuum cleaner, watches and all the dishes cooked for the holiday celebration. They also shot through the tyres of the first applicant's MAZ car, which was parked near the house.

12. The first applicant and Movsar Khutsayev were taken outside to the yard and made to lie face down under a shed. Beslan Khutsayev was already there. He was covered in blood. The officers conducted an identity check. Upon completion of the procedure one of them hit Beslan Khutsayev in the back with a rifle butt. The servicemen seized the passports of Beslan and Movsar Khutsayev as well as that of the first applicant. Afterwards, the servicemen walked away with Movsar and Beslan Khutsayev.

13. After the servicemen had left the house, the second applicant followed them and saw several Russian military vehicles – Ural and UAZ cars and armoured personnel carriers (APCs) – parked next to the village cemetery, about 500 metres from the applicants' house. She saw the officers putting Beslan and Movsar Khutsayev inside the cars. Later on the morning of 16 December 2001 the applicants saw spots of blood, footprints from military boots and tracks left by car tyres in the snow on the way from their house to the cemetery.

2. Apprehension of Adam Didayev

14. On the night of 16 December 2001 the second applicant family, together with Adam Didayev, stayed in their house at 18 Koltsevaya Street in Gekhi. Adam Didayev was undergoing in-patient treatment for tuberculosis in a hospital and had come home for the celebration of the Muslim holiday. The family had finished the preparations when at about 3 a.m. a group of approximately twenty armed masked men in camouflage uniforms rushed into the house. The men neither introduced themselves nor produced any documents. They spoke Russian without an accent. The applicants thought that they were Russian military servicemen. At some

point the seventh applicant heard one of the officers clearly saying via his portable radio set: “I am a major of the Main Intelligence Department [of the Ministry of Defence]...” (“Я майор ГРУ...”).

15. The officers beat the eighth applicant with a rifle butt, breaking two of his ribs and causing him to lose consciousness. The officers also beat Adam Didayev in the applicants' presence.

16. The servicemen searched the house and seized the applicants' possessions, in particular money (14,990 roubles), clothes, a videotape recorder, crockery and dishes cooked for the holiday celebration.

17. Having finished the search of the house, the servicemen invited a masked man, who had come with them, into the house. They pointed at Adam Didayev with a flashlight and the masked man nodded as if he had recognised him. The officers ordered Adam Didayev to put on warm clothes and to go with them. The applicants showed the officers a medical certificate stating that Adam Didayev suffered from tuberculosis. The officers looked at the certificate and answered that they would clear up the matter the next day. They took Adam Didayev away, ordering the applicants to stay in the house.

18. After the officers had left the house, the seventh applicant followed them and saw several Russian military Ural and UAZ cars, as well as APCs, parked about 250 metres from the applicants' house. She saw the officers putting her son, together with some other detained persons, inside the vehicles. After that the cars moved towards the Gekhi village military commander's office.

19. The description of the events of the night of 16 December 2001 is based on the accounts provided by the applicants and their neighbours to the applicants' representatives. The first applicant family submitted: two accounts of the events by the first applicant, obtained on 9 April 2004 and 16 June 2005; an account by the sixth applicant, obtained on 23 April 2004; an account by the second applicant, obtained on 25 April 2005; an account by the aunt of Movsar and Beslan Khutsayev, obtained on 25 April 2005; and an account by the applicants' neighbour, obtained on 20 April 2005. The second applicant family submitted: an account of the events by the seventh applicant, obtained on 9 April 2004; an account of the events by the tenth applicant, obtained on 15 April 2004; an account of the events by the eighth applicant, obtained on 17 April 2004; and an account of the events by their neighbour, obtained on 20 April 2005.

20. The Government did not dispute the circumstances of the detention. They objected to the description of the intruders as “servicemen”.

B. The search for Beslan Khutsayev, Movsar Khutsayev and Adam Didayev and the investigation

1. The applicants' account

21. On 16 December 2001 the applicants started to search for Movsar Khutsayev, Beslan Khutsayev and Adam Didayev. They contacted, both in person and in writing, various official bodies, such as the Russian President, the Russian State Duma, the Chechen administration, military commanders' offices and prosecutors' offices at different levels, describing in detail the circumstances of their relatives' apprehension and asking for help in establishing their whereabouts. The applicants retained copies of a number of those complaints and submitted them to the Court. An official investigation was opened by the local prosecutor's office. The relevant information is summarised below.

22. On 16 December 2001 both the applicant families complained to the Urus-Martan temporary District Department of the Interior (VOVD) about the apprehension of their relatives, ill-treatment and the seizure of documents and property. However, they did not keep copies of their letters and alleged that they had only received an oral response from the authorities.

23. On 25 February 2002 the prosecutor's office of the Urus-Martan District ("the district prosecutor's office") instituted a criminal investigation into the disappearance of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned no. 61030.

24. On 2 April 2002, near Urus-Martan, some clothes were found, together with the remains of three men. On 7 April 2002 the district prosecutor's office conducted an identification of the clothes. The clothes were presented to Ms Zaynap Kh., the aunt of Movsar and Beslan Khutsayev, who recognised them as clothes belonging to her nephews. It appears that on an unspecified date in April 2002 the clothes were also presented for identification to the first applicant, who identified them as belonging to his missing sons. The applicants were not aware whether any official steps had been taken following this finding.

25. On 25 April 2002 the investigation of the criminal case no. 61030 was suspended pursuant to Article 195 (§ 1 (3)) of the Code of the Criminal Procedure owing to the failure to identify the perpetrators. It appears that the investigation was subsequently reopened and suspended several times. Some of these decisions have not been communicated to the applicants.

2. Correspondence of the first applicant family with the law-enforcement authorities

26. On 15 February 2002 the second applicant wrote to a number of authorities, including the district prosecutor's office. In her letter she stated that on the night of 16 December 2001 a group of Russian military servicemen in camouflage uniforms had broken into her house and conducted a search of the place. She mentioned that the intruders had pointed their guns at the family members and had beaten her sons. The applicant stated that the servicemen had taken away valuable items belonging to her family and some identity documents, and had walked away with her sons. The applicant requested assistance in establishing the whereabouts of Movsar and Beslan Khutsayev.

