



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

FIRST SECTION

**CASE OF MUDAYEVY v. RUSSIA**

*(Application no. 33105/05)*

JUDGMENT

STRASBOURG

8 April 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 Mudayevy 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,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 March 2010,

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

**PROCEDURE**

1. The case originated in an application (no. 33105/05) 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 two Russian nationals, Mr Lomali (also spelled as Lom-Ali) Mudayev and Ms Malkan Mudayeva (“the applicants”), on 25 July 2005.

2. The applicants, who were granted legal aid, were represented by lawyers of the Centre of Assistance to International Protection, an NGO based in Moscow. The Russian Government (“the Government”) were represented by the First Deputy Minister of Justice Mr A. Savenkov and subsequently by the Representative of the Russian Federation at the European Court of Human Rights Mr G. Matyushkin.

3. On 1 April 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 application at the same time as its admissibility. On 2 April 2008 it decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

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 were born in 1950 and 1948 respectively. They live in Raduzhnoye, in the Grozny district, Chechnya. The applicants are the father and aunt of Aslan Mudayev, who was born in 1985, and Mokhmad Mudayev, who was born in 1982. The first applicant had a third son, Mr Akhmad Mudayev, who was killed in July 2003.

#### A. Disappearance of Aslan and Mokhmad Mudayev

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

###### a. **The abduction of Aslan and Mokhmad Mudayev**

6. On 29 January 2003 Russian military servicemen conducted a special operation in the village of Raduzhnoye in the Grozny district of Chechnya. More than twenty persons were apprehended as a result of the operation, including Aslan and Mokhmad Mudayev and another of the applicants' relatives, Mr Islam A. At the material time the village was under the full control of the federal forces.

7. At about 8 a.m. on 29 January 2003 the first applicant and his sons Aslan and Mokhmad Mudayev and other relatives, including Mr Israil M. and Mr Islam A., were in their family home situated in Raduzhnoye. The first applicant heard noise coming from the street and looked out of the window. He saw a group of armed men in camouflage uniforms and masks running into his yard. The men entered the house and ordered everyone to lie face down on the floor. They neither introduced themselves nor produced any documents.

8. The intruders ordered the first applicant to hand over his family members' passports and the family photographs. Upon receiving the documents and the photographs, the men took Aslan Mudayev, Mokhmad Mudayev and the first applicant's nephew Mr Islam A. outside.

9. The first applicant attempted to follow his relatives, but the armed men in the yard threatened to kill him. Meanwhile, the applicant's sons and nephew were put in a grey UAZ car (“*таблетка*”).

10. Sometime later the first applicant managed to go outside and saw a convoy of ten to twelve vehicles, including a grey UAZ car, two or three khaki coloured UAZ-469 cars and an APC (armoured personnel carrier) driving away in the direction of Grozny.

11. On the following day of 30 January 2003 all persons detained during the special operation, except for Aslan and Mokhmad Mudayev, were released.

**b. The subsequent events**

12. Immediately after the apprehension of Aslan and Mokhmad Mudayev the applicants and their relatives started searching for them.

13. The applicants' relative, Mr Israil M., who was at the first applicant's house during the abduction, immediately followed the convoy of military vehicles in his VAZ car with two female relatives. On the way to Grozny the abductors' vehicles split into two groups. One of them, comprised of the APC and several UAZ cars, drove in the direction of the nearby village of Znamenskoye in the Nadterechniy district, while the other proceeded in the direction of Grozny.

14. When the group arrived at Znamenskoye, the vehicles drove to the building of the Nadterechniy district department of the Federal Security Service ("the Nadterechniy district department of the FSB") and the Nadterechniy district department of the interior ("the Nadterechniy ROVD"). Some of the vehicles drove onto the agencies' premises.

15. Mr Israil M. and relatives of other men apprehended during the operation in Raduzhnoye decided to wait at the entrance to the FSB building. Several hours later Mr Israil M. managed to talk to the head of the Nadterechniy district department of the FSB Mr Mayrbek Kh. (also known as Mairbek Kh.; in the documents submitted he was also referred to as Mr M. Kh.) The latter told him that he would not release his relatives until two prosecution officials who had been abducted several days ago had been returned. He told Mr Israil M. that he knew about the involvement of the first applicant's other son, Akhmad Mudayev, in the abduction of the two officials. The officer threatened that if within the next two days Mr Israil M. did not return the two prosecutors or bring Akhmad Mudayev to their office, he would hand over Mr Israil's apprehended relatives to military servicemen in Khankala, the main base of the Russian federal forces in Chechnya.

16. Subsequently the applicants and their relatives spoke with Akhmad Mudayev, who told them that he had not participated in the prosecutors' abduction and refused to go to the district department of the FSB.

17. Within the next five or six months Mr Israil M. had regular meetings with Mr Mayrbek Kh. The latter insisted on his demands.

18. On 3 July 2003 the first applicant's elder son Akhmad Mudayev was killed in a skirmish. After that Mr Mayrbek Kh. told the first applicant that at some point Russian military forces had taken Aslan and Mokhmad Mudayev from his department under false identities and that he did not have any information concerning the brothers' whereabouts.

