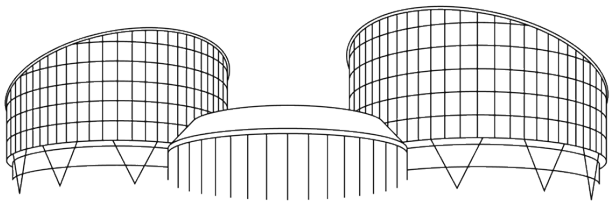

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VAKHAYEVA v. RUSSIA

(Application no. 27368/07)

JUDGMENT

STRASBOURG

10 July 2012

FINAL

19/11/2012

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

In the case of Vakhayeva v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 27368/07) 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 a Russian national, Ms Tamara Vakhayeva ("the applicant"), on 8 June 2007.

2. The applicant was represented by lawyers of the Stitching 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, Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 July 2010 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1947 and lives in Urus-Martan. She is the mother of Ruslanbek (also spelled as Rustambek) Vakhayev, who was born in 1974.

A. Disappearance of Ruslanbek Vakhayev

1. The applicant's account

(a) The detention of Ruslanbek Vakhayev

5. At the material time the Urus-Martan district was under the full control of the Russian federal forces. A strict curfew was enforced in the area. Military checkpoints manned by Russian servicemen were located on the roads leading to and from the town of Urus-Martan and other settlements in the district. One of the checkpoints, called "Roshnya" ("*Рошня"*) (from the documents submitted it follows that it was also known as KPP-206 (*контрольно-пропускной пункт 206*)), was located on the south-west outskirts of Urus-Martan, on the road leading from Urus-Martan to the village of Roshni-Chu.

6. On 5 October 2001 Ruslanbek Vakhayev and his friend Mr M.D. drove in the latter's white VAZ-2106 car with registration number K674XT95 from Urus-Martan to Roshni-Chu. The young men were going to visit Mr M.D.'s fiancé to discuss wedding plans. On the way to Roshni-Chu they picked up a woman with an ill child to give them a lift. The woman was returning to the village after seeing a doctor at the Urus-Martan central district hospital.

7. At about 4 p.m. the car was stopped by military servicemen at the "Roshnya" checkpoint for an identity check. After the check the officers told the passengers that they were detaining the driver, Mr M.D., and ordered everyone to get out of the car.

8. After that the servicemen started to beat Mr M.D. Ruslanbek Vakhayev tried to talk to the officers, but one of them pulled the cap off his head and threw it on the ground. Then Ruslanbek hit the officer in the face. Next the servicemen started to beat him with rifle-butts and kicks and closed the passage through the checkpoint. As a result, a large crowd of local residents gathered at the roadblock awaiting the opening of the passage and witnessing the beating of Ruslanbek Vakhayev and Mr M.D. The servicemen did not allow anybody to approach and opened gunfire to keep the crowd away.

9. One of the officers called someone via his portable radio set. Shortly afterwards an APC (armoured personnel carrier) arrived at the checkpoint. The servicemen forced Ruslanbek Vakhayev into the APC and Mr M.D. into the boot of his white VAZ-2106 car. The latter managed to shout his name and address into the crowd and asked the witnesses to inform his relatives about the arrest.

10. After that the APC and the white VAZ-2106 car drove away in the direction of the town centre of Urus-Martan.

(b) Subsequent events

11. On 6 October 2001 the applicant's daughter, Ms M.V., went to Mr M.D.'s relatives to find out the whereabouts of her brother Ruslanbek, who had not returned home the night before.

12. The mother of Mr M.D. told her that she had heard about the arrest of two young Chechen men in a white VAZ-2106 car on 5 October 2001 at the checkpoint located on the road leading from Urus-Martan to Roshni-Chu.