27. On 29 May 2002 the second applicant requested assistance from the VOVD in establishing the whereabouts of Movsar and Beslan Khutsayev. In her letter she explained that on the night of 16 December 2001 a group of representatives of Russian power structures had broken into her house and conducted an unlawful search, and that they had subjected her family members to beatings and had taken away her two sons Beslan and Movsar Khutsayev.

28. On 22 June 2002, in response to the first applicant's request, the Military Prosecutor's Office of the Urus-Martan district informed him that such information was to be obtained from the VOVD.

29. On 19 November 2002 the first applicant wrote to the district prosecutor's office and the Chechnya Prosecutor's Office, requesting them to expedite the investigation of criminal case no. 61030. He stated that he had not been questioned by the investigative authorities and that the district prosecutor's office had failed to take any other investigative measures. He complained about the lack of information about the investigation and pointed out that although his relatives had been abducted in December 2001, the perpetrators had still not been identified. The first applicant sought a review of the measures taken by the investigative authorities and asked to be informed about the results.

30. On 4 February 2003 the second applicant requested a number of authorities, including the prosecutors' offices at various levels, for assistance in establishing the whereabouts of Movsar and Beslan Khutsayev. The applicant stated that the authorities had failed to react to her detailed descriptions of the circumstances of her sons' abduction and her numerous complaints about the beatings by the servicemen.

31. On 13 February 2003 the district prosecutor's office informed Mrs Zaynap Kh. that they had taken all necessary measures in the course of the investigation into the disappearance of her nephews. The investigation had been suspended owing to the failure to identify the perpetrators.

32. On 17 April 2003 the first applicant requested assistance from the district prosecutor's office. In his letter he again described in detail the

events of 16 December 2001. In particular, he described the search conducted by the group of armed masked servicemen who had broken into his house and the beatings to which the intruders had subjected his family members. The applicant stated that the servicemen had taken away his family's property; that one of them had shouted at him: "Shut up. Did you not understand? Any Chechen is a natural-born bandit"; and that the group had taken away his two sons. The applicant mentioned that he had contacted a number of State authorities to ascertain his sons' whereabouts, but that all of them had denied their involvement in the abduction. The applicant also provided a detailed description of evidence which made him believe that the abduction had been conducted by the Russian federal forces. In particular, he pointed out that the local residents had seen a number of APCs and other military vehicles parked in the vicinity of the applicant's house on the night of 16 December 2001; that the local police, in spite of the curfew, had failed to stop the vehicles moving towards the applicants' house; that the boot prints and traces of blood discovered in the applicants' yard on the morning of 16 December 2001 led to the place where the vehicles were parked; that the intruders had been armed with machine guns with silencers and could not have acted so openly had they not belonged to the Russian federal forces; that the intruders had openly used portable radio sets and had called someone with the codename "Fog"; that they had clearly had a chain of command; and that on the morning of 16 December 2001, in spite of the applicants' request, the law-enforcement authorities had failed to visit the crime scene and initiate an investigation. The applicant asked the district prosecutor to take a number of investigative measures: to question representatives of the Russian military and law-enforcement agencies; to establish who had used the codename "Fog" during the night of 16 December 2001, to question a number of local residents; and to establish which division of the Main Intelligence Department of the Ministry of Defence had been stationed in the area on 16 December 2001.

33. On an unspecified date the second applicant wrote to a number of public bodies, including the Military Prosecutor's Office of Chechnya, asking for assistance. In her letters she stated that on 16 December 2001 a group of Russian military servicemen wearing black masks and camouflage uniforms had broken into her house and conducted an unlawful search of the place. She stated that the intruders had demanded valuables; that they had bound up all the males in the house and forced them to lie on the floor; and that they had subjected her family members to beatings and threats. The applicant mentioned that one of the servicemen had spoken on his portable radio set and had used the codename "Fog". The same servicemen had taken away her two sons and she had never heard from them since; her family had contacted various State authorities with requests for assistance; but the authorities had either given formal and meaningless replies or had not replied at all. The applicant expressed the opinion that the prosecutor's

office had been trying to cover up the identity of those who had abducted her sons and that the Chechen authorities had failed to take measures to protect the local population.

34. On 23 April 2003 the district prosecutor's office informed the second applicant that the investigation of criminal case no. 61030 had been suspended on 25 April 2002. The letter also stated that the local police had been instructed to take steps aimed at solving the crime.

35. On 19 June 2003 the district prosecutor's office again informed the first applicant that the investigation of case no. 61030 had been suspended on 25 April 2002.

36. On 24 March 2004 the first applicant requested the district prosecutor's office to take into consideration the pecuniary damage caused to them as a result of the search conducted on 16 December 2001. The applicant provided a detailed description of the seized property.

37. On 31 March 2004 the district prosecutor's office informed the first applicant that his request had been included in case file no. 61030 and that it would be taken into consideration during the investigation.

38. On 30 November 2004, in response to a request by the first applicant dated 26 November 2004, the district prosecutor's office informed him that the investigation of case no. 61030 had been suspended and reopened several times and that the most recent suspension of the investigation had taken place on 1 November 2004 owing to the failure to identify the perpetrators.

39. On 20 September 2005 the first applicant asked the district prosecutor's office to inform him of the progress in the investigation. In the absence of any reply, on 9 December 2005 and on 15 March 2006 he repeated his request. On 28 March 2006 the district prosecutor's office informed him that the investigation was pending, without referring to any procedural decisions.

40. The first applicant complained to the district prosecutor's office again on 2 June 2006. On 5 June 2006 he received a reply to the effect that the criminal investigation was ongoing and that he would be informed if there were any significant developments.

