



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

FIRST SECTION

**CASE OF GULUYEVA AND OTHERS v. RUSSIA**

*(Application no. 1675/07)*

JUDGMENT

STRASBOURG

11 February 2010

**FINAL**

*28/06/2010*

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



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

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyev,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 January 2010,

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

**PROCEDURE**

1. The case originated in an application (no. 1675/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Russian nationals listed below (“the applicants”), on 30 April 2004.

2. The applicants, who were granted legal aid, were represented by lawyers of the International Protection Centre, an NGO based in Moscow. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. On 5 June 2007 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

1. Ms Nuri Guluyeva, born in 1942,
2. Ms Raisa Guluyeva, born in 1961, and
3. Ms Roza Guluyeva, born in 1965.

6. The applicants are Russian nationals who live in Grozny.

7. The first applicant is the mother of Mr Ramzan Guluyev, born in 1967, and of the second and third applicants. At the material time they lived at 1 Mariupolskaya Street, Staropromyslovskiy District, Grozny, in the Chechen Republic. Their household comprised two neighbouring houses with a common courtyard.

#### **A. Abduction of Mr Ramzan Guluyev**

##### *1. The applicants' account*

8. Between 12 and 13 July 2002 the Guluyev family were at home: the applicants spent the night in one of the houses at 1 Mariupolskaya Street, while Mr Ramzan Guluyev and Sh., his seven-year-old cousin, were in the other. At about 11 p.m. they heard two gunshots apparently coming from the courtyard of an abandoned neighbouring house. Mr Ramzan Guluyev stepped outside to look around but noticed nothing suspicious; the family went to bed.

9. At about 2 a.m. the first applicant was awakened by some noise; she looked out of the window and saw in the courtyard a group of armed men wearing camouflage uniforms. Some of them rushed to the house in which Mr Ramzan Guluyev slept.

10. The first applicant screamed and woke her daughters. The applicants tried to get out of the house but the door appeared to be blocked. A few minutes later the door opened and two armed men entered; they smelled of alcohol. They wore no masks, had Slavic features and spoke unaccented Russian; the first applicant believed that they belonged to the Russian military. Shouting and swearing, the two servicemen ordered the applicants to keep quiet.

11. The second applicant eventually slipped into the courtyard and went towards Mr Ramzan Guluyev's house; she heard screams coming from it. Then she was seized by several servicemen. She asked them what was happening; they replied that they had received a call from the police and were carrying out a check; they promised to release Mr Ramzan Guluyev

once the check was over. Then they hit the second applicant with gun butts. The first and third applicants rushed into the courtyard and tried to protect the second applicant, but the servicemen started beating them as well. The first applicant, who had been suffering from breast cancer, received a particularly severe blow and lost consciousness. Coming to her senses a few minutes later she saw the servicemen taking Mr Ramzan Guluyev out of the courtyard.

12. There were around twenty-five servicemen; two or three of them wore masks. The servicemen appeared to be under the influence of alcohol. They took Mr Ramzan Guluyev to the street where several khaki UAZ vehicles and a grey all-terrain UAZ vehicle («таблетка») were parked. Some vehicles had no registration numbers while those of the others were covered with mud. The servicemen put Mr Ramzan Guluyev in one of the vehicles and drove away.

13. Later Sh. told the applicants that the servicemen had demanded money and gold from Mr Ramzan Guluyev.

14. Apart from their own statements the applicants submitted to the Court a statement by their neighbour, Mr V. Ya. According to Mr V. Ya., at approximately 2 a.m. on 13 July 2002 he heard screaming and went outside his house. He saw several UAZ vehicles and about thirty armed men in the street. They were taking Mr Ramzan Guluyev, who was not dressed, from his house. Mr V. Ya. tried to intervene, but the armed men ordered him to get back inside, threatening him with their weapons. He obeyed. When the cars left, he went to see the applicants. The three women had been severely beaten. They did not know who the abductors were or where Mr Ramzan Guluyev had been taken.

15. The applicants also enclosed a copy of a complaint from over 100 residents of the village of Katayama, Staropromyslovskiy District, to the administration of the Chechen Republic, submitted on an unspecified date in 2002. The residents complained that their fellow villagers had been disappearing and referred in particular to the abduction of Mr Ramzan Guluyev. It was stated, *inter alia*, that the applicants had been beaten by the abductors.

