



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

FIRST SECTION

CASE OF LULUYEV AND OTHERS v. RUSSIA

(Application no. 69480/01)

JUDGMENT

STRASBOURG

9 November 2006

FINAL

09/02/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Luluyev and Others v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 19 October 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 69480/01) 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 Mr Turko Saidalviyevich Luluyev, who was joined in his complaints by nine relatives, designated, at their request, by their initials.

2. The applicants, who had been granted legal aid, were represented before the Court by Gareth Peirce, a lawyer practising in London, the United Kingdom, and lawyers from the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia.

3. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

4. The applicants alleged that their relative, Mrs Nura Luluyeva, had been unlawfully arrested, tortured and killed by the domestic authorities and that there had been no effective investigation into these events.

5. By a decision of 30 June 2005, the Court declared the application admissible.

6. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant, Mr Turko Saidalviyevich Luluyev, is a Russian national who was born in 1979. His application was brought on his own behalf and on behalf of his close relatives: his father Mr Saidalvi Saidalimovich Luliyev, born in 1954 (the second applicant); the first applicant's brothers, Mr A.L., born in 1983, and Mr S.L., born in 1995, and his sister Ms Z.L., born in 1989 (the third to fifth applicants); Nura Luluyeva's parents, Ms G.B. and Mr S. G. (the sixth and the seventh applicants); and her brothers, Mr M.G., Mr Kh.G. and Mr S.S.G. (the eighth to tenth applicants), who requested that their names should not be disclosed. The applicants live in Gudermes, Chechnya.

8. Nura Said-Alviyevna Luluyeva, born in 1960, lived together with the second applicant and their children (the first, the third, the fourth and the fifth applicants) in Gudermes. She worked as a nurse and a kindergarten teacher; at the time of her abduction she also traded fruit at the local market. The second applicant worked in the law-enforcement bodies and subsequently as a judge; in 2002 he became the chairman of a district court in Chechnya. He has since ceased to work in the judiciary.

A. The circumstances of the case

9. The facts surrounding the abduction and killing of the applicants' relative, Nura Luluyeva, as submitted by the parties, are set out in Sections 1 and 2 below. A description of the materials submitted to the Court is contained in Part B.

1. The abduction of Nura Luluyeva and the investigation

10. On 3 June 2000 Nura Luluyeva, along with her two cousins, Markha Gakayeva and Raysa Gakayeva, went to the market place at Mozdokskaya Street in the northern part of Grozny.

11. Between 7 and 9 a.m. that morning an armoured personnel carrier (APC) appeared at the market. It was accompanied by two other vehicles, an Ural truck and an UAZ all-terrain vehicle. A group of servicemen, wearing camouflage uniforms and masks and armed with machine guns, disembarked from the vehicles. The servicemen detained several persons, mostly women, put sacks over their heads and loaded them into the APC. Nura Luluyeva and her two cousins were among those detained.

12. Someone apparently called the police from the Leninskiy temporary District Department of the Interior (Leninskiy VOVD), which was situated

only a few hundred metres from the scene. When the police appeared and tried to interfere, the military started shooting in the air with a machine gun, and then drove away. The deputy chief of the district administration was also present at the scene and he attempted to question the servicemen about their official affiliation and their mission at the market, but he was told only that they were “lawfully carrying out a special operation”. Having received this explanation the officials left the site.

13. Later in the afternoon the second applicant learned from neighbours about Nura Luluyeva's arrest. At about 3 p.m. he went to the market place and then to the Leninskiy VOVD, which had already been notified of the incident. It was also known that, in addition to Nura Luluyeva and her cousins, at least one other person, Mr Z. Tazurkayev, was detained on the same day.

14. From that day the applicants, primarily the second applicant, searched for Nura Luluyeva and her cousins until their bodies were found in February 2001 (see Section 2 below). On numerous occasions the second applicant applied to various authorities, requesting information about their whereabouts. In particular, he contacted the prosecutors at various levels, the Federal Security Service (FSB), various departments of the Ministry of the Interior, the Ministry of Defence and the Russian President's Special Representative in the Chechen Republic for Rights and Freedoms. The family members also petitioned the authorities, the media and public figures; they personally visited detention centres and prisons in Chechnya and further afield in the northern Caucasus.

15. These attempts yielded little result. The official bodies could not clarify the circumstances of Nura Luluyeva's disappearance. Occasionally they would forward the applicants' requests to the Chechnya Republican Prosecutor's Office or to the Grozny Town Prosecutor's Office.

16. On 20 June 2000 the second applicant was called for an interview at the Chechnya Republican Prosecutor's Office. He was asked to elaborate on the circumstances of his wife's disappearance, with regard to which he had requested an investigation.

17. On 21 June 2000 the Chechnya Republican Prosecutor's Office forwarded the applicant's complaint and the transcript of his interview to the Grozny Town Prosecutor's Office, with a request to make official enquiries and verify whether any State authority had taken Nura Luluyeva and her relatives into custody.

18. On 23 June 2000 the Grozny Town Prosecutor's Office instituted criminal proceedings under Article 126 part 2 of the Criminal Code – kidnapping. Investigation case file no. 12073 was opened. The applicants' family was informed accordingly on 4 July 2000. Two months later the case was adjourned, but the applicants were not informed of this and only found out about the adjournment later. None of the family members was questioned during those two months.

19. On 25 June 2000 the Chief of the Leninskiy VOVD informed the acting head of the FSB Department for Chechnya that N. Luluyeva, M. Gakayeva and R. Gakayeva were not listed among the detained persons in the Leninskiy VOVD. On the same day the military commander of the Leninskiy District of Grozny informed the FSB Department for Chechnya that the said persons had not been detained by the district military commander's office.

20. On 30 June 2000 the applicants were informed by the Chechnya Department of the FSB that N. Luluyeva and her relatives R. Gakayeva and M. Gakayeva had not been detained on 3 June 2000 by law-enforcement bodies, including the FSB and forces from the Ministry of Defence. No information was available about them.

21. On 31 August 2000 the second applicant applied to the Chechen Republican Prosecutor. He complained about the decision to adjourn the investigation and raised, *inter alia*, the following points: he had not been granted victim status and had not been formally questioned, no attempts had been made to establish the whereabouts of the missing persons and no other investigative actions had taken place. He referred to certain witness statements identifying the hull number of the APC in which the women had been taken away (allegedly 110) and requested that the location of the vehicle in question be established. He made a number of other requests, in particular to give testimony as a witness and to have the husbands of the two other missing women questioned, and to ask the FSB and the Ministry of Interior about "special operations" carried out in Grozny on 3 June 2000. In reply, the Office of the Chechen Republican Prosecutor informed the applicants that the decision to adjourn the investigation had been quashed and the case had been forwarded to the Grozny Town Prosecutor's Office for further investigation.

22. On 5 November 2000 the Office of the Chechnya Republican Prosecutor stated in reply to the second applicant's complaint that the criminal investigation into the kidnapping of Nura Luluyeva and her cousins had been taken under the special control of the Office. The letter further stated that "specific measures had been undertaken to intensify the investigation and to solve the circumstances of the crime."

23. On 4 December 2000 the second applicant was granted victim status in the criminal proceedings concerning the kidnapping of Nura Luluyeva (case no. 12073).