41. On 10 October 2006 the first applicant again requested the district prosecutor's office to update him on the progress of the investigation and to allow him access to the file. On 22 December 2006 the district prosecutor's office informed him that the investigator's decision of 28 April 2006 to adjourn the proceedings had been quashed on 22 December 2006.

42. On 27 January 2007 the investigator ordered an expert medical examination of the first applicant in order to assess the gravity of the injuries sustained by him on 15 December 2001. The order referred to the first applicant's testimony of 7 February 2006 in which he had complained about the injuries. On 16 February 2006 the medical expert found no traces of injuries on the first applicant.

43. On 10 February 2007 the first applicant again asked the district prosecutor's office to inform him of the state of proceedings in the criminal investigation concerning his sons' abduction.

44. On 31 July 2008 the Chechen Department of the Investigative Committee at the Prosecutor General's Office ("the Chechnya Investigative Committee") informed the second applicant that its office would be conducting a further investigation in criminal case no. 61030. The letter informed her of setting up of a special investigative group whose task was to deal with cases considered by the European Court of Human Rights. It also informed her that on 31 July 2008 the proceedings had been reopened.

45. In addition, the applicants on numerous occasions wrote to other law-enforcement authorities and public figures, who eventually forwarded their letters to the district prosecutor's office.

3. Correspondence of the second applicant family with the law-enforcement authorities

46. On 15 February 2002 the seventh applicant requested the district prosecutor's office and the Urus-Martan Military Commander's Office ("the district military commander's office") for assistance in establishing the whereabouts of Adam Didayev and securing his release from detention. In her letter she stated that at the material time her son had been undergoing in-patient tuberculosis treatment and had come home for the celebration of the religious holiday. The applicant also submitted that her husband had been beaten by the servicemen, who had broken two of his ribs, and that he had had problems recovering from the ill-treatment. The applicant stated that the intruders had beaten her daughter and taken away their personal property.

47. On 19 February 2002 the eighth applicant wrote to the Russian Minister of the Interior. He stated that the soldiers who had abducted his son had been drunk; that they had forced the applicant to the ground, sworn at him, beaten him with rifle butts and kicked him for 40 to 50 minutes, and that as a result they had broken two of his ribs.

48. On 21 May 2002 the seventh applicant wrote to the district military commander and complained about her son's detention. The applicant also submitted that her family members had been beaten.

49. On 31 May 2002 the South Federal Circuit Department of the Ministry of the Interior informed the eighth applicant that the district prosecutor's office had instituted criminal proceedings in connection with the abduction of Adam Didayev under Article 126 § 2 of the Criminal Code. The letter did not refer to the number of the criminal case file.

50. On 19 August 2002 the Chechnya Ministry of the Interior informed the seventh applicant that her request had been forwarded to the VOVD.

51. On 28 April 2003 the seventh applicant lodged a complaint with the district prosecutor's office. In her letter she described in detail the events of the night of 16 December 2001 and the absence of help from the authorities

in the days after the abduction. The applicant stated that the authorities had failed to take any urgent measures to investigate the crime and that their first visit to the crime scene had not taken place until two months after the events. The applicant submitted that she had provided the investigator with the information that one of the intruders had identified himself as a major of the Main Intelligence Department of the Ministry of Defence, but the investigator had failed to include this evidence in the questioning report. The applicant listed a number of necessary investigative measures which should have been taken by the investigative authorities, including an investigation of the crime scene, identification of those who had used portable radio sets on the night of 16 December 2001, and so on. She asked the authorities to take a number of investigative measures, such as: granting her the status of a victim and the status of a civil plaintiff in the criminal proceedings; conducting an inspection of the crime scene; establishing who had used portable radio sets on 16 December 2001; establishing who had used the military vehicles seen on the night of the abduction; providing her with an update concerning the status of the investigation; and informing her of the results of the examination of the complaint.

52. On 5 May 2003 the seventh applicant requested the district military commander for assistance in establishing the whereabouts of Adam Didayev. She stated that on 16 December 2001 a group of representatives of the Russian forces had broken into her house, subjected her husband and daughter to beatings, made a mess everywhere, taken the family's valuables and left with Adam Didayev. She submitted that one of the servicemen had used a portable radio set to ask for help; that the officer had introduced himself during the communication as a major of the Main Intelligence Department; and that in response to his requests he had been told that sixteen servicemen were on their way. The applicant also pointed out that the intruders had used Ural and UAZ military vehicles and two APCs. The applicant submitted that on the following day she had complained about the events of the night of 16 December 2001 to various authorities, but her requests had produced no results.

53. On 18 March 2004 the seventh applicant requested the district prosecutor's office to take into consideration the pecuniary damage caused to them as a result of the search conducted on 16 December 2001. The applicant provided a detailed description of the seized property.

54. In addition, the applicants on numerous occasions wrote to other law-enforcement authorities and public figures, who eventually forwarded their letters to the district prosecutor's office.

55. The applicants were not informed of any further developments of the investigation into the disappearance of their relatives.

4. Information submitted by the Government

56. The Government submitted about 200 pages from the criminal investigation file no. 61030. The contents of these documents and the Government observations can be summarised as follows.

57. The investigation of the abduction of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev by “unidentified masked men in camouflage uniforms with machine guns” had commenced on 25 February 2002. The case file contains complaints of 15 February 2002 by the two applicant families.

58. On 11 March 2002 the second and seventh applicants were granted victim status. On the same day the two women were questioned. Their statements contained detailed descriptions of the events surrounding the abduction, including a list of items of property that had been taken. The seventh applicant stated that her husband, the eighth applicant, and her daughter, the ninth applicant, had been beaten by the servicemen. She mentioned the radio conversation one of the intruders had had in which he had identified himself as a major of the Main Intelligence Department (of the Ministry of Defence) and the fact that APCs and a Ural vehicle had been stationed near the cemetery on that night.

59. On 22 May 2002 the military prosecutor of military unit no. 20102 (based at the headquarters of the Russian military in Chechnya) informed the district prosecutor's office that he had not discerned any reasons to suspect the involvement of the servicemen of the army, the Federal Security Service (FSB) or the Interior Troops of the Ministry of the Interior in the events of 16 December 2001. The file was therefore returned to the district prosecutor's office.