## *2. The Government's account*

16. On 13 July 2002 at approximately 1.40 a.m. unidentified men in camouflage uniforms with firearms abducted Mr Ramzan Guluyev from the house at no. 1 Mariupolskaya Street, Katayama village, Staropromyslovskiy District of Grozny, having used violence against the applicants.

## **B. Injuries inflicted on the applicants**

17. Following their relative's abduction, the three applicants discovered that each of them had numerous bruises. According to them, the first

applicant had three fingers on the left hand broken while the third applicant had broken ribs. The applicants complained about their injuries to the prosecutor's office.

18. Shortly after the events of 13 July 2002 the Grozny Prosecutor's Office ordered a medical examination of the applicants to be carried out.

19. Between 15 and 18 July 2002 an expert of the forensics bureau of the Chechen Republic examined the third applicant. According to the expert examination report, the third applicant had bruises on her face, left shoulder and right shin, inflicted by a solid blunt object. The expert confirmed that those injuries might have been caused on 13 July 2002 and noted that they did not lead to the loss of capacity to work and thus could not be considered significant injuries.

20. Between 18 and 22 July 2002 the same expert carried out an examination of the second applicant and established that she had a bruise and a graze on the elbows and a bruise on the back inflicted by a solid blunt object, probably on 13 July 2002. The expert found that those injuries were not to be regarded as significant.

21. According to the Government, on 17 July 2002 the investigator ordered a medical examination of the first applicant, However, she did not turn up and the examination was not conducted. The Government did not enclose any documents to corroborate their submissions.

### **C. Official investigation into Mr Ramzan Guluyev's disappearance**

22. In attempts to find their missing relative the applicants repeatedly contacted both in person and in writing numerous State officials, such as the prosecutors' offices at different levels, the Russian State Duma, the Chechen Administration, the Ministry of Finance of the Chechen Republic and the Russian President. In a number of written complaints they mentioned that they had been beaten by the perpetrators.

23. On 16 July 2002 an investigation into Mr Ramzan Guluyev's disappearance was opened under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was given the number 54043. On the same date the Grozny Prosecutor's Office granted the three applicants victim status in the proceedings in case no. 53043, stating that each of them had suffered both physical and emotional damage.

24. On 12 August 2002 the Prosecutor's Office of the Chechen Republic forwarded the applicants' complaint to the Grozny Prosecutor's Office.

25. On 19 August 2002 the Grozny Prosecutor's Office informed the second applicant that her complaint had been included in the investigation file in case no. 54043.

26. On 21 August 2002 the Prosecutor's Office of the Chechen Republic informed the second applicant that her complaint had been forwarded to the Grozny Prosecutor's Office.

27. On 27 August 2002 the Grozny Prosecutor's Office informed the second applicant that her complaint had been included in the investigation file in case no. 54043.

28. On 17 September 2002 the Grozny Prosecutor's Office informed the second applicant that the investigation into Mr Ramzan Guluyev's kidnapping in case no. 54043 had been stayed for failure to identify those responsible.

29. On 17 January 2003 the Grozny Prosecutor's Office informed the second applicant that that they had resumed the investigation in case no. 54043. On 24 January 2003 they informed her that the investigation had been suspended for failure to identify those responsible.

30. On 23 April 2003 the special task force unit of the department of the interior of the Astrakhan Region informed the first applicant that they had not participated in any special operations in Grozny on 13 July 2002.

31. On 9 June 2003 the prosecutor's office of the Staropromyslovskiy District of Grozny ("the district prosecutor's office") informed the applicants that they had suspended the investigation for failure to identify the perpetrators.

32. On 4 November 2003 the first applicant requested the deputy prosecutor of the Chechen Republic to assist her in the search for her son.

33. On 14 November 2003 the first applicant requested the district prosecutor's office to allow her access to the investigation file in case no. 54043.

34. On 19 November 2003 the department of the interior of the Chechen Republic informed the first applicant that the search for her kidnapped son was under way and investigative measures were being taken to find the perpetrators.

35. On 5 February 2004 the first applicant requested the district prosecutor's office to update her on the progress in the investigation into her son's kidnapping.

