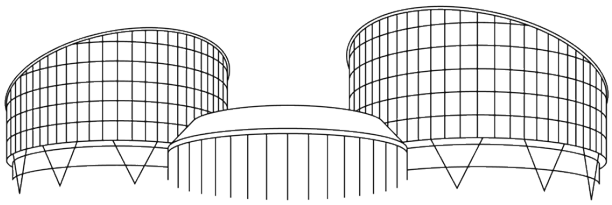

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF UMAYEVY v. RUSSIA

(Application no. 47354/07)

JUDGMENT

STRASBOURG

12 June 2012

FINAL

22/10/2012

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

In the case of Umayevy v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 22 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 47354/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Russian nationals Ms Raisa Umayeva and Mr Akhmed Umayev ("the applicants"), on 23 October 2007.

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 Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their relatives had been abducted, unlawfully detained and killed by State agents, that the investigation of their disappearance had not been effective, and that they had endured mental suffering in that connection and had not been afforded effective remedies in respect of the above mentioned grievances.

4. On 3 September 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3). On the same date the Court decided to grant to the application priority treatment under Rule 41 of the Rules of Court.

5. The Government objected to the joint examination of the admissibility and merits of the application and to the application of Rule 41. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, a married couple, were born in 1960 and 1957 respectively and live in the village of Prigorodnoye in the Chechen Republic.

7. The applicants are the parents of Mr Vidzha Umayev, born in 1982. The first applicant is the sister of Mr Timur Mezhidov, born in 1972. The latter is the brother-in-law of the second applicant.

A. The detention and disappearance of Vidzha Umayev and Timur Mezhidov and the applicants' search for them

1. The applicants' account

8. The description of the events below is based on the information contained in the application form and written statements by the first and second applicants, dated 17 and 23 July 2007 respectively.

(a) The detention of Vidzha Umayev and Timur Mezhidov

9. On 14 July 2006 the first applicant, Vidzha Umayev and Timur Mezhidov were travelling in the applicants' VAZ-2107 vehicle from the village of Nikhaloy to the village of Prigorodnoye.

10. At the Russian federal forces roadblock located at the entrance point of Shatoy village (hereinafter "the Shatoy roadblock") Russian servicemen stopped the applicants' vehicle to carry out a check. At the roadblock the first applicant saw a group of seven to eight servicemen of Chechen ethnic origin, who were standing near a silver-grey four-door Niva vehicle and speaking to each other in Chechen. The first applicant observed them for a while and was able to memorise their faces. She also specifically noticed that, whilst the servicemen from the roadblock who checked the identity papers were Russian, those standing by the Niva vehicle were Chechen. After checking Vidzha Umayev's and Timur Mezhidov's identity papers, Russian servicemen entered the relevant information in the roadblock logbooks and allowed them to continue their journey.

11. The first applicant, Vidzha Umayev and Timur Mezhidov then drove through Shatoyskiy District and crossed the border into Groznenskiy District. At the bridge in the vicinity of the entrance point of Yarash-Mardy village they saw three Chechen servicemen from the group they had already seen at the Shatoy roadblock. The servicemen walked towards the vehicle and ordered it to stop. One of the servicemen ordered the driver and the

passengers, in Chechen, to get out of the vehicle. Vidzha Umayev, Timur Mezhidov and the first applicant complied with the order and got out of the car. One of the servicemen then ordered Vidzha Umayev and Timur Mezhidov to get back into the applicants' vehicle. They obeyed and got into the back seats. At the same moment two servicemen joined them in the back seat, the third serviceman got into the driver's seat and the vehicle moved off quickly. Vidzha Umayev shouted in Chechen: "That's my mother! Don't leave her alone!" and the first applicant rushed towards the car. However, the car did not stop and the first applicant ran into a bridge barrier and fell to the ground.

12. The applicants have not seen Vidzha Umayev and Timur Mezhidov since.

(b) The applicants' search for their missing relatives

13. On 14 July 2006, shortly after the car with the abductors had left, the first applicant managed to stop a private vehicle, which took her home. Once there she told the second applicant about the abduction, and the applicants immediately left for Shatoy, intending to alert the Shatoyskiy District Department of the Interior ("the ROVD") to the incident.

