



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

FIRST SECTION

CASE OF UMAROVY v. RUSSIA

(Application no. 2546/08)

JUDGMENT

*This version was rectified on 23 July 2012
under Rule 81 of the Rules of Court*

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.



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Umarovy v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
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. 2546/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Mr Zhamal¹ Umarov and Ms Aysarat Umarova (“the applicants”), on 18 December 2007.

2. The applicants were represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged in particular that their relative had been abducted by State agents and that the authorities had failed to effectively investigate the incident. They cited Articles 2, 3, 5 and 13 of the Convention.

4. On 24 January 2010 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application. On 1 July 2010 it decided 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.

¹ Rectified on 23 July 2012: the text was “... Mr Zhamalat ...”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are Mr Zhamal (also spelled Zhamalat) Umarov and Ms Aysarat Umarova, who were born in 1936 and 1972 respectively. They live in Makhachkala, Dagestan. The applicants are the father and sister of Mr Ramazan (also known as Lobaz, Labaz, Labazan and Lobazan) Umarov, who was born in 1974.

A. Disappearance of the applicants' relative and subsequent events

1. Information submitted by the applicants

(a) Background information

6. In 1999 Ramazan Umarov was convicted of an offence and served a sentence in Tyuba, Dagestan. He was released in 2004 and went to live in Makhachkala.

7. On 25 August 2005 the officers of the Kirov district department of the interior in Makhachkala (the Kirov ROVD) arrested Ramazan Umarov and charged him with illegal possession of firearms. He spent three months in pre-trial detention. In 2006 he was acquitted by the court.

8. According to the applicants, officers of the Kirov ROVD continued to harass their relative, threatening to put him behind bars. As a result, Ramazan had to hide from the police.

9. On 21 April 2007 Ramazan Umarov told his former fellow prison inmate Mr S.S. about his problems with the police and asked him for help in finding a place to live. Mr S.S. allowed Ramazan to stay in his flat in a block at 41 Salavatova Street, Makhachkala, Dagestan.

(b) The events of 28 April 2007

10. In the morning of 28 April 2007 Mr S.S., his driver Mr M.R. and Ramazan Umarov were sleeping in the flat. At about 8 a.m. Ramazan Umarov woke Mr S.S. and Mr M.R. up and told them that the police were knocking at the door. He was holding a gun and grenades, which he then hid in the flat. The three men then opened the door.

11. The police searched the flat and found the hidden gun and the grenades. They arrested the three men, handcuffed them and took them to the Department for the Fight Against Organised Crime (the UBOP) of the Dagestan Ministry of the Interior (the Dagestan MVD).

12. On the same date the authorities initiated criminal proceedings against Mr S.S. and Mr. M.R. under Article 222 of the Criminal Code (illegal possession of firearms). The case file was given the number 702687. The two men were subsequently questioned about the circumstances of the case; both of them stated on several occasions that they had been arrested with Ramazan Umarov.

13. Ramazan Umarov was taken by the police to the UBOP building, with Mr S.S. and Mr M.R. but in a separate vehicle. The applicants were not informed about his arrest.

(c) The applicants' search for Ramazan Umarov

14. On 29 April 2007 a friend of Ramazan Umarov informed the first applicant that his son had been arrested. On the same date the applicants made an oral complaint about the arrest to a number of local law-enforcement agencies.

15. In the evening of 9 May 2007 the applicants received a phone call from a woman who informed them that Ramazan Umarov was with her. The first applicant managed to speak with his son. Ramazan, whose voice sounded weak and tired, told him that he had no idea where he was or what had happened to him. Then the woman told the second applicant that Ramazan was in the medical unit of a penal institution in Gudermes, Chechnya, and that he had been brought there after being found unconscious in a forest near Shali, Chechnya.

16. Later on the same date, around 11 p.m., a man called the applicants and told the first applicant to come to Gudermes if he wanted to obtain information about his son's whereabouts.

17. On 10 May 2007 the applicants had several phone conversations with the man and the woman, but they were unable to obtain from them any detailed information about Ramazan's whereabouts.

18. On 13 May 2007 Ramazan Umarov called the applicants and asked them to hand over their family VAZ-2107 car to "these people", explaining that only after that would he be able to return home. Shortly afterwards, unidentified people called the applicants and told them to bring 5,000 United States dollars (USD) and meet them in Kizil-Yurt, Dagestan.

19. On 14 May 2007 the applicants' friend Mr A. went to Kizil-Yurt with the money. There he met two Chechen men, Mr M.Sh. and Mr U.U., who took him to Khasavyurt, Dagestan, in a VAZ car with the registration number B 192 OM 08 RU. The two men took 20,000 Russian roubles (RUB) from Mr A. for information about a police officer, Mr Zh.Kh., who was supposed to know the whereabouts of Ramazan Umarov. However, Mr A. was unable to find the police officer Zh.Kh.

20. On 15 May 2007 the man who had previously called on 9 May 2007 called again and told the applicants that the police officer Mr Zh.Kh., who

was a senior police officer in Gudermes, would assist them in getting Ramazan Umarov released.

21. It is unclear whether the applicants met the officer Zh.Kh. or obtained any information from him. They have not heard any news of Ramazan Umarov since then.

22. In support of their application the applicants submitted a statement by the first applicant dated 4 December 2007, copies of a number of documents reflecting the applicant's correspondence with the authorities and copies of a few documents from the investigation file.

2. Information submitted by the Government

23. The Government did not challenge the matter as presented by the applicants. At the same time they submitted that the Russian authorities had not obtained "reliable information concerning the arrest of Ramazan Umarov by representatives of the authorities", and stated that the possible reasons he had gone missing were "his desire to abscond from the authorities" or "the actions of third parties".

24. According to the Government's submission, the information provided by the Russian Ministry of the Interior indicated that Ramazan Umarov had been a member of a radical religious movement; he had been prosecuted on several occasions, and had been a member of a terrorist group which had been eliminated during a special operation in 2006; he had also been involved in attacks on representatives of law-enforcement authorities.

B. The official investigation into the disappearance

1. Relevant information from criminal case no. 702687

25. On 28 April 2007 investigators in criminal case no. 702687 (see paragraph 12 above) questioned Mr M.R., who stated, amongst other things, that in the morning of 28 April 2007 he had been arrested by the police in the flat in Salavatova Street together with Mr S.S. and Ramazan Umarov, who, according to the witness, were wanted by the authorities on suspicion of murder. According to Mr M.R., he had been arrested in the flat, handcuffed and taken to the UBOP.