36. On 1 March 2004 the district prosecutor's office informed the first applicant that the investigation in case no. 54043 had been stayed for failure to identify those responsible.

37. On 9 April 2004 the district prosecutor's office summoned the first applicant to participate in certain investigative measures on 19 April 2004. On the same date they informed her that the investigation in case no. 54043 had been stayed.

38. On 20 April 2004 the district prosecutor's office informed the first applicant that they had resumed the investigation into her son's kidnapping.

39. On 23 April 2004 Prosecutor's Office of the Chechen Republic informed the first applicant that the investigation into her son's kidnapping was under way.

40. On 5 July 2004 the district prosecutor's office informed the second applicant that the investigation into Mr Ramzan Guluyev's kidnapping had been resumed.

41. On 1 March 2007 the district prosecutor's office informed the first applicant that the investigation into her son's kidnapping had been stayed and that investigative measures were being taken to find him and establish the perpetrators.

42. According to the Government, in the course of the investigation the crime scene was inspected and the applicants were questioned on unspecified dates. The second applicant allegedly submitted, *inter alia*, that the abductors of Mr Ramzan Guluyev had arrived in new UAZ cars and, since the local police department had no new vehicles she had concluded that they were from the Federal Security Service (FSB). The third applicant allegedly stated that some of them understood Chechen and the second applicant stated that one of the abductors had an accent. The first applicant allegedly submitted in the course of questioning that the abductors were armed and that they were wearing camouflage uniforms and sport shoes. Also, according to the Government, on unspecified dates the investigating authorities questioned Sh., Mr V. Ya. and five other neighbours of the applicants. The neighbours allegedly stated that they had not witnessed the abduction and had learned about it the next morning from other residents. The Government did not provide copies either of transcripts of the interviews or of other procedural documents in this respect.

43. Furthermore, according to the Government, requests for information had been sent to the operational search bureau of the Ministry of the Interior, United Alignment of the Interior Troops, Organised Crime Unit of the ministry of the interior and the FBS. According to the responses received, officers of the Ministry of the Interior had not detained Mr Ramzan Guluyev and had no information about his whereabouts. The FSB had no information about him either. Furthermore, Mr Ramzan Guluyev was not detained in a remand prison in the territory of the Chechen Republic. According to the information received in the course of the investigation, no special operations had been conducted on 13 July 2002. The Government provided neither copies of the requests and responses nor information on their dates.

#### **D. Judicial proceedings against the investigators**

44. On 10 March 2004 the first applicant complained to the Staropromyslovskiy District Court of Grozny ("the district court") that the investigators had taken no action in the case concerning her son's kidnapping. As she received no reply to that complaint, she lodged with the district court an identical application on 21 June 2004.



45. On 16 July 2004 the district court dismissed the first applicant's complaint for the reason that the investigation was under way and investigative measures were being taken to resolve the crime.

46. On 26 July 2004 the first applicant appealed against the first-instance judgment. On 31 August 2004 the Supreme Court of the Chechen Republic found no flaws in the investigation and dismissed the appeal.

## II. RELEVANT DOMESTIC LAW AND OTHER RELEVANT DOCUMENTS

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

48. According to the report on Chechnya of July 2002 by Medecins du Monde, an NGO based in Paris, France, at the relevant time there was a curfew in Chechnya between 10 p.m. and 6 a.m.

## THE LAW

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

49. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies, since the investigation into the disappearance of Mr Ramzan Guluyev had not yet been completed. The applicants stated that the criminal investigation had proved to be ineffective and that their complaints to that effect, including their application to the district court, had been futile.

50. 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). The Court observes that the applicants complained to the law enforcement authorities shortly after the kidnapping of Mr Ramzan Guluyev and that an investigation has been pending since 16 July 2002. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

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

## II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

52. The applicants complained under Article 2 of the Convention that their relative had been deprived of his life 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

53. The Government contended that the domestic investigation had obtained no evidence to the effect that Mr Ramzan Guluyev was dead or that any servicemen of the federal law-enforcement agencies had been involved in his kidnapping or alleged killing. In particular, the applicants failed to mention any specific military insignia. The second applicant's conclusion that the abductors had been FSB officers because they had been driving new UAZ vehicles was mere speculation since they could have been accessible to offenders other than servicemen, which was also the case with weapons and camouflage uniforms. The applicants' submissions that the abductors had sought gold and money and had worn sport shoes was further proof that they were not servicemen. Furthermore, the investigation obtained no information that any special operations had been conducted at the relevant time. The Government also submitted that there had been no curfew in Grozny on the date of Mr Ramzan Guluyev's abduction, but conceded that checkpoints had been operating.