13. The applicant's daughter returned home and informed the family about the events at the checkpoint. Then the applicant and her relatives went to the building of the Urus-Martan temporary district department of the interior (the VOVD) in the town centre to find out whether the State authorities had any information about their relative. The applicant joined the crowd of local residents which had gathered outside the building. The applicant asked around whether anyone had heard about the arrest of two men at the checkpoint. Several women confirmed that they had witnessed the arrest of two Chechen men at the checkpoint on 5 October 2001 and suggested that the applicant talk to local taxi drivers who had closely witnessed the events.

14. After that the applicant went to the taxi stand where she spoke to taxi drivers working on the route between Urus-Martan and Roshni-Chu. One of them confirmed that he had seen the servicemen at the checkpoint stopping a white VAZ car with two young men and a woman with a child in it, and the subsequent apprehension of the two men. The woman with the child had been taken from the checkpoint to Roshni-Chu by another taxi driver.

15. Meanwhile, a man visited the house of Mr M.D. and informed his relatives that he had witnessed Mr M.D.'s arrest at the checkpoint. The man had been able to find Mr M.D.'s relatives as the latter had managed to shout out his name and address before being forced into the boot of the car.

16. In the evening of 6 October 2001 the woman with the child visited the applicant's home. She told the applicant that on 5 October 2001 she had visited a doctor in Urus-Martan and was looking for a lift back home to Roshni-Chu. Mr M.D. and Ruslanbek Vakhayev had picked her up to give her a lift to the village. At the "Roshnya" checkpoint the car had been stopped by military servicemen and the two men had been arrested and taken away. The applicant did not note the woman's name and address.

17. Several days later the applicant spoke to Mr L.M., the deputy head of the Urus-Martan district administration. The latter confirmed that Ruslanbek Vakhayev and Mr M.D. had been arrested at the checkpoint located on southwest outskirts of Urus-Martan and were detained in the Urus-Martan district military commander's office (the district military commander's office) located in the centre of the town. Mr L.M. promised the applicant that he would help get her son released. He was unable to assist the applicant as at some point later he was killed.

18. Sometime after the abduction the applicant's daughter, Ms M.V. saw the white VAZ-2106 car with registration number K674XT95 on the premises of the district military commander's office. She recognised the car by its colour, registration number and the curtains with the tiger head pattern in the back window of the car. For about two months after the abduction she saw the car on numerous occasions in the town centre; men in military uniforms were driving in it.

19. There has been no news of Ruslanbek Vakhayev and Mr M.D. since their arrest.

20. In support of her statements the applicant submitted the following documents: a statement by Ms N.M. dated 15 March 2007; a statement by Ms Ya.I. dated 15 March 2007; a statement by Ms A.Ch. dated 23 March 2006, a statement by Ms M.V. dated 4 April 2007, a statement by the applicant dated 5 April 2007 and copies of the documents received from the authorities.

2. Information submitted by the Government

21. The Government did not challenge the matter as presented by the applicant. At the same time they submitted that there was no evidence that Ruslanbek Vakhayev was dead or that State servicemen were involved in his alleged abduction.

B. The official investigation into the abduction

1. Information submitted by the applicant

22. According to the applicant, on 7 October 2001 she complained in writing about her son's abduction to a number of local law-enforcement agencies. She did not retain a copy of her complaint.

23. On 2 June 2002 the applicant complained about the abduction of her son by military servicemen at the checkpoint to the district prosecutor, the head of the VOVD and the district military commander. She stated that his abduction had been witnessed by a large number of local residents, including the woman with the ill child.

24. On 30 June 2002 the Chechnya department of the Federal Security Service (the FSB) informed the applicant that they had forwarded her complaint about her son's abduction to the Chechnya prosecutor's office.

25. On 14 August 2002, 30 May and 7 July 2003 the military prosecutor's office of the United Group Alignment (the UGA) forwarded the applicant's complaints about the abduction to the military prosecutor's office of military unit no. 20102.

