



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

FIRST SECTION

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

*(Application no. 9960/05)*

JUDGMENT

STRASBOURG

16 December 2010

**FINAL**

**20/06/2011**

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



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

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 November 2010,

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

**PROCEDURE**

1. The case originated in an application (no. 9960/05) 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 five Russian nationals listed in paragraph 5 below (“the applicants”) on 15 March 2005.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new representative, Mr G. Matyushkin.

3. On 7 January 2008 the Court decided to apply Rule 41 of the Rules of Court, to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. The President of the Chamber acceded to the Government's request not to make publicly accessible the documents from the criminal investigation file deposited with the Registry in connection with the application (Rule 33 of the Rules of Court).

4. The Government objected to the joint examination of the admissibility and merits of the application and to the application of Rule 41 of the Rules of Court. Having considered the Government's objections, the Court dismissed them.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- (1) Ms Khava Tumayeva, born in 1947;
- (2) Ms Aset Khatuyeva, born in 1983;
- (3) Ms Ms Kheda Gigayeva, born in 1979;
- (4) Ms Rukiyat Tumayeva, born in 1981; and
- (5) Ms Zinaida Tumayeva, born in 1954.

6. The applicants are Russian nationals, who live in the village of Valerik in the Achkhoy-Martanovskiy District of the Chechen Republic.

7. The first applicant is the mother of Mr Shamkhan Tumayev, born in 1982. The second applicant is Shamkhan Tumayev's common-law wife; they are the parents of two minor children. The third and fourth applicants are Shamkhan Tumayev's sisters. The fifth applicant is his aunt.

#### **A. Disappearance of Shamkhan Tumayev**

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

###### **(a) Abduction of Shamkhan Tumayev**

8. At the material time the Tumayev family lived at 13 Titova Street in the village of Valerik. The second applicant was pregnant with her second child. Shamkhan Tumayev occupied the right wing of the house together with the second applicant and their child, whilst the first and third to fifth applicants occupied the left wing.

9. According to the applicants, at the material time the village of Valerik was under the firm control of the Russian federal troops, who maintained manned checkpoints on the roads at the entry to and exit from the village. Moreover, at the time of the events described below, the village was under a curfew and around forty Russian servicemen were stationed there on a permanent basis.

10. In the applicants' submission, between 18 and 19 September 2004 about a hundred servicemen from units operating under the direction of Ramzan Kadyrov, the then deputy prime minister of the Chechen Republic, arrived in Valerik with a view to carrying out a sweeping operation. They deployed, amongst other things, tanks, armoured personnel carriers and UAZ all-terrain vehicles.

11. At about 2 a.m. on 19 September 2004, around fifteen to twenty armed men in camouflage uniforms arrived at the applicants' house. They

spoke unaccented Russian and all but one of them wore black masks. They shouted: "Open the doors! Police!". The second applicant opened the door. Several armed men entered the premises and put the second applicant onto the floor. Some armed men stayed in the courtyard. The intruders took the keys from the second applicant and confiscated several video cassettes of various movies, a video cassette with a recording of Shamkhan Tumayev's father, and Shamkhan Tumayev's mobile phone from the safe. They also took Shamkhan Tumayev's passport, checked it and brought Shamkhan Tumayev away.

12. In the meantime, the first applicant also opened the door. The intruders immediately asked her to give them a passport. The first applicant inferred that they were servicemen carrying out a passport check. She started looking for her own passport. According to the first applicant, in the meantime the servicemen turned everything upside down. Shortly thereafter they locked the first applicant and her relatives in their part of the house. After a while she heard some movements coming from outside, a shot being fired and the noise of leaving vehicles. The first applicant managed to get outside through the window, whereupon she found out that the intruders had taken away Shamkhan Tumayev, his mobile phone and several video cassettes. Her neighbours told her that they had seen a silvery UAZ-469 vehicle. The first applicant also found two spent cartridges in the yard.

13. Some of the applicants' neighbours and relatives, who had been woken up because of the noise, tried to follow the abductors but the servicemen threatened to kill them, beat them up, put them against a wall and fired several shots above their heads.

14. In the morning of 20 September 2004 the applicants discovered that three more inhabitants of the village of Valerik, including a Mr Kh., had been abducted by the armed men.

15. The description of the events of the night of 19 September 2004 is based on the written statements dated 26 May 2005 by the first, second and third applicants and Z.T., on the written statements of the fifth applicant and A.A. made on 27 May 2005, and on the applicants' hand-written sketch of the premises at 13 Titova Street.

16. The applicants have had no news of Shamkhan Tumayev since 19 September 2004.

**(b) Media reports regarding Shamkhan Tumayev's disappearance and his fellow residents' meeting in Achkhoy-Martan**

17. On 21 September 2004 a group of residents of Valerik, including the applicants, gathered at the administration of Achkhoy-Martan to protest against the abduction of Shamkhan Tumayev.

18. The applicants submitted several printouts from internet media and an article from a local newspaper. The information contained therein may be summarised as follows:

19. On 21 September 2004 an internet newspaper called “Grani.ru” published the following information:

“On 21 September a meeting was conducted in Achkhoy-Martan. According to the news agency “Prima”, participants in the meeting had sought to liberate their fellow resident Shamkhan Tumayev, ... who, according to them, had been abducted by [Ramzan] Kadyrov's forces ...

Several days ago a large number of servicemen of the “battalion” named after Akhmad Kadyrov (the former security service of the former president of Chechnya) had arrived in the [Achkhoy-Martanovskiy] District, which had been followed by “sweeping operations” and abductions of residents of the district.

Two days ago, at about 3 a.m., unknown masked people took 22-year-old Shamkhan Tumayev away by force without giving any explanations. On the same day under similar circumstances, his fellow resident of Valerik, [Mr.] Kh., was abducted.”

20. On the same day an internet newspaper called “Kavkazskiy uzel” reported as follows:

“Today a considerable number of residents of the village of Valerik gathered at the central square of Achkhoy-Martan, Chechen Republic. They wanted the State authorities to liberate their 22-year-old fellow resident Shamkhan Tumayev, who had been abducted by armed men wearing masks on 19 September. The residents of Valerik consider that Tumayev was kidnapped by officers of the battalion named after Akhmed Kadyrov.

Several days before, a large number of servicemen of that battalion (the former security service of the President of the Chechen Republic) had arrived in the [Achkhoy-Martanovskiy] district in some fifty UAZ vehicles, subsequent to which there had been “sweeping operations” and people had been abducted. In particular, on the day of the abduction of Shamkhan Tumayev a [Mr] Kh., 22 years old, had been abducted under similar circumstances.”

21. Similar information to that described above was posted on 22 September 2004 by the news agency “Prima” on its website and published on 27 September 2004 in an article of the local newspaper “Imam” entitled “People are still disappearing” (*Люди продолжают пропадать*”).