24. On 8 December 2000 the Office of the Chechnya Republican Prosecutor sent a progress report in several cases to the Russian President's Special Representative in the Chechen Republic for Rights and Freedoms. Case no. 12073 concerning the "kidnapping in Grozny at Mozdokskaya Street of N. Luluyeva, R. Gakayeva, M. Gakayeva and Z. Tazurkayev" was mentioned as being investigated by the Grozny Town Prosecutor's Office under the "special control" of the Office of the Chechnya Prosecutor.

25. On an unspecified date in 2000 the Deputy Head of the Administration of Chechnya sent a letter to the Chief Military Prosecutor of Russia. He related the disappearance of Nura Luluyeva and other women, stating that they had been detained by unidentified servicemen from the federal forces. He further alleged that the investigation by the local prosecutors had proved ineffective and therefore requested that the case be transferred to the Chief Military Prosecutor's Office for investigation.

26. On 16 January 2001 the Office of the Chechnya Republican Prosecutor informed the second applicant that additional questions had been put to the witnesses and enquiries about the missing persons had been sent to all departments of the Interior in Chechnya, to the FSB, to the military prosecutor of military unit no. 20102, and to the military commander of Grozny. It was also mentioned that the possible involvement of "certain detachments of the power structures" (*"силовых структур"*) in the kidnapping of the women was being investigated.

27. On 5 February 2001 the Grozny Town Prosecutor's office informed the second applicant that the investigation into the kidnapping of Nura Luluyeva had been adjourned under Article 195 § 3 of the Criminal Procedural Code (CCP) for failure to identify the culprits.

2. The discovery of Nura Luluyeva's body and further developments

28. On 24 February 2001 news came through that a mass grave had been uncovered in "*Zdorovye*", an abandoned holiday village on the outskirts of Grozny, less than one kilometre from Khankala, the headquarters of the Russian military forces in Chechnya. 47 bodies, dumped in the village, had been collected and transferred to a temporary location in Grozny belonging to the Ministry for Emergency Situations (Emercom).

29. On 2 March 2001 a forensic examination was performed on the bodies.

30. On 4 March 2001 Nura Luluyeva's brother and three other relatives went to the Emercom premises and identified the three bodies as those of Nura Luluyeva, Markha Gakayeva and Raisa Gakayeva. As the bodies were in an advanced stage of decomposition they could only be identified by their earrings and clothes. A relative who saw the three women on 3 June 2000 confirmed that the clothes and the earrings were the same as those worn by the deceased on that day. The relatives who took part in the identification also noted that the individuals had been blindfolded.

31. On the same day, adhering to the religious custom that bodies be buried as soon as possible, the relatives sought permission to transfer the bodies for burial to the village of Noyber, situated about 15 km from Gudermes. On 4 March 2001 the Grozny Town Prosecutor's Office issued a note permitting the transportation of the bodies of Markha Gakayeva, born in 1962, Raisa Gakayeva, born in 1964 and Nura Luluyeva, born in 1960,

from Grozny to the villages of Noyber and Engel-Yurt, Gudermes District, for burial.

32. The burial took place on 5 March 2001 in Noyber. The applicants and other members of the family came to Noyber and took part in the funeral, but none of them saw the bodies.

33. The discovery of the mass grave was reported in the media and became a subject of two special reports by the human rights NGOs Memorial (March 2001) and Human Rights Watch (May 2001). Both NGO reports stated that, of the identified bodies in the mass grave, 16 or 17 belonged to persons previously detained by the Russian forces, and specifically mentioned the case of Nura Luluyeva. The latter report also stated that the remaining bodies – over 30 – had been buried on 10 March 2001 without any further announcements, thus preventing their further identification and examination.

34. On 31 March 2001 the Chechnya Republican Prosecutor's Office informed the applicants that further investigation of case no. 12073 would be conducted by that Office. It informed the applicants that the investigation was seeking to identify the culprits and that any further information would be communicated to them in due course.

35. On 9 April 2001 the civil registration office of Gudermes issued death certificate no. 212 for Nura Saidalviyevna Luluyeva, born in 1960. The date and place of death were recorded as 3 June 2000, Khankala.

36. On 12 April 2001 the Gudermes District Department of the Ministry of Health of Chechnya issued a medical death certificate in respect of Nura Luluyeva, born in 1960. It recorded the date and place of death as 3 June 2000, Grozny, Khankala. With reference to a forensic examination, it indicated that the death had resulted from homicide and was caused by a gunshot wound to the head. The circumstances of the death were described as the “period of hostilities”.

37. On 28 April 2001 a forensic report was drawn up following an examination on 2 March 2001. It established that Nura Luluyeva's death had been caused by a multiple comminuted skull fracture, the exact origin of which could not be identified, but which was inflicted by a blunt solid object applied with strong impact. It stated that the death had occurred 3-10 months before the discovery of the corpse.

38. On 26 May 2001 the head of the village administration of Noyber issued a certificate confirming that on 5 March 2001 Nura Luluyeva's body was buried in the village cemetery, with all costs borne by the applicants' family.

39. On 21 August 2001 the Interfax News Agency interviewed the Chechnya Republican Prosecutor, Vladimir Chernov, about progress in the investigation of crimes committed in Chechnya by the federal troops. The Prosecutor stated that the circumstances of the deaths of 51 persons whose bodies had been discovered in March on the outskirts of Grozny were still

being investigated, and that 24 bodies had been identified by their relatives and buried. He further pointed out that “there were no eyewitness reports that federal troops were responsible for the murders” and therefore the main probability being explored by the investigation was that the mass burial had been organised by rebel fighters.

40. On 6 May 2002 the Chechnya Republican Prosecutor's Office, in reply to a request by the applicants' legal counsel, SRJI, for an update on file no. 12073, wrote that “a number of actions were being undertaken by the investigative authorities to identify [the murderers]”.

41. In March 2003 the first applicant complained to the Chechnya Republican Prosecutor. He indicated that the ongoing investigation would not be effective so long as it sought to prove that the abduction and murder had not been committed by military servicemen. He recalled that the persons who had abducted Nura Luluyeva and other women had been driving an APC – a vehicle which only the military could have possessed – and that the hull number of the APC had been noted. He further stated that the body had been discovered within the security zone of the Khankala military base, which was under the strict control of the military authorities. Finally, he complained that the families had not received any substantive information about the investigation.

42. On 18 April 2003 the SRJI requested the Chechnya Republican Prosecutor to grant victim status in the proceedings to the first applicant and to provide an update on the investigation.

43. On 24 April 2003 the Chechnya Republican Prosecutor's Office informed the first applicant that proceedings in criminal investigation no. 12073 had been resumed and that he would be informed of further developments.

44. On 1 October 2003 investigation of the criminal case was again adjourned due to a failure to identify the culprits.

45. On 12 January 2004 the Deputy Prosecutor of the Chechen Republic quashed this decision and forwarded the case for further investigation.

46. In 2004-2005 the investigation into Nura Luluyeva's death was adjourned and resumed at least five times. Every time it was resumed the supervising prosecutors gave detailed orders to the investigators as to what measures were to be taken. In particular, the instructions of 15 February 2005 required that a special commission be set up to investigate the case and ascertain whether any military officials had been involved in the crime; that officers earlier involved in the investigation be questioned and that several other witnesses, including women street cleaners, be questioned. The instructions of 22 August 2005 contain further orders, such as to find out to which military detachment the APC hull number 110 belonged, but it also ordered that the instructions of 15 February 2005 be carried out.