26. On 17 September 2002 and 12 May 2003 the Prosecutor General's office in the Southern Federal Circuit forwarded the applicant's complaint

about the ineffectiveness of the investigation into her son's abduction and request for assistance in the search for him to the Chechnya prosecutor's office for examination.

27. On nine occasions, that is, on 23 and 30 September 2002 and then on 9 and 17 June and 18 August 2003, and 4 March, 24 June, 28 November and 21 December 2005 the Chechnya prosecutor's office forwarded the applicant's complaints about her son's abduction from the checkpoint and her requests for assistance in the search for him to the district prosecutor's office for examination.

28. On 3 November 2002 (in the submitted materials the date was also stated as 18 October 2000) the Urus-Martan district prosecutor's office instituted an investigation into the abduction of Ruslanbek Vakhayev under Article 126 of the Criminal Code (kidnapping). The case file was given the number 61153 (in the submitted documents the number was also referred to as 24048).

29. On 25 December 2002 the investigators granted the applicant victim status in the criminal case.

30. On 14 January 2003 the investigators informed the applicant that on an unspecified date they had suspended the investigation in the criminal case for failure to establish the identities of the perpetrators.

31. On 29 April 2003 the Chief Military Prosecutor's office forwarded the applicant's complaint about her son's abduction from the checkpoint to the military prosecutor's office of the UGA.

32. On 10 June 2003 the Chechnya Ministry of the Interior (the Chechnya MVD) forwarded the applicant's complaint about her son's abduction to the VOVD for examination.

33. On 17 and 30 June 2003 the military prosecutor's office of military unit no. 20102 informed the applicant that the examination of her complaints had not established any involvement of military servicemen in the abduction of Ruslanbek Vakhayev.

34. On 20 June 2003 and 8 December 2005 the VOVD informed the applicant that neither military servicemen, nor representatives of law enforcement agencies of the Urus-Martan district had arrested her son and that he was not detained on the premises of the VOVD. In the first letter the authorities referred to criminal case no. 24048, and in the second letter they referred to criminal case no. 61153.

35. On 3 July 2003 the district military commander's office informed the applicant that they had conducted an inquiry into her allegations about the abduction of her son at the checkpoint and stated the following:

> "... as of 30 June 2003 the Urus-Martan district military commander's office does not have any information concerning the whereabouts of your son and the reasons for his arrest. The absence of information is explained by the fact that the [current] military commander's office has been fulfilling its tasks in the Urus-Martan district only since 28 December 2002 and the fact that the reference to [your son's] arrest 'in the autumn of 2001' is not precise enough."

36. On 5 August 2003 the applicant complained to the Chechnya prosecutor. In her letter she stated that her son had been detained at the checkpoint of the Russian military forces and had disappeared since and that none of the law-enforcement or military agencies had acknowledged the involvement of their servicemen in his abduction. The applicant further complained that the district prosecutor's office had opened the investigation into the disappearance more than one year after the events and that the investigators had failed to identify the military servicemen who had manned the checkpoint on 5 October 2001. She requested that the prosecutor's office resume the suspended investigation and inform her about its progress.

37. On 20 October 2003 the Chechnya FSB informed the applicant that they had not arrested her son and that he had not been suspected by them of any criminal activities.

38. On 16 January 2004 the district prosecutor's office informed the applicant that on 14 January 2004 they had resumed the investigation in the criminal case.

39. On 4 March 2004 the Chechnya prosecutor's office informed the applicant that the investigation of the criminal case was in progress.

40. On 12 April 2004 the applicant complained to the district military commander about her son's abduction at the checkpoint and requested assistance in the search for him.

41. On 30 March 2005 the district prosecutor's office informed the applicant that on 15 March 2005 they had resumed the investigation in the criminal case.