26. On the same date, 28 April, and then on 7 May 2007, investigators in criminal case no. 702687 questioned Mr S.S., who stated, amongst other things, that at the beginning of April 2007 he had met his former fellow prison inmate Ramazan Umarov. The latter had asked for accommodation, explaining that he had had problems with the police and was looking for a place to live. Mr S.S. had allowed Ramazan to stay in the flat in Salavatova Street. In the morning of 28 April 2007 a group of police officers had

arrived at the flat. They handcuffed and arrested him, Mr M.R. and Ramazan Umarov. After the arrest Mr S.S. had been taken to the UBOP.

27. On 21 May 2007 the deputy district prosecutor issued instructions for the investigators in the criminal case no. 702687 initiated against Mr S.S. and Mr M.R. The text of the document included the following:

“... From the statements given to the investigation by Mr S.S. and Mr M.R. it follows that a man named Ramazan with the nickname “Lobaz” was arrested with them at the flat. This man had a gun and grenades and was taken to the Dagestan UBOP with Mr S.S. and Mr M.R.

In addition, [witness] Mr R.R. also stated that a person with the nickname “Lobaz” had been taken from the crime scene to the Dagestan UBOP.

... it is necessary, in order to establish the whereabouts of Ramazan, to identify and question the UBOP officers who had carried out the arrest and ask them about the reasons for their failure to take him to the investigator and about his current whereabouts. ... and to conduct an inquiry into the circumstances of Ramazan’s [subsequent] disappearance from the UBOP building ...”

28. From the documents submitted it follows that on 8 November 2007 the criminal case was terminated by the Sovietskiy District Court of Makhachkala for lack of *corpus delicti* in the actions of Mr S.S. and Mr M.R. (see paragraph 66 below).

2. Information from criminal case no. 702789 (in the documents submitted also referred to under no. 702809)

29. On 10 and 11 May and then subsequently on 14 June 2007 the applicants complained to the Dagestan Prosecutor about the disappearance of Ramazan Umarov. They stated that he had been arrested on 28 April 2007 by the police, taken to the UBOP and subsequently disappeared. The applicants provided the prosecutor with details of the phone conversations which had taken place between 9 and 15 May 2007 and the numbers from which they had received the phone calls. They also stated that Ramazan had been found in the forest near Shali, Chechnya and expressed their concern that after the arrest in Dagestan he had been secretly taken to Chechnya, whereas two other men who had been arrested with him had remained in Dagestan.

30. On 16 May 2007 the investigators questioned the second applicant, who stated that at the beginning of April 2007 her brother Ramazan Umarov had purchased a blue car of the VAZ-21074 model and that on 17 April 2007 he had obtained the official registration number for the vehicle: 196 YY 05 RUS. She also stated that according to the lawyer of one of the two men who had been arrested with Ramazan on 28 April 2007, the latter had been taken away by the police separately from them. The applicant also provided a description of the phone calls received in connection with Ramazan’s disappearance and his alleged detention in

Chechnya. She expressed her opinion that her brother had been arrested by the police who had suspected him of terrorist activities and who had subsequently also taken his car.

31. On the same date, 16 May 2007, the investigators questioned the first applicant, who stated that for a number of years the police had suspected his son Ramazan of membership of an extremist religious movement. At the end of April 2007 he had been informed that Ramazan had been arrested along with other men, following a special operation in Salavatova Street. The other two men had been detained in the Sovietskiy ROVD, while Ramazan had disappeared. On 9 May 2007 a man had called the applicant and told him that Ramazan had been detained in Gudermes, Chechnya, and that he could come there to pick him up. The applicant had gone to Gudermes, but had not been able to find his son. In the applicant's opinion, his son Ramazan had been abducted by law-enforcement officers, who had also taken away his son's car.

32. On 16 May 2007 the investigators questioned a security guard at the car park situated next to the technical school in Makhachkala, Mr I.M. The Government furnished the Court only with a part of his witness statement, according to which on 24 April 2007 two men had parked a VAZ-2107 car with the registration number 196 YY 05 RUS in the car park. Several days later, on or around 27 April 2007, two men who had arrived in an armoured UAZ vehicle, and who showed their service identity documents as police officers, spent the entire day in the car park waiting for someone.

33. On 18 May 2007 the investigators questioned another security guard at the car park, Mr Sh.G., whose statement was similar to the one given by Mr I.M. and who added that the police officers had searched the VAZ-2107 car with the registration number 196 YY 05 RUS and found some documents in it. Within the next few days the car had disappeared from the car park.

34. On 19 May 2007 the Sovietskiy district prosecutor's office of Makhachkala (the district prosecutor's office) initiated a criminal investigation into the disappearance of Ramazan Umarov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 702789.

35. On 20 May 2007 the investigators again questioned the second applicant, who stated, amongst other things, that her brother Ramazan Umarov had been arrested on suspicion of terrorism in 2005 and that at the beginning of April 2007 he had purchased a blue VAZ -21074 car with the registration number 196 YY 05 RUS. According to the applicant, on 29 or 30 April 2007 the first applicant had told her that Ramazan had been arrested with two other men on 28 April 2007 by representatives of the UBOP, but that subsequently he had been taken somewhere separately from the two men. She further stated that her brother had been kidnapped, most

probably for ransom, by police officers who suspected him of terrorism and who had also taken away his car.

36. On 21 May 2007 the investigators questioned Mr A.A., the investigator of criminal case no. 702687 (see paragraphs 25-27 above), who stated that from the information collected by their investigation, it appeared that Ramazan Umarov (also known as Labaz) had been arrested together with Mr M.R. and Mr S.S. on 28 April 2007 in the flat in Salavatova Street and then taken away somewhere separately from the two men.

37. On 24 May 2007 the investigators questioned Mr Ma.Ma. who stated, amongst other things, that on 28 April 2007 he had received a phone call from his cousin Mr S.S., who had told him that he was about to be arrested by police, who were surrounding the building he was in, and that he was in the flat with Mr M.R. and Labaz (Ramazan Umarov). According to the witness, later on 28 April 2007 he had spoken with police officer Mr R.Z., who had told him that the three men had all been arrested and taken to the UBOP.