54. The Government argued that the investigation into the abduction of the applicants' relative met the Convention requirement of effectiveness. It was promptly instituted, and all measures available under national law were being taken to identify those responsible, which was supported by findings of domestic courts with respect to the first applicant's complaint. The numerous decisions to suspend and resume the proceedings did not demonstrate their ineffectiveness, but showed that the authorities in charge

had continued to take steps to solve the crime. The Government pointed out that the applicants' submissions before the Court were more detailed than their statements made in the course of the domestic investigation, which demonstrated their reluctance to cooperate with the investigation. They also referred in this respect to the first applicant's alleged failure to appear for the medical examination. The Government submitted that the applicants would be provided with access to the case file upon completion of the investigation.

55. The applicants argued that Mr Ramzan Guluyev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. They also stated that at the time of the abduction Grozny was under curfew. To support their statement the applicants referred to several cases where the Court had found that there had been curfew in different parts of the Chechen Republic in the summer – autumn 2002, in particular, to *Dangayeva and Taramova v. Russia*, no. 1896/04, § 81, 8 January 2009, where the Court had established that there had been curfew in Grozny on 23 October 2002 respectively. They also enclosed a letter signed by five residents of Grozny who confirmed that there had been curfew in operation at the time of Mr Ramzan Guluyev's abduction.

56. The applicants also argued that the investigation had not met the effectiveness and adequacy requirements laid down by the Court's case-law. In particular, necessary investigative measures either had not been taken promptly enough or had not been taken at all. Numerous suspensions and resumptions of the investigation had served to prolong it unnecessarily and had delayed the taking of the most basic steps. Furthermore, 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. The applicants 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. They also pointed out that the Government's allegations concerning the applicants' reluctance to cooperate with the domestic investigation were not corroborated by any evidence.

## **B. The Court's assessment**

### *1. Admissibility*

57. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits

of the complaint (see paragraph 51 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

## 2. Merits

### (a) The alleged violation of the right to life of Mr Ramzan Guluyev

#### i. General principles

58. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

#### ii. Establishment of the facts

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

60. The applicants alleged that on the night of 12-13 July 2002 their family member, Mr Ramzan Guluyev, was abducted by Russian servicemen and then disappeared. They invited the Court to draw inferences as to the well-foundedness of their allegations from the Government's failure to provide the documents requested from them. They said that they had been eyewitnesses to Mr Ramzan Guluyev's abduction and provided a coherent account of the sequence of events. The applicants also enclosed a witness statement by their neighbour Mr V. Ya. and an application by over 100 local residents to the Chechen administration in relation to the abduction of Mr Ramzan Guluyev.

61. The Government conceded that Mr Ramzan Guluyev had been abducted by unknown armed men on the night of 13 July 2002. However, they denied that the abductors were State servicemen. They referred to the absence of conclusions from the ongoing investigation and denied that the State was responsible for the disappearance of the applicants' family member.

62. The Court notes that despite its repeated requests for a copy of the investigation file into the abduction of Mr Ramzan Guluyev, the Government, relying on Article 161 of the Code of Criminal Procedure, have produced no documents from the case files. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

63. In view of this and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect. It considers that the applicants have presented a coherent and convincing picture of their family member's abduction on the night of 13 July 2002. It observes that the Government did not deny that Mr Ramzan Guluyev had been abducted by armed men, although they did deny that the men were State agents.

64. The Government referred in particular to statements that the applicants had allegedly made in the course of the investigation, that Mr Ramzan Guluyev's abductors had worn sport shoes, some of them understood Chechen and one of them had had an accent. The Court considers that it can disregard these arguments since the Government failed to produce copies of the records of interviews to which they referred. The Government also noted that UAZ vehicles could have been driven and camouflage uniforms and weapons could have been used by anybody and not necessarily by State agents. However, even accepting this argument, the Court does not consider that it refutes the applicants' contentions that the abductors were servicemen for the following reasons.