14. On their way, about 2.5 km from the bridge, where the first applicant, her son and brother had been stopped by the Chechen servicemen, the applicants saw their VAZ-2107 vehicle. It was parked about fifty metres from the road, at a dugout in which were two Russian servicemen. In the applicants' submission, on that day Russian military forces had groups of servicemen stationed at the Shatoy road at about 200 metres distance from each other. The applicants saw that three of the doors of their VAZ-2107 vehicle were open and its headlights were on. Vidzha Umayev's mobile phone was in the vehicle. The first applicant asked the servicemen how their car had arrived at the dugout. They replied that it had arrived there, followed by a four-door silver-grey Niva vehicle. Two people were taken out of the VAZ-2107 vehicle and put into the silver-grey Niva vehicle, which then left in the direction of the village of Duba-Yurt.

15. After that the applicants took Vidzha Umayev's mobile phone and went to the ROVD. From there the second applicant, the head of the ROVD, whom the applicants identified as "Sayd-Akhmed", and several police officers left for the Shatoy roadblock. The first applicant stayed at the ROVD and lodged a written complaint about the abduction of her son and brother.

16. On the same day, on arrival at the Shatoy roadblock, the second applicant and Sayd-Akhmed spoke to a senior roadblock officer from the Shatoyskiy District military commander's office. He confirmed that the servicemen at the roadblock had checked Vidzha Umayev and Timur Mezhidov's identity papers and stated that everything was in order, and that the two men had been let through the roadblock and had left. Meanwhile the

first applicant also arrived at the roadblock. While the second applicant was speaking to the officer, a UAZ vehicle with two Chechen servicemen in it arrived at the roadblock. The first applicant identified them as members of the group of Chechen servicemen she had seen at the Shatoy roadblock while the authorities were checking her relatives' identity papers. The applicants immediately asked those servicemen where the other members of their group were and where they had taken Vidzha Umarov and Timur Mezhidov. The two men laughed and answered that they had not arrested Vidzha Umayev and Timur Mezhidov. They also stated that they did not know the other servicemen who had been at the Shatoy roadblock with them. According to the applicants, the head of the ROVD told them that the two Chechen servicemen were from the special Vostok Russian Military Battalion of the Main Intelligence Service ("the GRU") and that they were called "Yamadayevtsy" after their commander Sulim Yamadayev. The applicants then returned home.

17. On 15 July 2006 the applicants again complained to various State bodies about the abduction of Vidzha Umayev and Timur Mezhidov. They did not keep copies of those complaints.

18. On 17 or 18 July 2006 a certain Mr I.A., a GRU officer, visited the applicants and told the second applicant that a certain Mr R., a GRU colonel and commander of the 921st regiment, wished to talk to him.

19. On 23 July 2006 the applicants and Mr I.A. drove to a Russian federal forces base located in the village of Borzoy in the Chechen Republic. The second applicant left his vehicle, with the first applicant and Mr I.A. inside. At the military base checkpoint he was met by two Russian servicemen, one of them a warrant officer and the other a captain. They accompanied the second applicant into the checkpoint building, where Mr R. was already waiting for him.

20. Mr R. confirmed that the applicant's son was being held in the military base and said that he "opened his eyes when touched but then rolled them up". Mr R. then asked the second applicant to write a note for his son, "telling him to answer their questions". The second applicant asked Mr R. what statement they wanted from his son, but received no reply. The second applicant then handed over to Mr R. medical certificates attesting to his son's disability. Mr R. looked at them, and from his reaction the second applicant inferred that Mr R. had realised that his servicemen had beaten up a seriously ill person. The second applicant then told Mr R. that he would not write any notes for his son and requested that he be released. Mr R. replied that "they did not have a deal then" and ordered the servicemen to accompany the second applicant to the exit, which they did. The second applicant returned to the car and left the premises with the first applicant.

21. On an unspecified date in October 2006 the first applicant received a phone call on her mobile phone from a person who whispered "Mother, mother!" and then suddenly the conversation was disconnected. The first

applicant inferred that it was Vidzha Umayev and, since the number was displayed, she called back. A woman replied to her in Russian and immediately hung up. When the first applicant dialled the number again, a man's voice told her not to call that number any more. The first applicant informed the law-enforcement authorities about the call. In the applicants' submission, at the material time the only company providing mobile communication services in the Chechen Republic was Megafon. The figures 923 indicated that the number from which she had received the call was not a Megafon number but was from another company. In the applicants' opinion, only Russian army servicemen could have had phone numbers from mobile communication providers other than Megafon.

22. On an unspecified date in November 2006 Mr I.A. visited the applicants again and offered them information on Vidzha Umayev and Timur Mezhidov in exchange for 50,000 Russian roubles (RUB). Two days later the second applicant met Mr I.A. in Prigorodnoye and the latter told him that Vidzha Umayev and Timur Mezhidov were not alive. Mr I.A. promised the second applicant that their bodies would be retrieved, and left.