38. On 29 May 2007 the investigators granted the first applicant victim status in the criminal case and questioned him. The applicant stated, amongst other things, that his son Ramazan Umarov had been harassed by police on the suspicion of being a member of a radical religious movement and that in the end of April 2007 he had been told that his son had been arrested with two other men and taken to the UBOP; that after the arrest, in May 2007, some people had told him that Ramazan had been detained in Gudermes; the witness had gone there but to no avail. According to the applicant, his son Ramazan had been abducted by police officers, who had also taken his son's car from the car park. The applicant expressed the opinion that he was certain that his son had been abducted by the police, who were "with barefaced impudence" denying this, and asked the investigators to assist him with Ramazan's release.

39. On 30 May 2007 the investigators again questioned the car park security guard, Mr I.M., who reiterated his previous statement, given on 16 May 2007 (see paragraph 32 above) and added that the two police officers had searched the car with the registration number 196 YY 05 RUS, found some papers in it and taken them away. According to the witness, he could identify one of the police officers, because he had red hair and light eyes.

40. On 31 May 2007 the first applicant again complained about his son's disappearance to the district prosecutor and to the head of the Dagestan Federal Security Service (the FSB). He stated that Ramazan Umarov had been arrested on 28 April 2008 by police officers and taken to the UBOP, and that he had then disappeared. The applicant provided details of phone conversations between 9 and 15 May 2007 and the numbers from which he had received the phone calls.

41. On 1 June 2007 the investigators questioned the owner of the car park, Mr Sh.G., who stated that on 28 or 29 April 2007 he had noticed an armoured UAZ vehicle in the car park. The two men who had arrived in it had introduced themselves as police officers and explained that they wanted to search the blue VAZ car with the registration number 196 YY 05 RUS which had been parked there since 24 April 2007. The officers had waited for several hours, then in the evening they had searched the car, as they had the keys to the vehicle, found some papers in it and wanted to take the car away. The witness had refused to let them take the vehicle unless they provided him with the detailed information on their service identity cards and a written receipt confirming the seizure of the car. The officers had suggested waiting for their superior, who arrived half an hour later. The senior officer was a tall man of strong build. He had asked the witness and his colleague about the men who had parked the car on 24 April 2007. Then the three officers had decided not to take the car and left. Several days later the blue VAZ car had disappeared from the car park. According to the witness, it was highly probable that the police officers had somehow taken the car away, as they had the car keys and the documents for the vehicle, which according to them they had taken from the arrested owner of the car.

42. On 13 June 2007 the investigators requested the head of the Dagestan UBOP, the head of the Dagestan FSB and the head of the Dagestan Counterterrorism Agency to inform them whether their officers had conducted a special operation on 28 April 2007 in Salavatova Street, whether they had arrested Ramazan Umarov, and where the latter had been detained after the arrest.

43. On 14 June 2007 the Dagestan Counterterrorism Agency replied to the investigators that their officers had not arrested or detained Ramazan Umarov. The letter also stated that he had been a member of a radical religious movement, had been prosecuted twice and had been a member of an illegal armed group eliminated in 2006.

44. On 14 June 2007 the investigators received judicial permission to obtain information from phone service providers about the numbers from which the applicants been called in May 2007 in connection with the abduction.

45. On 14 June 2007 the first applicant again complained to the Dagestan prosecutor about his son's disappearance. He stated that Ramazan Umarov had been arrested with the two other men on 28 April 2007, taken to the UBOP and had then gone missing. The applicant complained that since 2005 his son had been persecuted by the police, who suspected him of illegal activities, and described the phone calls received in May 2007 in connection with the abduction. The applicant further stated that he had gone to Gudermes to search for his son; that there he had met Mr M.Sh. and Mr U.U. who had driven around in a car with registration number B 192 OM 08 RUS and had promised to help him to find Ramazan, but in

the end had advised him to find police officer Dzh. Khalilov, who allegedly had information about Ramazan's whereabouts. The applicant further complained that Ramazan's VAZ car had been searched by the police and had then disappeared from the car park. Finally, he requested assistance in the search for his son.

46. On 15 June 2007 the Dagestan Prosecutor's office ordered the investigators to take a number of actions. The decision stated, amongst other things, the following:

"... [Our] review of the investigation file demonstrated that the investigation has been conducted in an incomplete manner, and that investigative actions necessary to establish the factual circumstances of the case have not been taken.

It is necessary to question in detail Mr M.R. and Mr S.S. about the circumstances of their arrest by police officers, to obtain the description of the officers' appearance and outfits, to find out whether they could have known any of the officers, to find out whether Ramazan Umarov had been taken with them to the premises of the UBOP, where exactly he was detained and where he was taken afterwards, and so on...

[It is necessary]... to organise an identification parade of the UBOP and Sovietskiy ROVD police officers who were on duty between 27 and 28 April 2007 so that Mr M.R. and Mr S.S. can identify them...

.... to question the police officers who participated in the arrest of Mr M.R. and Mr S.S. and, if necessary, to arrange confrontations between them and the officers, as both men asserted that they had been arrested with Ramazan Umarov;

... to identify the people who took [Ramazan Umarov's] car away from the car park;

... to question close relatives, neighbours and friends of Ramazan Umarov about the circumstances [of the disappearance] ..."

47. On 19 June 2007 the Dagestan UBOP informed the investigators that they had neither arrested nor detained Ramazan Umarov, Mr M.R. or Mr S.S.

48. On 27 June 2007 the investigators questioned police officer Mr R.Z., who had been on duty at the Sovietskiy ROVD on 28 April 2007. According to his statement, he did not know how many men had been arrested following the special operation conducted on that date. He further stated that servicemen from the UBOP, the Counterterrorism Agency and their superiors had participated in the operation.

49. On 27 June 2007 the investigators also questioned Mr A.B., the head of the Special Task Unit (the OMON) of the Sovietskiy ROVD, who stated that he had participated in the special operation on 28 April 2007, as a result of which two men had been arrested. According to the witness, Ramazan Umarov was not arrested as a result of the operation.

50. On 28 June 2007 the investigators questioned Mr S.S., who stated, amongst other things, that on 28 April 2007 he had been arrested by police, with Mr M.R. and Ramazan Umarov. The latter had probably been taken away in a UAZ car, and he did not know whether Ramazan had also been taken to the UBOP and detained there.