## *2. Information submitted by the Government*

22. The Government submitted that the domestic investigation had obtained no evidence that any special operations had been conducted in Valerik on the night of the abduction of Shamkhan Tumayev or that any servicemen had been implicated in his abduction.

## **B. The search for Shamkhan Tumayev and the investigation**

### *1. The applicants' account*

#### **The applicants' search for Shamkhan Tumayev**

23. Immediately after the abduction the applicants complained about it to the local police office, and on the morning of 19 September 2004 they complained about the abduction to the police of Achkhoy-Martan.

24. Early in the morning of 19 September 2004 a group of police officers arrived at the applicants' house. They examined the crime scene, took casts of footprints left there and questioned Shamkhan Tumayev's family members.

25. On 20 September 2004 the applicants visited Mr D., the head of the administration of the Achkhoy-Martanovskiy District. Mr D. promised them that he would make a few phone calls in order to gather information on Shamkhan Tumayev's whereabouts. On an unspecified date D. came to the village of Valerik and told the applicants that they should not worry and that their relative would return home.

26. Subsequently all of the applicants applied to various authorities with a request that they be assisted in searching for Shamkhan Tumayev.

27. On an unspecified date the first applicant requested that the military commander's office of the Achkhoy-Martanovskiy District and the prosecutor's office of the Achkhoy-Martanovskiy District ("the district prosecutor's office") establish her son's whereabouts.

28. On 24 September 2004 the district prosecutor's office forwarded the second applicant's complaint about the abduction of Shamkhan Tumayev to the head of the department of the interior of the Achkhoy-Martanovskiy District ("ROVD") and requested the latter body to carry out an inquiry into the matter complained of. The letter stated, in particular, that, per the applicant's complaint, at about 2 a.m. on 19 September 2004 unidentified armed persons wearing masks and camouflage uniforms had burst into the applicants' house and had abducted Shamkhan Tumayev. The abductors had arrived in three white UAZ-469 vehicles.

29. On 29 September 2004 the district prosecutor's office instituted an investigation into Shamkhan Tumayev's disappearance under Article 126 § 2 of the Russian Criminal Code ("aggravated kidnapping"). The case file was assigned the number 38043. The applicants submit that they were not promptly informed of the decision to open the investigation.

30. On 8 October 2004 the ROVD forwarded the first applicant's complaint of the abduction of her son to the district prosecutor's office.

31. On 24 December 2004 the district prosecutor's office informed the applicants that the term of the preliminary investigation of case no. 38043 had been extended until 29 January 2005.

32. On 29 January 2005 the district prosecutor's office informed the first applicant that the investigation into Shamkhan Tumayev's kidnapping had been suspended because of its failure to identify the perpetrators.

33. On 3 February 2005 the first applicant requested that the district prosecutor's office open a criminal investigation into the abduction of her son, grant her victim status in those proceedings and provide her with copies of the related decisions.

34. On 12 February 2005 the district prosecutor's office informed the first applicant of the following. Shamkhan Tumayev had been abducted by around fifteen unidentified armed men in camouflage uniforms driving a VAZ-2131 vehicle, a UAZ-469 and an all-terrain UAZ vehicle. The district prosecutor's office had opened an investigation into case no. 38043 and had taken certain investigative measures. In particular, they had examined the crime scene, had compiled a plan of unspecified investigative steps to be taken, had come up with a number of unspecified versions of the abduction and had interviewed the applicants' neighbours and other residents of Valerik. They had also sent requests to various law-enforcement agencies in the Chechen Republic, Ingushetia, Dagestan and the Stavropol Region. However, Shamkhan Tumayev's whereabouts had not been established. On 29 January 2005 the investigation had been suspended. Nevertheless, unspecified operational and search measures were being taken to resolve the crime.

35. On 25 May 2005 the first applicant requested that the district prosecutor's office inform her of the progress in the investigation into her son's kidnapping. It is unclear whether her request was ever replied to.

## *2. Information submitted by the Government*

### **(a) The Government's refusal to provide the entire criminal file**

36. Despite specific requests by the Court, the Government did not disclose most of the contents of criminal case no. 38043, providing only copies of some documents relating to the preliminary ROVD inquiry (see below), the decision to institute the investigation; records of several witnesses' interviews; some of the decisions to suspend and reopen the investigation; the crime scene and site inspection reports concerning the applicants' house and three checkpoints; and copies of several replies from the State authorities to the requests for information on Shamkhan Tumayev and his whereabouts made in the course of the investigation.

37. The Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure and in breach of the interests of unspecified parties to criminal proceedings.

38. Most of the documents submitted by the Government were illegible or legible only in part. All pages in the file submitted by the Government

contained three separate page numbers; some documents concerning investigative actions dated November 2004 had been placed in the file submitted to the Court before the documents dated October and September 2004. Some copies of interview records were not full, i.e. they contained only the first page with the witness's data and the beginning of their respective accounts of the events, whilst the remaining pages were missing. In at least five copies of interview records, the year "2005" appears to have been written over with the year "2008".

39. The information concerning the investigation, provided by the Government and contained in the documents submitted by them, in so far as they are legible, may be summarised as follows.

**(b) Preliminary inquiry conducted by the ROVD**

40. On 19 September 2004 the ROVD received the applicants' complaint about the abduction of Shamkhan Tumayev. In the complaint, the applicants had stated that at about 2 a.m. on 19 September 2004 a group of persons in camouflage uniforms and masks driving three white UAZ-469 vehicles had abducted Shamkhan Tumayev and had taken him to an unknown destination.

41. On the same date the ROVD launched a preliminary inquiry into the abduction and inspected the crime scene. According to the crime scene inspection report, no objects of interest for the inquiry were found in the applicants' house. The report did not mention whether or not there had been a disturbance in the house.

42. Again on the same date, ROVD officers obtained a written statement from the second applicant, in which she explained that at about 2 a.m. on 19 September 2004 someone had started knocking on the door of the part of the house where she had been staying with Shamkhan Tumayev and their two-year-old daughter. When she had opened the door, a group of three to four armed men in camouflage uniforms and masks had burst inside and had ordered everyone to lie down. The applicant had inferred that the intruders were servicemen and had complied with the order. Some of the servicemen had then taken Shamkham Tumayev outside and others had ordered the second applicant to open a safe. The servicemen had taken several video cassettes of Indian movies from the safe and had explained that they would check whether they contained any recording of members of illegal armed groups or their terrorist activities. The second applicant had seen about ten servicemen in total and submitted that she had not seen or heard any vehicles in the courtyard or on the street.

43. Upon being interviewed again on the same date, the second applicant confirmed her account of the events given in the written statement and submitted in addition that, immediately after Shamkhan Tumayev's abduction and after the first applicant had managed to get outside, they had

alerted their relatives to the abduction. Their relatives had caught up with the abductors and had seen their vehicles.