65. The Court notes that the parties disagreed as to whether there had been curfew in Grozny at the time of the abduction. The Government submitted that there had been none, but conceded that checkpoints had been operating. The applicants maintained that there had been curfew and enclosed a letter signed by five residents of Grozny who confirmed that the curfew had been operating at the relevant time. The Court has no reasons to doubt the veracity of this statement especially in view of the Government's failure to corroborate their submissions by any evidence. However, the Court is not called upon to decide on this issue in the present case since it is not in dispute between the parties that checkpoints in Grozny were operating at the time of the abduction.

66. In the Court's view, the fact that a large group of armed men in uniform in several vehicles was able to pass freely through checkpoints,

proceeded to check identity documents in a manner similar to that of State agents and spoke unaccented Russian suffices to corroborate the applicants' allegation that they were State servicemen.

67. The Court also notes that in their applications to the authorities the applicants consistently maintained that Mr Ramzan Guluyev had been detained by unknown servicemen, and requested the investigating authorities to look into that possibility. It further notes that after seven years the domestic investigation has produced no tangible results.

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

69. Taking into account the above elements, the Court is satisfied that the applicants have made out a prima facie case that their family member was detained by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide a plausible explanation of the events in question, the Court finds it established that Mr Ramzan Guluyev was abducted on 13 July 2002 at his home in Grozny by State servicemen during an unacknowledged security operation.

70. The Court further notes that there has been no reliable news of Mr Ramzan Guluyev since July 2002. His name has not been found in the official records of any detention facilities. Finally, the Government have not submitted any explanation as to what happened to him after his abduction.

71. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts)), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Mr Ramzan Guluyev or any news of him for over seven years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of his disappearance and the official investigation into his abduction, which has gone on for over seven years, has produced no tangible results.

72. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Mr Ramzan Guluyev was abducted on 13 July 2002 by State servicemen and that he must be presumed dead following his unacknowledged detention.

*iii. The State's compliance with Article 2*

73. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

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

75. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Mr Ramzan Guluyev.

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

76. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family and carried out with reasonable promptness and expedition. It should also be effective in the sense that it is capable of leading to a determination of whether or not the force used in such cases was lawful and justified in the circumstances, and should afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*,

no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

77. The Court notes at the outset that very few documents from the investigation were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of very scarce information submitted by the Government and a few documents available to the applicants that they provided to the Court.

78. Turning to the facts of the present case, the Court notes that, according to the applicants, they notified the authorities about the abduction shortly after it occurred. The investigation was opened on 16 July 2002. Accordingly, the Court is satisfied that it was instituted with sufficient promptness.

79. The Court further has to assess the scope of the investigative measures taken. The applicants argued that, because of the Government's refusal to provide the case file, it was not possible to establish which particular investigative measures were taken. The Court observes that it is not disputed by the parties that the three applicants were questioned with regard to the abduction of Mr Ramzan Guluyev. According to the Government, the scene of the abduction was inspected and a number of requests sent to various State authorities with a view to establishing his whereabouts. Furthermore, Sh., Mr V. Ya. and five other neighbours of the applicants were questioned in the course of the investigation. However, the Government have produced no documents, such as inspection reports, transcripts of questioning or copies of the requests and responses, to corroborate their submissions. Accordingly, not only is it impossible to establish how promptly those measures were taken, but whether they were taken at all.

80. Furthermore, it appears that a number of crucial steps were never taken. In particular, there is no evidence that any officials of local law-enforcement and military authorities were questioned. Neither the owners of the UAZ vehicles that had moved around Grozny on the night of 13 July 2002 nor their itinerary were established.

81. It is obvious that, if they were to produce any meaningful results, these investigative measures should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. The delays and omissions, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

82. The Court also notes that even though the applicants were granted victim status in the investigation concerning the abduction of their relative, they were only informed of the suspensions and resumptions 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.

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

84. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years having produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection.

85. 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 Mr Ramzan Guluyev, in breach of Article 2 in its procedural aspect.