23. Two days later the second applicant and his relative went to the village of Borzoy to meet Mr I.A. He told the second applicant that there were three mass graves in Borzoy but he did not know in which of them Vidzha Umayev and Timur Mezhidov had been buried. He also specified that their bodies were in different graves and that they "had been shot dead by Chechens in the presence of a Russian". He noted however that he had not witnessed the killings.

24. On an unspecified date the second applicant contacted a Russian army general whom he knew well and told him about Mr R. The general told the applicant that this was the first time he heard that name and that it must have been a false name.

2. Information submitted by the Government

25. The Government submitted that on 14 July 2006, on the road between Grozny and Shatoy, near the bridge close to the village of Yarysh-Mardy, three unidentified individuals wearing camouflage uniforms and carrying automatic weapons had stopped a vehicle in which Vidzha Umayev and Timur Mezhidov were travelling, following which the latter disappeared.

B. Official investigation

1. The applicants' account

26. It appears that following the applicants' complaints about the abduction of their relatives the ROVD carried out an inquiry into their

allegations. The inquiry was given the number 81. The exact date of the opening of the inquiry remains unclear.

27. On 25 July 2006 the prosecutor's office of the Groznenskiy District ("the district prosecutor's office") received the inquiry file from the ROVD.

28. On the same date the district prosecutor's office instituted a criminal investigation in respect of the abduction of Vidzha Umayev and Timur Mezhidov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was assigned the number 54063. The decision stated that at about 4 p.m. on 14 July 2006 at the bridge near Yarysh-Mardy village, three unidentified armed individuals in camouflage uniforms had stopped the VAZ-2107 vehicle in which Vidzha Umayev, Timur Mezhidov and the first applicant were travelling, and had taken Vidzha Umayev and Timur Mezhidov to an unknown destination.

29. By a letter of 26 July 2006 the prosecutor's office of the Chechen Republic ("the republican prosecutor's office") replied to the first applicant that it had examined her complaint about the abduction of Vidzha Umayev and Timur Mezhidov and informed her that on 25 July 2006 the district prosecutor's office had opened a criminal investigation in respect of the abduction of her son and brother.

30. On 20 September 2006 the first applicant was granted victim status in connection with the proceedings in case 54063. She was informed of that decision on 21 September 2006.

31. On 28 May 2007 the first applicant wrote to the President of the Chechen Republic. She described in detail the circumstances of the abduction of her relatives and her attempts to find them and asked for assistance in her search for them.

32. On 15 June 2007 the republican prosecutor's office replied to the first applicant that on 25 July 2006 the district prosecutor's office had opened a criminal case in respect of the abduction of her relatives. The letter also stated that on 25 October 2006 the investigation in case 54063 had been suspended for failure to identify the perpetrators.

33. On 17 July 2007 the first applicant wrote to the district prosecutor's office, seeking information on the progress of the investigation in case 54063. She requested that the proceedings be resumed if they had been suspended and sought access to the investigation case file and permission to make copies from it. There is no indication that the applicant's request was ever replied to.

34. By a letter of 22 June 2007 the district prosecutor's office informed the first applicant that on 22 July 2007 it had resumed the investigation in case 54063.

35. In the applicants' submission, in October 2007 the district prosecutor's office informed them orally that on an unspecified date the investigation in case 54063 had been suspended again.

2. Information submitted by the Government

(a) The Government's refusal to furnish a copy of the investigation file

36. The Government refused to submit any documents from criminal case file concerning the abduction of the applicants' relatives, referring to Article 161 of the Russian Code of Criminal Procedure.

(b) Information concerning the progress of the investigation of the abduction of the applicants' relatives

37. The information about the investigation provided by the Government can be summarised as follows.

38. On 25 July 2006 the district prosecutor's office opened a criminal investigation in respect of the abduction of Vidzha Umayev and Timur Mezhidov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was assigned the number 54063.

39. On 25 October 2006 the investigation was suspended for failure to identify the perpetrators.

40. On 22 June 2007 the investigation was resumed because the investigating authorities had established that serviceman R.D. of military unit 44822 was implicated in the abduction.

41. On 21 July 2007 Mr R.D.'s name was put on a wanted list.

42. On 6 June 2008 the investigation of the abduction of the applicants' relatives was entrusted to an investigating committee of the prosecutor's office of the Russian Federation in the Chechen Republic (hereinafter "the investigating committee").

43. On 8 July 2008 the investigating committee issued a decision to formally charge Mr R.D. with abducting the applicants' relatives and the criminal case was transferred to the military investigating department with the United Group Alignment of the Military Forces for Counterterrorist Operations in the North Caucasus Region (hereinafter the "investigating department"). The case file was given the number 34/00/0023-08.