51. On an unspecified date after 28 June 2007 Mr M.R. (in the document submitted his initials were mistakenly stated as R.R.) refused to give a statement to the investigation, stating that it would be identical to the one given by Mr S.S.

52. On 29 June 2007 the Dagestan MVD informed the investigators that ‘as a result of the actions taken it was impossible to establish which police officers had arrested Mr M.R. and Mr S.S. on 28 April 2007.’

53. On an unspecified date in June 2007 the Dagestan Prosecutor’s office informed the applicants that the investigation into the disappearance of their relative was in progress. The text of the letter included the following:

“...as a result of the inquiry it was established that Ramazan Umarov had been arrested with Mr S.S. and Mr M.R. by unidentified representatives of the law-enforcement agencies and taken to the building of the Dagestan UBOP ...”

54. On 5 July 2007 the investigators requested the Dagestan MVD to inform them which police units had participated in the arrest on 28 April 2007. The letter stated, amongst other things, the following:

“... the investigation established that Ramazan Umarov had been arrested with Mr S.S. and Mr M.R. by police officers and taken to the 6th Department [the UBOP] ...”

Taking into account the [above] circumstances and the fact that the head of the UBOP of the Dagestan MVD, A. Kuliyeu, and the head of the Department of the Fight against Extremism and Criminal Terrorism, M. Magomedov, deny arresting Ramazan Umarov, it is necessary to find out which police units did participate in the arrest of Mr M.R. and Mr S.S. and to summon the officers who had participated in the arrest to the district prosecutor’s office to appear before the investigators ...”

55. On the same date, 5 July 2007, the investigators wrote to the head of the UBOP and the head of the Department of the Fight Against Extremism and Criminal Terrorism (the UBE) stating that the investigation into the abduction of Ramazan Umarov had established that he had been arrested on 28 April 2007 in Salavatova Street, together with Mr M.R. and Mr S.S. The investigators requested to be informed whether the agencies’ units had in fact arrested Ramazan Umarov on 28 April 2007, and if so to summon the officers who had participated in the special operation. There was no response to either of these requests.

56. On 6 July 2007 the investigators questioned Mr A.M., who lived near the block of flats at no. 41 in Salavatova Street, and who stated, amongst other things, that he had witnessed the special operation on 28 April 2007 from the balcony of his flat on the fourth floor. According to the witness, as

a result of the operation, three men had been taken out of the building at 41 Salavatova Street; all of them had been handcuffed and taken away in UAZ cars. One of the arrestees had been taken away separately from two others.

57. On 6 July 2007 the investigators requested the Dagestan Minister of the Interior to provide information concerning the whereabouts of Ramazan Umarov. The letter stated, amongst other things, the following:

“... the investigation established that on 28 April 2007, following a special operation, Ramazan Umarov was arrested with Mr M.R. and Mr S.S. in flat. 46 at 41 Salavatova Street, Makhachkala ... according to the statements of Mr M.R. and Mr S.S., they were in the flat with Ramazan Umarov at the time [of the arrest] and that the firearms and ammunition found there belonged to him ... Since the special operation it has been impossible to establish the whereabouts of Ramazan Umarov; neither his relatives nor law-enforcement agencies have information about his fate ...

On the basis of the above, you are requested to inform us in detail about the results of the special operation, in particular, who was in charge of it, which units had been involved ... in connection with the urgent need to take operational-search measures in the Chechen Republic, we ask your permission to send police officers from the Sovietskiy ROVD in Makhachkala over there ...”

58. On 10 July 2007 the UBOP informed the investigators that they had not arrested or detained Mr S.S., Mr M.R. and ‘Mr R. Umarbekov’. The letter did not contain any information concerning Ramazan Umarov.

59. On 13 July 2007 the investigators questioned the father of Mr M.R., Mr R.R. who stated, amongst other things, that his son Mr M.R. had been arrested on 28 April 2007 in the same flat, with Mr S.S. and Labaz (Ramazan Umarov). Late in the evening of 28 April 2007 the witness and his wife had arrived at the Sovietskiy ROVD, where they had met their son’s lawyer Ms Larisa, who had told them that the three arrested men had been taken from the flat in Salavatova Street to the ROVD. The witness had spent several hours at the police station and had managed to speak with officer A. Zabitov, who had told him that his son, Mr S.S. and Labaz had been arrested together. Then the officer had promised to question Labaz and find out whether Mr M.R. had been involved in the same activities as Labaz. On 29 April 2007 the witness had returned to the ROVD, but he had been told that his son and Mr S.S. had been brought before the judge at the Sovietskiy District Court; when the witness had arrived at the court, his son and Mr S.S. were there, but Labaz was not with them. According to the witness, lawyer Larisa and the lawyer of Mr S.S. had told him that Labaz had remained either in the Sovietskiy ROVD or in the UBOP.

60. On 31 July 2007 the Dagestan MVD requested the UBOP and the UBE to confirm the following:

“... The investigation conducted by the Sovietskiy district prosecutor’s office, Makhachkala, established that on 28 April 2007, following a special operation, Mr Ramazan Umarov, who was born in 1974, was arrested by representatives of

law-enforcement agencies in flat 46 at 41 Salavatova Street, with Mr S.S. and Mr M.R.

After the arrest the three men were taken to the building of the UBOP of Dagestan MVD.

In connection with the above you are requested to confirm the above as fact.”

61. On the same date, 31 July 2007, the Dagestan MVD requested the Sovietskiy ROVD to confirm the following:

“The investigation conducted by the Makhachkala Sovietskiy district prosecutor’s office established that on 28 April 2007, following a special operation, Mr Ramazan Umarov, who was born in 1974, was arrested by representatives of law-enforcement agencies in flat 46 at 41 Salavatova Street, with Mr S.S. and Mr M.R.

After the arrest the three men were taken to the Makhachkala Sovietskiy ROVD (according to the entries in the registration log for 28 April 2007).

In connection with the above you are requested to confirm the arrest of Ramazan Umarov.”

There was no response to this request.

62. On 2 August 2007 the blue VAZ-2107 car belonging to Ramazan Umarov, without its registration number, was found at the local car pound.