47. During that period several witnesses were questioned, including the applicants and the investigator K. who was originally in charge of

investigating case no. 12073. It was established that on the day of Nura Luluyeva's detention the Sofrino interior security troops of the Ministry of the Interior had been carrying out a special operation at Mozdokskaya Street, Grozny. It was also established that the hull number of the APC in which Nura Luluyeva and her relatives had been taken away was 110. However, in reply to the official request, the Sofrino interior security troops denied that there was an APC with this hull number at their disposal. The enquiry to the military prosecutor's office as to which military detachment had operated APC no. 110 did not yield any result. Likewise, the APC driver and the FSB officer originally involved in the investigation could not be identified.

48. At present the investigation continues. It has not yet identified the persons or the military detachment responsible for the abduction and murder of Nura Luluyeva and others, and no one has been charged with the crimes.

B. Documents and extracts from the investigation file

49. In order to be able to assess the merits of the applicants' complaints and in view of the nature of the allegations, the Court requested the Government to submit a copy of the complete criminal investigation file in the present case. Before the case was declared admissible the Government submitted only 17 documents out of 368, having refused to provide the rest on the grounds of confidentiality.

50. After the case was declared admissible the Court did not repeat the request for the entire investigation file but demanded specifically the documents concerning the adjournment and resumption of the investigation, the supervising prosecutors' orders and the examination of Nura Luluyeva's body. The Government were also asked about the progress of the investigation and were invited to submit any relevant documents. They were also asked to identify the military unit which was present in Mozdokskaya Street, Grozny, on the morning of 3 June 2000, to give the names and ranks of its crew members and to identify the APC which was present. In reply, the Government submitted the specified documents and provided the investigation progress report prepared by the Prosecutor General's Office, which contained a summary of the investigative steps taken in 2004-2005.

51. The documents submitted by the Government can be summarised as follows:

(a) Decision to open a criminal investigation

52. On 23 June 2000 a prosecutor from the Grozny Town Prosecutor's Office opened criminal investigation file no. 12073 into the abduction on 3 June 2000 at about 9 a.m. of Nura Luluyeva and other persons by unidentified armed men, dressed in camouflage and driving an APC without hull numbers. His report further stated that, according to eye-witnesses,

officers from the nearby Leninskiy VOVD arrived at the scene and attempted to interfere, but were shot at by the armed men. Requests for information, forwarded to the local bodies of the interior, the FSB and the military commanders' offices, had proved ineffective.

(b) Description of the site

53. On 6 July 2000 an investigator from the Leninskiy VOVD examined the site at Mozdokskaya Street where Nura Luluyeva and other women had been detained. The investigators did not find anything noteworthy.

(c) Statement by Nura Luluyeva's husband

54. In December 2000 an investigator from the Grozny Town Prosecutor's Office questioned Nura Luluyeva's husband, the second applicant, as a victim in the criminal case. The second applicant stated that early on the morning of 3 June 2000 Nura Luluyeva, together with her two cousins, Markha Gakayeva and Raisa Gakayeva, went to the Severny market in Grozny to sell cherries. At about noon on the same day another relative, Kheda, who had travelled with Nura Luluyeva, came to his house and told him that in the morning, while selling cherries, she saw an APC in the market and noted that Nura Luluyeva and other women were forced inside by armed men dressed in camouflage and wearing masks. According to Kheda, other people tried to intervene, but the armed men shouted in Russian that they were conducting a special operation and shot above their heads with submachine-guns. Servicemen from the Leninskiy VOVD then arrived, but they were also shot at with a machine gun. Someone from the VOVD asked them who they were and one of the masked men showed him an identity card. Kheda further told him that servicemen from the Emercom also arrived, but they were not allowed to approach. Another person in civilian clothes arrived and showed his identity card to one of the armed persons. They exchanged a few words and the man walked away. The APC with the detainees left. Kheda had immediately returned to Gudermes to tell the second applicant about his wife's detention.

55. The second applicant further explained that he had immediately gone to Grozny to establish his wife's whereabouts. He had personally visited all the district departments of the interior in Grozny, the FSB office and the military commander's office, but no authority acknowledged his wife's detention. Some servicemen who were at that time serving in the Leninskiy VOVD on mission from the Yekaterinburg region were his acquaintances since he had previously worked in the police force in that region, and in July 2000 the head of the criminal police informed him that the hull number of the APC which had driven away his wife was 110. The policemen from the Leninskiy VOVD assured him that they were doing everything possible to find his wife.

(d) Statements by the witnesses to the arrest and other victims' relatives

56. In the period from July to November 2000 investigators from the Grozny Town Prosecutor's Office questioned several eye-witnesses to the events of 3 June 2000 and relatives of other persons who had been detained and “disappeared” on that day. The total number of persons detained is not apparent from the documents submitted, but it must be at least five.

57. Witness B., an employee of the district administration, stated in July 2000 that at about 8.30 – 8.45 a.m. on 3 June 2000 he was walking past the Leninskiy VOVD building and heard shooting nearby. Then he saw policemen running from the VOVD building towards the noise. About 200 metres away he noted a group of men wearing camouflage uniforms and balaclava masks, armed with sub-machine guns and portable grenade-launchers. The policemen from the VOVD, also armed with machine-guns, were standing across from them. The witness approached the armed men and produced his identity card; one of the masked men, the senior member of the group, told him that they were conducting a special operation and would call later at the Leninskiy district military commander's office to explain. They did not have any signs or markings on their camouflage and did not introduce or identify themselves. The witness noted an APC standing nearby, but could not identify it.

58. The family of Z. Tazurkayev, who had been detained with Nura Luluyeva, was questioned in July 2000 and again in November 2000 about the circumstances of his detention. His daughter testified that at about 7 a.m. on 3 June 2000 a friend's wife came in and asked her father to help her find her husband. Her father left with that woman and had not been seen since. At about 9 a.m. she went outside to get water and saw a group of servicemen wearing masks and a group of people who were shouting something about them driving away women. Then a group of policemen arrived and the servicemen shot in the air. The military left in an APC; the witness did not notice any men in civilian clothes on the hull or any numbers. She recalled that someone told her that the servicemen had been waiting in the courtyard of a nearby house since 3 a.m. on the previous night. Z. Tazurkayev's wife testified on two occasions in November 2000 that she had been contacted by persons who did not tell her their names out of fear for their lives, and who told her that her husband had been detained in a ground pit at the Khankala military base. One man told her that he had been detained alongside her husband and saw him badly beaten. It was allegedly her husband who had asked the man to contact his family.

59. Zura A., questioned in August 2000, testified that on 3 June 2000 she witnessed how Z. Tazurkayev and three women were arrested in an ambush operation in her friends' flat in Mozdokskaya Street. The leader of the operation group questioned the witness but she was then released. He also told her that he was from the FSB and that they were looking for the owner of the flat because “some of their guys had been killed there”. She

described the leader of the operation group as a Russian male, and said that the men in the group were armed with sub-machine guns and wore unmarked camouflage.

60. Tamara Kh. stated in December 2000 that she had learnt from her sister's husband that in June 2000 her sister, Tamani Kh., had been detained by servicemen at the market in Grozny, along with other women who were trading there, and that there had been no news of them since. The family continued to search for Tamani everywhere, but without any results. On the same day Tamara Kh. was granted victim status in the proceedings concerning her sisters' disappearance.