44. It appears that shortly thereafter the investigation was suspended again and that it was resumed on 11 November 2009.

45. In the Government's submission the investigation in case 34/00/0023-08 is still pending.

(c) The findings of the investigation

46. The Government stated that the findings of the preliminary investigation confirmed the version of events submitted by the applicants.

47. In the Government's submission, the preliminary investigation established that Mr R.D. had been doing military service in military unit 44822 of the Vostok special-purpose battalion (previously an infantry battalion) since 10 August 2004. In mid-July 2006 Mr R.D. had colluded

with two unidentified individuals with a view to abducting Vidzha Umayev and Timur Mezhidov. On 14 July 2006, having acquired information on the route taken by Vidzha Umayev and Timur Mezhidov, Mr R.D., armed with an automatic weapon, organised an ambush at the Grozny-Shatoy road near Yarysh-Mardy with a view to arresting and abducting them. At about 4 p.m. on the same day Mr R.D. stopped the VAZ-2107 vehicle with Vidzha Umayev and Timur Mezhidov, following which "Mr R.D. and two armed men in camouflage uniforms arrested them and took them to an unknown destination", leaving the first applicant behind.

48. In the Government's submission, the above account of the events was confirmed by the first applicant, who had been granted victim status, and the second applicant, who had been interviewed as a witness. The applicants also informed the investigators that following the abduction they had learnt from Mr I.A. that their abducted relatives had been held at the military base in the village of Borzoy and eventually killed.

49. The first applicant confirmed those submissions during a check of her statement at the crime scene (*проверка показаний на месте совершения преступления*) and identified Mr R.D. from a photograph as the person who had abducted her son and brother.

50. Mr I.A., interviewed on an unspecified date, stated that he had learnt about the abduction of Vidzha Umayev and Timur Mezhidov from Z.M. The second applicant had contacted Mr I.A. six months after the abduction, asking the latter to organise a meeting with officers of the military base, following which they had met a serviceman named Volodya, who had asked for RUB 50,000 for information about the applicants' son and had then informed them that the applicants' relatives had been killed.

(d) Information concerning criminal case 68800

51. On an unspecified date the investigating authorities opened a criminal case against Mr R.D. on suspicion that he had caused serious damage to the health of a third person by shooting at him at the local market in the village of Borzoy on 23 May 2007. The case file was given the number 68800.

52. On 18 October 2008 case 68800 was transferred for investigation to an unspecified investigating department of an unspecified military unit.

53. On 22 January 2009 criminal case 6800 was joined to the criminal case concerning the abduction of the applicant's relatives and the new file was given the number 34/36/0092-08.

II. RELEVANT DOMESTIC LAW

54. 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. Submissions by the parties

55. The Government contended that the applicants had failed to exhaust domestic remedies. They submitted that the investigation of the disappearance of Vidzha Umayev and Timur Mezhidov had not yet been completed. They further argued that the first applicant had been granted victim status and thus must have been able to participate effectively in the investigation procedure. Moreover, it was open to the applicants to complain to higher-ranking prosecutors or courts about the alleged omissions of the investigation and to lodge a civil claim for damages, but they had not availed themselves of those remedies.

56. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that, moreover, its effectiveness had been undermined in its early stages. With reference to the Court's practice, they argued that they were not obliged to apply to civil courts in order to exhaust domestic remedies.

B. The Court's assessment

57. 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).

58. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

59. 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.

60. As regards criminal-law remedies, the Court observes that the applicants complained to the law-enforcement authorities immediately after the kidnapping of their relatives, and that an investigation has been pending since 25 July 2006. The applicants and the Government dispute the effectiveness of the investigation of the abduction.

61. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation in question 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

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

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Submissions by the parties

1. The Government

63. The Government argued that the criminal investigation had obtained no evidence that the domestic authorities had carried out any special operations aimed at arresting the applicants' relatives. In their view, it was possible that Mr R.D. had abducted Vidzha Umayev and Timur Mezhidov "out of personal, and possibly financial, motives". The bodies of the applicants' relatives were never discovered and there were no indications that they had been killed.

64. As regards the investigation, the Government submitted that the domestic authorities had taken a significant number of investigative steps, and whilst the whereabouts of Mr R.D. remained unknown, the relevant bodies had put his name on a wanted list and were actively searching for him, as well as for his accomplices. The fact that the steps taken by the investigators had not yielded any results was not as such indicative of any omissions on the part of the investigating authorities, because the applicants did not enjoy an absolute right to obtain the conviction of the presumed perpetrators.