63. On 9 August 2007 the Dagestan MVD replied to the investigators’ request of 6 July 2007 (see paragraph 57 above) stating that on 28 April 2007 the police, working with the FSB and the Sovietskiy ROVD, had arrested Mr M.R. and Mr S.S. at 41 Salavatova Street, whereas ‘the arrest of Ramazan Umarov was not confirmed’.

64. From the contents of the criminal case file submitted by the Government it follows that on 31 August 2007 the supervising prosecutor criticised the investigation of the abduction and ordered that a number of actions be taken (see paragraph 87 below). However, the content of this document was not disclosed by the Government.

65. On 19 October 2007 the investigation of the criminal case was suspended for failure to identify the perpetrators. The applicants were not informed of this.

66. Between the end of October and 8 November 2007 the criminal case opened against Mr S.S. and Mr M.R. was examined by the Sovietskiy District Court in Makhachkala, Dagestan (see paragraph 28 above). The Government furnished the Court with part of the transcript of the court hearing, which indicates that a number of witnesses, including Ms Z.Ga., the investigator Mr A.A., Mr R.M., officer A.Ch., Mr A.O. and district police officer N. Dzh., stated that a third person had been arrested with Mr S.S. and Mr M.R. and taken away in a car. In addition, Mr S.S. and Mr M.R. had themselves confirmed to the court that they had been arrested at the flat with Ramazan Umarov.

67. On 13 November 2007 the supervising prosecutor ordered that the investigation of the criminal case be resumed because it was necessary to take further investigative action.

68. On 21 November 2007 the first applicant's lawyer complained to the head of the Investigations Department at the Dagestan Prosecutor's office that the investigation into Ramazan Umarov's disappearance was ineffective. In particular, the investigators had not identified the police officers who had participated in the special operation on 28 April 2007; they had failed to question the officers who had been in charge of the operation, to examine the circumstances of the disappearance of Ramazan Umarov's car from the car park, and to follow up on the information received in connection with Ramazan's subsequent detention in Gudermes, Chechnya.

69. On 21 November 2007 the first applicant's lawyer complained to the Dagestan Prosecutor that Ramazan Umarov had been arrested unlawfully and had then disappeared, and pointed out that the investigators had failed to take such basic steps as to identify the policemen who had participated in the special operation on 28 April 2007. There was no response to this complaint.

70. On 28 November 2007 the investigators again questioned the investigator in charge of the criminal case opened against Mr S.S. and Mr M.R., Mr A.A., who stated that he had heard from someone that following the special operation conducted on 28 April 2007 in Salavatova Street three people had been detained. He did not know for sure who the third person was, but it could have been Labaz Umarov. He further explained that the head of Sovietskiy ROVD, Mr A.B., had been in charge of the special operation, along with the head of the criminal search division and other senior officers from the ROVD, and that he had no idea where this third person had been taken after the special operation.

71. On 29 November 2007 the investigators questioned the head of the Sovietskiy ROVD, officer A.B., who stated that as a result of the special operation on 28 April 2007 only two people had been arrested; that he had already explained this to the first applicant along with the fact that his son Labaz had been legitimately detained on previous occasions, as Labaz was a member of illegal armed groups. The officer further stated that he had not been involved in the disappearance of the applicants' relative and that in his opinion Labaz had most probably absconded from the authorities as he was suspected of participation in terrorist attacks against the police.

72. On 30 November and 13 December 2007 the deputy head of the Makhachkala Investigation Department wrote to the Dagestan Minister of the Interior and the Head of the Dagestan FSB requesting information concerning the investigation of Ramazan Umarov's disappearance. Both letters stated, amongst other things, the following:

“... the preliminary investigation established that on 28 April 2007 Ramazan Umarov had been arrested with Mr S.S. and Mr M.R. in flat 46 at 41 Salavatova Street...

... the fact that following the special operation three people were arrested is confirmed not only by statements of Mr S.S. and Mr M.R. but also by witness statements from the policemen and neighbours in this block of flats.

... The investigation established undeniably that Labaz Umarov had been arrested on 28 April 2007 by representatives of law-enforcement agencies, who were conducting a special operation. Representatives of the Ministry of the Interior and the heads of the units provided the investigation with untruthful statements to the effect that their officers had not conducted a special operation, and that Labaz Umarov was not taken to the UBOP ...

...in connection with the above I request that you provide information about the units and about each of the policemen who participated in the special operation to arrest Labaz Umarov with Mr S.S. and Mr M.R. on 28 April [2007] ...”

73. On 12 December 2007 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicants were not informed about this decision.

74. On 25 December 2007 the investigation was resumed because it was necessary to take additional investigative actions.

75. On 25 December 2007 the investigators questioned Mr S.S., who confirmed his previous statement, that he had been arrested with Labaz Umarov. The witness added that he had been taken to the UBOP in the same car as Mr M.R., and that Labaz had been taken separately; that in the UBOP building he had heard the policemen talking about their interrogation of Labaz and Mr M.R. From the questions he had been asked, the witness had understood that the police had been after Labaz Umarov, that the latter had been their primary interest, and that he and Mr M.R. had just happened to be arrested with him.

76. On 26 December 2007 the investigators questioned Mr M.R., whose statement about the arrest was similar to the one given by Mr S.S. on 25 December 2007.

77. On 9 January 2008 the investigators questioned officer A.Ch. who stated that he had not witnessed the arrest, but had heard from people whose names he was unable to remember that as a result of the special operation on 28 April 2007 three men had been arrested and that one of them had been called Labaz.

78. On 15 January 2008 the investigators questioned Mr R.Me., who stated that he lived next to the place where the special operation was conducted on 28 April 2007 and that he had seen three men being arrested and taken away in UAZ cars. He saw two of these men, Mr S.S. and Mr M.R., later, during their trial at the District Court, but he did not see the third one again.

79. On 23 January 2008 the investigators questioned Ms Z.M., who stated that she lived next to the place where the special operation was conducted on 28 April 2007 and that she had seen three men being arrested and taken away in UAZ cars. She saw two of these men, Mr S.S. and Mr R.M., later, during their trial at the District Court, but she did not see the third one, whom she had seen being beaten by the police during the arrest on 28 April 2007, again.

80. On 24 January 2008 the Dagestan FSB replied to the investigators' request of 13 December 2007 (see paragraph 72 above) stating that they had not been able to confirm either whether the three men arrested on 28 April 2007 had been taken to the UBOP nor to identify the officers who had participated in the special operation.