42. On 15 June 2005 the applicant complained to the military prosecutor of the UGA. In her letter she described in detail the circumstances of her son's abduction at the checkpoint and stated that her son had been arrested by representatives of State agencies in broad daylight and in the presence of numerous witnesses. She further complained that the investigation in the criminal case had been ineffective, that the investigators had failed to identify the servicemen who had manned the checkpoint at the material time and failed to question any of the witnesses to the arrest; that the VAZ-2106 car which had been taken away by the abductors, had been seen for a long time after the abduction in the yard of the district military commander's office and that military officers had driven around Urus-Martan in it. In the light of the inaction of the district prosecutor's office and the circumstances surrounding the abduction, the applicant asked the military prosecutor to request the investigation file from the district prosecutor's office, to conduct the investigation into the events and to identify and prosecute the servicemen who had manned the checkpoint on 5 October 2001 and abducted her son.

43. On 4 July 2005 the district prosecutor's office replied to the applicant and stated that they had examined her complaint and that operational-search measures were being taken to identify the perpetrators.

44. On 30 July 2005 the military prosecutor's office of military unit no. 20102 informed the applicant that the investigation in criminal case no. 61153 had not established the involvement of military servicemen in her son's abduction and that, therefore, the investigation should be carried out by the district prosecutor's office.

45. On 27 August 2005 the military prosecutor's office of the UGA informed the applicant that the inquiry conducted by the military prosecutor's office of military unit no. 20102 had not established the involvement of military servicemen in the abduction and that the abduction was being investigated by the district prosecutor's office in the framework of criminal case no. 24048.

46. On 4 November and 5 and 28 December 2005 the district prosecutor's office informed the applicant that they had suspended the investigation in the criminal case for failure to identify the perpetrators and that operational-search measures were being taken to identify the culprits.

47. On 28 February 2006 the Chechnya prosecutor's office forwarded the applicant's complaint about the abduction to the district prosecutor's office for examination.

48. The applicant submitted that she received no further information from the authorities concerning the investigation into her son's disappearance.

2. Information submitted by the Government

49. On 27 July 2002 the applicant complained in writing about her son's abduction from the checkpoint to the Urus-Martan ROVD. She described the abduction and stated that it had taken place on 5 October 2001 in the vicinity of Roshni-Chu.

50. On 3 November 2002 the district prosecutor's office initiated a criminal investigation "into the detention on 5 October 2001 of Ruslanbek Vakhayev and Mr M.D. at the checkpoint next to Roshni-Chu...". The criminal case file was given the number 61153.

51. On 10 and 19 November 2002 the investigators questioned the applicant, who stated that her son Ruslanbek had been abducted at the checkpoint by military servicemen after having been stopped there with Mr M.D. in the latter's white car and that this car had later been seen on the premises of the military commander's office.

52. On 22 November 2002 the investigators requested that the district military commander's office, the district FSB, the temporary district police group (*ОГ ВОГО и П МВД*) and military unit no. 6779 inform them whether they had arrested or detained Ruslanbek Vakhayev.

53. On 29 and 30 November 2002 the district FSB, military unit no. 6779 and the temporary district police group replied that they had neither arrested nor detained the applicant's son.

54. On an unspecified date in November 2002 the head of the checkpoint KPP-206 (*Roshnya*) informed the investigators that they did not have any information about the alleged arrest or detention of Ruslanbek Vakhayev as their service at the checkpoint had commenced on 25 October 2002 and that no documents regarding this incident had been handed over from the previous military unit who had manned the checkpoint.

55. On 25 December 2002 the applicant was granted victim status in the criminal case.

56. On 2 January 2003 the investigators questioned the father of Mr M.D. The Government only furnished the Court with a part of his statement, from which it followed that his unofficial search for his son had not brought any tangible results.

57. On 3 January 2003 the investigation of the criminal case was suspended for failure to identify the perpetrators. The applicant was informed thereof on 14 January 2003.

58. On 20 June 2003 the supervising prosecutor ordered that the investigation be resumed on account of the investigators' failure to take crucial steps. On the same date the proceedings were resumed and the applicant was informed thereof.