**c. Information obtained by the applicants about the detention of Aslan and Mokhmad Mudayev**

19. The first applicant's nephew, Mr Islam A., who had been apprehended with Aslan and Mokhmad Mudayev, was released on 30 January 2003. Mr Islam A. told the applicants that he had been put in one

cell with Aslan and Mokhmad Mudayev. In the evening of 29 January 2003 he had been questioned by Mr Mayrbek Kh., the head of the Nadterechniy district department of the FSB.

20. In February 2003 Mr Mayrbek Kh. arrived at the mosque of the Raduzhnoye village. He told a number of local residents gathered there that Aslan and Mokhmad Mudayev had been detained in the FSB building. One of the local residents, Mr Arsanuka M., asked him whether any criminal charges had been brought against the brothers. In response the officer told him that he would release Aslan and Mokhmad Mudayev only if their elder brother Akhmad surrendered to the authorities.

21. Mr Aslan A., who had been detained for some time with the Mudayev brothers in the FSB building and released, told the applicants that during the detention, Aslan and Mokhmad Mudayev had been beaten and questioned separately from each other.

22. On 10 May 2003 (in the documents submitted the date 12 May 2003 was also given) an explosion occurred in the building of the Nadterechniy district department of the FSB and partially destroyed it. In the evening of 10 May 2003 Aslan and Mokhmad Mudayev were taken from the building to an unknown destination. There has been no news about the brothers ever since.

23. In support of their statements the applicants submitted: an account by the first applicant (undated); an account by Mr Israil M. dated 12 November 2003; an account by Mr Islam A. dated 14 November 2003; an account by Mr Khavashi K. (undated); an account by Mr Arsanuka M. (undated); an account by Mr Amin K. (undated) and copies of documents received from the authorities.

## *2. Information submitted by the Government*

24. The Government did not challenge most of the facts as presented by the applicants. According to their submission of 25 July 2008 "... on 29 September 2003 an investigator of the Grozny district prosecutor's office initiated an investigation of criminal case no. 42172 opened in connection with the abduction of Aslan and Mokhmad Mudayev under Article 126 § 2 of the Criminal Code ...".

25. In the same submission, referring to the contents of criminal case no. 42172, the Government further stated:

"... on 29 January 2003 in the village of Raduzhnoye in the Nadterechniy district of Chechnya officers of the Nadterechniy district department of the FSB conducted a special operation. The goal of the operation was the identification of persons who had abducted employees of the Chechnya prosecutor's office. In the course of the criminal investigation [of the Mudayev brothers' abduction] the head of the Nadterechniy district department of the FSB, Mr M. Kh., who was in charge of the operation, was questioned by the investigators.

[According to his statement] during the operation Aslan and Mokhammad Mudayev had been brought to the Nadterechniy district department of the FSB in connection with the abduction of the officials from the Chechnya prosecutor's office. As a result of the questioning it had been established that Aslan and Mokhammad Mudayev had not been involved in the abduction of the prosecution officials. After that Aslan and Mokhammad Mudayev had been released.”

26. The Government also submitted:

“... on 12 May 2003 a terrorist act was committed in the village of Znamenskoye in the Nadterechniy district. As a result, the building of the Nadterechniy district department of the FSB was partially destroyed. Procedural documents, explanations and statements by Aslan and Mokhammad Mudayev were [also] destroyed.”

**B. The search for Aslan and Mokhammad Mudayev and the investigation**

*1. Information submitted by the applicants*

**a. The official investigation into the abduction**

27. The applicants and their relatives also contacted, both in person and in writing, various official bodies, such as the Chechen administration, military commanders' offices, departments of the interior and prosecutors' offices at different levels, asking for help in establishing the whereabouts of Aslan and Mokhammad Mudayev. 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.

28. According to the applicants, from January 2003 to August 2003, on a number of occasions, they complained in person to the Nadterechniy district prosecutor's office about the abduction of their relatives.

29. On 22 September 2003 a local human rights organisation complained on behalf of the applicants and their relatives to the Grozny district prosecutor's office about the abduction of Aslan and Mokhammad Mudayev.

30. On 29 September 2003 the Chechnya prosecutor's office forwarded the applicants' complaint about the abduction of their relatives to the Grozny district prosecutor's office.

31. On 15 January 2004 the applicants' representatives wrote to the Chechnya prosecutor's office. They described in detail the circumstances of the Mudayev brothers' abduction during the special operation conducted by the Nadterechniy district department of the FSB on 29 January 2003. The letter stated that the brothers had been taken to the detention centre of the district department of the FSB; they had been detained there until 10 May 2003, when they had been taken away in an unknown direction. According to the information obtained by the applicants from the persons who had been detained together with Aslan and Mokhammad Mudayev from January to

May 2003, the conditions of their detention had been inhuman; the brothers had been beaten, had marks of ill-treatment on their bodies and fallen ill. After May 2003, according to some witnesses, the conditions of their detention in another place had also been inhuman; the brothers had been severely beaten and bound by adhesive tape. According to the letter, the applicants and their relatives had spoken with the head of the Nadterechniy district department of the FSB Mr Mayrbek Kh. who had told them that the release of the two Mudayev brothers would be possible only in exchange for their elder brother Akhmad. The letter further stated that the applicants had complained about the arrest and detention of Aslan and Mokhmad Mudayev to a number of authorities, including the Nadterechniy district prosecutor's office, the Nadterechniy district department of the FSB, the Grozny district prosecutor's office and the Chechnya prosecutor's office. Referring to the European Convention on Human Rights the applicants requested the following information: on what grounds the Mudayev brothers had been arrested; whether any criminal charges had been brought against them and if so, what stage the criminal investigation was at; which authorities had issued the warrant for their arrest and where exactly the brothers had been detained. Finally, the applicants requested the authorities to ensure their safety and the safety of the witnesses to the abduction of Aslan and Mokhmad Mudayev.