81. On 25 January 2008 the investigation of criminal case no. 702789 was again suspended, for failure to identify the perpetrators. The applicants were not informed about this decision.

82. On 7 February 2008 the second applicant complained to the Head of the Investigations Department of the Dagestan Prosecutor's office that investigation into her brother's disappearance was ineffective. She stated that her brother had been abducted by police officers and that the investigation had failed to take adequate steps to identify the perpetrators. She pointed out that she and her father had provided the authorities with the phone numbers of the people who had contacted them in May 2007 concerning the whereabouts of Ramazan Umarov; that they had found out from Chechen police officers that prior to the abduction, the head of the UBE, Mr M. Magomedov, had pledged to kill Ramazan Umarov; that Ramazan had told her over the phone that he had been abducted by three officers from the UBE, Mr M.M., Mr A.B. and Mr N.B., and that she had submitted this information to the investigators, but they had failed to follow up on it. She further stated that the investigator in charge of the criminal case was biased against Ramazan Umarov and considered him to be a religious extremist. Finally, she stated that their complaints of 21 November 2007 (see paragraphs 68-69 above) had been ignored by the authorities. There was no response to this complaint.

83. On 6 May 2008 the investigation was resumed because it was necessary to take additional investigative actions.

84. On 16 May 2008 the investigators questioned Ms Yu.M., who stated that she lived next to the place where the special operation was conducted on 28 April 2007 and that she had seen three men being arrested and taken away in UAZ cars.

85. On 19 May 2008 the deputy head of the Investigation Department of Makhachkala again wrote to the Dagestan Minister of the Interior and the Head of the Dagestan FSB, requesting information concerning the investigation of Ramazan Umarov's disappearance. The letter stressed that the witnesses and police officers had stated to the investigators that three,

not two people, had been arrested as a result of the special operation on 28 April 2007. The letter requested the agencies to assist the investigators in the search for the applicants' relative, stating, amongst other things, the following:

‘... in the absence of operational support [from the law-enforcement agencies] the investigation is unable to establish Ramazan Umarov's whereabouts; in addition, for some unclear reason, the orders given by the investigators [to the police] remain not complied with ...’

86. On 6 June 2008 the investigation of the criminal case was suspended for failure to identify the perpetrators: the first applicant was informed.

87. On 23 July 2008 the supervising prosecutor overruled the decision to suspend the investigation as unlawful, and ordered that a number of steps be taken. In particular, the decision stated the following:

“... the investigation of the criminal case established that on 28 April 2007 police officers arrested Ramazan Umarov with Mr S.S. and Mr M.R. in flat 46 at 41 Salavatova Street, Makhachkala ...

Examination of the criminal case file demonstrated that the investigation is being delayed and conducted in a superficial and unplanned manner, and that the required investigative actions have not been taken in an appropriate manner ...

... the investigators in charge of the criminal case failed to comply with the orders issued by the supervising prosecutor on 31 August 2007 ...”

88. On 14 August 2008 the investigators again questioned the first applicant, who provided a detailed description of the events and stated that his son Ramazan had been harassed by the police on suspicion of terrorism; that at the end of April 2007 he had been told that his son had been arrested with two other men. The applicant stressed that in his opinion, officer A.B. [the head of the Sovietskiy ROVD], was responsible for his son's disappearance and that his son's abduction had been organised and carried out by police under the command of the said officer.

89. On 15 August 2008 the investigators again questioned the second applicant, who reiterated her previous statement (see paragraph 35 above) and stated that in her opinion Ramazan Umarov had been abducted by police officers.

90. On 28 August 2008 the investigation of the criminal case was again suspended for failure to identify the perpetrators, and the applicants were informed about it.

91. On 17 August 2009 the first applicant requested the investigators to provide him with access to the investigation file concerning his son's disappearance. There was no response to this request.

92. On 16 July 2010 the investigation of the criminal case was resumed because it was necessary to take a number of investigative actions. The applicants were informed.

93. On 19 July 2010 the Sovietskiy District Court granted the investigators permission to obtain the list of phone calls and their recipients from four mobile phone numbers from which the applicants had received phone calls in May 2007 concerning Ramazan Umarov's whereabouts.

94. On the same date, 19 July 2010, the investigators obtained the list of phone numbers and the list of those called.

95. On 16 August 2010 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicants were informed.

96. On various dates between 2007 and 2010 the investigators forwarded a number of information requests to various law-enforcement agencies and hospitals, asking whether Ramazan Umarov had applied for medical help, whether his corpse had been discovered in their districts, and whether he had crossed state borders. Replies were received in the negative.

97. The materials submitted indicate that the investigation of Ramazan Umarov's disappearance has not been completed to date. The applicants were not informed about progress in the criminal proceedings other than of their suspension and reopening.

98. In reply to the Court's request the Government furnished a part of the contents of criminal case no. 702789, running up to 363 pages. The contents of several documents submitted had been blacked out. No explanation was given, either for the failure to submit the full contents of the case file, or for the blacked-out parts of the documents.

II. RELEVANT DOMESTIC LAW

99. 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. EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

100. The Government contended that the complaint should be declared inadmissible as premature, as the investigation of the disappearance of Ramazan Umarov had not yet been completed. They further argued, in relation to the complaint under Article 13 of the Convention, that it had been open to the applicants to lodge complaints with courts about any acts

or omissions on the part of the investigating authorities. They could also have claimed civil damages..

101. The applicants contested the Government's submission, stating that the only supposedly effective remedy, the criminal investigation, had proved to be ineffective.

B. The Court's assessment

102. 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).

103. 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.

104. As regards a civil action to obtain redress for damage sustained as a result of illegal acts or unlawful conduct on the part 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, §§ 119-21, 24 February 2005). 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.

105. As regards criminal remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law-enforcement authorities after the disappearance of Ramazan Umarov and that an investigation has been pending since 19 May 2007. The applicants and the Government disagree on the effectiveness of the investigation of the disappearance.

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

II. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS

A. The parties' arguments

107. The Government contended that the domestic investigation had obtained no evidence to the effect that Ramazan Umarov was dead or that any representatives of law-enforcement agencies had been involved in his disappearance. The Government further claimed that the investigation into his disappearance met the Convention requirement of effectiveness.