59. On 11 July 2003 the investigators again questioned the applicant who reiterated her previous statements and added that her son Ruslanbek had been in the car with Mr M.D. and a woman with her paralysed son when they had been stopped at the checkpoint, and that after the abduction Mr M.D.'s car had been seen on the premises of the military commander's office.

60. On 20 July 2003 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicant was informed thereof on the same date.

61. On 20 August 2003 the applicant complained to the Chechnya Prosecutor that the investigation into her son's abduction had been ineffective. She stated that the proceedings had been suspended in spite of the investigators' failure to take such basic steps as identification of the servicemen who had manned the checkpoint on 5 October 2001. The applicant requested that the investigation be resumed and the servicemen who had manned the checkpoint be identified and questioned.

62. On 10 September 2003 the applicant complained to the Prosecutor General that the investigation into the abduction had been ineffective. She described the circumstances of the events and stated that the investigators had failed to take basic steps to identify the culprits.

63. On 14 January 2004 the supervising prosecutor ordered that the investigation be resumed on account of the investigators' failure to take crucial steps and provided the investigators with a list of measures to be taken. On the same date the proceedings were resumed and the applicant was informed thereof.

64. On 15 January 2004 the investigators provided the supervising prosecutor with a brief report on the progress of the investigation in the criminal case. The document stated, amongst other things, the following:

> "... the investigation established that on 5 October 2001 Ruslanbek Vakhayev, who was born in 1974, and Mr M.D., who was born in 1978, had been detained at the checkpoint next to the village of Roshni-Chu. No information concerning their whereabouts has been available since ..."

65. On 18 January 2004 the investigators questioned the applicant's daughter, Ms M.V., who stated that on 5 October 2001 her brother Ruslanbek Vakhayev and Mr M.D. had told her that they had been going to Roshni-Chu to visit Mr M.D.'s fiancé. They had left in Mr M.D.'s white VAZ-2106 car. On 6 October 2001 the witness had spoken to the mother of Mr M.D. and then learnt about the arrest of two young men at the checkpoint on 5 October 2001. The arrest had been witnessed by the taxi-drivers at the taxi stand located close to the checkpoint. One of the drivers had arrived at the applicant's home with the woman who had been in the car with Ruslanbek and Mr M.D. when they had been stopped at the checkpoint. Both of them had informed the witness and the applicant about the circumstances of the incident.

66. On 18 January 2004 the investigators again questioned the applicant, whose statement was similar to the one made by her daughter Ms M.V. on the same date.

67. On 28 January 2004 the investigators questioned the mother of Mr M.D., Ms A.D., whose statement was similar to the one made by Ms M.V. on 18 January 2004.

68. On 29 January and 5 February 2004 the investigators questioned Ms Z.D. and Mr Sh.D., both of whom stated that on 5 October 2001 they had driven together to Roshni-Chu. At the checkpoint outside the village they had had to stop owing to the traffic jam caused by the arrest of two young men by the military servicemen who had been manning the checkpoint. According to the witnesses, they had met an acquaintance of theirs, Mr Kh., who had witnessed the events along with many other people awaiting the opening of the passage. On the following day the witnesses had been told that the two men were Ruslanbek Vakhayev and Mr M.D.

69. On 29 January and 4 February 2004 the investigators questioned the applicant's relatives, Ms A.V. and Ms Z.S., whose statements about the events were similar to the one made by Ms M.V. on 18 January 2004.

70. On 14 February 2004 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicant was informed thereof.

71. On 2 March 2004 the supervising prosecutor ordered that the investigation be resumed on account of the investigators' failure to take crucial steps and provided the investigators with a list of measures to be

taken. On the same date the proceedings were resumed and the applicant was informed thereof.

72. On 2 April 2004 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicant was informed thereof on the same date and appealed against this decision to the Urus-Martan Town Court (see paragraph 104 below).