32. On 11 February and 16 September 2004 the Chechnya prosecutor's office informed the applicants that on 29 September 2003 the Grozny district prosecutor's office had initiated an investigation into the abduction of Aslan and Mokhmad Mudayev.

33. On 28 April 2004 the Chechnya Department of Human Rights and Freedoms wrote to the Chechnya prosecutor's office. The letter stated that Aslan and Mokhmad Mudayev had been abducted on 29 January 2003 during an identity check.

34. On 22 May 2004 the Grozny district prosecutor's office granted the second applicant victim status in criminal case no. 42172 instituted in connection with the abduction of Aslan and Mokhmad Mudayev.

35. On 10 August and 28 October 2004 the military prosecutor's office of the United Group Alignment (the military prosecutor's office of the UGA) forwarded the applicants' complaints about the abduction to the Chechnya prosecutor's office for examination.

36. On 10 September 2004 the Grozny district prosecutor's office informed the applicants that the investigation in the criminal case had been suspended for failure to establish the identities of the perpetrators.

37. On 25 October 2004 the Grozny district prosecutor's office informed the Chechnya prosecutor's office that on 21 June 2004 the investigation in the criminal case had been suspended and that the investigators had been instructed to take investigating measures and that upon their completion the



case would be transferred to the Nadterechniy district prosecutor's office for further investigation.

38. On 18 February 2005 the Grozny prosecutor's office informed the applicants that on that date they had resumed the investigation in the criminal case.

39. On 18 March 2005 the Grozny prosecutor's office informed the applicants that on that date they had suspended the investigation in the criminal case for failure to establish the identities of the perpetrators.

40. On 19 April 2005 the second applicant requested the Grozny district prosecutor's office to inform her about the results of the criminal investigation of the abduction and provide her with access to the investigation file.

41. On 5 May 2005 the first applicant complained to the Chechnya prosecutor's office. He stated that his two sons, Aslan and Mokhmad Mudayev, had been abducted on 29 January 2003 by representatives of the Nadterechniy district department of the FSB under the command of officer Mayrbek Kh., and that the investigation opened by the Grozny prosecutor's office had been ineffective. In particular, the applicant pointed out that the investigators had failed to comply with the court's decision of 30 December 2004 concerning the reopening of the suspended investigation and questioning of all persons involved in the abduction; that the investigation had been suspended several times in spite of the authorities' failure to establish the circumstances of the abduction. The applicant requested the Chechnya prosecutor's office to take over the investigation and to comply with the court's decision of 30 December 2004.

42. On 13 May 2005 the Chechnya prosecutor's office informed the first applicant that the investigation in the criminal case had been resumed.

#### **b. Proceedings against law-enforcement officials**

43. In November 2004 the applicants lodged a complaint with the Grozny district court of Chechnya (the district court). They complained of unlawful suspensions of the investigation in the criminal case and a failure on the part of the authorities to take basic investigative measures. The applicants sought a ruling obliging the prosecutor's office to resume the investigation and question the witnesses of their relatives' abduction.

44. On 30 December 2004 the district court allowed the complaint. The court stated, *inter alia*, the following:

“... the court established that:

... from [the date of the opening of the criminal case] 29 September 2003 up to the present the investigation in criminal case no. 42172 was suspended three times and resumed twice owing to the applicants' numerous complaints.

On 30 November 2004 the investigator Zh. U. took the last decision to suspend the investigation for failure to establish the identities of the perpetrators; this decision

was taken by him after 25 November 2004, that is, [shortly] after the applicants had lodged their court complaint about his actions.

Given the kind of approach the investigator has taken to the execution of his work duties, it is possible that the perpetrators [of the abduction] will not be established any time soon [...]the investigator did not carry out the written orders issued by the deputy district prosecutor on 25 October 2004 ... even though such orders were compulsory ...

In the course of the preliminary investigation it had been unequivocally established by whom and when the Mudayev brothers had been arrested and where they had been detained. From this it follows that the investigator and the supervising prosecutor must concentrate their attention on the identification of those who detained the brothers, on the examination of the lawfulness and the grounds for their detention, [and] the establishment of the actual place of their detention, which was carried out without lawful grounds ...

The court decided:

1. To recognise as unlawful the actions of the investigator Zh.U. concerning the suspension of the investigation in criminal case no. 42182 under Article 208 § 1 of the Criminal Procedure Code [for failure to establish the identities of the perpetrators];
2. To oblige the investigator to carry out in full the written orders issued by the [supervising] prosecutor ...;
3. To question all persons involved in the arrest of the Mudayev brothers in violation of Articles 91 and 92 of the Criminal Procedure Code [grounds and procedure for detention];
4. To examine the lawfulness and the grounds for the Mudayev brothers' detention without a court order, [which took place] in violation of Article 108 of the Criminal Procedure Code [arrest procedure] ...”