108. The applicants argued that Ramazan Umarov had been arrested by representatives of law-enforcement agencies on 28 April 2007 on suspicion of terrorist activities, and subsequently disappeared. They further submitted that he should be presumed dead in the absence of any reliable news of him for more than four years.

B. The Court's evaluation of the facts

109. The Court points out that a number of principles have been developed in its case-law as regards applications in which it is faced with the task of establishing the facts of matters on which the parties disagree. As to the matters are in dispute, the Court reiterates its jurisprudence requiring a standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

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

111. The Court reiterates that it has noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. In connection with this the Court notes that in the present case, despite its requests for a copy of the entire investigation file into the

abduction of Ramazan Umarov, the Government, without providing any explanations, produced only some of the documents from the file, several of which had been partially blacked out.

112. In view of this, and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. Next, the Court will proceed to examine crucial elements in the present case that should be taken into account when deciding whether the responsibility for the life of the applicants' relative can be attributed to the authorities.

113. The applicants alleged that Ramazan Umarov had been arrested on 28 April 2007 in Salavatova Street, Makhachkala, by representatives of law-enforcement authorities on suspicion of terrorism, and subsequently killed. The Government neither disputed the matter as presented by the applicants nor provided any explanation of the events other than stating that there was no 'reliable information concerning the arrest of Ramazan Umarov by representatives of the authorities' and that the reason for Ramazan Umarov's disappearance could have been either 'his desire to abscond from the authorities' or 'the actions of third parties (see paragraph 23 above). In addition, the Government stated to the Court that Ramazan Umarov had been a member of a terrorist group and that he had been involved in attacks on representatives of law-enforcement authorities (see paragraphs 24 above).

114. The Court notes that little evidence has been submitted by the applicants in support of their application, which is rather comprehensible in the light of the investigators' reluctance to provide them with access to the investigation file (for example, see paragraph 91 above). Nevertheless, the Court notes that in addition to the documents enclosed with their submission, the applicants' allegation is supported by numerous witness statements collected by the investigation into the abduction of Ramazan Umarov and by the District Court during the examination of the criminal case opened against Mr S.S. and Mr M.R. (see paragraphs 25-27, 36-37, 46, 50-51, 53-57, 59, 66, 70, 72, 75-79 and 84-85 above). The investigation also accepted the factual assumptions as presented by the applicants (see paragraphs 29-31, 35, 38, 40, 45, 68-69, 82, 88 and 89 above) and took steps to verify their allegations that Ramazan Umarov had been arrested by the police and subsequently detained on the premises of local law-enforcement agencies (see paragraphs 27, 42, 46, 48-49, 54-55, 57, 60-61, 70-72, 77 and 85 above). However, it does not appear that those steps were able to yield a tangible result.

115. The Court observes that where the 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)).

116. 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 agents. The Government's statement that the investigators had not found any evidence proving the involvement of representatives of law-enforcement authorities in Ramazan Umarov's disappearance is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Ramazan Umarov was arrested on 28 April 2007 by State servicemen.

117. There has been no reliable news of Ramazan Umarov since the date of his arrest. The Government have not submitted any explanation as to what happened to him afterwards.

118. The Court finds that in a situation when a person is detained by unidentified policemen without any subsequent acknowledgment of the detention and is then missing for several years, that situation can be regarded as life-threatening. The absence of Ramazan Umarov or of any news of him for more than four years supports this assumption.

119. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Ramazan Umarov must be presumed dead following his unacknowledged detention by State agents.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

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

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

A. The parties' submissions

121. The Government contended that the domestic investigation had obtained no evidence to the effect that Ramazan Umarov was dead or that any State agents had been involved in his abduction. The Government further claimed that the investigation into his disappearance met the Convention requirement of effectiveness, as all possible measures available under national law were being taken to have the crime resolved.

122. The applicants argued that Ramazan Umarov had been arrested by representatives of law-enforcement agencies on 28 April 2007, that he subsequently disappeared, and that he should be presumed dead in the absence of any reliable news of him for several years. The applicants also argued that the investigation of the abduction was ineffective. In particular, they alleged that it had been initiated only after a significant delay and that it had been protracted overall; that the investigators had not examined the crime scene in the flat where Ramazan Umarov had been arrested; that the officers in charge of the special operation conducted on 28 April 2007 had not been identified and questioned, and that, in spite of having all the relevant information, the investigators had failed to identify and question the officers who had arrested Ramazan Umarov and the people who had contacted the applicants after his arrest.

B. The Court's assessment

1. Admissibility

123. 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 issue concerning the exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 106 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 Ramazan Umarov

124. The Court has already found that the applicants' relative must be presumed dead following unacknowledged detention by State agents. In the absence of any justification put forward by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of the substantive aspect of Article 2 in respect of Ramazan Umarov.

(b) The alleged inadequacy of the investigation of the disappearance

(i) General principles

125. The obligation to protect the right to life under Article 2 of the Convention requires that there should be some form of effective official investigation (see *McCann and Others*, cited above, § 161). It is necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Güleç*, cited above, §§ 81-82, and *Ögur v. Turkey* [GC], no. 21954/93, §§ 91-92, ECHR 1999-III).

126. The authorities must act of their own motion once the matter has come to their attention; they cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC] no. 22277/93, § 63, ECHR 2000-VII).

127. In this context, there must also be an implicit requirement of promptness and reasonable expedition (see *Yaşa v. Turkey*, cited above, § 102-104, and *Çakici v. Turkey*, cited above, §§ 80, 87, 106). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation of a particular situation. However, a prompt response by the authorities may generally be regarded as essential in maintaining public confidence in the rule of law and in preventing any appearance of collusion in, or tolerance of, unlawful acts.

128. The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Ögur*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident (see, for example, *Salman*, cited above, § 106, and *Tanrikulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV). Any deficiency in the investigation which undermines its ability to establish the identity of the person responsible will risk falling below this standard.

129. In addition, there must be a sufficient element of public scrutiny of the investigation or its results to ensure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *McKerr v. the United Kingdom*, no. 28883/95, § 115, ECHR 2001-III).