73. On 27 August 2004 the supervising prosecutor ordered that the investigation be resumed for the failure to take necessary steps. On the same date the proceedings were resumed and the applicant was informed thereof.

74. On 27 September 2004 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicant was informed thereof on the same date and appealed against this decision to the Urus-Martan Town Court (see paragraph 107 below).

75. On 25 February and 9 May 2005 the applicant again complained to the Chechnya prosecutor and the Prosecutor General. She provided a detailed description of the circumstances surrounding the abduction and stressed that there had been numerous witnesses to the incident and that Mr M.D.'s car had afterwards been seen on the premises of the military commander's office. She further stated that the investigation of the abduction had been ineffective and that her complaints against the investigators' decisions, including those to the local court, had been to no avail and requested that the servicemen who had manned the checkpoint on 5 October 2001 be identified and prosecuted.

76. On 15 March 2005 the supervising prosecutor ordered that the investigation be resumed on account of the investigators' failure to take crucial steps and provided the investigators with a list of measures to be taken. On the same date the proceedings were resumed and the applicant was informed thereof.

77. On 11 April and subsequently on 7 October 2005 the investigators requested that the Central Archives of the Russian Ministry of the Interior inform them which military units had manned the checkpoint on 5 October 2001, stating, amongst other things, that

> "... [from] the materials collected by the investigation it follows that on 5 October 2001 at about 12 a.m. Ruslanbek Vakhayev and Mr M.D. were detained at the checkpoint by representatives of state forces ..."

78. On 30 May 2005 the Central Archives of the Russian Ministry of the Interior replied that they did not have any relevant information and suggested that the investigators ask for information from the Archives of the North-Caucasus Military Circuit. No reply was received to the request of 7 October 2005.

79. On 16 March 2005 the investigators questioned Mr A.B. The Government did not furnish the Court with a copy of his statement.

80. On 18 March 2005 the investigators again questioned the applicant's daughter, Ms M.V., who stated that about three or four days after the

abduction she had learnt from Mr M.D.'s younger brother that the white car in which Ruslanbek and Mr M.D. had been detained at the checkpoint had been parked in the yard of the Urus-Martan military commander's office. She also stated that she had met a taxi driver who had witnessed the abduction and described it to her in detail. On the evening of 6 October 2001 she and her cousin, Ms Z.S., had gone to see the head of the local administration, Mr L.M., who had told them that both young men had been detained at the military commander's office. Mr L.M. had been killed six months after the events.

81. On 21 March 2005 the investigators questioned Mr R.M. The Government did not furnish the Court with a copy of his statement.

82. On 21 March 2005 the investigators again questioned the applicant, who stated that she had found out about her son's abduction by the servicemen from witnesses to the events. She could not recall the names of the witnesses, but stated that one of them was a cashier at the State Pensions Fund in Roshni –Chu. For about two months after the abduction she had been promised that Ruslanbek would be released, but to no avail. Therefore, about a year later she had given up hope and lodged a written complaint with the authorities.

83. On 24 March 2005 the investigators questioned the cousin of Ms M.V., Ms Z.S., who confirmed the latter's statement made on 18 March 2005.

84. On 25 March 2005 the investigators again questioned the mother of Mr M.D., Ms A.D., who stated that her husband, who had conducted the search for their son, had told her that the local administration had informed him that M.D. and Ruslanbek Vakhayev had been detained in the building of the military commander's office and that they had waited for the release of the two men for several months.

85. On 5 April 2005 the investigators again questioned the father of Mr M.D., Mr Ma.D., who stated that after his son's abduction at the checkpoint he had learnt that his son's car had been parked for some time on the premises of the Urus-Martan military commander's office. He stated that military commander Gadzhiyev, with whom he had been acquainted, had promised to assist him in obtaining the release of his son and Ruslanbek, but to no avail, and that Gadzhiyev had been killed several months later.