45. On 11 May 2005 the second applicant complained to the district court that the investigation into the abduction had been ineffective. She described in detail the circumstances of the abduction and pointed out that Aslan and Mokhmad Mudayev had been unlawfully detained as hostages in the Nadterechniy district department of the FSB. The applicant stated that the investigation into the abduction had been suspended several times and that the last suspension had taken place on 13 May 2005. The applicant sought a ruling obliging the prosecutor's office to resume the investigation and transfer it to the Chechnya prosecutor's office.

46. On 8 June 2005 the district court rejected the applicant's complaint. On 16 August 2005 this decision was upheld on appeal by the Chechnya Supreme Court.

## *2. Information submitted by the Government*

47. The Government submitted that the investigation of the abduction of the applicants' relatives had commenced on 29 September 2003 upon receipt on 22 September 2003 of a complaint by the applicants' relative Mr I.M. about the abduction of Aslan and Mokhmad Mudayev on 29 January 2003.

48. On 27 September 2003 the investigators conducted a crime scene examination at the first applicant's house. Nothing was collected from the scene.

49. On 29 September 2003 the first applicant was granted victim status in the criminal case and questioned. According to a copy of his witness statement submitted to the Court, the applicant stated that at about 8.15 a.m. on 29 January 2003 a group of fifteen masked men in military uniforms armed with automatic weapons had broken into his house. The men had put everyone up against the wall, and then ordered everyone to lie on the floor face down. After that they had demanded everyone's passports and checked them. The men had returned all the documents, except for the passports of his sons Aslan and Mokhmad Mudayev. Immediately after the men had taken the applicant's two sons outside, put them in a light-coloured UAZ vehicle ('*tabletko*') and taken them to the settlement of Znamenskoye in the Nadterechniy district of Chechnya. When the applicant had asked the men about the reasons for the arrest of his sons, the men had not explained anything. They had told him and his relatives to stay inside, threatening to shoot if anyone went outside. According to the applicant, the abductors had arrived at his house in a light-coloured UAZ vehicle and two grey GAZ vehicles; the cars did not have registration numbers. At some point later the applicant had asked the head of the Nadterechniy district department of the FSB Mr Mayrbek Kh. about his sons. The latter had told him that Aslan and Mokhmad Mudayev had been detained on the premises of his department. The applicant had not received any other information about his sons' whereabouts.

50. On 22 May 2004 the investigators granted the second applicant victim status in the criminal case.

51. According to the Government, the investigators also questioned a number of witnesses. Without providing any of the relevant witness statements and the dates, the Government summarised their testimonies as follows.

52. On an unspecified date the investigators questioned the applicants' relative, Mr I.B., who stated that on 29 January 2003 he had been in the first applicant's house with his relatives. In the morning a group of armed masked men had broken into the house, checked identity documents and taken him, Aslan and Mokhmad Mudayev in a UAZ car to the village of Znamenskoye in the Nadterechniy district. There they had been placed in one cell. In the evening of the same day the witness had been interrogated twice. The first questioning had been conducted by Mr M.Kh. who had asked him about Akhmed Mudayev. The second interrogation was conducted by a man who had spoken unaccented Russian, in the presence of a Chechen man. In the evening of 30 January 2003 the witness had been released, whereas Aslan and Mokhmad Mudayev remained in detention.

53. On an unspecified date the investigators questioned the second applicant. She stated that on 29 February 2003 a special operation had been conducted in Raduzhnoye by the local FSB office and that Mr Mayrbek Kh. had been in charge of it. As a result of this operation more than twenty young men had been arrested in the settlement, including her nephews Aslan and Mokhmad Mudayev and Mr I.A. Many of the detainees had been released in the evening on the same day. On 30 January 2003 her nephew Mr I.A. had also returned home. He had told her that he had been detained with Aslan and Mokhmad Mudayev in the FSB office.

54. On unspecified dates the investigators also questioned twelve other witnesses, including the first applicant, Mr A.M., Mr I.M., Mr Yu.V., Mr A.D., Mr S.B., Mr Sh.A., Ms A.B., Ms B.O., Mr T.A., Ms T.M., Mr A.K. and Mr S.Z., who provided statements similar to the one given by the second applicant.

55. On an unspecified date the investigators questioned the applicants' neighbour, Ms Kh. D., who stated that at about 9 a.m. on 29 January 2003 three grey UAZ vehicles without registration numbers had arrived at the first applicant's house. A group of armed men in camouflage uniforms and masks had gotten out of the cars. The men had taken the first applicant's two sons and driven them away in the direction of the Nadterechniy district.

56. On an unspecified date the investigators also questioned Mr I.M., who provided a statement similar to the one given by Ms Kh.D.

57. On an unspecified date the investigators questioned Ms T.M. who stated that at about 9 a.m. on 29 January 2003 she had been driving with her relatives through the area situated next to the bridge in the village of Pobedinskoye. There she had seen several UAZ cars and APCs which were driving in the direction of the village of Znamenskoye in the Nadterechniy district. After the witness had arrived at Pobedinskoye, she had learnt from the local residents that earlier in the morning a group of armed men in camouflage uniforms under the command of the head of the Nadterechniy district department of the FSB, Mr M. Kh., had taken Aslan and Mokhmad Mudayev away; that the relatives of the abducted men had followed the abductors in cars and that they had seen that the two brothers had been taken to the premises of the Nadterechniy district department of the FSB.