2. The applicants

65. The applicants maintained that there existed evidence beyond reasonable doubt that their relatives had been kidnapped and killed by State agents. They stressed that the domestic investigation had established that Mr R.D., who had abducted their relative, belonged to the State military forces, and that the first applicant had identified him as one of the abductors. They further averred that at the material time only State agents could wear uniforms, carry weapons and park their vehicles unhindered at roadblocks. Moreover, the abductors had left their vehicle at the dugout where two Russian servicemen had been stationed. With reference to the statement by Mr I.A., citing a military serviceman from the base at which Vidzha Umayev and Timur Mezhidov had been detained and stating that they had been killed, the applicants submitted that their relatives were to be presumed dead. They also submitted that the Government's statement, that Mr R.D. could have abducted their relatives for ransom, was unconvincing, and invited the Court to draw inferences from the respondent State's failure to submit any documents from the case file concerning the kidnapping.

66. As to the investigation, the applicants submitted that the investigators had not identified or interviewed the servicemen from the military roadblocks, the man named Volodya, or the two accomplices of Mr R.D. Moreover, whilst Mr R.D. was identified as the suspect on 22 June 2007, his name was put on a wanted list only on 21 July 2007 and the formal decision to charge him with the crime was delivered a further year later. In the applicants' submission, they were not informed of any significant developments in the investigation, apart from some decisions to suspend and reopen it.

B. The Court's assessment

1. Admissibility

67. 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, it 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 61 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the substantive limb of Article 2

68. The Court notes at the outset that the Government did not dispute any of the applicants' submissions concerning the facts of the abduction and the ensuing events, but claimed that serviceman R.D., whom the domestic authorities had charged with the crime, could have kidnapped the applicants' relatives "for personal, financial, reasons". The applicants contested that submission. Accordingly, the Court has first to assess whether the alleged breach of Article 2 of the Convention is imputable to the State.

(i) As to whether the alleged violation of the right to life of Vidzha Umayev and Timur Mezhidov is imputable to the State

(α) General principles

69. 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. Detainees 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 people 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).

70. It is further noted that, in the context of military service, the Court has emphasised on several occasions that unregulated and arbitrary action by State agents is incompatible with effective respect for human rights and that the State must ensure, by putting in place a system of adequate and effective safeguards against arbitrariness and abuse of force, that its agents

duly understand the limits of their power and that, in their actions, they are guided not only by the letter of the relevant professional regulations but also pay due regard to the pre-eminence of respect for human life as a fundamental value (see, among other authorities, *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 284, 26 April 2011, with further references).

71. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 182-83, ECHR 2009).

72. Lastly, it should be pointed out that the Court recognises that it must refrain from taking on the role of a first-instance tribunal of fact, unless this is rendered unavoidable by the circumstances of a particular case. Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place. The Court is not bound by the findings of domestic courts, and cogent elements may require it to depart from and set aside these findings (see, among many other authorities, *Aktaş v. Turkey*, no. 24351/94, § 271, ECHR 2003-V (extracts), and, more recently, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 180, 24 March 2011).

(β) Application of these principles in the present case

73. The Court notes at the outset that despite its requests for a copy of the criminal file opened in respect of the abduction of Vidzha Umayev and Timur Mezhidov, the Government refused to produce any documents from it, relying on Article 161 of the Code of Criminal Procedure. In this respect it points out that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by it (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)). The Court finds no reasons to depart from those findings in the present case, and considers that it can draw inferences from the Government's conduct (see *Mikheyev v. Russia*, no. 77617/01, § 105, 26 January 2006).

74. As it has been observed above, the Government did not dispute any of the applicants' factual submissions concerning the circumstances of the abduction and the ensuing events, but claimed that Mr R.D. could have abducted the applicants' relatives "for financial reasons". In other words,

they denied that the disappearance of Vidzha Umayev and Timur Mezhidov was attributable to the State. However, after carefully examining the parties' arguments and the materials available to it, the Court is not convinced by the Government's argument, for the following reasons.

75. It observes in the first place that the Government's submission that the applicants' relatives could have been kidnapped "for financial reasons" is very vague and, moreover, unsupported by any evidence. Owing to the Government's refusal to submit any documents from the criminal case file, the Court is deprived of an opportunity not only to discern what the Government mean by "financial reasons" but to assess whether the domestic investigation had in reality considered that thesis at any stage.