86. On 15 April 2005 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicant was informed thereof.

87. On 15 June 2005 the applicant complained to the military prosecutor of military unit no. 20102, providing a detailed description of the circumstances surrounding the abduction and naming witnesses to the events. She stated that in spite of having the necessary information, the investigators had failed to identify the servicemen who had manned the

checkpoint on 5 October 2001, to question numerous witnesses to the incident who had been waiting to go through the checkpoint and to establish the circumstances under which the car of the abducted men had happened to be used by servicemen from the military commander's office. She pointed out that her complaints to the local courts against the investigators' decisions had failed to prompt the investigators to take those steps.

88. On 4 October 2005 the supervising prosecutor again ordered that the investigation be resumed on account of the investigators' failure to take crucial steps and provided the investigators with a list of measures to be taken. In particular, he instructed the investigators to identify and question the witnesses to the abduction, including the taxi driver who had informed the applicant and Ms M.V. about the events and the cashier from the State Pension Fund. On the same date the proceedings were resumed and the applicant was informed thereof.

89. On 6 October 2005 the applicant refused to familiarise herself with the contents of the criminal case file owing to the state of her health.

90. On 8 October 2005 the investigators again questioned the applicant. The Government did not furnish a copy of this statement to the Court.

91. On various dates in October 2005 the investigators questioned three local residents, Ms L.R., Ms B.E. and Ms Z.A., all of whom stated that they had not witnessed the abduction and were not aware of the incident.

92. On 4 November 2005 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicant was duly informed.

93. On 15 December 2005 and 26 February 2006 the applicant again complained to the Chechnya prosecutor, providing a detailed description of the circumstances surrounding the abduction and naming witnesses to the events. She stated that in spite of having the relevant information, the investigators had failed to identify the servicemen who had manned the checkpoint on 5 October 2001, to question numerous witnesses to the incident who had been waiting to go through the checkpoint and to establish the circumstances under which the car of the abducted men had happened to be used by servicemen from the military commander's office. She requested that the investigators take the above measures and pointed out that her complaints to the local courts against the investigators' decisions had failed to prompt the investigators to take those steps.

94. On several dates in 2006 the applicant was informed by the prosecutors' offices of various levels that the investigation of her son's abduction was in progress and that the investigators were taking all possible steps to identify the culprits.

95. On 15 May 2007 the applicant complained to the Urus-Martan district prosecutor, stating that she had not been informed as to whether the investigators had taken the steps necessary to comply with the court order of

30 September 2005 (see paragraph 110 below). She requested that the investigation be resumed and that she be allowed to examine the case file.

96. On 17 May 2007 the Urus-Martan district prosecutor partially allowed the applicant's complaint, stating that it would be up to the investigator in charge of the criminal case to decide when and to what extent she would be able to view the case file.

97. On 22 June 2007 the applicant again complained to the Urus-Martan district prosecutor, stating that she had attempted on several occasions to gain access to the investigation file at the district prosecutor's office, but that it had not been possible as the investigator in charge of the case had been either busy or absent. The applicant requested to be provided with access to the case file.

98. On 25 and 26 June 2007 the investigators again questioned the applicant's daughter, Ms M.V., and the father of Mr M.D., Mr Ma.D., both of whom reiterated their previous statements.

99. On 2 July 2007 the Urus-Martan district prosecutor replied to the applicant's complaint of 22 June 2007, stating that it was up to the investigator in charge of the criminal case to decide when and to what extent she would be able to view the case file. On the same date the investigator sent the applicant a letter stating that she could view the case file at the prosecutor's office on 4 July 2007. It is unclear whether the applicant received the letter. On 5 July 2007 the investigator in charge of the criminal case reported to the district prosecutor that the applicant had failed to show up to view the case file.