(e) Forensic report

61. On 28 April 2001 a forensic expert prepared a report based on the description of the crime-scene in "Zdorovye" where, from 24 February – 1 March 2001, 47 bodies bearing signs of violent death were discovered (the description of the site was not submitted to the Court). One body was identified as that of Nura Luluyeva. The crime-scene report was quoted as follows: "the following clothes were discovered on the corpse: a blue cardigan and a printed dress. The bones of the extremities, chest and pelvis are intact. The right frontal part of the head has an extensive defect to the bone, the bone lamella is totally missing. Skin is mummified, yellowish-brown in colour, solid to the touch".

62. The expert was asked to answer questions concerning the possible reasons for and time of Nura Luluyeva's death. The expert concluded that it appeared that the death had occurred 3 to 10 months prior to the discovery of the body, and had resulted from an extensive wound to the front of the head, which had caused massive deformation to the frontal part of the skull.

(f) Statements by officials from the Leninskiy VOVD

63. In July 2003 investigators questioned several officers who, at the material time, were serving in the Leninskiy VOVD, Grozny, on mission from other regions of the Russian Federation. They recalled having opened a search file in respect of Nura Luluyeva and other women, but the search had not produced any results. They could not recall if the hull number of the APC which had taken away the women was known to the investigation authorities.

Officer K. was questioned in May 2004 and gave submissions reflected in the progress report prepared by the Prosecutor General's Office, cited below.

(g) Investigation progress report prepared by the Prosecutor General's Office

64. At the Court's request, the Government provided the following update on the investigation, covering the period from January 2004 to August 2005:

“On 12 January 2004 the [acting Deputy of the Chechnya Republican Prosecutor] by his decree quashed the decree to suspend the preliminary investigation in the criminal case no. 12073 of 20 January 2003 and the preliminary investigation was reopened. After reopening proceedings in the case [11 persons including the former military commandant of the Town of Grozny], were interviewed as witnesses. Moreover, a number of [actions were commissioned] to establish witnesses of the committed crime.

On 10 May 2005 the victim, S. S. Luluyev, was again interviewed and he stated that in the course of the search for his relatives he had been assisted by [the] officers of the [Department] of the Interior of the Leninskiy District of the Town of Grozny, [Mr K.], [Mr Yu.] and the operating officer by name of “Mikhail”. Moreover, the search was conducted [by] an officer of the [FSB] by surname of “Balandin”. Mr S.S. Luluyev has learned from the above persons that the driver of the [APC] with the hull number 110 was a serviceman by name of “Fedyakin”. Mr S.S. Luluyev did not give his consent to have the corpse of his wife exhumed. The corpse was examined earlier. The forensic medical examination established the violent nature of Mrs N.S. Luluyeva's death.

On 28 May 2004 the [Prosecutor's Office] of the Sverdlovsk Region [was commissioned] to interview [Mr K.] as a witness. He stated that in 2000 he had been detached to the Town of Grozny to serve as an operating officer of [the] criminal investigations department. Pursuant to the fact of abduction of Mrs N.S. Luluyeva, sisters Gakayevy and Mr Z. Tazurkayev measures had been taken with a view to establish persons who had committed the abduction. In particular, the hull number of the [APC], in which the abducted had been taken away, had been established. It turned out impossible to establish the surname of the driver of that armoured personnel vehicle. According to [the] received information special measures on Mozdokskaya Street during the indicated period of time were conducted by the Sofrino brigade of internal troops of the [...] Ministry of the Interior. During his second duty trip to the Chechen Republic in March 2001 he learned that the corpses of the abducted persons had been found and identified.

On 28 May 2005 the Military [Prosecutor's Office] of the Moscow Military District [was commissioned] to carry out several investigative actions to check the information that the crime had been committed by [the] servicemen of the regiment no. 245 of the Sofrino brigade of internal troops of the [...] Ministry of the Interior. According to the reply received from the commanding officer of the military unit no. 3641 (the Sofrino brigade of internal troops of the [...] Ministry of the Interior) a serviceman by surname of Fedyakin is not listed among the personnel of the unit and an [APC] with the hull number 110 is not listed among the vehicles of the unit. The military unit no. 3641 did not include regiment no. 245. The military unit comprises four operational battalions and not regiments.

On 8 September 2004 an inquiry concerning [the] officer of the [FSB] S. Balandin was sent to the Head of the Chechen Republican Directorate of the [FSB]. The criminal case-file was added with the reply of the Deputy Head of the Chechen Republican Directorate of the [FSB], according to which an officer S. Balandin is not listed among the personnel of the Directorate.

The preliminary investigation in the case was repeatedly suspended. On 15 February 2005 the [Deputy of the Chechnya Republican Prosecutor] by his decree quashed the decree to suspend the preliminary investigation. Pursuant to Section 37 of the Code of

Criminal Procedure of the Russian Federation, the directives were issued to eliminate inconsistencies in the testimony of the witness [K.], to establish women who were cleaning the territory near the commandant's office of the Leninskiy District of the Town of Grozny and who allegedly heard shouts coming from [APCs], to interview Mr. Kh.N. Djabrailov again.

On 18 March 2005 the preliminary investigation in the case was suspended pursuant to Section 208 §1(1) of the Code of Criminal Procedure of the Russian Federation (in view of non-establishment of the person to be prosecuted as the accused [of the abduction]).

On 22 August 2005 the Deputy [Prosecutor] of the Leninskiy District of the Town of Grozny by his decree quashed the decree to suspend the preliminary investigation in the criminal case and the preliminary investigation was reopened. On that very day a fresh inquiry requesting the information on whereabouts of Mr S. Balandin was sent to the Head of the Chechen Republican Directorate of the [FSB]. On 24 August 2005 an inquiry requesting the information on whereabouts of [the] officer of the [Department] of the Interior, [Mr Yu], and [an] operating officer by name "Mikhail" was sent to the Head of the Leninskiy District Department of the Interior of the Town of Grozny. On 26 August 2005 a fresh [commission request] was sent to the [Prosecutor's Office] of the Town of Severouralsk of the Sverdlovsk Region to interview [Mr K.]. On 31 August 2005 the military [Prosecutor's Office] of the military unit no. 20102 [was commissioned] to establish a military unit equipped with an [APC] with the hull number 110. At present, the investigation in the case is in progress."

II. RELEVANT DOMESTIC LAW

1. The Code of Criminal Procedure

65. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic. From 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (CCP).

66. The 1960 CCP required a competent authority to institute criminal proceedings if there was a suspicion that a crime had been committed. That authority was under an obligation to carry out all measures provided for by law to establish the facts and to identify those responsible and secure their conviction. The decision whether or not to institute criminal proceedings had to be taken within three days of the first report on the relevant facts (Articles 3, 108-09). Where an investigating body refused to open or terminated a criminal investigation, a reasoned decision was to be provided. Such decisions could be appealed to a higher-ranking prosecutor or to a court (Articles 113 and 209).

67. Criminal investigation is now carried out under the supervision of a prosecutor whose powers include giving detailed instructions to the

investigating authorities as to what measures should be taken to investigate the case (Article 37 §2(11) of the new CCP).

68. Under the old CCP, during criminal proceedings persons who had been granted victim status could submit evidence and file applications, have full access to the case file once the investigation was complete, challenge appointments and appeal decisions or judgments in the case. At an inquest, the close relatives of the deceased were to be granted victim status (Article 53). Similar provisions are contained in the new CCP.