44. On 19 September 2004 ROVD officers interviewed Mr Sh. T. He submitted that at about 3 a.m. on 19 September 2004 the first applicant had come to his house and had told him about the abduction of Shamkhan Tumayev, following which Sh. T. and three other individuals, I.M., A.T. and R.Kh., had gone in their vehicle in the direction of the neighbouring village of Katyr-Yurt. Whilst they had been driving in Katyr-Yurt, their car had been stopped by a group of armed men wearing masks, who had checked the vehicle's passengers' identity papers and had ordered them to return home. At about 6 a.m. on 19 September 2004 Sh. T. and his companions had left for Achkhoy-Martan. On their way there they asked servicemen at checkpoint no. 181 whether a convoy of two UAZ vehicles, a silvery Niva and a UAZ all-terrain vehicle had passed the checkpoint on that night, and the servicemen at the checkpoint had allegedly confirmed the passage of those vehicles.

45. On the same date ROVD officers interviewed Mr V.I., residing at 26 Titova Street. He submitted that at about 2 a.m. on 19 September 2004 he had been woken up by the noise of vehicles coming from the street. V.I. had not gone outside. In the morning he had learnt about the abduction of Shamkhan Tumayev.

46. It appears that on the same date, 19 September 2004, the ROVD officers also interviewed the first applicant. She stated that at about 2 a.m. on 19 September 2004 she had been woken up by knocking on the front door. When she had opened it, three masked and armed persons in camouflage uniforms had burst inside and had asked her to give them her son's passport. The intruders had then locked the first applicant and her relatives up. The first applicant had managed to get outside through the window, whereupon she had seen the second applicant, who had told her that the intruders had taken Shamkhan Tumayev away. The first applicant had heard the noise of several vehicles leaving.

47. On 21 September 2004 the ROVD extended the time-limit for carrying out the preliminary inquiry into the abduction of Shamkhan Tumayev until 1 October, owing to the need to carry out unspecified additional investigative actions. It is unclear whether the ROVD took any further investigative steps after 21 September 2004.

48. By letter of 29 September 2004, the district prosecutor's office instructed the ROVD to carry out a preliminary inquiry into the applicants' complaint of the abduction of Shamkhan Tumayev by a group of armed men in masks and camouflage uniforms who had been driving three white UAZ-469 vehicles.

**(c) Institution of the investigation by the district prosecutor's office**

49. On 29 September 2004 the district prosecutor's office received the materials from the preliminary inquiry and instituted a criminal investigation into the abduction of Shamkhan Tumayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 38043. The decision stated, amongst other things, that from the materials of the ROVD preliminary inquiry it followed that at about 2 a.m. on 19 September 2004 a group of about 15 armed men in camouflage uniforms and masks, driving a VAZ-2131 vehicle, a UAZ-469 vehicle and an all-terrain UAZ vehicle, had arrested Shamkhan Tumayev and had taken him to an unknown destination.

**(d) Investigative steps taken between September 2004 and February 2005**

50. On an unspecified date the district prosecutor's office compiled a plan of investigative steps for case no. 38043.

51. On 30 September 2004 investigator D. of the district prosecutor's office carried out an additional crime scene inspection at 13 Titova Street, but found no objects of interest to the investigation.

52. On 1 October 2004 investigator D. interviewed the applicants' neighbour, N.T., as a witness. He stated that at about 2 a.m. on 19 September 2004 a group of about fifteen armed persons in masks and camouflage uniforms had burst into the applicants' house and had abducted Shamkhan Tumayev. N.T. had learnt about the particular circumstances of the abduction from the applicants at about 3 a.m. on 19 September 2004 and had immediately gone to their house. In the morning on 19 September 2004 several ROVD officers had come to the applicants' house, had inspected the crime scene and had interviewed the applicants and a number of witnesses. During the interviews, the officers had established that the intruders had driven a VAZ-2131 vehicle, a UAZ-469 vehicle and an all-terrain UAZ vehicle, which had been stationed further along Titova Street. The abductors had not parked the vehicles close to the applicants' house because it was situated in a dead end and they would have encountered problems turning around and going back.

53. On 1 October 2004 the first applicant was granted victim status in the proceedings relating to case no. 38043. The decision granting her such status stated that at about 2 a.m. on 19 September 2004 about fifteen armed masked men in camouflage uniforms, who had been driving a VAZ-2131, a UAZ-469 and an all-terrain UAZ vehicle, had arrested Shamkhan Tumayev and had taken him to an unknown destination.

54. On the same date the first applicant was interviewed. She reiterated her earlier submissions concerning the circumstances of the abduction of her son and stated, amongst other things, that, when she had managed to get outside after having been locked up, she had seen the second applicant, who had told her about the abduction. The first applicant herself had heard the

noise of the vehicles leaving. Although she had not seen the vehicles herself, her neighbours had told her that the abductors had come in a VAZ-2131, a UAZ-469 and all-terrain UAZ vehicles. The first applicant had also stated that the abductors had spoken Russian.

55. On 3 October 2004 the investigators interviewed Mr R.D., an officer of the ROVD. He stated, amongst other things, that on 19 September 2004 he had participated in the inspection of the crime scene and the interviewing of the applicants and witnesses. He confirmed the description of the events given to him by the second applicant in her written statement of 19 September 2004 and also referred to her saying that the abductors' vehicles had not been parked directly at the applicants' house but further along the street because the house was at a dead end and that the abductors would have had problems turning around on their way back.

56. On 7 and 11 October 2004 investigator D. inspected checkpoints nos. 186 and 190 located at the exit from and entry to Achkhoy-Martan. According to the relevant inspection records, no objects of interest to the investigation were found or seized. Both records stated that the checkpoints' vehicle passage logbooks had contained no records concerning the registration of vehicles between 19 and 21 September 2004.

57. On 12 October 2004 the investigators interviewed the first applicant, who reiterated her earlier submissions concerning the abduction of her son, the abductors' having asked for his passport and having locked her up with her relatives. She also stated that she had learnt from her neighbours about the vehicles in which the abductors had come.

58. On the same date the investigators interviewed Sh. T. as a witness. He stated that at about 3 a.m. on 19 September 2004 the applicants had come to his home and had told him about the abduction of Shamkhan Tumayev. Sh. T. had spoken to unspecified people and had learnt from them that the abductors had come in a white armoured Gazel vehicle, a white VAZ-2107 and an all-terrain UAZ vehicle. The above-mentioned unspecified people had not been able to tell Sh. T. whether the vehicles had had licence plates. Those vehicles had gone first in the direction of Katyr-Yurt but had then turned around and headed in the direction of Shaami-Yurt.

59. The fourth applicant, who was interviewed as a witness on 12 October 2004, stated that at about 2 a.m. on 19 September 2004 a group of armed men in camouflage uniforms and masks had burst into the applicants' house and had taken away Shamkhan Tumayev. After their departure the applicants had not been able to find Shamkhan Tumayev's mobile phone.