58. On unspecified dates the investigators also questioned three other witnesses, including Ms M.Yu., Ms. Z.K. and Ms L.A., who provided statements similar to the one given by Ms T.M.

59. On an unspecified date the investigators questioned Mr Z.B., who stated that he had known Aslan and Mokhmad Mudayev since childhood. On 29 January 2003 he had learnt that the two brothers had been arrested as a result of the operation conducted under the command of the head of the Nadterechniy district department of the FSB, Mr M. Kh. According to the witness, the elder brother of the arrested men, Akhmed, had been a member of illegal armed groups but Aslan and Mokhmad had not been involved in

illegal activities. At some point Akhmed Mudayev had been killed by the OMON (special task force) police officers during a skirmish in the village of Dolinskoye.

60. On an unspecified date the investigators questioned the applicants' relative Mr E.M., who stated that his nephews Aslan and Mokhmad Mudayev had been arrested on 29 January 2003 by representatives of the Nadterechniy district department of the FSB in the presence of its head, Mr Mayrbek Kh. On the following day many of those who had been detained were released. However, Aslan and Mokhmad Mudayev did not return home.

61. On an unspecified date the investigators questioned a police officer, N.M., who stated that in the spring of 2003 he had worked as the district police officer in the settlement of Podebinskoye in the Grozny district. About two months prior to that, in the winter of 2003, Aslan and Mokhmad Mudayev had been brought to the Nadterechniy district department of the FSB.

62. On unspecified dates the investigators also questioned Mr G.R. and Mr B.S., who had provided statements similar to the above statement by Mr N.M.

63. On an unspecified date the investigators questioned Mr E.A. who stated that about two or three weeks after the apprehension of Aslan and Mokhmad Mudayev he had been detained on the premises of the FSB office in the Nadterechniy district and that at the time he had not seen the applicants' relatives there.

64. On an unspecified date the investigators questioned Mr S.Z., who stated that in January 2003 about twenty of his fellow villagers, including Aslan and Mokhmad Mudayev, had been detained by representatives of the FSB in the villages of Raduzhnoye and Dolinskoye. On 26 April 2003 he had been arrested by representatives of the Nadterechniy district department of the FSB and was released some time later. During his detention at the FSB office he had not seen the applicants' relatives.

65. On an unspecified date the investigators questioned the head of the Nadterechniy district department of the FSB Mr Mayrbek Kh., who stated that after two staff members of the Chechnya prosecutor's office had been kidnapped their department had taken operational search measures aimed at establishing the identity of the perpetrators. As a result, Aslan and Mokhmad Mudayev had been brought over to the FSB office and questioned. After it had been established that the two brothers had not been involved in the abduction, Aslan and Mokhmad Mudayev had been released. The witness did not know why the brothers had not returned home. The officer further stated that Aslan and Mokhmad Mudayev had signed papers to the effect that they had nothing against the officers of the FSB; however, these documents had been later destroyed. Relatives of Aslan and Mokhmad Mudayev had contacted the witness on a number of occasions

asking for assistance in establishing the brothers' whereabouts. According to the witness, he had had information concerning the possible absconding of Aslan and Mokhmad Mudayev from Chechnya to Ingushetia, where their brother Akhmed, an active member of illegal armed groups, had been hiding. In the summer of 2003 Akhmed Mudayev had been killed in a shoot-out. The witness had no information concerning the whereabouts of Aslan and Mokhmad Mudayev.

66. The investigators requested information from the Nadterechniy district court concerning arrest orders issued by the court as of 29 January 2003 in respect of Aslan and Mokhmad Mudayev. According to the district court, no such orders had been issued by it.

67. The investigators also requested information from the head of the Nadterechniy district administration concerning the list of persons who had suffered as a result of the terrorist attack committed on 12 May 2003 in Znamenskoye. The list of victims did not contain the names of Aslan and Mokhmad Mudayev.

68. According to the Government, the investigation failed to establish the whereabouts of Aslan and Mokhmad Mudayev; their corpses were not found. No evidence demonstrating the involvement of federal forces in their disappearance was found.

69. According to the documents submitted by the Government, between 29 September 2003 and 25 July 2008 the investigation was suspended and resumed on at least three occasions, that is, on 21 June 2004, 8 June 2005 and 11 February 2008, and it has so far failed to establish the identities of the perpetrators.

70. From the Government's submission it follows that on 16 July 2008 the head of the Investigations Department of the Investigations Committee at the Office of the Russian Prosecutor General decided that the investigation of the abduction of the applicants' relatives should be carried out by a joint group of investigators from the prosecutor's office and the military investigations department.

71. The Government further submitted that all the measures envisaged under the domestic law were being taken by the investigators and that the applicants had been duly informed of all decisions taken during the proceedings.

72. Despite specific requests by the Court the Government did not disclose most of the contents of criminal case file no. 42172, providing only copies of several notifications to the applicants of the suspension and reopening of the proceedings and a copy of the witness statement given by the first applicant on 29 September 2003. The Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained data concerning the witnesses or other participants in the criminal proceedings.