69. Article 161 of the new CCP establishes the rule of the impermissibility of disclosure of data from the preliminary investigation. Under part 3 of that Article, information from the investigation file may be divulged with the permission of a prosecutor or investigator and only so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. Divulging information about the private life of participants in criminal proceedings without their permission is prohibited.

70. Article 195 § 3 of the old CCP provided for a criminal investigation to be adjourned if no suspect in a crime could be identified. Similar provisions are set out in Article 208 § 1(1) of the new CCP.

2. The Code of Civil Procedure

71. Article 214 part 4 of the Code of Civil Procedure (*Гражданский процессуальный Кодекс РСФСР*), which was in force until 1 February 2003, provided that courts had to suspend consideration of a case if it could not be considered until another set of civil, criminal or administrative proceedings had been completed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

72. The applicants submitted that Article 2 of the Convention had been violated in respect of their mother and close relative, Nura Luluyeva. They submitted that the circumstances of her detention and the discovery of her body in a mass grave indicated that she had been killed by federal forces. They further submitted that there had been a violation of the procedural aspect of Article 2 since no effective investigation had been carried out into the circumstances of her detention and murder. They relied on Article 2 of the Convention, which provides:

“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 alleged failure to protect the right to life

1. Arguments of the parties

73. The applicants submitted that there was overwhelming evidence to conclude that Nura Luluyeva had been deprived of her life by State agents in circumstances that violated Article 2 of the Convention. They argued that she had been detained on 3 June 2000 during a “mopping-up” operation in Mozdokskaya Street in the northern part of Grozny and then killed. They relied on the findings of the investigation that she had been detained by a group of armed men who forced her into an APC – a military vehicle. They referred to the witnesses' statements and to the information received from the officials of the Leninskiy VOVD about the hull number of that APC. They further argued that the discovery of her body in a mass grave in close proximity (less than one km) to a large military base in Khankala, access to which was restricted almost exclusively to Russian military forces, confirmed the participation of State agents in the killing of Nura Luluyeva. The applicants further noted that the authorities had failed to provide an explanation or an alternative version of the events.

74. The Government did not dispute the fact that Nura Luluyeva had been murdered, and they acknowledged that it was her body which had been discovered with others in the mass grave in early 2001. However, they did not find it possible to answer the question of whether there had been a violation of Article 2 in respect of Nura Luluyeva since the investigation was still in progress. They maintained that Nura Luluyeva had been apprehended by persons whose identity had not been established, and that the materials in the investigative authorities' possession did not permit the conclusion that any state agency or servicemen were involved.

75. The Government referred to the accounts by the Prosecutor General's Office on the latest steps made in investigating the case of Nura Luluyeva,

stating that several witnesses had been questioned concerning the alleged participation of certain servicemen in the security operation at Mozdokskaya Street. Apparently further interrogations were needed. It also contained a mention of unsuccessful attempts to establish whether the APC with hull number 110 belonged to the implicated military unit. The accounts contained no conclusions on any of the above matters and did not indicate whether any version other than that alleged by the applicant was being pursued by the investigation.

2. *The Court's assessment*

(a) **General considerations**

76. The Court reiterates that Article 2, which safeguards the right to life and sets out those circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (*McCann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, §§ 146-147).

77. In the light of the importance of the protection afforded by Article 2, the Court 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 (see, amongst other authorities, *Avsar v. Turkey*, no. 25657/94, § 391, ECHR 2001).

78. As to the facts that are in dispute, the Court recalls its case-law confirming the standard of proof as “beyond reasonable doubt” in its assessment of evidence (*Avsar v. Turkey*, cited above, § 282). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (*Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

79. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, the *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, § 32, and *Avsar* cited above, § 283)

even if certain domestic proceedings and investigations have already taken place.

(b) Application in the present case

80. The Court notes that although the Government deny that State servicemen were involved in killing Nura Luluyeva, they do not dispute as such any of the specific facts underlying the applicants' version of her disappearance and death. In particular, it is a common ground that Nura Luluyeva was abducted from the market place at Mozdokskaya Street by armed men dressed in camouflage and wearing masks. The Government also accepted that a military vehicle – an APC – was present at the scene at the time of her apprehension and that she was driven away in this vehicle on the last occasion she was seen alive. It is also acknowledged by the Government, and it was unequivocally established in the domestic proceedings, that Nura Luluyeva died as a result of murder, and that her body was found at the same place as the bodies of the other people with whom she was detained.

81. It also appears uncontested that Nura Luluyeva's apprehension took place at the same time as a security raid was being conducted in the same street. According to the witness testimony of K., quoted by the Government, a “mopping-up operation” was being carried out in Grozny's Mozdokskaya Street by the military detachment referred to as the Sofrino interior security troops. Although this detachment's participation was not confirmed or disproved in the domestic proceedings, the fact that a security operation was indeed taking place at that time and place has never been denied by any officials advising on the matter. The Court therefore considers it established that Nura Luluyeva's apprehension coincided with a special security operation carried out by military or security servicemen in the immediate vicinity.

82. The Court further notes that neither the Government nor the evidence made available to the Court suggest that any armed individuals other than the State servicemen conducting the above security operation were present at the scene of Nura Luluyeva's apprehension. In particular, there is nothing in the witnesses' statements to imply the involvement of illegal paramilitaries. In these circumstances, the Court cannot but conclude that Nura Luluyeva was apprehended and detained by State servicemen in the course of conducting the special security operation.

83. The next point to be considered by the Court is whether there is a link between Nura Luluyeva's arrest by State servicemen and her death. It remains unclear whether Nura Luluyeva was killed immediately after her apprehension or some time later. The forensic report of 28 April 2001 dates her death to 3-10 months before the discovery of the corpse. However, for official purposes she was presumed dead as of 3 June 2000, the date of her disappearance, as the medical post-mortem report and the official death

certificates indicate. The link between her kidnapping and death has furthermore been assumed in all the domestic proceedings, and the Court takes that into account.

84. Finally, and above all, the discovery of Nura Luluyeva's body together with the bodies of the other people with whom she was detained strongly suggests that her death belonged to the same sequence of events as her arrest. The fact that the bodies were wearing the same clothes as those worn by the individuals in question on the day of their detention (see § 30 above) provides further support for this conclusion.

85. Having regard to the above, the Court considers that there exists a body of evidence that attains the standard of proof “beyond reasonable doubt”, and thus makes it possible to hold the State authorities responsible for Nura Luluyeva's death. It follows that there has been a violation of Article 2 of the Convention in this respect.

B. Alleged inadequacy of the investigation

1. Arguments of the parties

86. The applicants alleged that the authorities had failed to conduct an effective investigation into the circumstances of Nura Luluyeva's abduction and death, in violation of the procedural aspect of Article 2. They argued that the investigation fell short of the standards of the European Convention and of the national legislation. They pointed to the delay in opening the investigation, its repeated and unfounded suspensions and its duration for over six years without significant progress. They emphasised that the second applicant, who had alerted the authorities on the day of his wife's detention, was formally questioned as a witness and granted victim status as late as in December 2000, that is, six months after the incident. On the basis of documents from the investigation file submitted by the Government, they questioned the relevance and effectiveness of the measures taken to investigate the case; they also complained that the authorities had failed to verify all possible investigative versions, and in particular the one implicating State servicemen.