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

86. The applicants relied on Article 3 of the Convention, submitting that they and Mr Ramzan Guluyev had been ill-treated by the State agents during his abduction. They also claimed that they had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention and that as a result of his 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**

87. The Government disagreed with these allegations and argued that there was no evidence that Mr Ramzan Guluyev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. As for the applicants, the investigation had not established that they had been ill-treated by representatives of the State. They emphasised in this regard that the first applicant had not appeared for the medical examination. Likewise, since it had not been established by the domestic investigation that Mr Ramzan Guluyev had been abducted by State agents, the applicants' mental suffering could not be imputable to the State.

88. The applicants maintained their complaints. They also submitted that the first applicant, having undergone oncological surgery, had been too weak to go to the place where the examination was to be conducted. However, no efforts had been made to assist her with getting there or to make alternative arrangements. Furthermore, the applicants pointed out that the Government had adduced no evidence to show that the first applicant had indeed been summoned to the examination.

## **B. The Court's assessment**

### *1. Admissibility*

#### **(a) The complaint concerning the ill-treatment of Mr Ramzan Guluyev**

89. The Court observes that the applicants did not submit any documentary evidence, such as medical certificates or witness statements, confirming that Mr Ramzan Guluyev had sustained any injuries on 13 July 2002. Nor does it appear that this complaint has been properly raised before the domestic law-enforcement authorities. It is therefore unable to establish, to the necessary degree of proof, that Mr Ramzan Guluyev had been ill-treated by Russian servicemen, and finds that this complaint has not been substantiated.

90. 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.

#### **(b) The complaint concerning the ill-treatment of the applicants on 13 July 2002**

91. 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.

#### **(c) The complaint concerning the applicants' mental suffering**

92. 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 ill-treatment of the applicants**

#### *i. The alleged ill-treatment*

93. The Court notes that the applicants enclosed copies of medical reports stating injuries caused to the second and third applicants. It further notes the Government's argument that the first applicant, having been summoned to a medical examination, failed to appear. The Court observes however that while it is not contested by the Government that the first applicant raised the complaint about the ill-treatment before the competent authorities, they have enclosed no documents to corroborate their contention that she was summoned to a medical examination at all. Accordingly, the Court is not satisfied that the first applicant is at fault in this respect.

94. Furthermore, although no medical certificate has been submitted to the Court with respect to the injuries allegedly caused to the first applicant, the Court notes that Mr V. Ya., who had witnessed the abduction of Mr Ramzan Guluyev and had gone to see the applicant immediately after the former had been taken away, confirmed that the three women had been severely beaten. Furthermore, in the application of the Katayama residents to the administration of the Chechen Republic in connection with Mr Ramzan Guluyev's abduction it was also stated that the applicants had been beaten by the abductors. Accordingly, the Court is satisfied that the applicants were beaten by Mr Ramzan Guluyev's abductors on the night of 13 July 2002. It further notes that in paragraph 69 above it was established that Mr Ramzan Guluyev was abducted by State agents who broke into the applicants' household.

95. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, amongst other authorities, the *Tekin v. Turkey* judgment of 9 June 1998, § 52, *Reports* 1998-IV).

96. Taking into account the injuries sustained by the second and third applicants and the age and the state of health of the first applicant at the time when she was beaten by her son's abductors, the Court considers that this treatment reached the threshold of "inhuman and degrading" since it not only caused the applicants physical suffering, but must have made them feel humiliated and caused fear and anguish as to what might happen to them and their family member.

97. The Court therefore concludes that the applicants suffered inhuman and degrading treatment contrary to Article 3 of the Convention.

*ii. Effective investigation*

98. 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).

99. The Court notes that the applicants' allegations of ill-treatment were properly raised before the investigating authorities. However, the domestic investigation produced no tangible results.

100. For the reasons stated in paragraphs 76-85 above in relation to the procedural obligation under Article 2 of the Convention, the Court concludes that the Government has failed to conduct an effective investigation into the ill-treatment of the applicants.

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

**(b) The complaint concerning the applicants' mental suffering**

102. 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).