60. On 17 April and 28 April 2003 the first and seventh applicants, respectively, lodged detailed complaints with the district prosecutor's office (see paragraphs 41 and 62 above).

61. On 11 September 2003 the investigation questioned the first applicant as a witness. The Government did not provide a copy of the transcript, but in their observations submitted that he had testified about the beatings he and his son Beslan had sustained on the night of the abduction. He also described the intruders, mentioned the call-name “Fog” used by one of them and referred to the military vehicles seen by the second applicant and by the sixth applicant, his daughter-in-law. The first applicant at that time stated that he had not sought medical assistance in relation to the injuries sustained.

62. On 18 September 2003 the district prosecutor's office sent a request for information to all the district prosecutor's offices in Chechnya. The letter referred to the detention of the three men on 16 December 2001 by unidentified armed persons and asked the offices to check whether Beslan Khutsayev, Movsar Khutsayev and Adam Didayev had ever been detained or treated in medical institutions. On the same day the investigators

requested information about the three men from various State authorities in Chechnya and in the Southern Federal Circuit, including the FSB, the Ministry of the Interior, the Ministry of Justice and the military commander's office.

63. In September and October 2003 all services replied that they had not detained Beslan Khutsayev, Movsar Khutsayev and Adam Didayev or carried out a criminal investigation into their activities. The three men had never been detained or delivered to a temporary detention ward. No State agency had any information about their whereabouts.

64. According to the Government, on 24 September 2003 the district prosecutor's office questioned the second and sixth applicants. They did not produce copies of these statements to the Court, but submitted that the applicants had confirmed the details of their relatives' detention. Both women described the military vehicles they had seen near the cemetery: two APCs, one Ural military truck and one all-terrain UAZ vehicle. The intruders had put the detainees into the Ural and left towards the main road, in the direction of Urus-Martan.

65. On several occasions in 2005 and in 2006, following the applicants' complaints, the district prosecutor's office had instructed the local police department (ROVD) to take steps to investigate the abduction.

66. According to the Government, on 27 June 2005 the first applicant was again questioned as a witness. They did not submit a copy of the transcript of the questioning.

67. In April 2006 the investigator sought information about the missing men from the detention centres of the Ministry of Justice in the Southern Federal Circuit. In May and June 2006 the centres replied that they had never been detained there.

68. On 4 January 2007 the seventh applicant was again questioned about the circumstances of the abduction. On the same day she requested to be granted the status of a civil plaintiff in view of the pecuniary damage caused to her family and the injuries sustained by her husband and daughter, the eighth and ninth applicants. The request was granted on the same day.

69. On 7 January 2007 the investigator questioned the first applicant. He stated that he had been beaten and sustained injuries on 16 December 2001, but that he had not applied to any medical institution on that account. On the same day the first applicant was granted the status of a victim in the proceedings.

70. On 15 January 2007 the investigator questioned the third applicant about the events of 16 December 2001.

71. On 17 January 2007 the second applicant was recognised as a civil plaintiff in the proceedings, in view of the pecuniary damage sustained by the family. The Government stated that she had been again questioned on the same day, but did not submit a copy of the transcript.

72. On 19 January 2007 the investigators visited the household of the second applicant family. They examined the site of the crime and took photographs of the house. Nothing of interest to the investigation was noted, except the broken door of one of the wardrobes. Later on the same day the investigators followed the seventh applicant to the site where she had seen the military vehicles on the night of the abduction. She pointed to the spot where the vehicles had been stationed and explained that she had seen two APCs, one Ural vehicle and one all-terrain UAZ vehicle. She pointed to the direction of the main road where the vehicles had departed. Nothing of interest to the investigation had been noted.

73. Also on 19 January 2007 the investigators examined the household of the first applicant's family. The first applicant explained the events of the night of 16 December 2001. He referred to the shots fired by the abductors at the wheel of his MAZ truck, but no cartridge or bullet could be found. The truck in question had been sold and could not be examined. Nothing of further interest to the investigation had been noted. The investigators also took photographs of the site.

74. On 22 January 2007 the investigators questioned the eighth and ninth applicants about the circumstances of the abduction of Adam Didayev and about the injuries sustained by them. Both stated that they had not sought medical assistance in relation to the incident and that by the time of the questioning no traces of the ill-treatment had persisted. Therefore, there was no reason to carry out a medical expert examination.

75. On 16 February 2007 the medical expert concluded that there were no traces of injuries on the first applicant.

76. On 26 January 2007 the investigator additionally qualified the events of 16 December 2001 as theft in respect of the first applicant family and armed robbery in respect of the second applicant family. The decisions listed the items and value of the stolen property.

77. In January 2007 the investigator requested the head of the Urus-Martan ROVD to identify and question the neighbours of the two applicant families and the residents who lived near the village cemetery in order to find eyewitnesses to the events of 16 December 2001. In February 2007 the servicemen of the ROVD questioned five men who had lived near the Gekhi cemetery. In identically worded statements they said that they had not seen or heard the military vehicles on the night of 15 to 16 December 2001 and that they had had no information about the abductions.

78. In relation to these five witness statements, the applicants in August 2008 submitted to the Court five statements collected by them from the witnesses or from their relatives. These statements concern four out of the five witnesses questioned by the investigation. According to these statements, two of the witnesses had not lived in Gekhi in December 2001: one witness had been in detention and another lived in another region. Four men who had been in Gekhi on the date in question confirmed that they had

seen and heard the military vehicles moving through the night, despite the curfew. Two men explained that in February 2007 they had signed the records of the questionings upon a request by the local policemen, without reading them. The Government, in their additional observations, questioned the evidential value of these statements.