60. Between 5 October and 8 November 2004 various State authorities, including the local office of the FSB and the ROVD, replied to the district prosecutor's office affirming that they had no information on Shamkhan Tumayev's whereabouts.

61. On 24 November 2004 the district prosecutor's office wrote to the applicants to notify them that the term of the preliminary investigation of case no. 38043 had been extended for three months.

62. On 25 November 2004 the investigators interviewed the applicants' neighbour, V.T. He stated that at about 3 a.m. on 19 September 2004 he had been woken up by shots being fired. He had dressed himself, had gone outside and had seen the first applicant, who had told him about the abduction of Shamkhan Tumayev. The intruders had come to the applicants' house on foot, having left their vehicles further along the street. They had also locked the first applicant and her relatives up during the abduction.

63. Between 6 October 2004 and 3 February 2005 the investigation interviewed some thirty residents of Valerik as witnesses. They stated, in almost identical terms, that they had learnt about the abduction of Shamkhan Tumayev from their fellow residents of Valerik or from the applicants. In particular, they had learnt that at about 2 a.m. on 19 September 2004 a group of about fifteen armed masked men in camouflage uniforms had burst into the applicants' house and had taken Shamkhan Tumayev away. The abductors had spoken Russian and had arrived in several vehicles, including UAZ-469, VAZ-2131 and an all-terrain UAZ vehicle. One witness also mentioned a Gazel vehicle.

**(e) Investigative actions carried out in June and July 2007**

64. According to an interview record dated 21 June 2007, on that date investigator D. interviewed the fourth applicant as a witness. She confirmed her previous account of the events concerning the abduction of Shamkhan Tumayev and submitted that she had mistakenly stated during her previous interview that the abductors had taken Shamkhan Tumayev's mobile phone. She had subsequently learnt from the second applicant that Shamkhan Tumayev had sold the mobile phone about a week before his abduction. She also stated that the video cassettes had not been confiscated.

65. According to a further interview record dated 21 June 2007, on that date investigator D. interviewed the second applicant as a witness. She confirmed her earlier description of the circumstances of her husband's abduction and stated that, although she had submitted in her previous interview that the abductors had said that they would seize the video cassettes, they had not taken them in the end. As to her husband's mobile phone, she stated that he had sold it a week before his abduction. Their other relatives had not known about it and had stated to the investigation that it had been taken by the abductors.

66. On 21 June 2007 the investigation interviewed Sh. T. as a witness. He stated that whilst being interviewed on 12 October 2004, he had told the investigators that the abductors had gone first in the direction of Katyr-Yurt and subsequently in the direction of Shaami-Yurt. However, Sh. T. had learnt about that fact on the morning on 19 September 2004 from

unspecified residents of Valerik, who had gathered at the local administration's office. Sh. T. had not known who had seen the vehicles move in the above-mentioned direction.

67. On 21 June 2007 investigator D. refused to open a criminal case into the seizure of the video cassettes and the mobile phone from the applicants' house by the abductors of Shamkhan Tumayev. The decision stated that at about 2 a.m. on 19 September 2004 unidentified armed persons in masks and camouflage uniforms, who had been driving a VAZ-2131, a UAZ-469 and an all-terrain UAZ vehicle, had abducted Shamkhan Tumayev from 13 Titova Street. Referring to the statements obtained from the second and fourth applicants on 21 June 2007, the investigator found that there was no evidence that the video cassettes and the mobile phone had ever been stolen. Lastly, it was stated that it was open to the applicants to appeal against the decision to a higher prosecutor or a court under Article 124 or 125 of the Code of Criminal Procedure. On the same date investigator D informed the applicants of the decision.

68. Between 25 June and 16 July 2007 investigator D. interviewed some twenty-one residents of Valerik. According to copies of their interview records, which are identically worded, the witnesses had learnt about the abduction of Shamkhan Tumayev from their fellow residents. Shamkhan Tumayev's abductors had been armed and masked and had worn camouflage uniforms. They had driven a VAZ-2131, a UAZ-469 and all-terrain UAZ vehicles without registration plates. The related documents included two records of interviews with an individual called R.S.Yu., who was said to reside at the same address. The interview records were dated 25 and 30 June 2007 and were identical to each other.

69. It appears that on an unspecified date in July 2007 the investigation was suspended.

**(f) Reopening of the investigation in February 2008**

70. On 7 February 2008 the deputy head of the Achkhoy-Martanovskiy inter-district investigating department within the Prosecutor's Office of the Russian Federation reopened the investigation of case no. 38043. The decision to do so had stated that the investigation had been suspended and reopened on numerous occasions, owing to its failure to identify the perpetrators. The latest decision to suspend the investigation had been issued on 19 July 2007. An examination of the file had revealed that the decision to suspend the investigation had been premature, because not all relevant investigative steps had been taken.

71. On the same date investigator D. wrote to the applicants to notify them about the reopening of the investigation.

72. The Government submitted that the investigation of case no. 38043 was pending.

## 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. They submitted that the investigation into the disappearance of Shamkhan Tumayev had not yet been completed. They further argued that the applicants had neither complained to the domestic courts about the inaction of the district prosecutor's office or the decision to suspend the investigation, nor had they asked the district prosecutor's office to take any specific investigative actions. In the Government's submission, the applicants' victim status had permitted them to participate effectively in the investigation. In that respect the Government relied on cases concerning A., S. and E., where the domestic courts had allegedly granted their complaints against the inaction of the relevant prosecutors' offices. The Government did not furnish copies of the decisions they relied on. Lastly, the Government stated that the applicants could have applied to civil courts for compensation under Articles 151 and 1069 of the Russian Civil Code.

75. The applicants contested the Government's objection. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect had been futile. They specifically stressed that, even if they had challenged the investigating authority's omissions in the courts with the result that their claims were granted and that the district prosecutor's office was ordered to resume the investigation, nothing would have prevented it from suspending the investigation again. In fact, following the applicants' complaints, higher-ranking prosecutors had ordered the investigation to be resumed but it had then been suspended again. They also submitted that the authorities had been under an obligation to act of their own motion in investigating the crime against Shamkhan Tumayev and that they should not have left it to the initiative of his next of kin. Referring to other cases concerning disappearances in the Chechen Republic, they also

alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in the Chechen Republic had rendered any potentially effective remedies inadequate and illusory in their case. Lastly, with reference to the Court's practice, they argued that they had not been obliged to apply to the civil courts 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 *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

79. As regards criminal law remedies, the Court observes that the applicants complained to the law-enforcement authorities immediately after the kidnapping of Shamkhan Tumayev and that an investigation has been pending since 29 September 2004. 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. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION**

81. The applicants complained under Article 2 of the Convention that their relative had been deprived of his life by the servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

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

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

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

#### **A. Submissions by the parties**

82. The Government argued that the domestic investigation had obtained no evidence that State agents had been involved in the abduction of Shamkhan Tumayev or that any special operations had been conducted in the village of Valerik on the night of his kidnapping. No State authority had acknowledged his detention and his body had not been discovered. While being formally interviewed by the domestic authorities, none of the applicants had stated that the abductors of their relative had been servicemen. The fact that the abductors had shouted “Open! Police!” or that they had been wearing camouflage uniforms or had carried arms did not mean that they were servicemen. Members of illegal armed groups in the Chechen Republic had often worn uniforms and had pretended to be agents of law-enforcement authorities.