76. Moreover, the Court considers that a number of further elements seriously undermine the Government's argument. In particular, the Government admitted that at the material time Mr R.D. was a serviceman of the special-purpose battalion of the Russian military forces and thus a State agent. Furthermore, apart from the fact that the abductors, including Mr R.D., were wearing camouflage uniforms and carrying arms, with nothing suggesting that those were not their service weapons, it is noteworthy that they not only stopped the applicants' vehicle in broad daylight, giving orders to its passengers (see paragraph 11 above), but that they openly transferred the applicants' relatives to their Niva vehicle at the dugout of the Russian federal forces, that is a place under the control of the State (see paragraph 14 above). It is also significant for the Court that the investigators in their decisions, as conveyed by the Government, unequivocally stated that Mr R.D. and his accomplices had "arrested" the applicants' relatives (see paragraph 47 above).

77. The Court also cannot overlook that the first applicant, as well as Vidzha Umayev and Timur Mezhidov, had already seen those servicemen at the Shatoy roadblock in a situation rather suggesting that the latter were agents of the State on duty (see paragraph 10 above) and that ultimately, when the applicants returned to the Shatoy roadblock after the abduction, they found servicemen of the same group there (see paragraph 16 above).

78. In addition, it follows from the Government's submissions that the applicants' allegation concerning their relatives' detention at a State military base after their kidnapping was confirmed by Mr I.A., a State official and, more specifically, a GRU officer, in his statement to the investigating authorities (see paragraph 50 above). The Government did not contest either the accuracy of his statement or the fact that Mr I.A. belonged to the GRU military service.

79. Taking into account all the elements outlined above and drawing inferences from the Government's refusal to submit any of the documents from the investigation file, the Court finds that Vidzha Umayev and Timur Mezhidov had been abducted on 14 July 2006 by State agents and that,

contrary to the Government's submission, the responsibility for their disappearance lies with the respondent State.

(ii) As to whether the applicants' relatives may be presumed dead

80. The Court will next examine the applicants' submission that their relatives may be presumed dead following their abduction.

81. In this respect it points out that there has been no reliable news of Vidzha Umayev and Timur Mezhidov since the date of their kidnapping. Their names have not been found in any official detention facility records. Moreover, the Government have not submitted any explanation as to what happened to them after their arrest.

82. The Court reiterates that in previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina v. Russia*, no. 69481/01, 27 July 2006; *Imakayeva*, cited above; *Luluyev 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; *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007; and, more recently, *Beksultanova v. Russia*, no. 31564/07, 27 September 2011) it has repeatedly found that, in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of detention, this can be regarded as life-threatening. Applying this rationale and having regard to the circumstances of the case, and, among other things, the events surrounding the abduction, the statement by Mr I.A. to the effect that Vidzhu Umayev and Timur Mezhidov had been killed (see paragraph 50 above) and to the absence of any news of them for more than five years, the Court finds that the evidence available permits it to establish that Vidzha Umayev and Timur Mezhidov must be presumed dead following their unacknowledged detention by State servicemen.

(iii) The Court's conclusion concerning the substantive limb of Article 2

83. The Court has found that the applicants' relatives must be presumed dead following their unacknowledged detention by State servicemen, and that their deaths are attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Vidzha Umayev and Timur Mezhidov.

(b) The alleged violation of the procedural limb of Article 2

(i) General principles

84. 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 v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324, 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, §§ 105-9, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

(ii) Application of these principles in the present case

85. The Court reiterates that the Government refused to produce any documents from the case file concerning the investigation of the abduction of the applicants' relatives. It therefore has to assess the effectiveness of the investigation on the basis of the very sparse information submitted by the Government and the few documents available to the applicants, which they provided to the Court.

86. Turning to the facts of the present case, the Court observes that the applicants complained to the authorities about the abduction of Vidzha Umayev and Timur Mezhidov on 14 July 2006, that is on the same day when it occurred. However, the investigation into the abduction was instituted only on 25 July 2006, eleven days later. In the Court's opinion, this delay, for which no explanation was provided, was not only indicative of a lack of a prompt reaction on the part of the authorities but must also have been liable to undermine, from the beginning, the capacity of the investigation to secure the relevant evidence.

87. The Court has further to assess the scope of the investigative measures taken. In this connection it points out that, according to the Government, after the opening of the investigation the investigating authorities interviewed the first applicant and Mr I.A., conducted an examination of the crime scene, and put Mr R.D.'s name on a wanted list. In this respect the Court observes that, in the absence of any supporting documents, it is not only precluded from assessing whether the majority of those investigative steps were taken promptly, but is unable to establish

whether they were taken at all (see, for example, *Isayev and Others v. Russia*, no. 43368/04, § 145, 21 June 2011).