79. In January 2007 the investigator asked the headquarters of the army and of the Ministry of the Interior in Chechnya and the FSB to find out whether any security operations had been carried out in Gekhi on the night of 15 to 16 December 2001, whether any military vehicles had been involved, which detachment of the Main Intelligence Department had been stationed in the district at the material time and whether it had been involved in the operation. The letter also asked to identify the officer who had used the call-name “Fog” and to identify and question the servicemen who had manned the roadblock at the relevant time. All services responded in February 2007 that they had no information relevant to the case and had no means of finding out the answers to the questions posed.

80. According to the Government, the law-enforcement authorities had never arrested or detained Beslan Khutsayev, Movsar Khutsayev and Adam Didayev on criminal or administrative charges and had not carried out a criminal investigation in respect of them. No special operations had been carried out in respect of the applicants' relatives.

81. According to the documents submitted by the Government, between February 2002 and December 2006 the investigation was suspended and resumed on at least three occasions, and so far it had failed to identify those guilty.

82. The Government stated that the investigation was in progress and that disclosure of the remaining documents from the criminal investigation file would be in violation of Article 161 of the Code of Criminal Procedure, since it contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

C. Proceedings against law-enforcement officials

83. On 21 June 2003 the first and seventh applicants lodged a complaint with the Urus-Martan Town Court (“the Town Court”). They described the events of 16 December 2001 and complained about the unlawful suspension of the investigation of criminal case no. 61030 and the failure of the authorities to take basic investigative measures and to examine a number of their requests on the merits. The applicants requested the reopening of the investigation and a fresh determination of the nature of the crime and asked to be granted the status of civil plaintiffs in the criminal proceedings.

84. On 17 March 2004 the Town Court examined their complaint and allowed it in part. The court stated that the district prosecutor's office had

unlawfully failed to examine the applicants' requests, and instructed the investigative authorities to conduct a proper examination.

85. On 13 September 2004 the first applicant lodged a complaint with the Town Court. He stated that the district prosecutor's office had failed to comply with the court's decision of 17 March 2004. He sought a ruling that the new decision to suspend the criminal investigation was unlawful, and requested access to the criminal case file and the conduct of an effective and thorough investigation.

86. On 15 October 2004 the Town Court dismissed his complaint. On 3 November 2004 the Supreme Court of the Chechen Republic upheld that decision on appeal.

II. RELEVANT DOMESTIC LAW

87. 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

88. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev and the events of 16 December 2001 had not yet been completed. They further argued that it had been open to the applicants to challenge in court any acts or omissions of the investigating or other law-enforcement authorities. They also argued that it had been open to the applicants to pursue civil complaints but that they had failed to do so.

89. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect, including their application to the Town Court, had been futile. 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

90. 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).

91. 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.

92. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 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.

93. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law-enforcement authorities shortly after the kidnapping of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev and that an investigation has been pending since 25 February 2002. The applicants and the Government disagreed as to the effectiveness of the investigation of the kidnapping.

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

A. The parties' arguments

95. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Beslan Khutsayev, Movsar Khutsayev and Adam Didayev had been State agents. In support of their complaint they referred to the following facts. The village of Gekhi had been under the total control of federal troops. There had been Russian military checkpoints at the roads leading to and from Gekhi. The armed men who had abducted Beslan Khutsayev, Movsar Khutsayev and Adam Didayev had Slavic features and had spoken Russian without an accent, which proved that they were not of

Chechen origin. The men had arrived in military vehicles late at night, which indicated that they had been able to circulate freely after the curfew. The men had acted in a manner similar to that of special forces carrying out identity checks. They had been wearing specific camouflage uniform, were armed and had had portable radios. One of them had identified himself over the radio as a “major of the Main Intelligence Department”. All the information disclosed from the criminal investigation file supported their assertion as to the involvement of State agents in the abduction. Since their relatives had been missing for a very lengthy period, they could be presumed dead. That presumption was further supported by the circumstances in which they had been arrested, which should be recognised as life-threatening.

96. The Government submitted that unidentified armed men had kidnapped Beslan Khutsayev, Movsar Khutsayev and Adam Didayev. They contended that the investigation of the incident was pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relatives were dead. The Government raised a number of objections to the applicants' presentation of the facts. They noted that the applicants' description of the perpetrators as “servicemen” was based on the subjective perception of armed men as such and that the witnesses had not seen any insignia or service badges which would confirm their belonging to the armed forces. They also stressed that the perpetrators of the crime had been motivated by lucrative instincts and that their real aim had been to steal the applicants' property. The Government further alleged that the applicants' description of the circumstances surrounding the abduction was partly inconsistent. The Government referred to the witness statements made to the Court and to the domestic investigation.

B. The Court's evaluation of the facts

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

98. The Court notes that despite its requests for a copy of the entire investigation file into the abduction of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev, the Government produced only part of the documents from the case file. The Government referred to Article 161 of the

Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by it (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII).

99. In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicants' relatives can be presumed dead and whether their deaths can be attributed to the authorities.

100. The applicants alleged that the persons who had taken Beslan Khutsayev, Movsar Khutsayev and Adam Didayev away on 16 December 2001 and then killed them had been State agents. The Government did not dispute any of the factual elements underlying the applications and did not provide another explanation of the events.

101. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. It finds that the fact that a large group of armed men in uniform, equipped with military vehicles, was able to move freely through military roadblocks during curfew hours and proceeded to check identity documents and apprehended several persons at their homes strongly supports the applicants' allegation that these were State servicemen conducting a security operation. In their applications to the authorities the applicants consistently maintained that Beslan Khutsayev, Movsar Khutsayev and Adam Didayev had been detained by unknown servicemen and requested the investigation to look into that possibility. The domestic investigation also accepted factual assumptions as presented by the applicants and took steps to check whether law-enforcement agencies were involved in the kidnapping. The investigation was unable to establish which precise military or security units had carried out the operation, but it does not appear that any serious steps were taken in that direction.

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

103. In view of the factual elements summarised above, the Court is not convinced by the Government's reference to the "subjective" nature of the applicants' perception of the armed men as servicemen or the presence of a lucrative impulse in their actions, as these arguments do not contradict the

applicants' allegation that these men were State agents and do not in themselves furnish another explanation of the events.