83. In the Government's submission, the applicants' account of the events of 19 September 2004 contained several contradictions. In particular, whilst they stated that when searching for Shamkhan Tumayev's passport, the abductors had turned everything upside down, according to the crime scene inspection report, the house had been in perfect order and no fingerprints had been found on the furniture. Although in their application form the applicants had stated that the abductors had thrown the second applicant on the floor, in her written statement of 19 September 2004 she had submitted that she had been ordered to lie on the floor, which she had done on her own. The second applicant's submissions as to when the intruders had taken Shamkhan Tumayev away and when she had been ordered to open the safe had also differed in several respects. In the same vein, in her statement of 12 October 2004 the first applicant had stated that the intruders had first taken her son away and had then asked for this passport, whereas in a statement she had made to her representatives on 6 June 2008 she had submitted that they had first asked for the passport and had then taken him away. Moreover, in some statements the applicants had

submitted that the abductors had spoken Russian and Chechen. Likewise, as had transpired during the applicants' additional interviews, the abductors had not seized any video cassettes from them and had not taken the mobile phone.

84. The Government further pointed out that the applicants had not made any submissions to the investigators about the shooting during the abduction. The only person to have mentioned it was V.T. However, the first applicant had then referred to the shooting in her above-mentioned statement to her representatives. Although many witnesses had referred to the fact that the abductors had used a number of vehicles, none of them had seen those vehicles, they had only heard about them from neighbours. Only the first and third applicants had stated that they had heard the noise of the vehicles leaving, as well as V.I. However, according to inspection reports from checkpoints nos. 181 and 190 and their logbooks, the vehicles indicated by the witnesses had not passed through those checkpoints. Moreover, none of the people interviewed by the investigation had witnessed the abduction itself: all of the residents of Valerik, except for the applicants, had submitted that they had learnt about the abduction from "neighbours".

85. As regards the investigation, the Government argued that it had satisfied the Convention requirements. It had been conducted by an independent authority which had interviewed a sizeable number of witnesses, sent numerous requests for information, inspected the checkpoints and logbooks and carried out other investigative measures. Although the investigation had been suspended on numerous occasions, it was still pending and was considering various theories of the abduction. The first applicant had been granted victim status and had been properly informed of the progress of the investigation.

86. The applicants claimed that they had produced evidence which established "beyond reasonable doubt" that their relative had been detained by State agents and that he must be presumed dead following his unacknowledged detention. They stressed that only servicemen had been able to openly wear camouflage uniforms in the Chechen Republic at the material time. The fact that the abductors had been using special purpose vehicles, which had formed part of the usual equipment of the military forces, also supported their submission that they had been servicemen. In the applicants' view, this had been further confirmed by the fact that the large group who had abducted their relative had been able to drive in a convoy of several military vehicles through checkpoints and during curfew hours in the area controlled by the federal troops. After several years of investigation, the Government had simply denied that the abductors of Shamkhan Tumayev had been servicemen and had failed to provide any other plausible explanation of what had happened to him.

87. The applicants further argued that the Government had distorted their statements to the investigators and that on several occasions the investigating authorities had either incorrectly recorded them or had omitted several details. In particular, they submitted that they had always stated to the authorities that the abductors had spoken Russian. As regards shots in the yard, the applicants had told the investigating authorities about them and had handed them over two spent cartridges they had found in their yard. However, the investigators had never interviewed them in that connection or put any questions to them about it.

88. The applicants further stressed that neither the second nor the fourth applicant had ever stated to the investigating authorities that the abductors of Shamkhan Tumayev had not taken the video cassettes and the mobile phone. Moreover, the signatures on their alleged interview records dated 21 June 2007 had not belonged to them, the falsity of which could easily be verified if they were compared to their signatures in their passports, which they had submitted to the Court.

89. In the applicants' submission, the investigation into the abduction of Shamkhan Tumayev had not been effective. In particular, the investigators had failed to interview the servicemen at the checkpoints which the abductors had passed with their relative, as well as to organise the applicants' confrontations with them. They had also failed to interview authority figures, such as the military commander of the district, with a view to verifying whether special operations had been conducted in Valerik, as well as the head of the local administration, who had submitted that he had obtained information on Shamkhan Tumayev's whereabouts. The investigation had failed to examine the spent cartridges found in the applicants' courtyard. The fact that the investigators had obtained identical witness statements demonstrated that they had tried to give the appearance of conducting an effective investigation without having had a real determination to establish the relevant circumstances.

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

### *1. Admissibility*

90. 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 Shamkhan Tumayev

#### (i) General principles

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

#### (ii) Establishment of the facts

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

93. The applicants alleged that at about 2 a.m. on 19 September 2004 their relative, Shamkhan Tumayev, had been abducted by Russian servicemen and had then disappeared. They relied on their own accounts of the events and statements by witnesses obtained by the domestic investigation.

94. The Government conceded that Shamkhan Tumayev had been abducted on 19 September 2004 by unidentified armed camouflaged men. However, they denied that the abductors had been servicemen and that they had come in a convoy of vehicles, referring to the absence of conclusions from the ongoing investigation.

95. The Court notes that despite its requests for a copy of the entire investigation file into the abduction of Shamkhan Tumayev the Government refused to produce most of the documents from the case file, referring 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-XIII (extracts)).

96. 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-founded nature of the applicants' allegations.

97. The Government argued that nothing in the documents they agreed to disclose to the Court confirmed the applicants' submission that the abductors had driven in a convoy of vehicles. In this respect the Court notes that N.T., interviewed shortly after the abduction, stated that, during the questioning of the applicants' neighbours and other witnesses on 19 September 2004, ROVD officers had established that the abductors had driven three specific vehicles – a VAZ-2131 vehicle, a UAZ-469 vehicle and an all-terrain UAZ vehicle (see paragraph 52 above). In this connection the Court does not lose sight of the fact that the Government failed to submit any witness statements collected by the ROVD officers immediately after the abduction other than those belonging to the applicants.

98. It further observes that the decision to institute a criminal investigation into case no. 38043 also mentioned a VAZ-2131, a UAZ-469 and an all-terrain UAZ vehicle with reference to the information and materials obtained during the ROVD preliminary inquiry (see paragraph 49 above). The ensuing decisions issued by the district prosecutor's office in the course of the investigation referred to the same specific vehicles (see paragraphs 34 and 53 above).