## II. RELEVANT DOMESTIC LAW

73. 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

74. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies, submitting that the investigation into the disappearance of Aslan and Mokhmad Mudayev 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, and that the applicants had availed themselves of that remedy. Finally, they argued that it had been open to the applicants to pursue civil complaints but that they had failed to do so.

75. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective. With reference to the Court's practice, they argued that they were not obliged to claim damages through civil proceedings in order to exhaust domestic remedies.

#### B. The Court's assessment

76. 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).

77. 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.

78. 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 *Hashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 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.

79. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement authorities about the kidnapping of Aslan and Mokhmad Mudayev and that an investigation has been ongoing since 29 September 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

80. 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

81. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Aslan and Mokhmad Mudayev had been State agents. In support of their complaint they referred to the following facts. The Government had confirmed to the Court that the local law-enforcement authorities had conducted a special operation on 29 January 2003, as a result of which Aslan and Mokhmad Mudayev had been taken to the Nadterechniy district department of the FSB along with other residents of Raduzhnoye. However, the applicants' relatives had not been released on the following day, unlike the other detainees, and had never returned home. The Government's allegations that the two brothers had been released shortly after their apprehension were completely unsubstantiated and refuted by witness statements collected by the applicants and the official investigation. All the information disclosed by the Government about the criminal investigation supported the applicants' assertion as to the involvement of State agents in the abduction of their relatives. Since Aslan and Mokhmad Mudayev 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.

82. The Government submitted that on 29 January 2003 the Nadterechniy district department of the FSB, under the command of its head officer M.Kh., had conducted a special operation to identify the perpetrators of the abduction of two prosecution officials which had taken place prior to the events in question. As a result of the operation, Aslan and Mokhmad Mudayev had been taken to the Nadterechniy district department of the FSB



for questioning. Their non-participation in the abduction of the officials had been established and the two brothers had been released. The Government further stated that the brothers might have absconded from the authorities. They further contended that the investigation into the incident was ongoing and that there was no evidence that State representatives might be responsible for the disappearance of the Mudayev brothers. The Government further argued that there was no convincing evidence that the applicants' relatives were dead as their corpses had not been found. Referring to the witness statements obtained by the investigation, the Government pointed out that Mr E.A. and Mr S.Z. had stated that during their detention in the Nadterechniy district department of the FSB in February 2003 and after 26 April 2003 accordingly, they had not seen the Mudayev brothers either on the premises of the FSB office or during the transportation of the office's detainees in May 2003 after the partial destruction of the building as a result of the terrorist attack. The Government did not submit these witness statements to the Court.

#### **B. The Court's evaluation of the facts**

83. 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*, § 161, Series A no. 25).

84. The Court notes that despite its requests for a copy of the investigation file into the abduction of Aslan and Mokhmad Mudayev, the Government produced only a few 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 the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-VIII (extracts)).

85. 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.

86. The applicants alleged that the persons who had taken Aslan and Mokhmad Mudayev away on 29 January 2003 and then killed them had been State agents. The Government did not dispute any of the main factual

elements underlying the application. They acknowledged that the applicants' relatives had been detained by State agents, but suggested that they had been released some time later.

87. The Government submitted that the applicants' relatives had been detained on 29 January 2003 by representatives of the local law-enforcement agencies under the command of the head of the Nadterechniy district department of the FSB officer M. Kh. and taken to the FSB office for questioning and that they had been released shortly afterwards (see paragraph 25 above). In support of their position the Government referred to the summary of the witness statement given by officer M.Kh. to the investigators (see paragraph 65 above), which the Government did not submit to the Court. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

88. The Court notes that the applicants' allegation is supported by the witness statements collected by the applicants and by the investigation. In particular, the Court notes that a number of witnesses pointed out that Aslan and Mokhammad Mudayev had not been released from detention in the FSB office unlike the other men who had been apprehended as a result of the special operation (see paragraphs 20, 21, 52 and 60 above). It further observes that the Government's allegation that the applicants' relatives were released after questioning was not substantiated by any documents. In their application to the authorities the applicants consistently maintained that Aslan and Mokhammad Mudayev had been arrested by servicemen under the command of officer M. Kh. and subsequently detained in the FSB office and requested the investigation to examine that possibility (see paragraphs 31, 41, 45, 49 and 53 above). The domestic investigation also accepted factual assumptions as presented by the applicants and questioned officer M. Kh. However, it does not appear that any serious steps were taken to verify his statement concerning the release of the applicants' relatives.

89. 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).

90. 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 Court observes that the Government submitted no evidence, such as records of detention and release, to corroborate their contention that the applicants' relatives had been set free. As to the Government's contention that the records were destroyed as a result of the fire (see paragraph 26 above), they failed to submit any evidence confirming that the impugned documents had been indeed destroyed as a result of it. No documents in the case file indeed refer to the destruction of the documents as a result of the incident. The Court is struck by the fact that the source of this assertion is none other than the officer most closely implicated in the detention of the Mudayev brothers. In such circumstances and taking into account the absence of any evidence to the contrary, the Court finds that Aslan and Mokhmad Mudayev remained under the control of the authorities after being apprehended during the special operation.

91. The Court further notes that no documents relating to the applicants' relatives' apprehension and subsequent detention have been made available to it. There has been no reliable news of the Aslan and Mokhmad Mudayev 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.