88. As regards putting Mr R.D.'s name on the wanted persons' list, the only investigative action in respect of which the Government indicated the date on which it was supposedly carried out, the Court notes that it was only done a month after the investigators had established that he was implicated in the abduction. In the absence of an explanation, it considers that this delay cannot be considered acceptable. Moreover, owing to the Government's refusal to submit any documents from the case file, the Court is precluded from assessing not only what specific measures aimed at establishing Mr R.D.'s whereabouts were taken by the authorities and whether they were sufficient, but whether they were taken at all.

89. It furthermore transpires that a number of crucial investigative steps were never taken.

90. In this respect the Court points out that there is no indication that the investigating authorities took any steps to identify the two accomplices of Mr R.D., as well as other servicemen from their group, who had stayed near the Niva vehicle at the Shatoy roadblock, although it follows from the parties' submissions that the first applicant had been able to memorise their faces, and there was reliable evidence that they belonged to the Vostok battalion (see paragraphs 10 and 11 above). Furthermore, there is nothing to suggest that any attempts were made to identify and interview the servicemen who had manned the Shatoy roadblock and those who had been stationed at the dugout where the abductors had left the applicants' vehicle. It is also striking that the investigators did not consider it necessary to examine the applicants' vehicle with a view to looking for, for example, the abductors' fingerprints, particularly given the applicant's submission that one of them had been driving the car. Lastly, despite the information that the applicants' relatives had been detained at a specific military base, it does not transpire that any steps were taken to verify that information.

91. Whilst the Court agrees with the Government that the obligation to investigate is an obligation of result and not of means (see, for example, *Makaratzis v. Greece* [GC], no. 50385/99, § 74, ECHR 2004-XI), it considers that the omissions outlined above raise serious doubts as to the authorities' genuine determination to elucidate the crime and to bring those responsible to justice.

92. In addition, although the first applicant was granted victim status two months after the opening of the investigation, there is no indication that the authorities ever considered recognising the second applicant as a victim in the proceedings. Furthermore, having regard to the applicants' queries addressed to the investigating authorities, some of which apparently remained unanswered (see paragraph 33 above), the Court is not persuaded that the authorities ensured that the investigation received the required level of public scrutiny to safeguard the interests of the next of kin in the

proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

93. Having regard to the part of the Government's objection which was joined to the merits of the complaint, inasmuch as it concerned the fact that the domestic investigation is still pending, the Court notes that the investigation, plagued by inexplicable delays, has been ongoing for several years and has produced no tangible results. Moreover, owing to the time which has elapsed since the events complained of, certain investigative measures that ought to have been taken much earlier can no longer be usefully carried out. As the Court has noted above, it has strong doubts that the way the investigation was handled increased the prospects of identifying the remaining perpetrators and establishing the fate of Vidzha Umayev and Timur Mezhidov.

94. Moreover, having regard to the applicants' unanswered requests for access to the case file and for information on the developments in the investigation (see paragraph 33 above), the Court is not convinced that, in the absence of such access and not being properly informed of the progress of the investigation, including the most basic decisions, the applicants could have effectively challenged the actions or omissions of the investigating authorities before the courts or higher-ranking prosecutors. In respect of the complaints to higher-ranking prosecutors the Court also reiterates that it has consistently refused to consider that extraordinary remedy as a remedy to be exhausted by applicants in order to comply with the requirements of Article 35 § 1 of the Convention (see, among many other authorities, *Trubnikov v. Russia* (dec.), no. 9790/99, 14 October 2003; *Belevitskiy v. Russia*, no. 72967/01, § 59, 1 March 2007; and, more recently, *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 90, 24 February 2005). For the same reasons the Court is not persuaded by the Government's argument concerning the first applicant's victim status. Therefore, it is highly doubtful that the remedies relied on would have had any prospects of success.

95. Accordingly, the Court finds that the remedies cited by the Government were ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust the domestic remedies within the context of the criminal investigation.

96. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the abduction and subsequent death of Vidzha Umayev and Timur Mezhidov in breach of Article 2 under its procedural limb. Accordingly, there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Submissions by the parties

98. The Government argued that the investigating authorities had not acted in a way which could have exposed the applicants to inhuman or degrading treatment prohibited by Article 3 of the Convention.

99. The applicants maintained the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

101. 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* and *Imakayeva*, both cited above, §§ 358 and 164, respectively).

102. In the present case, the Court notes that the applicants are the parents of Vidzha Umayev and sister and brother-in-law of Timur Mezhidov. For more than five years they have not had any news of their son and brother. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about Vidzha Umayev and Timur Mezhidov. Despite their attempts, the applicants have never received any plausible explanation or information about the fate of their relatives following their detention. The responses they received mostly denied State responsibility for their arrest 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.