99. Against this background the Court cannot accept as convincing the Government's argument that the use of such vehicles by the abductors was not confirmed by those documents from the criminal case file which the Government selectively furnished to it.

100. The Court further observes that not only the applicants but also witness V.I. stated to have heard the noise of vehicles on the applicants' street at the time of the abduction (see paragraph 45 above). Lastly, the Court takes note of several witness' statements saying that, the applicants' house being located in a dead end, the abductors had had to leave their vehicles further along the street (see paragraphs 52 and 55 above).

101. In sum, the Court is inclined to accept the applicants' submission that the abductors had come and gone in a convoy of a VAZ-2131, a UAZ-469 and an all-terrain UAZ vehicle.

102. The Government also argued that the applicants' account of the events concerning the abduction of their relative had been contradictory in several aspects. As regards their submission that the abductors could not have turned everything in the house upside down, as claimed by the applicants, because the crime scene inspection report allegedly recorded that the applicants' house was in “perfect order”, it is noted that the report in

question does not appear to contain any such information (see paragraph 41 above). In so far as they submitted that the applicants had stated to the investigation that the abductors had spoken both Russian and Chechen, the Court cannot find any evidence to this effect in the documents at its disposal. On the contrary, according to the first applicant's interview record of 1 October 2004, she clearly stated that the abductors had spoken Russian (see paragraph 54 above). As regards the video cassettes and the mobile phone, the Court will examine this issue separately below. As to the remainder of the Government's submissions in this respect, the Court does not find that they were such as to call into doubt the credibility of the applicants' account of the events or the consistency of their submissions.

103. In support of their submissions, the applicants also furnished a number of printouts of articles from internet sources and a local newspaper. However, whilst those materials appear to confirm their submission that they had picketed the local administration's office with a request that their relative be found, they are of little evidential value for the Court because the sources of the information contained in them – in particular, as regards the allegation that specific forces had been conducting sweeping operations in Valerik – remain unclear.

104. Nonetheless, having regard to the applicants' submissions, their hand-drawn sketch of the premises and the other materials at its disposal, the Court finds that they presented an overall coherent and convincing picture of Shamkhan Tumayev's abduction on 19 September 2004 by a group of armed, masked and camouflaged men driving in a convoy of several vehicles. It observes that the applicants' account was consistent both throughout the domestic investigation and before this Court (see paragraphs 11-15, 43, 46, 54, 57 and 59 above).

105. The Court further takes note of the fact that the Government did not dispute the applicants' submission that their relative had been abducted from an area which had been under curfew and where the authorities had maintained manned checkpoints at the material time. The Government's submission that the abductors had not passed through the two checkpoints inspected by investigator D. is of little relevance for the Court's analysis, because the checkpoint inspection reports at issue only stated that the checkpoints' logbooks contained no vehicle registration records for the time between 19 and 21 September 2004 (see paragraph 56 above), which, in the Court's opinion, does not exclude that the abductors' vehicles could have passed through the checkpoints without being registered in the logbooks.

106. In the Court's view, the fact that a large group of armed men in uniforms driving in a convoy of several vehicles was able to pass freely through checkpoints during curfew hours and proceeded to arrest the applicants' relative in a manner similar to that of State agents strongly supports the applicants' allegation that they were State servicemen and that

they were conducting a special operation in Valerik on the night of Shamkhan Tumayev's abduction.

107. The Court notes that in their applications to the authorities the applicants consistently maintained that Shamkhan Tumayev had been detained by unknown servicemen and requested that the investigating authorities look into that possibility. It further notes that after more than six years the investigation has produced no tangible results.

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

109. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their relative was abducted by State servicemen. The Government's statement that the investigation had not found any evidence to support the involvement of servicemen in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents from the investigation file, which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Shamkhan Tumayev was arrested on 19 September 2004 by State servicemen during an unacknowledged security operation.

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

111. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among many others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luhuyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (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 Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this situation can be regarded as life-threatening. The absence of Shamkhan Tumayev or of any news of him for more than six years supports this assumption.

112. Accordingly, the Court finds that the evidence available permits it to establish that Shamkhan Tumayev must be presumed dead following his unacknowledged detention by State servicemen.

(iii) *The State's compliance with Article 2*

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

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

115. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Shamkhan Tumayev.

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

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

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

117. The Court notes at the outset that the Government refused to produce a copy of the entire case file for case no. 38043. It therefore has to assess the effectiveness of the investigation on the basis of the information submitted by the Government and the few documents available to the applicants that they provided to the Court.

118. Turning to the facts of the present case, the Court observes that the applicants notified the authorities of the abduction on 19 September 2004, that is, immediately after it had occurred. On the same date the ROVD initiated a preliminary inquiry into the applicants' allegations, inspected the crime scene and interviewed some of the applicants and other witnesses. It transpires that all investigative steps the ROVD took in the course of the inquiry were taken on 19 September 2004 and it does not appear that it carried out any other investigative actions after that date (see paragraphs 41-47 above). However, the district prosecutor's office instituted a criminal investigation only on 29 September 2004. In the Court's view, this period of inactivity *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

119. The Court has further to assess the scope of the investigative measures taken. From the documents furnished by the Government, it can be seen that between September 2004 and February 2005 the authorities inspected the crime scene and two checkpoints, interviewed some of the applicants and a number of residents of Valerik, and sent requests to various State bodies to establish Shamkhan Mutayev's whereabouts. In June and July 2007 the district prosecutor's office interviewed the second and fourth applicants and another twenty residents of Valerik and issued a refusal to open a criminal case into the seizure of the video cassettes and the mobile phone by the abductors. It is unclear whether any, and, if any, what, measures were taken after the reopening of the investigation in February 2008.

120. The Court notes that although it appears that the investigating authorities carried out an important number of investigative actions, it transpires that some crucial steps were never taken. In particular, whilst investigator D. inspected some checkpoints, it does not transpire that he made any attempts to identify and interview the servicemen who had been on duty on the night of the abduction. Furthermore, despite the applicants' and witnesses' statements concerning the firing of shots in the yard of 13 Titova Street, no steps were taken to verify that information, and it is also unclear what became of the spent cartridges that the applicants had given to the authorities. Likewise, it does not emerge from the materials available to the Court that the investigation had attempted to identify and

interview the persons mentioned by Sh. T. during his first interview by ROVD officers

121. It is obvious that, if they were to produce any meaningful results, these investigative measures should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. The delays and omissions, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

122. Furthermore, having regard to the abundance of identically worded records of interviews of the residents of Valerik and the fact that some of those statements appear to have been made by the same persons with a difference of several days between statements (see, for example, paragraph 68 above), the Court considers that the applicants' argument that, instead of concentrating on crucial investigative steps the investigation was dissipating its resources on superficial and irrelevant activities, cannot be discarded as being completely without foundation.