103. In the present case the Court notes that the applicants are the mother and sisters of the disappeared person who witnessed his abduction. For more than seven years they have not had any news of him. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their family member. Despite their attempts, the applicants have never received any plausible explanation or information about what became of him following his detention. The responses they received mostly denied State responsibility for his relative's abduction or simply informed them that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

104. The Court therefore concludes that there has been a violation of Article 3 of the Convention in this respect as well.

#### IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

105. The applicants further stated that Mr Ramzan Guluyev 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**

106. The Government asserted that no evidence had been obtained by the investigators to confirm that Mr Ramzan Guluyev had been deprived of his liberty.

107. The applicants reiterated the complaint.

##### **B. The Court's assessment**

###### *1. Admissibility*

108. 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*

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

110. The Court has found that Mr Ramzan Guluyev was abducted by State servicemen on 13 July 2002 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

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

## V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

113. The applicants complained that under national law they were barred from making a civil claim for compensation for their relatives' unlawful detention or death pending the outcome of the criminal investigation. They relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

### **A. Admissibility**

114. 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.

### **B. Merits**

115. The Court finds that the applicants' complaint under Article 6 concerns essentially the same issues as those discussed under the procedural aspect of Article 2 and under Article 13. In these circumstances it finds that no separate issues arise under Article 6 of the Convention.

## **VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION**

116. The applicants claimed that they had been deprived of effective remedies in respect of their complaints under Articles 2, 3 and 5, 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**

117. 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 the first applicant had availed herself 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.

118. The applicants reiterated the complaint.

### **B. The Court's assessment**

#### *1. Admissibility*

119. The Court reiterates that, according to its case-law, Article 13 applies only where an individual has an “arguable claim” to be the victim of

a violation of a Convention right. In view of the Court's findings above with regard to the applicants' complaints under Article 2, Article 3 in respect of themselves and Article 5, the applicants clearly had an arguable claim for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The Court therefore notes that the applicants' complaints under Article 13 in conjunction with Articles 2, 3 and 5 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

120. In so far as the applicants relied on Article 13 in conjunction with Article 3 of the Convention in respect of their complaint concerning Mr Ramzan Guluyev, the Court notes that in paragraph 90 it declared the complaint under Article 3 inadmissible in this part. Accordingly, the applicants did not have an “arguable claim” of a violation of a substantive Convention provision and, therefore, Article 13 of the Convention is inapplicable. This part of the complaint must therefore be declared inadmissible and rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## 2. Merits

121. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at the national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, judgment of 25 June 1997, § 64, *Reports* 1997-III).

122. As regards the complaint of a lack of effective remedies in respect of the applicants' complaints under Article 2 concerning the disappearance of Mr Ramzan Guluyev and under Article 3 concerning the ill-treatment they were subjected to, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of



those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

123. It follows that in circumstances where, as here, the criminal investigation into the disappearance and the ill-treatment has been ineffective and the effectiveness of any other remedy that may 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.

124. Consequently, there has been a violation of Article 13 in conjunction with Articles 2 and 3 of the Convention.

125. As regards the violation of Article 3 of the Convention found on account of the applicants' mental suffering as a result of the disappearance of their close relative, their inability to find out what had happened to him and the way the authorities had handled their complaints, the Court notes that it has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

126. As regards the applicants' reference to Article 5 of the Convention, the Court reiterates that, according to its established case-law, the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a violation of Article 5 of the Convention as a result of unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. 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

128. The first applicant claimed a total of 36,000 euros (EUR) in respect of pecuniary damage caused by the disappearance of her son.

129. In particular, the first applicant claimed damages in respect of loss of earnings by her son after his abduction and subsequent disappearance in the amount of EUR 21,600. She submitted that Mr Ramzan Guluyev had been employed as an engineer, and enclosed his employment record to that effect. According to the applicant, a person with similar qualifications currently earns EUR 300-400 per month. Taking into account that the average life expectancy for women in Russia is seventy years, the first applicant assumed that she could be financially dependent on Mr Ramzan Guluyev from 2002 until 2012. She could count on 30% of his total income, which would amount to EUR 10,800. She claimed that she could count on another 30% of his income due to the fact that she had to take care of his daughter born after his disappearance. Consequently, she claimed EUR 10,800 in this respect as well.