(ii) Application of the above principles to the present case

130. In the present case, the abduction of Ramazan Umarov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

131. The Court notes that the applicants reported the abduction to the authorities at the latest on 10 May 2007 (see paragraphs 14 and 29 above). The official investigation into the incident was initiated only on 19 May 2007, nine days after the receipt of the applicants' complaint. From the very beginning the applicants alleged that their relative had been arrested on 28 April 2007 in Salavatova Street with two other men and then taken to the premises of either the UBOP or the Sovietskiy ROVD. Despite the fact that they received this information immediately, the investigators neither examined the crime scene at the place of the arrest, nor checked the registration logs of arrestees in the law-enforcement agencies where he had been allegedly taken but merely interviewed the applicants and two security guards (see paragraphs 29-33 above). It is noteworthy that even at a later date, in July 2007, when they had obtained the information that Ramazan Umarov's detention was recorded in the registration log of the Sovietskiy ROVD for 28 April 2007, the investigators failed to take all possible measures to follow up on this information, limiting themselves merely to sending a request for information (see paragraph 61 above). Moreover, from the documents submitted it follows that in spite of numerous witness statements given by Mr S.S., Mr M.R., several local residents and the policemen who had participated in the special operation on 28 April 2007, the investigators failed to take any steps to conduct an identification parade including the officers who arrested Mr S.S. and Mr M.R. in order to find out where the policemen could have taken Ramazan Umarov from the flat in Salavatova Street. The Court also notes that in addition to the number of witnesses directly pointing out that the applicants' relative was arrested with the two other men, the investigators, once they had obtained statements from the car park security staff and the phone numbers of the people who had contacted the applicants after the abduction, had failed to take any measures at all to follow up on these leads; nor did they follow up on the information relating to the perpetrators' identities which was provided to the investigators by the second applicant (see paragraph 82 above).

132. Furthermore, from the documents submitted it is evident that in August and November 2007 and then in July 2008 the supervising prosecutors criticised the investigators for failure to take the most important investigative actions (see paragraphs 64, 67 and 87 above) and ordered remedial measures, which were not complied with. In the absence of any explanations for the above shortcomings, the Court concludes that the authorities failed to demonstrate diligence and promptness in dealing with such a serious matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

133. As regards the overall conduct of the proceedings, the Court notes that after having opened on 19 May 2007 the investigation was suspended on six occasions: for the first time on 19 October 2007, when it was resumed on 13 November 2007; it was suspended again on 12 December 2007 and resumed on 25 December 2007; for the third time on 25 January 2008 and resumed on 6 May 2008; for the fourth time on 6 June 2008 and resumed on 23 July 2008; for the fifth time on 28 August 2008 and resumed on 16 July 2010 and on 16 August 2010. Each time, the investigation was stayed without the necessary actions being taken, and each time it was resumed, either following criticism by supervising prosecutors or because it was necessary to take investigative actions. These premature suspensions, in a situation when vital steps had not been taken by the investigators, undermined the investigators' ability to identify and punish the perpetrators (see *Ögur*, cited above, § 88).

134. Turning to the requirement of public scrutiny, the Court notes that even though the first applicant was granted victim status on 29 May 2007, he was only sporadically informed about the suspensions of the proceedings (see paragraphs 65, 73, 81, 86, 90 and 95 above) and that his request for access to the case file was ignored by the investigators (see paragraph 91 above).

135. The Government argued that the first applicant had been granted victim status in the criminal case, and that therefore the applicants could have sought judicial review of the decisions of the investigators as part of the exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged acts or omissions of investigating authorities before a court. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that this remedy was ineffective in the circumstances, and dismisses the issue of the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

136. 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 Ramazan Umarov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

137. 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

138. The Government disagreed with these allegations, 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.

139. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

140. 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

141. 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).

142. In the present case the Court notes that the applicants are close relatives of the disappeared person. For more than four years they have not had any news of the missing man. 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, they have never received any plausible explanation or information about what became of him following his arrest. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

144. The applicants further stated that Ramazan Umarov 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

145. The Government asserted that no evidence had been obtained by the investigators to confirm that Ramazan Umarov had been arrested or detained by law-enforcement authorities.

146. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

147. 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

148. 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 and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII (extracts)).

149. The Court has found that Ramazan Umarov was arrested by State servicemen on 28 April 2007 and has not been seen since. It is unclear whether his arrest was logged into any custody records as the official investigation into his abduction had failed to verify this (see paragraph 61 above). Keeping this in mind along with the statements of the law-enforcement authorities denying Ramazan Umarov's detention by their agents (see paragraphs 43, 47, 49, 58, 63, 71 and 80 above) and the Government's submission (see paragraphs 23 and 145 above) the Court concludes that his detention was not officially acknowledged. 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).

150. 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 to 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.

151. In view of the foregoing, the Court finds that Ramazan Umarov 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.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

152. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties’ submissions

153. The Government contended that the applicants had effective remedies at their disposal as required by Article 13 of the Convention. The applicants had had an 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.

154. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

155. 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

156. The Court reiterates that in circumstances where, as here, a criminal investigation into the 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).

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

158. 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).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

159. 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

160. The applicants did not submit any claims for pecuniary damage. As regards non-pecuniary damage, they submitted that the amount should be determined by the Court on an equitable basis.

161. The Government submitted that finding a violation of the Convention would in itself comprise an adequate compensation in the applicants' case.

162. 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 be 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 finding of violations. It awards the applicants 60,000 euros (EUR) jointly, plus any tax that may be chargeable thereon.

B. Costs and expenses

163. The applicants were represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to 1,043 pounds sterling (GBP, approximately EUR 1,260). They submitted the following breakdown of costs:

- (a) GBP 450 for three hours of legal work by a United Kingdom-based lawyer at a rate of GBP 150 per hour;
- (b) GBP 433 for translation costs, as certified by invoices; and
- (c) GBP 160 for administrative and postal costs.

164. The Government disputed the amount claimed, submitting that it was unreasonable and unsubstantiated.

165. The Court has to establish first whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

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

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

168. Having regard to the details of the claim submitted by the applicants, the Court awards them the amount of EUR 1,260 as claimed, 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 UK, as identified by the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the issue of 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 Ramazan Umarov;
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 Ramazan Umarov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ramazan Umarov;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Articles 3 and 5;

9. *Holds*

(a) that the respondent State is to pay, 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 for costs and expenses:

(i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;

(ii) EUR 1,260 (one thousand two hundred and sixty 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 United Kingdom;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President