123. The Court further notes that even though the first applicant was eventually granted victim status in the proceedings in case no. 38043, it does not transpire that the authorities have ever considered granting that status to other applicants. It also transpires from the applicants' repeated and apparently mostly unanswered requests for information addressed to the investigating authorities that they were hardly informed of any developments in the investigation at all. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings

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

125. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays and omissions, has been pending for many years with no tangible results.

126. Furthermore, the applicants, who had no access to the case file and were not properly informed of the progress in the investigation, could not have effectively challenged any acts or omissions of the investigating authorities before a court or sought to have particular investigative steps taken. In addition, the Court emphasises in this respect that while the adjourning or reopening of proceedings is not in itself a sign that the

proceedings are ineffective, in the present case the decisions to adjourn were made without the necessary investigative steps being taken (see, for example, paragraph 70 above), which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success.

127. In sum, the Court finds that the remedies relied on by the Government were ineffective in the circumstances and dismisses their preliminary objection.

128. 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 Shamkhan Tumayev, in breach of Article 2 in its procedural aspect.

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

129. The applicants relied on Article 3 of the Convention, submitting that as a result of their relative's disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

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

#### **A. The parties' submissions**

130. The Government disagreed with the applicants' assertions and argued that the investigation had not established that the applicants had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

131. The applicants maintained their complaint.

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

##### *1. Admissibility*

132. The Court notes that this complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## 2. Merits

133. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member, but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

134. In the present case the Court notes that the applicants are close relatives of the disappeared person and that the first and second applicants, as well as the fourth applicant, witnessed his abduction. It also observes that all applicants actively participated in the search for Shamkhan Tumayev and approached various State authorities in that connection (see, for example, paragraph 25 above). For more than six years they have not had any news of Shamkhan Tumayev. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing relative. Despite their attempts, the applicants have never received any plausible explanation or information about what became of him following his detention. The responses they received mostly denied State responsibility for his relatives' abduction or simply informed them that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

135. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the applicants.

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

136. The applicants further stated that Shamkhan Tumayev had been detained in violation of the guarantees contained in Article 5 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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

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

### **A. The parties' submissions**

137. The Government asserted that no evidence had been obtained by the investigators to confirm that Shamkhan Tumayev had been deprived of his liberty. They were not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about their detention.

138. The applicants reiterated the complaint.

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

#### *1. Admissibility*

139. 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*

140. 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).

141. The Court has found that Shamkhan Tumayev was apprehended by State servicemen on 19 September 2004 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their

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

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

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

## V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

144. The applicants alleged the search carried out at their house on 19 September 2004 was illegal and constituted a violation of their right to respect for their home in breach of Article 8 of the Convention, which provides:

“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.”

### A. The parties' submissions

145. The Government claimed that the alleged interference with the applicants' right to respect for their family life and home was not imputable to the State. As regards the search, they further submitted that the applicants had failed to exhaust domestic remedies because they had not complained about it to any law-enforcement authorities, the district prosecutor's office or courts. Furthermore, it did not transpire from the materials of the case that the abductors of Shamkhan Tumayev had carried out a “search”, in the proper meaning of that term, in the applicants' house. On the contrary, it was evident from the first and second applicants' submissions to the

investigation that the abductors had simply asked them to open the safe containing some video cassettes.

146. The applicants reiterated their complaint, stating that there had been no effective remedies at the national level in respect of their complaint about the search, and that the only remedy which could have been effective would have been a proper investigation of the circumstances of Shamkhan Tumayev's abduction but that the authorities had failed in that obligation.

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

### *Admissibility*

147. The Government argued that the applicants had failed to exhaust domestic remedies in respect of their submissions concerning the alleged breach of their right to respect for their home. The applicants disagreed.

148. The Court considers that it need not examine the parties' submissions in this respect because the applicants' complaint is in any event inadmissible for the following reasons.

149. The Court observes that the applicants' complaint about the alleged search is based only on the vague statement of the first applicant that the abductors of her son had turned everything in the house upside down (see paragraph 12 above), whilst the other applicants, who were present in the house at the time of Shamkhan Tumayev's abduction, did not mention that fact. Moreover, the applicants did not submit any additional evidence, such as witness statements or complaints to the domestic investigative bodies substantiating their complaint under this heading. The Court notes that the applicants' complaints to the authorities, in so far as can be judged from the documents reviewed by the Court, referred essentially to the fact that their relative had been unlawfully detained. No separate proceedings were lodged by any of the applicants in respect of the unlawful searches allegedly carried out at their homes. The Court is therefore unable to establish, to the necessary degree of proof, that the alleged interference has taken place, and finds that this complaint has not been substantiated.

150. Accordingly, this part of the application is manifestly ill-founded and must therefore be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## **VI. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION**

151. The applicants complained under Article 1 of Protocol No. 1 to the Convention that their property had been unlawfully seized on the night of

their relatives' abduction. Article 1 of Protocol No. 1 to the Convention 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. Submissions by the parties**

152. The applicants submitted that they had learnt about the interview records of the second and fourth applicant dated 21 June 2007 from the Government's observations and that those documents must have been forged. In particular, in their statements to their representatives dated 6 June 2008 the second and fourth applicants claimed that the signature on the printed records of their interviews was not theirs. They enclosed copies of their passports with their signatures in order to confirm that submission. They also stressed that although the records stated that the interviews had taken place in the district prosecutor's office, they had never been questioned there in connection with their complaints of the seizure of their property.

153. The Government submitted that the applicants had not exhausted domestic remedies because they had not specifically complained of the seizure to any authorities and, in the alternative, had not appealed against the refusal of 21 June 2007 to open a criminal case, of which the fourth applicant had been notified in writing. Moreover, from the additional interview records of the second and fourth applicants, it was evident that Shamkhan Tumayev had sold his mobile phone a week before his abduction and that his abductors had not seized the video cassettes.

154. The Government further claimed that in 2008 the district prosecutor's office had sought to verify the applicants' complaint of the seizure of the mobile phone and video cassettes. In particular, on 30 August 2008 the applicants' relative, A.Kh., had allegedly stated to the investigators that on 21 June 2007, when he had been in the Valerik village administration's office, a young man had approached him and had introduced himself as an investigator from the district prosecutor's office. The man had explained to A.Kh. that he had come to examine the applicants' complaint of the seizure of video cassettes and Shamkhan Tumayev's mobile phone during his abduction. The second and fourth applicants had also been present in the local administration office and had stated to the investigator that the abductors of Shamkhan Tumayev had not taken his mobile phone because he had sold it a week before his abduction, and that the abductors had not seized the video cassettes either. The women had allegedly also asked the investigator not to take any action in respect of the video cassettes. Some time later the investigator had typed

up their statements on the computer. The applicants had read them and had signed them, without making any other submissions. The Government did not enclose A.Kh.'s statement. In the Government's submission, the investigating authorities had not been able to interview the second and fourth applicants during the verification exercise conducted in 2008 because the women had left Valerik.