103. 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

104. The applicants further stated that Vidzha Umayev and Timur Mezhidov 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. Submissions by the parties

105. The Government asserted that no evidence had been obtained by the investigators to confirm that the applicants' relatives had been deprived of their liberty by State agents or held in detention in State institutions. They had not been listed among the people kept in detention centres and none of the regional law-enforcement agencies had had information about their detention.

106. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

108. The Court reiterates that it 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).

109. The Court has found that Vidzha Umayev and Timur Mezhidov were arrested by State servicemen on 14 July 2006 and have not been seen since. Their detention was not acknowledged, was not logged in any custodial records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

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

111. In view of the foregoing, the Court finds that Vidzha Umayev and Timur Mezhidov were held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

112. Lastly, 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. Submissions by the parties

113. 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 the opportunity to challenge the acts or omissions of the investigating authorities in court and could also claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

114. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

116. The Court reiterates that in circumstances where, as here, a criminal investigation of 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).

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

118. 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).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. 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. Damage

120. The applicants did not submit any claim for pecuniary damage. They claimed 150,000 euros (EUR) in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their son and brother, the indifference shown by the authorities towards them and the failure to provide any information about their fate.

121. The Government submitted that the applicants' claims were excessive.

122. The Court points out that it has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relatives. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. Taking into account that the applicants are the parents of Vidzha Umayev and sister and brother-in-law of Timur Mezhidov, the Court awards the applicants jointly EUR 120,000, plus any tax that may be chargeable to them.

B. The applicants' request for an investigation

123. The applicants also requested that "an independent investigation which would comply with the requirements of the Convention be conducted" into the disappearance of their relatives. They submitted that in the context of an enforced disappearance it was the State's obligation to establish what had occurred to the victim and to bring those responsible to justice and alleged that the respondent State was constantly failing to respect that obligation.

124. The Government made no comments on the applicants' submissions.

125. The Court notes that in a number of similar cases, in comparable circumstances, it has decided, with reference to its established principles, that it was most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order with a view to discharging their legal obligation under Article 46 of the Convention (see,

among other authorities, *Umayeva v. Russia*, no. 1200/03, §§ 123-24, 4 December 2008; *Kukayev v. Russia*, cited above, §§ 131-34; *Lyanova and Aliyeva v. Russia*, nos. 12713/02 and 28440/03, § 160, 2 October 2008; *Medova v. Russia*, no. 25385/04, §§ 142-43, ECHR 2009 ... (extracts); and *Mutsolgova and Others v. Russia*, no. 2952/06, § 168, 1 April 2010). It does not see any exceptional circumstances which would lead it to reach a different conclusion in the present case.

C. Costs and expenses

126. The applicants were represented by lawyers of the SRJI. They submitted an agreement between them and the SRJI for their representation before the Court and an itemised schedule of costs and expenses that included the drafting of legal documents submitted to the Court at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 4,566.86.

127. 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).

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

129. 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.

130. 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 the case involved little documentary evidence, in view of the Government's refusal to submit the case file.

131. Regard being had to the details of the claims submitted by the applicants the Court awards them the amount claimed, that is EUR 4,566.86, together with any value-added tax that may be chargeable to the applicants, to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

132. The Court considers it appropriate that the default interest rate 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 application admissible;

3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Vidzha Umayev and Timur Mezhidov;

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 Vidzha Umayev and Timur Mezhidov disappeared;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants' mental suffering;

6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Vidzha Umayev and Timur Mezhidov;

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 the applicants, within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement, save in the case of the payment in respect of costs and expenses:

(i) EUR 120,000 (one hundred and twenty thousand euros) to the first and second applicants jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,566.86 (four thousand five hundred and sixty-six euros and eighty-six cents), 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 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Kovler is annexed to this judgment.

N.A.V.
S.N.

CONCURRING OPINION OF JUDGE KOVLER

I share all the Court's conclusions finding violations of Articles 2, 3, 5 and 13 of the Convention. My problem is the calculation of the award for non-pecuniary damage suffered by the two applicants.

The applicants are the mother and father of the first victim, Mr Vidzha Umayev, which is why a standard award of 60,000 euros (EUR) is justified (see, among other authorities, *Abuyeva and Others v. Russia*, no. 27065/05, 2 December 2010, Annex). As to the second disappeared person, Mr Timur Mezhidov, the applicants are his sister and brother-in-law respectively, so, according to the Court's case-law, the award for mental suffering can be reduced. An automatic award "per capita" irrespective of the degree of kinship is not, to my mind, justified in this kind of case.