92. 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-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Republic, when a person is detained by servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Aslan and Mokhmad Mudayev or of any news of them for many years supports this assumption. Furthermore, the Government have failed to provide any explanation as to the disappearance of the applicants' relatives after their arrest, and the official investigation into their abduction, which has lasted for more than six years, has produced no tangible results.

93. The Court further notes that, regrettably, it has been unable to benefit from the results of the domestic investigation owing to the Government's failure to disclose most of the documents from the file (see paragraph 72 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

94. Accordingly, the Court finds that the evidence available permits it to establish that Aslan and Mokhmad Mudayev must be presumed dead following their unacknowledged detention by State servicemen.

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

95. The applicants complained under Article 2 of the Convention that their relatives had been deprived of their lives by State agents 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**

96. The Government contended that the domestic investigation had obtained no evidence to the effect that Aslan and Mokhmad Mudayev 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.

97. The applicants argued that Aslan and Mokhmad Mudayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of them for 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 January 2005 the district prosecutor's office had not taken certain crucial investigative steps. The investigation into Aslan and Mokhmad Mudayev's kidnapping had been opened several months after the events and then had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and that the relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been ongoing 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*

98. 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 80 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 Aslan and Mokhmad Mudayev**

99. The Court has already found that the applicants' relatives must be presumed dead following unacknowledged detention by State servicemen. In the absence of any justification put forward by the Government, the Court finds that their deaths can be attributed to the State and that there has been a violation of Article 2 in respect of Aslan and Mokhmad Mudayev.

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

100. 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).

101. In the present case, the kidnapping of Aslan and Mokhmad Mudayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

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

103. The Court notes that the authorities were made aware of the crime by the applicants' written submission on 22 September 2003. The investigation in case no. 42172 was instituted on 29 September 2003. Taking into account that the Government failed to furnish the Court with any information as to the dates of the investigative measures taken by the prosecutor's office, it is nonetheless clear that after the opening of the criminal case the investigators did not take even the most basic steps. For instance, the Court notes that, as can be seen from the decision of the district

court of 30 December 2004, by that date the investigators had not questioned any of the persons involved in the arrest of the Mudayev brothers even though "... in the course of the preliminary investigation it had been unequivocally established by whom and when the Mudayev brothers had been arrested and where they had been detained ..." (see paragraph 44 above). It is obvious that if they were to produce any meaningful results such investigative measures should have been taken immediately after the investigation obtained the relevant information. 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 matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII). Further, it does not appear that the investigation tried to identify and question any of the servicemen who had worked in the Nadterechniy district department of the FSB, other than officer M.Kh., in order to establish whether Aslan and Mokhmad Mudayev had been detained there after 29 January 2003, or that the investigators tried to identify and question the more than twenty other residents of Raduzhnoye who had been arrested in the course of the same special operation.

104. The Court also notes that even though the applicants were granted victim status in the criminal case 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, and to safeguard the interests of the next of kin in the proceedings.

105. Finally, the Court notes that the investigation was adjourned and resumed on numerous occasions and that there were lengthy periods of inactivity on the part of the prosecutor's office when the proceedings were suspended. The district court criticised the deficiencies in the proceedings and ordered remedial measures (see paragraph 44 above). It appears that its instructions were not complied with.

106. The Government argued that the applicants could have sought further 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. Nevertheless, the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take essential investigative measures. Moreover, the district court's instructions to the 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.

107. 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 Aslan and Mokhmad Mudayev, in breach of Article 2 in its procedural aspect.

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

108. The applicants relied on Article 3 of the Convention, submitting that after their arrest Aslan and Mokhmad Mudayev had been subjected to inhuman and degrading treatment and that the State had failed to investigate the applicants' allegations about it 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**

109. The Government disagreed with these allegations and argued that the investigation had not established that Aslan and Mokhmad Mudayev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

110. The applicants maintained their submissions.

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

###### *1. Admissibility*

###### **Ill-treatment of the applicants' relatives**

111. 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*).

112. The Court has already found that Aslan and Mokhmad Mudayev were detained on 29 January 2003 by federal forces and that no reliable news of them has been received since. It has also found that, in view of all the known circumstances, they can be presumed dead and that the

responsibility for their death lies with the State authorities (see paragraph 99 above). However, the questions of the exact way in which they died and whether they were subjected to ill-treatment while in detention have not been elucidated. The Court considers that the applicants' reference to the statement of Mr Aslan A. (see paragraph 21 above) does not enable it to find beyond all reasonable doubt that Aslan and Mokhmad Mudayev were ill-treated in detention. It thus finds that this part of the complaint has not been substantiated.

113. 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.

## 2. *Merits*

### **Alleged ineffectiveness of the investigation of the ill-treatment**

114. 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).

115. The Court notes that the applicants raised in detail their complaints about the ill-treatment of Aslan and Mokhmad Mudayev with the investigating authorities (see paragraph 31 above). However, it does not appear that their complaints were properly examined by the prosecutor's office.

116. For the reasons stated above in paragraphs 103 – 107 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 Aslan and Mokhmad Mudayev.