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

155. The Court notes that the Government disputed that there had been a seizure of the applicants' property, whilst the applicants affirmed that the abductors had seized the video cassettes and Shamkhan Tumayev's mobile phone. However, the Court does not find it necessary to resolve this issue because it considers that the complaint is in any event inadmissible for the following reasons.

156. The Government argued that the applicants had not exhausted domestic remedies in respect of their complaint of the seizure because they had not brought the matter to the attention of the authorities and had not appealed against the refusal to open a criminal investigation of 21 June 2007.

157. The Court considers, contrary to the first part of the Government's argument, that the applicants explicitly complained to the authorities of the seizure of their property during their first interviews (see, for example, paragraph 42 above). Hence, it is not persuaded that they had not properly raised the issue at the domestic level. It notes, however, that the applicants had, indeed, failed to appeal against the refusal to open a criminal case into the seizure of the mobile phone and the video cassettes issued on 21 June 2007. In this connection it is observed that the decision explicitly stated that it could be appealed against to a court and referred to specific provisions of the Code of Criminal Procedure for doing so (see paragraph 67 above).

158. It further observes that whilst the applicants specifically stressed that they had learnt about the existence of interview records dated 21 June 2007 from the Government's observations, they had not stated that they had not received the investigator's decision of 21 June 2007. Neither did they claim that they had been provided with it outside the time-limit for appealing against it or that they had been prevented from doing so for any other reason.

159. Against this background, the Court is led to conclude that the applicants failed to exhaust domestic remedies in respect of their complaint of the seizure of their property. Hence, the complaint under Article 1 of Protocol No.1 should be dismissed pursuant to Article 35 §§ 1 and 4 of the Convention.

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

160. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations of the Convention, 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

161. 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. They added that participants in criminal proceedings were also able to claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

162. The applicants reiterated the complaint.

### B. The Court's assessment

#### 1. Admissibility

163. The Court notes that it has declared the applicants' complaints under Article 8 and Article 1 of Protocol No. 1 inadmissible. It therefore considers that the applicants did not have an arguable claim of a violation of those Convention provisions. Accordingly, their complaint under Article 13 that they had no effective remedies in relation to the above-mentioned complaints must be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

164. As regards the remainder of the applicants' submissions under Article 13, the Court considers that this part of the 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

165. The Court reiterates that in circumstances where, as here, a criminal investigation into a disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State

has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

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

#### VIII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

168. The applicants complained that they had been discriminated against in the enjoyment of their Convention rights, because the violations of which they complained had taken place because of their being resident in Chechnya and their ethnic background as Chechens, which was contrary to Article 14 of the Convention. They also complained that the abduction of their relative had breached Article 8 of the Convention, the text of which has been cited above.

169. Article 14 reads:

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

170. The Court observes that no evidence has been submitted to it that suggests that the applicants were treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated. As regards the applicants' submissions concerning their family life, and having regard to all the material in its possession, the Court finds that it does not disclose any appearance of a violation of this Convention provision.

171. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

172. 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. The Government's objection

173. The Government submitted that the document containing the applicants' claims for just satisfaction had been signed by Mr R. Lemaitre, while, in the Government's opinion, the applicants had been represented by Mr A. Nikolayev, Mr A. Sakalov, Ms D. Straistenau, Ms E. Ezhova and Ms A. Maltseva. They therefore insisted that the applicants' claims for just satisfaction were invalid.

174. The Court points out that the applicants issued powers of attorney in the name of the SRJI, an NGO that collaborates with a number of lawyers. Since the SRJI lists Mr R. Lemaitre as a member of its Governing Board, the Court has no doubt that he was duly authorised to sign the claims for just satisfaction on behalf of the applicants. The Government's objection must therefore be dismissed.

### B. Pecuniary damage

175. The applicants claimed damages in respect of loss of earnings by their relative after his arrest and subsequent disappearance. The first applicant claimed 151,768.60 Russian roubles (RUB) and the second applicant claimed RUB 717,714.75.

176. The applicants submitted that at the material time Shamkhan Tumayev had worked as electric welder but that they had been unable to obtain certificates supporting his status. Accordingly, they submitted that the calculation of lost earnings had to be made on the basis of the subsistence level established by national law. With reference to the relevant provisions of the Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 (“the Ogden tables”), the applicants calculated Shamkhan Tumayev's earnings with an adjustment for 13.67% yearly inflation. The applicants submitted that the first applicant would have been entitled to 10% of the total amount of his earnings. The second applicant claimed that she would have been entitled to 20% of his earnings and that until they reached the age of majority her two children would have been entitled to a further 20% of her husband's income each.

177. The Government argued that the applicants' claims were unsubstantiated and that they had not made use of domestic avenues available for obtaining compensation for the loss of their breadwinner.

178. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

179. Having regard to the applicants' submissions and the fact that there is no evidence that Shamkhan Tumayev was employed at the time of his abduction, the Court awards 4,000 euros (EUR) to the first applicant and EUR 7,000 to the second applicant in respect of pecuniary damage, plus any tax that may be chargeable to the applicants on that amount.

### **C. Non-pecuniary damage**

180. The first applicant claimed EUR 40,000, the second applicant EUR 50,000, the third and fourth applicants claimed EUR 20,000 each and the fifth applicant claimed EUR 10,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards him and the failure to provide any information about the fate of their close relative.

181. The Government characterised the amounts claimed as exaggerated.

182. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the above findings of violations. It awards to the first applicant EUR 20,000, to the second applicant EUR 34,000, and to the third to fifth applicants EUR 2,000 each, plus any tax that may be chargeable on those amounts.

### **D. Costs and expenses**

183. The applicants were represented by the SRJI. They submitted an itemised 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, as well as administrative expenses, translation and courier delivery fees. The aggregate claim in respect of costs and

expenses related to the applicants' legal representation amounted to EUR 9,414.78.

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

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

186. Having regard to the details of the information and legal representation contracts submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

187. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of former Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. Moreover, the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that research was necessary to the extent claimed by the representatives. The Court notes that the applicants did not submit any documents in support of their claim for administrative costs.

188. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 2,500, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

#### **E. Default interest**

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Shamkhan Tumayev;
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 Shamkhan Tumayev disappeared;
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 in respect of Shamkhan Tumayev;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of 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*
  - (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 4,000 (four thousand euros) to the first applicant and EUR 7,000 (seven thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
    - (ii) EUR 20,000 (twenty thousand euros) to the first applicant, EUR 34,000 (thirty-four thousand euros) to the second applicant and EUR 2,000 (two thousand euros) to the third, fourth and fifth applicant each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (iii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and

expenses, to be paid into the representatives' bank account in the Netherlands;

(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;

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

Done in English, and notified in writing on 16 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President