130. The first applicant also claimed that as a result of her son's disappearance she had developed breast cancer. She claimed damages in the amount of EUR 15,000 on account of medical treatment she had to undergo. She submitted a number of medical documents attesting that she had received treatment for cancer. However, she presented no documents related to the amounts of money spent.

131. As regards damages in respect of loss of earnings by Mr Ramzan Guluyev, the Government argued that no compensation should be awarded to the first applicant since it had not been established that her son was dead. Furthermore, she should have applied to the domestic courts with a claim for compensation in respect of damage caused by the death of the breadwinner.

132. As regards the claim related to medical expenses, the Government argued that there was no direct causal connection between the damage claimed and the events underlying the application. Furthermore, the first applicant failed to enclose any documents supporting the amount of medical expenses.

133. 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”.

134. The Court finds that there is indeed a direct causal link between the violation of Article 2 in respect of the first applicant's son and the loss by the applicant of the financial support which he could have provided for her. Although it notes that the applicant failed to enclose documents supporting the exact amount of his earnings, the Court finds it reasonable to assume that he would have had earnings if he had continued to work and that the first applicant would have benefited from them. It notes, at the same time, that the first applicant furnished no documents to corroborate that Mr Ramzan Guluyev's daughter had even been born, let alone to prove that the latter was dependent on the first applicant and not on her mother or other relatives. Accordingly, the Court finds the claim unsubstantiated in this part.

135. As regards the claim for compensation of medical expenses, the Court observes that from the documents submitted by the applicants it follows that the first applicant underwent cancer surgery in 1996. Furthermore, in their submissions before the Court the applicants referred to the fact that the first applicant was suffering from cancer at the time of her son's abduction (see paragraphs 11 and 88 above). Therefore, leaving aside the question whether cancers could in principle be provoked by psychologically traumatising situations, the Court concludes that this is obviously not the case in the present circumstances. Accordingly, the Court finds that there is no direct causal link between the violation of Article 2 in respect of the first applicant's son and her claim for medical expenses.

136. Having regard to the applicants' submissions, the Court awards EUR 10,800 to the first applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

## **B. Non-pecuniary damage**

137. The first applicant claimed EUR 100,000 and the second and third applicant claimed EUR 50,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards him and the failure to provide any information about the fate of their close relative.

138. The Government found the amounts claimed exaggerated.

139. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' close relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to

the applicants jointly EUR 65,000, plus any tax that may be chargeable thereon.

### **C. Costs and expenses**

140. The applicants also claimed EUR 5,850 for the costs and expenses incurred before the Court on account of the work performed by lawyers of the International Protection Centre. They enclosed no documents to support the amount claimed.

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

142. The Court may make an award in respect of costs and expenses in so far that they were actually and necessarily incurred and are reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V and *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

143. The Court notes that the applicants enclosed no documents to corroborate the amount claimed. At the same time it observes that the applicants issued authority forms for lawyers of the International Protection Centre, who submitted application form and observations on behalf of the applicants. Therefore, the Court is satisfied that the applicants' representatives did carry out a certain amount of legal work in relation to the present application.

144. The Court further notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. Furthermore, the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that research was necessary to the extent claimed by the representatives.

145. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 2,500, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to the applicants.

### **D. Default interest**

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2, 3 in respect of the applicants, 5 and 6 of the Convention and the complaint under Article 13 of the Convention in conjunction with the above provisions admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Mr Ramzan Guluyev;
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 Mr Ramzan Guluyev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of the ill-treatment they had been subjected to in the course of Mr Ramzan Guluyev's abduction;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the ill-treatment of the applicants;
7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;
8. *Holds* that there has been a violation of Article 5 of the Convention in respect of Mr Ramzan Guluyev;
9. *Holds* that no separate issues arise under Article 6 of the Convention;
10. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 and of Article 3 of the Convention on account of the ill-treatment of the applicants;
11. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Article 3 on account of the applicants' mental suffering and Article 5 of the Convention;
12. *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 rate applicable at the date of settlement:

- (i) EUR 10,800 (ten thousand eight hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage to the first applicant;
  - (ii) EUR 65,000 (sixty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
  - (iii) EUR 1,650 (one thousand six hundred fifty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
- (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;

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

Done in English, and notified in writing on 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President