87. The applicants further alleged that the investigation was not public. Apart from the second applicant, none of Nura Luluyeva's close relatives had been granted victim status. They also claimed that the authorities had systematically failed to inform them of progress in the investigation and of the procedural events in the case.

88. The Government maintained that the investigation into Nura Luluyeva's abduction and killing was underway and referred to the difficulties in the investigation arising from the need to fight organised crime and terrorism in Chechnya. They disagreed that the investigation had been deficient and claimed that the authorities were doing everything

possible in the circumstances: in other words, the competent officials had started a criminal investigation and had taken all necessary measures in accordance with the national legislation. It had been established that Nura Luluyeva was forcibly detained by a group of armed persons who blindfolded her and forced her into an APC and that she was subsequently murdered, probably on the day of detention. They admitted that the criminal investigation had been suspended and resumed on several occasions, but contended that attempts to solve the crime were continuing. The supervising prosecutors were exercising due control over the investigation and giving instructions about the necessary investigative actions.

89. The Government contested the applicants' allegations that the investigation was not public. They referred to the answers received by the applicants from the State authorities (the FSB, the Ministry of the Interior, the military commander of the Leninskiy district and the Prosecutor's Office), which in their view demonstrated that the applicants were duly informed of the progress of the investigation. The Government also pointed out that the proceedings in their initial phase (2000-2001) were governed by the then valid Code of Criminal Procedure which did not entitle the victims to familiarise themselves with the investigation file until the investigation had been completed. In this respect they informed the Court that the domestic rules had since changed.

2. *The Court's assessment*

(a) **General considerations**

90. 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, *McCann and Others v. the United Kingdom* cited above, § 161; and the *Kaya v. Turkey* judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105). The essential purpose of such 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. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures (see *İlhan v. Turkey* [GC] no. 22277/93, § 63, ECHR 2000-VII).

91. The investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Ögur v. Turkey* [GC], no. 21954/93, § 88, ECHR 1999-III). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (with regard to autopsies, see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; concerning witnesses, for example, *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109; concerning forensic evidence, for example, *Gül v. Turkey*, no. 22676/93, § 89, judgment of 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling below this standard.

92. In this context, there must also be an implicit requirement of promptness and reasonable expedition (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, § 102-104; and *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III, §§ 106-107). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

(b) Application in the present case

93. In the present case, an investigation was carried out into the abduction and killing of Nura Luluyeva. The Court must assess whether that investigation met the requirements of Article 2 of the Convention. In this respect the Court notes that its knowledge of the criminal proceedings at issue is limited to the materials from the investigation file selected by the respondent Government (see §§ 49-50 above). Drawing inferences from the respondent Government's behaviour when evidence is being obtained (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161), the Court assumes that the materials made available to it have been selected so as to demonstrate to the maximum extent possible the effectiveness of the investigation in question. It will therefore assess the merits of this complaint on the basis of the existing elements in the file and in the light of these inferences.

94. The Court first notes that, in the instant case, the authorities were instantly aware of Nura Luluyeva's arrest because the police and a representative of the local administration happened to be present at the scene. According to their statements as witnesses, they did not interfere

because they believed at the time that they were witnessing a lawful arrest by a competent law-enforcement body. However, they could not have been completely reassured, because the servicemen refused to identify themselves or tell them on behalf of which agency they were acting.

95. Accordingly, when that afternoon the second applicant came to the Leninskiy VOVD and complained about the incident, the very least the police could have been expected to do was to verify as rapidly as possible which authority, if any, had taken the women into custody. If within a few hours or, at the most, within the next few days, the action could not be attributed to any authority, this should have provided grounds to suspect kidnapping and to open an investigation without further delay.

96. However, the materials presented to the Court disclose that, despite the applicants' numerous frantic requests, the first official enquiries concerning Nura Luluyeva's supposed arrest were made to the prosecutor's office, to the military commandant and to the FSB no earlier than on 20 June 2000, that is, a fortnight after her apprehension. No criminal proceedings were opened until 23 June 2000, that is, 20 days after her disappearance. The Court sees no reasonable explanation for such long delays in a situation where prompt action was vital.

97. The Court further notes that once the criminal investigation had been opened the manner in which it was conducted could not be described as thorough and efficient, since it was plagued with delays in taking even the most trivial steps. In particular, after a number of witnesses testified in June and July 2000 that the detained women had been taken away in an APC, this information was not followed up. No attempts to track down the APC were made, even after the witnesses had indicated its hull number in December 2000. The first official enquiry concerning the APC dates to 2005, that is, after this information had been demanded by the Court.

98. The Court further notes that the discovery of Nura Luluyeva's body in 2001 provided the authorities with new important facts. In particular, it was then established that her death was a result of a murder and, what is more, one of a series of murders. Such a major event should have prompted the investigative authorities to intensify their efforts. However, no information has been submitted by the Government as to whether any investigative actions were taken following the discovery of the mass grave, apart from the identification and forensic examination of the bodies.

99. The Court also notes that between June 2000 and the beginning of 2006 the investigation was adjourned and reopened at least eight times. The prosecutors ordered certain steps to be taken on several occasions (see § 46 above). However, these instructions were either not followed or were followed with an unacceptable delay. Some orders have still to be complied with, despite having been made more than once, such as the order to ask the military prosecutor's office which military detachment had had in its possession the APC with hull number 110. The Court finds a repeated

failure to comply with the supervising prosecutor's instruction particularly inexplicable and frustrating where all that was needed was to obtain official information from a State agency.

100. Finally, there has been a substantial delay in granting victim status to the applicants. It was not until December 2000 that the decision to grant victim status to the second applicant was taken, thus affording him minimum guarantees in the criminal proceedings. Moreover, even after victim status had been granted, information concerning the progress of the investigation was provided to him only occasionally and in part.

101. In the light of the foregoing, and with regard to the inferences drawn from the respondent Government's presentation of evidence (§ 93 above) the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance and death of Nura Luluyeva. The Court accordingly holds that there has been a violation of Article 2 also in this respect.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

102. The applicants alleged that Nura Luluyeva had been subjected to inhuman and degrading treatment and that the authorities had failed to investigate this allegation. They also complained that the suffering inflicted upon them in relation to her disappearance and death constituted treatment prohibited by Article 3 of the Convention, which provides:

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

A. The alleged failure to protect Nura Luluyeva from inhuman and degrading treatment

1. Arguments of the parties

103. The applicants complained that the circumstances of her detention strongly indicated that Nura Luluyeva had been subjected to ill-treatment in violation of Article 3 of the Convention. They further submitted that the authorities had failed to investigate effectively the allegation of ill-treatment, and therefore failed in their positive obligations under Article 3.

104. The Government did not make any comments as regards this complaint, other than general reference to the ongoing domestic investigation and the absence of any findings therein.

2. The Court's assessment

105. The Court recalls its established case-law according to which allegations of ill-treatment must be supported by appropriate evidence (see,

mutatis mutandis, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. pp. 17-18, § 30). 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, pp. 64-65, § 161 *in fine*).

106. It is undisputed that Nura Luluyeva died as a result of the use of force. However the description of the injuries found on her body by the forensic experts does not permit the Court to conclude beyond reasonable doubt that she had been tortured or otherwise ill-treated prior to her death. It therefore sees no basis for finding a violation of Article 3 in this context

107. As to the alleged violation of procedural guarantees of Article 3, the Court considers that in the absence of any reliable information about the alleged ill-treatment of Nura Luluyeva this complaint raises no separate issue from that examined under Article 2 (above) and to be examined under Article 13 of the Convention (below).