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

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

118. The applicants stated that Aslan and Mokhmad Mudayev had been detained in violation of the guarantees contained in Article 5 of the Convention. Article 5 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**

119. The Government asserted that no evidence had been obtained by the investigators to confirm that Aslan and Mokhmad Mudayev had been deprived of their liberty. The brothers had been brought to the Nadterechniy district department of the FSB for questioning and had been released shortly afterwards. The applicants' relatives were not listed among the persons kept in detention centres and none of the local law-enforcement agencies had information about their detention.

120. The applicants reiterated the complaint.

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

##### *1. Admissibility*

121. 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*

122. 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).

123. The Court has found that Aslan and Mokhmad Mudayev were apprehended by State servicemen on 29 January 2003 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 (see paragraph 90 above). 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).

124. 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.

125. In view of the foregoing, the Court finds that Aslan and Mokhmad Mudayev 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 VIOLATION OF ARTICLE 18 IN CONJUNCTION WITH ARTICLE 5 § 1 (c) OF THE CONVENTION

126. The applicants further alleged that the detention of their relatives was carried out for a purpose other than those envisaged by Article 5 § 1 (c), contrary to Article 18 of the Convention. Article 18 reads:

“The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

127. As for the alleged violation of Article 18 in conjunction with Article 5 of the Convention, the Court reiterates that Article 18 of the Convention does not have an autonomous role. It can only be applied in conjunction with other Articles of the Convention (*Gusinskiy v. Russia*, no. 70276/01, § 73, ECHR 2004-IV).

128. The Court has already found in paragraphs 123-125 above that the applicants' relatives were deprived of their liberty without any of the

safeguards contained in Article 5, and not “for the purpose of bringing [a person] before the competent legal authority on reasonable suspicion of having committed an offence” as stipulated in Article 5 § 1 (c). In these circumstances, since that issue has already been addressed by the Court, there is no need to examine these facts again under Article 18 in conjunction with Article 5 of the Convention.

## VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

129. 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

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

131. The applicants reiterated the complaint.

### B. The Court's assessment

#### 1. Admissibility

132. 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

133. The Court reiterates that in circumstances where, as here, a criminal investigation into a disappearance has been ineffective (see paragraph 107 above) and the effectiveness of any other remedy that might have existed, including civil remedies, as suggested by the Government in the present case, has consequently been undermined the State has failed in its obligation

under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

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

## VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. 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

137. The first applicant, as the father of Aslan and Mokhmad Mudayev, claimed damages in respect of loss of earnings by his sons after their arrests and subsequent disappearances. Referring to the method of calculation used in the case of *Isayeva v. Russia* (no. 57950/00, §§ 232-236, 24 February 2005), he claimed a total of 21,600 euros (EUR) under this heading.

138. The Government regarded these claims as unsubstantiated. They also pointed to the existence of domestic statutory machinery for the provision of a pension for the loss of a family breadwinner.

139. The Court reiterates that there must be a clear causal connection between the damage claimed by an applicant and the violation of the Convention at issue, and that this may, in an appropriate case, include compensation in respect of loss of earnings. The Court further finds that loss of earnings also applies to elderly parents and that it is reasonable to assume that Aslan and Mokhmad Mudayev would eventually have had some earnings from which the first applicant would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the first applicant's sons and the loss by the first applicant of the financial support which they could have provided. Having regard to the applicants' submissions and the fact that Aslan and Mokhmad Mudayev were not employed at the time of their apprehension, the Court awards EUR 20,000 to the first applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

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

140. The first applicant, as the father of the disappeared Aslan and Mokhmad Mudayev, claimed EUR 200,000 in respect of non-pecuniary damage for the suffering he had endured as a result of the loss of his family members, the indifference shown by the authorities towards him and the failure to provide any information about the fate of his sons. The second applicant, as the aunt of the disappeared men, claimed 50,000 EUR under this head.

141. The Government found the amounts claimed exaggerated.

142. 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 Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards 100,000 EUR to the first applicant and 20,000 EUR to the second applicant plus any tax that may be chargeable on these amounts.

## **C. Costs and expenses**

143. The applicants were represented by lawyers of the Centre of Assistance to International Protection, Ms K. Moskalenko and Ms S. Davydova. The applicants submitted that the aggregate claim in respect of costs and expenses related to their legal representation amounted to EUR 4,500.

144. The Government indicated that the applicants had not shown that the expenses claimed for legal representation had actually been incurred.

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

146. Having regard to the details of the information in its possession, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

147. As to whether the costs and expenses were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation.

148. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 4,000 less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable thereon.

**D. Default interest**

149. 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. *Declares* the complaints under Articles 2, 3 (in respect of the authorities' failure to investigate the alleged ill-treatment), 5 and 13 admissible and the remainder of the application inadmissible;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of domestic remedies and rejects it;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Aslan and Mokhmad Mudayev;
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 Aslan and Mokhmad Mudayev disappeared;
5. *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 allegations of ill-treatment of Aslan and Mokhmad Mudayev;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Aslan and Mokhmad Mudayev;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds* that there is no need to examine the applicants' complaint under Article 18 in conjunction with Article 5 § 1 (c);
10. *Holds*
  - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, 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 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the first applicant;
  - (ii) EUR 100,000 (hundred thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first applicant;
  - (iii) EUR 20,000 (twenty thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the second applicant;
  - (iv) EUR 3,150 (three thousand one hundred and fifty euros) plus any tax that may be chargeable, in respect of costs and expenses to the applicants;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President