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

105. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their relatives were apprehended by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Beslan Khutsayev, Movsar Khutsayev and Adam Didayev were arrested on 16 December 2001 by State servicemen during an unacknowledged security operation.

106. There has been no reliable news of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev 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.

107. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII; *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 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 Beslan Khutsayev, Movsar Khutsayev and Adam Didayev or of any news of them for many years supports this assumption.

108. Accordingly, the Court finds that the evidence available permits it to establish that Beslan Khutsayev, Movsar Khutsayev and Adam Didayev must be presumed dead following their unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

109. The applicants complained under Article 2 of the Convention that their relatives had been deprived of their lives by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

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

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

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

A. The parties' submissions

110. The Government contended that the domestic investigation had obtained no evidence to the effect that Beslan Khutsayev, Movsar Khutsayev and Adam Didayev were dead or that any servicemen of the federal law-enforcement agencies had been involved in their kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants' relatives met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible.

111. The applicants argued that Beslan Khutsayev, Movsar Khutsayev and Adam Didayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for several years. The applicants also argued that the investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law. The applicants pointed out that by 2008 the district prosecutor's office had not taken some crucial investigative steps. The investigation into the kidnapping had been opened with a significant delay and had then been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and the relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any known results was further proof of its ineffectiveness. They also invited the Court

to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

112. 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. The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) Alleged violation of the right to life of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev

113. The Court has already found that the applicants' relatives must be presumed dead following their unacknowledged detention by State servicemen and that the deaths can be attributed to the State. In the absence of any justification in respect of any use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev.

(b) Alleged inadequacy of the investigation of the kidnapping

114. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

115. In the present case, the kidnapping of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

116. The Court notes at the outset that some of the documents from the file were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the available documents and information.

117. The Court finds that the authorities were immediately made aware of the crime by the applicants. The applicants consistently indicated to the Court and to the national investigation that they had started to look for their relatives from 16 December 2001 by applying to various State bodies in Gekhi and in Urus-Martan (see paragraph 32 above). The investigation in case no. 61030 was instituted on 25 February 2002, that is, more than two months after Beslan Khutsayev, Movsar Khutsayev and Adam Didayev's abduction. Such a postponement *per se* was liable to affect the investigation of a kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It also appears that within the following month two applicants were questioned and granted victim status. However, it appears that after that a number of crucial steps, including questioning of other witnesses, examination of the sites and medical examinations of the victims, were unacceptably delayed and were conducted only in January and February 2007 – that is, more than five years after the event (see paragraphs 70, 72-75 and 77 above). It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

118. A number of essential steps were never taken. Most notably, despite the witnesses' references to the use of military vehicles, the radio call-name and the identification of one of the intruders as a “major of the Main Intelligence Department”, it does not appear that the investigation, except for one attempt in January 2007, tried to obtain any information about the carrying out of a security operation. Thus, it failed to identify and question the servicemen who had manned the roadblock to which the witnesses referred, to find out whether any special operations had been carried out in Gekhi on the night in question, and to identify and question any of the servicemen who had been involved in the detention of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev or their fellow detainees. The investigation also inexplicably failed to pursue the information about the findings of clothes and human remains in April 2002, even though the relatives recognised some of the items of clothes as those belonging to Movsar and Beslan Khutsayev (see paragraph 24 above).

119. The Court also notes that even though three applicants were eventually granted victim status in the investigation concerning the abduction of their relatives, they were only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the

investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

120. Lastly, the Court notes that the investigation was adjourned and resumed at least four times and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending. The Town Court criticised deficiencies in the proceedings and ordered remedial measures. It appears that its instructions were not complied with.

121. 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 being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years having produced no tangible results. The Government argued that the applicants could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. The Court observes that the applicants did, in fact, make use of that remedy, which eventually led to the resumption of the investigation (see paragraph 84 above). However, the Town Court's instructions to the district prosecutor's office to investigate the crime effectively did not bring any tangible results for the applicants. The investigation was repeatedly suspended and resumed, but it appears that no significant investigative measures were taken to identify those responsible for the kidnapping. In such circumstances, the Court considers that the applicants could not be required to challenge in court every single decision of the district prosecutor's office. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

122. 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 Beslan Khutsayev, Movsar Khutsayev and Adam Didayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

123. The applicants relied on Article 3 of the Convention, submitting that on 16 December 2001 Beslan Khutsayev, Movsar Khutsayev and Adam Didayev, as well as the first, eighth and ninth applicants, had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. They argued that this complaint had not been properly investigated. Finally, they alleged that as a result of their relatives' disappearance and the State's failure to investigate it properly, they had

endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The parties' submissions

124. The Government disagreed with these allegations and argued that the investigation had not established that the applicants and Beslan Khutsayev, Movsar Khutsayev and Adam Didayev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

125. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

126. 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 concerning the ill-treatment inflicted on 16 December 2001

127. In so far as the second applicant complained of ill-treatment during the arrest, the Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161 *in fine*).

128. The Court has found it established that the applicants' three relatives were detained on 16 December 2001 by State agents. It has also found that, in view of all the known circumstances, they can be presumed dead and that the responsibility for their deaths lies with the State authorities (see paragraphs 97-108 above).

129. The Court notes that the fact that Beslan Khutsayev, Movsar Khutsayev, Adam Didayev and the first, eighth and ninth applicants were beaten during the arrest was confirmed by several witness statements, given by the applicants to the Court and to the domestic investigation. From the outset the applicants systematically informed the investigating authorities of

the attack on them, having stated in their complaints that the detained men and three of the applicants had been repeatedly struck and injured by the kidnappers. It is true that the applicants did not provide any medical documents attesting to the injuries they had allegedly sustained, but in the particular circumstances of the present case the Court finds that the investigative authorities should have reacted earlier and taken steps to obtain a medical examination of the applicants prior to 2007, by which time no traces of the beatings could have been observed (see paragraphs 74 and 75 above).