B. The alleged violation of Article 3 in respect of the applicants

1. Arguments of the parties

108. The applicants submitted that, as a result of the anguish and emotional distress suffered by them in connection with the detention and murder of their mother and close relative, they had been subjected to ill-treatment falling within the scope of Article 3 of the Convention.

109. The Government made no separate comments as regards this complaint.

2. The Court's assessment

(a) The applicants' standing as victims

110. The applicants submitted that, as close relatives of Nura Luluyeva, that is, her children, husband, parents and brothers, they had suffered severe mental distress and anguish as a result of the manner in which the authorities had responded to their enquiries and treated them.

111. The Court reiterates that the question whether a family member may claim to be a victim of treatment contrary to Article 3 will depend on the existence of special factors which gives the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements will include the proximity of the family tie – in that context, a certain weight will attach to the parent-child bond, – the particular circumstances of the relationship, the extent to which the

family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002; *Çakıcı v. Turkey* [GC], no. 23657/94, § 98, ECHR 1999-IV; and *Timurtaş v. Turkey*, no. 23531/94, § 95, ECHR 2000-VI). The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct.

112. In the present case, that the Government did not dispute the victim status of the applicants. The Court, moreover, notes that Nura Luluyeva's children, husband and parents belong to her immediate family, and, to a certain extent, so do her brothers. Moreover, although it was mainly the second applicant who, in view of his legal profession, had the most frequent encounters with the authorities, other family members were also closely involved in the search for Nura Luluyeva. In this connection, it is noteworthy that one of her brothers went to identify Nura Luluyeva's body after the discovery of the mass grave (see § 30).

113. In view of the above, the Court does not consider it necessary to distinguish in the present case any family members who could not have standing as victims for the purposes of Article 3.

(b) Scope of the present case

114. The Court notes that while a family member of a “disappeared person” can claim to be a victim of treatment contrary to Article 3 (see *Kurt v. Turkey* judgment, §§ 130-34), the same principle would not usually apply to situations where the person taken into custody has later been found dead (see, for example, *Tanlı v. Turkey*, no. 26129/95, § 159, ECHR 2001-III (extracts)). In the latter cases the Court would limit its findings to Article 2. However, if a period of initial disappearance is long it may in certain circumstances give rise to a separate issue under Article 3 (see *Gongadze v. Ukraine*, no. 34056/02, §§ 184-186, ECHR 2005-...).

115. In the present case, the news about Nura Luluyeva's death had been preceded by a 10-month period when she was deemed disappeared and during which the investigation into her kidnapping was being conducted. The Court is thus faced with a situation in which there exists a distinct period during which the applicants sustained uncertainty, anguish and distress characteristic to the specific phenomenon of disappearances. It will therefore proceed to examine whether the authorities' conduct in this period amounted to a violation of Article 3 in respect of the applicants.

(c) Alleged violation of Article 3

116. The Court refers to the above findings that there was inexplicable procrastination on the part of the authorities in instituting criminal proceedings into Nura Luluyeva's abduction. The applicants' distress in that period is attested by their numerous efforts to prompt the authorities to act, as well as by their own attempts to search for her and her cousins.

117. As an additional element contributing to the applicant's sufferings, the Court notes the authorities' unjustified delay in granting victim status to the applicants (see § 100 above), lack of access to the case file and the sparse information they received about the investigation throughout the proceedings. It follows that the applicants' uncertainty about the fate of Nura Luluyeva was aggravated by their exclusion from monitoring the progress of the investigation.

118. The Court therefore finds that the applicants suffered distress and anguish as a result of the disappearance of Nura Luluyeva and of their inability to find out what had happened to her or to receive up-to-date and exhaustive information on the investigation. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3. The Court concludes that there has been a violation of that Article in respect of the applicants.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

119. The applicants complained that the provisions of Article 5 as a whole had been violated in respect of Nura Luluyeva. Article 5 reads as follows:

“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:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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.”

120. The applicants referred to the known circumstances of Nura Luluyeva's arrest at the market place and claimed that it was unlawful, arbitrary and devoid of any procedural guarantees provided for by domestic law and the Convention.

121. The Government maintained that it remained unknown whether any State authority or servicemen had been involved in Nura Luluyeva's apprehension and deprivation of liberty.

122. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. In order to minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure. The unacknowledged detention of an individual is a complete negation of these guarantees and discloses a very grave violation of Article 5. Bearing in mind the responsibility of the authorities to account for individuals under their control, Article 5 requires them to take effective measures to safeguard against the risk of disappearance and to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and has not been seen since (see *Çakici v. Turkey*, cited above, § 104; and *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001).

123. It has been established that Nura Luluyeva was detained on 3 June 2000 by State authorities and has not been seen alive since (see § 82 above). The Government submitted no explanation for her detention and provided

no documents of substance from the domestic investigation into her arrest. The Court thus concludes that she was a victim of unacknowledged detention, in violation of Article 5 of the Convention.

124. The Court further considers that the authorities should have been alert to the need to investigate more thoroughly and promptly 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 as concerns the conduct of the investigation, leave no doubt that the authorities failed to take prompt and effective measures to safeguard Nura Luluyeva against the risk of disappearance.

125. Consequently, the Court finds that Nura Luluyeva was held in unacknowledged detention in complete absence of the safeguards contained in Article 5, which constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

126. The applicants stated that they were deprived of access to a court, contrary to the provisions of Article 6, the relevant part of which reads:

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

127. The applicants submitted that they had had no access to a court because their civil claim for damages would depend entirely on the outcome of the criminal investigation into the disappearance and murder of Nura Luluyeva. In the absence of any findings, they could not effectively apply to a court.

128. The Government disputed this allegation in general terms.

129. 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 to be discussed further under Article 13. In such circumstances, the Court finds that no separate issues arise under Article 6 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

130. The applicants alleged a violation of Article 8 of the Convention, which reads:

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

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

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

131. The applicants complained that the abduction and murder of their mother and close relative constituted an unjustified interference with their right to respect for their family life, in breach of Article 8 of the Convention.

132. The Government made no separate comments as regards this complaint.

133. In the circumstances of the present case, notwithstanding the tragic consequences for the family, the Court does not find that any issue arises separate from the above conclusions that there has been a violation of Articles 2 and 3 of the Convention (see §§ 85 and 118 above).

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

134. The applicants complained that they had had no effective remedies in respect of the violations alleged under Articles 2, 3 and 5 of the Convention. They referred 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.”

135. The Government's comments consisted of a general reference to the ongoing criminal proceedings.

136. 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. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions by the authorities of the respondent State (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, § 95; and *Aydin v. Turkey* judgment of 25 September 1997, *Reports* 1997-VI, § 103).

137. Given the fundamental importance of the rights guaranteed by Article 2 of the Convention, 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, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *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).

138. In view of the Court's findings above with regard to Article 2, this complaint is clearly “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131 § 52). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13.

139. However, in circumstances where, as here, the criminal investigation into the killings was ineffective (see § 101 above), and where the effectiveness of any other remedy that may have existed, including the civil remedies, was consequently undermined, the Court finds that the State has failed in its obligation under Article 13 of the Convention.

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

141. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court recalls its findings of a violation of these provisions (see §§ 107 and 125 above). In the light of this it considers that no separate issues arise in respect of Article 13 in connection with Articles 3 and 5 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

142. The applicants alleged a violation of Article 14 of the Convention, which reads:

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

143. The applicants complained about discrimination, alleging that the above violations occurred because their family is of Chechen origin and they are residents of Chechnya.

144. The Government did not address these issues beyond denying the factual basis of the substantive complaints.

145. The Court notes that those complaints arise out of the same facts as those considered under Articles 2 and 13 of the Convention. In the light of its conclusions with respect to those Articles (see §§ 85 and 140 above) the

Court does not consider it necessary to examine those complaints separately under Article 14.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

146. 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

147. The applicants submitted that Nura Luluyeva, who was 40 years old at the time of her death, was working and, together with her husband, was supporting her three youngest children and would have continued to do so until they reached 18. On the assumption that Nura Luluyeva would be earning at least the minimum wage, the applicants claimed RUR 112,313.78 in respect of the estimated loss of earnings of Nura Luluyeva, composed as follows:

- (i) the third applicant – RUR 668,87;
- (ii) the fourth applicant – RUR 90,905.83;
- (iii) the fifth applicant – RUR 20,739.08.

148. The applicants also claimed RUR 54,200 to cover the expenses which they had borne in connection with Nura Luluyeva's funeral, including travel and ceremony costs. They submitted relevant receipts to confirm the expenses incurred.

149. In total the applicants claimed RUR 166,513.78 (an equivalent of 4,850 euros (EUR)) in respect of pecuniary damage.

150. The Government disputed the claims on the grounds that there was no evidence that Nura Luluyeva had intended to work until her children reached 18 or that she intended to spend her income on supporting her children.

151. As regards the applicant's claim for loss of earnings, the Court's case-law has established that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in appropriate cases, include compensation in respect of loss of earnings (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20; and *Çakıcı*, cited above, § 127).

152. The Court notes that Nura Luluyeva, together with her husband, provided a living for her family. The Court also recalls its finding that the authorities were liable under Article 2 of the Convention for her death (see

§ 85 above). In these circumstances, there was a direct causal link between the violation of Article 2 and the loss, suffered by Nura Luluyeva's children, of the financial support provided by her. Having regard to Nura Luluyeva's age at the time of her death the Court sees no reason to doubt, as the Government argue, that she would have continued to work and earn money, or that the dependant applicants would have benefited from this.

153. In the light of the foregoing, the Court awards the total sum of EUR 4,850 euros (EUR) in respect of pecuniary damage, payable to the first applicant on behalf of the third, the fourth and the fifth applicants.

B. Non-pecuniary damage

154. As to non-pecuniary damage, the applicants stated that they had lost their close relative and endured years of stress, frustration and helplessness in relation to her disappearance and death, aggravated by the authorities' inactivity in the investigation of these events. The applicants claimed the overall sum of EUR 150,000, which comprised the following claims:

- (i) four of Nura Luluyeva's children claimed EUR 25,000 in respect of the non-pecuniary damage caused by the death of their mother;
- (ii) Nura Luluyeva's mother claimed EUR 20,000 in respect of the non-pecuniary damage caused by the death of her daughter;
- (iii) three of Nura Luluyeva's brothers claimed EUR 10,000 in respect of the non-pecuniary damage caused by the death of their sister;
- (iv) the second and the seventh applicants did not claim compensation for non-pecuniary damage.

155. The Government submitted that the sums claimed by the applicants were excessive.

156. The Court recalls the violations of Articles 2, 3, 5 and 13 of the Convention which it has found. Consequently, and having regard to the awards made in comparable cases, the Court, on an equitable basis, awards the applicants the following sums for non-pecuniary damage:

- (i) each of the first, the third, the fourth and the fifth applicants, the sum of EUR 12,000;
- (ii) the sixth applicant, the sum of EUR 10,000;
- (iii) each of the eighth, ninth and tenth applicants, the sum of EUR 2,000,

making an aggregate sum of EUR 64,000, plus any tax that may be chargeable on the above amounts.

C. Costs and expenses

157. The applicants were represented by Gareth Peirce and by the SRJI. They submitted a schedule of costs and expenses that included research and

interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 9,700 plus USD 1,395 (an equivalent of EUR 1,084), which comprised:

- EUR 750 for the preparation of the initial application;
- EUR 1,250 plus USD 801 for the preparation and translation of additional submissions;
- EUR 3,500 plus USD 594 for the preparation and translation of the applicant's reply to the Government's memorandum;
- EUR 1,500 in connection with the preparation of additional correspondence with the ECHR;
- EUR 950 in connection with the preparation of the applicant's response to the ECHR decision on admissibility;
- EUR 1,750 in connection with the preparation of legal documents submitted to the domestic law-enforcement agencies;

158. The applicants also claimed EUR 679 for administrative costs (7% of legal fees).

159. The Government did not dispute the details of the calculations submitted by the applicant, but contended that the sum claimed was excessive for a non-profit organisation such as the applicant's representative, the SRJI.

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

161. The Court notes that, under a contract entered into by the first applicant in October 2005, he agreed to pay the SRJI's representative those costs and expenses incurred for representation before the Court, subject to delivery by the Court of a final judgment concerning the present application and to payment by the Russian Federation of the legal costs should these be granted by the Court. Having regard to the rates for the work of the SRJI lawyers and senior staff and to the administrative costs, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives.

162. Further, it has to be established whether the costs and expenses incurred by the applicant for legal representation were necessary. The Court notes that this case was rather complex, especially in view of the large amount of documentary evidence involved, and required the research and preparation in the amount stipulated by the representative.

163. In these circumstances and having regard to the details of the claims submitted by the applicants, the Court awards them the full amount

of the claimed sum of EUR 11,463, less the EUR 715 received by way of legal aid from the Council of Europe, plus any tax that may be chargeable.

D. Default interest

164. 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. *Holds* that there has been a violation of Article 2 of the Convention in respect of the disappearance and death of Nura Luluyeva;
2. *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 of Nura Luluyeva's disappearance and death;
3. *Holds* that there has been no violation of Article 3 of the Convention as regards the alleged ill-treatment of Nura Luluyeva;
4. *Holds* that no separate issues arise under Article 3 of the Convention in respect of the failure to conduct an effective investigation into the alleged ill-treatment of Nura Luluyeva;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention;
8. *Holds* that no separate issues arise under Articles 6, 8 and 14 of the Convention, and under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5 of the Convention;
9. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts, all of which, save for those payable to the bank in the

Netherlands, are to be converted into Russian roubles at the rate applicable at the date of settlement :

- (i) EUR 4,850 (four thousand eight hundred and fifty euros) in respect of pecuniary damage, payable to the first applicant on behalf of the third, the fourth and the fifth applicants;
 - (ii) EUR 12,000 (twelve thousand euros) to each of the first, third, fourth and fifth applicants in respect of non-pecuniary damage;
 - (iii) EUR 10,000 (ten thousand euros) to the sixth applicant in respect of non-pecuniary damage;
 - (iv) EUR 2,000 (two thousand euros) to each of the eighth, ninth and tenth applicants in respect of non-pecuniary damage;
 - (v) EUR 10,748 (ten thousand seven hundred and forty eight euros) in respect of costs and expenses, to be paid in euros to the bank account in the Netherlands indicated by the applicants' representatives;
 - (vi) any tax that may be chargeable on the above amounts.
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 9 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President