130. With the above considerations in mind, the Court finds it established that Beslan Khutsayev, Movsar Khutsayev, Adam Didayev and the first, eighth and ninth applicants were beaten and injured by the same persons who had taken away the three men and whom it has found above to have been State agents. For reasons similar to those set out above in relation to the procedural aspect of Article 2, the investigation was not able to identify these persons and no one has been charged with any crime.

131. The Court therefore concludes that Beslan Khutsayev, Movsar Khutsayev, Adam Didayev and the first, eighth and ninth applicants suffered inhuman treatment contrary to Article 3 of the Convention.

(b) Effective investigation

132. The Court reiterates that “where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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” (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

133. The Court notes that the applicants' statements to the effect that Beslan Khutsayev, Movsar Khutsayev, Adam Didayev and the three applicants had been subjected to ill-treatment on 16 December 2001 were enclosed with the applicants' applications and requests to the investigating authorities. However, the domestic investigation produced no tangible results.

134. For the reasons stated in paragraphs 114-122 above in relation to the procedural obligation under Article 2 of the Convention, the Court concludes that the respondent State has failed to conduct an effective investigation into the ill-treatment of Beslan Khutsayev, Movsar Khutsayev, Adam Didayev and the first, eighth and ninth applicants.

135. Accordingly, there has been a violation of Article 3 also in this respect.

(c) The complaint concerning the applicants' moral suffering

136. 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).

137. Turning to the applicants in the present case, the Court first points out that no evidence has been submitted to it that the sixth applicant, the sister-in-law of Beslan and Movsar Khutsayev, was in any manner involved in the search for the missing men (see, by contrast, *Luluyev and Others*, cited above, § 112). The Court also finds that she cannot be considered a close family member of the disappeared men, especially in view of the presence among the applicants of their parents and siblings. In such circumstances, the Court, while accepting that the disappearance of family members might have been a source of considerable distress to the sixth applicant, is nevertheless unable to conclude that her mental and emotional suffering was distinct from the inevitable emotional distress in a situation such as the one in the present case and that it was so serious that it fell within the ambit of Article 3 of the Convention.

138. The Court further notes that the remaining applicants are parents and siblings of the disappeared persons who witnessed their abduction. For eight years they have not had any news of the missing men. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing relatives. Despite their attempts, they have never received any plausible explanation or information about what became of their relatives following their detention. The responses they received mostly denied State responsibility for their relatives' arrest or simply informed them that the investigation was ongoing. The findings under the procedural aspect of Article 2 are also of direct relevance here.

139. The Court therefore concludes that there has been a violation of Article 3 of the Convention also in respect of the applicants, with the exception of the sixth applicant.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

140. The applicants further stated that Beslan Khutsayev, Movsar Khutsayev and Adam Didayev 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

141. The Government asserted that no evidence had been obtained by the investigators to confirm that Beslan Khutsayev, Movsar Khutsayev and Adam Didayev had been deprived of their liberty. They were not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about their detention.

142. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

143. 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

144. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and

discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others*, cited above, § 122).

145. The Court has found that Beslan Khutsayev, Movsar Khutsayev and Adam Didayev were apprehended by State servicemen on 16 December 2001 and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

147. In view of the foregoing, the Court finds that Beslan Khutsayev, Movsar Khutsayev and Adam Didayev 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.

VI. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

148. The applicants complained that the searches carried out at their homes on 16 December 2001 had been illegal and disclosed a violation of Article 8 of the Convention. They also referred to the unlawful seizure of their property during the search and relied on Article 1 of Protocol No. 1 to the Convention. These Articles provide as follows:

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 1 of Protocol No. 1

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

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. The parties' submissions

149. The Government contended that State agents had not been involved in the alleged violations. They also denied that any searches had been carried out in the applicants' houses, since the events in question had been investigated by the domestic authorities as robbery and theft. They stressed that both applicant families had been recognised as civil plaintiffs in the proceedings and that upon the completion of the investigation they would be able to claim damages through the domestic courts. In the meantime, their complaint was premature.

150. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

151. The Court considers, in the light of the parties' submissions, that the applicants' complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint. The complaints under Article 8 and Article 1 of Protocol No. 1 to the Convention must therefore be declared admissible.

2. Merits

152. As to the Government's objection that the applicants failed to exhaust available domestic remedies, the Court points out that on several occasions the applicants reported the events of 16 December 2001 to the domestic authorities and mentioned, in particular, the unlawful search of

their house and the seizure of their property and documents by the abductors. The official bodies denied that those who had intruded into the applicants' home and abducted their relatives were State agents (see, by contrast, *Chitayev and Chitayev v. Russia*, no. 59334/00, §§ 64, 77 and 143, 18 January 2007). In the absence of any domestic findings of State responsibility for the allegedly unlawful search and the seizure of the applicants' property, the Court is not persuaded that the court remedy referred to by the Government was accessible to the applicants and would have had any prospects of success (see *Betayev and Betayeva v. Russia*, no. 37315/03, § 112, 29 May 2008). The Government's objection concerning non-exhaustion of domestic remedies must therefore be dismissed.

153. The Court further notes that the information concerning the search and the seizure of the property was communicated promptly to the domestic law-enforcement authorities; however, the latter for a long time failed to take any measures to examine it. Only in January 2007 were the second and the seventh applicants granted the status of civil plaintiffs and the actions of the perpetrators additionally qualified as theft and robbery (see paragraphs 68, 71 and 76 above). Although the Government denied State responsibility for the searches and seizure of the property, the Court has already found that the persons who had entered the applicants' home and detained their relatives belonged to the State military or security forces. Therefore, it finds that the searches of the applicants' homes on 16 December 2001 and the seizure of the property were imputable to the respondent State.

154. The Court also notes that the servicemen did not show the applicants a search warrant. Neither did they indicate any reasons for their actions. Furthermore, it appears that no search warrants were drawn up at all, either before or after the events in question. In sum, the Court finds that the searches in the present case were carried out without any, or any proper, authorisation or safeguards.

155. Accordingly, there was an interference with the applicants' right to respect for their home and for the protection of their property. In the absence of any reference by the Government to the lawfulness and proportionality of these measures, the Court finds that there has been a violation of the applicants' right to respect for their home guaranteed by Article 8 of the Convention and their right to protection of property guaranteed by Article 1 of Protocol No. 1 to the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

156. 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

157. 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 and had availed themselves of it. They added that participants in criminal proceedings could also claim damages in civil proceedings and referred to cases where victims in criminal proceedings had been awarded damages from State bodies and, in one instance, the prosecutor's office. In sum, the Government submitted that there had been no violation of Article 13.

158. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

159. 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

160. The Court reiterates that in circumstances where, as here, a criminal investigation into a disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

162. As to the applicants' complaint under Article 13 in conjunction with Article 8 and Article 1 of Protocol No. 1, the Court considers that in a situation where the authorities had denied involvement in the alleged intrusion into the applicants' houses and the taking of their belongings and where the domestic investigation had failed to examine the matter, the applicants did not have any effective domestic remedies in respect of the alleged violations of their rights secured by Article 8 of the Convention and

Article 1 of Protocol No. 1. Accordingly, there has been a violation on that account.

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

163. 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 because of their being resident 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.”

164. 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.

165. 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.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

166. 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

167. The second and seventh applicants sought reimbursement of the pecuniary damage caused by the unlawful seizure of their property. On the basis of the documents from the domestic investigation, the second applicant claimed a total of 18,150 Russian roubles (RUB) under this head (419 euros (EUR)) and the seventh applicant RUB 53,800 (EUR 1,243).

168. The Government denied State responsibility for the imputed acts.

169. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with

the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

170. Having regard to its above conclusions under Article 1 of Protocol No. 1, it finds that there is a direct causal link between the violation of the right to respect for the applicants' property and the damage claimed. The applicants' itemised claims to this effect have been recorded by the domestic investigation in January 2007. The Government did not question the amounts claimed.

171. Having regard to the above, the Court awards EUR 419 to the second applicant and EUR 1,243 to the seventh applicant in respect of pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Non-pecuniary damage

172. The applicants claimed non-pecuniary damage for the suffering they had endured as a result of the loss of their family members, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relatives. They asked the Court to determine an amount which would be reasonable and appropriate.

173. The Government considered that the finding of a violation would be sufficient.

174. The Court has found a violation of Articles 2, 3, 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 be victims of a violation of Article 3, on account of moral suffering (with the exception of the sixth applicant), and Article 8 of the Convention and Article 1 of Protocol No. 1. In addition, the first, eighth and ninth applicants were found to have suffered from inhuman and degrading treatment in breach of Article 3. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. Taking into account the above findings and the degree of the ties between the applicants and the disappeared men, it awards the following sums, plus any tax that may be chargeable on them:

- (a) EUR 125,000 to the first to fifth applicants jointly;¹
- (b) EUR 12,000 to the first, eighth and ninth applicants each;
- (c) EUR 65,000 to the seventh to tenth applicants jointly.

C. Costs and expenses

175. The applicants were represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of

1. Rectified on 9 November 2010: the amount was “EUR 65,000”.

costs and expenses related to the applicant's legal representation amounted to EUR 1,368 (1,236 pounds sterling (GBP)). They submitted the following breakdown of costs:

- (a) GBP 600 for six hours of legal work by United Kingdom-based lawyers at a rate of GBP 100 per hour;
- (b) GBP 446 for translation costs, as certified by invoices; and
- (c) GBP 190 for administrative and postal costs.

176. The Government disputed the reasonableness of and justification for the amounts claimed under this heading.

177. The Court has to establish first whether the costs and expenses indicated by the applicants' relatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

178. Having regard to the information submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually and necessary incurred by the applicants' representatives.

179. The Court awards them the amount of EUR 1,368 as claimed, 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 United Kingdom, as identified by the applicants.

D. Default interest

180. 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 dismisses it;
2. *Declares* the complaints under Articles 2, 3, 5, 8 and 13 of the Convention and Article 1 of Protocol No. 1 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 Beslan Khutsayev, Movsar Khutsayev and Adam Didayev;
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 Beslan Khutsayev, Movsar Khutsayev and Adam Didayev disappeared;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the inhuman and degrading treatment of Beslan Khutsayev, Movsar Khutsayev, Adam Didayev and the first, eighth and ninth applicants;
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 Beslan Khutsayev, Movsar Khutsayev, Adam Didayev and the first, eighth and ninth applicants;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of all the applicants, except the sixth applicant, on account of their moral suffering;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Beslan Khutsayev, Movsar Khutsayev and Adam Didayev;
9. *Holds* that there has been a violation of Article 8 of the Convention and of Article 1 of Protocol No. 1;
10. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Articles 2 and 8 of the Convention and of Article 1 of Protocol No. 1;
11. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 419 (four hundred and nineteen euros), plus any tax that may be chargeable, to the second applicant in respect of pecuniary damage;
 - (ii) EUR 1,243 (one thousand two hundred and forty-three euros), plus any tax that may be chargeable, to the seventh applicant in respect of pecuniary damage;

- (iii) EUR 125,000 (one hundred and twenty-five thousand euros)¹, plus any tax that may be chargeable, to the first to fifth applicants jointly in respect of non-pecuniary damage;
 - (iv) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, to the first, eighth and ninth applicants each in respect of non-pecuniary damage;
 - (v) EUR 65,000 (sixty-five thousand euros), plus any tax that may be chargeable, to the seventh to tenth applicants jointly in respect of non-pecuniary damage;
 - (vi) EUR 1,368 (one thousand three hundred and sixty-eight 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 United Kingdom;
- (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.

Done in English, and notified in writing on 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

1. Rectified on 9 November 2010: the amount was “EUR 65,000 (sixty-five thousand euros)”.