100. On various dates between the end of 2002 and 2007 the investigators forwarded numerous requests for information to various departments of the interior, the FSB, the prosecutors' offices, the military commanders' offices, detention centres and hospitals in other regions in Chechnya and the Russian Federation asking whether they had arrested or detained Ruslanbek Vakhayev, provided him with medical help or found his corpse or had any information about his whereabouts or fate. Only replies in the negative were received.

101. On 9 September 2010 the investigation of the criminal case was resumed and the applicant was informed thereof.

102. The Government further submitted that although the investigation had failed to establish the whereabouts of Ruslanbek Vakhayev, it was still in progress. The authorities were taking all possible steps to have the crime resolved. The law-enforcement authorities had never arrested or detained Ruslanbek Vakhayev.

103. Despite specific requests by the Court the Government disclosed only part of the investigation file in criminal case no. 61153, running up to 373 pages. No explanation was given for the failure to submit a copy of the entire contents of the case file.

C. Proceedings against the investigators

1. The first set of proceedings

104. On 28 July 2004 the applicant complained about the ineffectiveness of the investigation into her son's abduction to the Urus-Martan Town Court (hereafter "the Town Court"). She stated that in spite of numerous witnesses to the abduction and the relative simplicity with which such information could have been obtained by the investigators, the district prosecutor's office had failed to identify the servicemen who had manned the checkpoint on the date of the abduction. The applicant asked the court to order the district prosecutor's office to conduct a thorough and effective investigation into the events, to prosecute the perpetrators, to grant her the status of civil plaintiff in the proceedings and provide her with access to the investigation file.

105. On 13 August 2004 the Town Court partially allowed the applicant's complaint and ordered the district prosecutor's office to conduct a thorough and effective investigation of the abduction. The text of the decision included the following:

> "... it follows from the investigation file, that the investigation has not been conducted in full. For instance, the investigators did not identify and question the officers ... who had manned the checkpoint on the southwest outskirts of Urus-Martan and participated in the arrest of Ruslanbek Vakhayev; the investigators failed to identify and question the woman who had been in the same car with the abducted men; not all of the steps listed in the operational-search plan have been taken during the criminal investigation ..."

106. The remainder of the complaint was rejected. The court stated that the applicant would have the right to view the investigation file only after the completion of the investigation.

2. The second set of proceedings

107. Around 20 October 2004 the applicant again complained to the Town Court about the ineffectiveness of the investigation in the criminal case and the lack of access to the investigation file.

108. On 1 November 2004 the Town Court rejected her complaint. The decision stated, amongst other things, the following:

> "... During the investigation the district prosecutor's office carried out the court's orders of 13 August 2004. In these circumstances the applicant's request for a more thorough and effective investigation is unsubstantiated ..."

109. The applicant appealed against that decision to the Chechnya Supreme Court. On 7 September 2005 the Chechnya Supreme Court overruled the decision and remitted the applicant's complaint to the Town Court for a fresh examination.

110. On 30 September 2005 the Town Court allowed the applicant's complaint and ordered the investigators to conduct a thorough and effective investigation of the abduction and allow the applicant to view the investigation file. The text of the court's decision included the following:

> "... from the case-file materials it follows that the investigation failed to take all the necessary steps to establish the whereabouts of the abducted man and identify the perpetrators. In particular, they failed to:
>
> - identify and question the witnesses who had been at the checkpoint during R. Vakhayev's arrest on 5 October 2001;
>
> - identify and question the state servicemen who had manned the checkpoint on the day of R. Vakhayev's apprehension;
>
> - take measures to find the car in which R. Vakhayev had arrived [at the checkpoint] in spite of the statement by witness Ms T.V. that this car had been parked in the yard of the district military commander's office and, moreover, that its officers had driven around in this car;
>
> These circumstances demonstrate that the applicant's request for a more thorough and effective investigation of the criminal case is substantiated ..."

II. RELEVANT DOMESTIC LAW

111. 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. ISSUE CONCERNING THE EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

112. The Government submitted that the investigation into the disappearance of Ruslanbek Vakhayev 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 applicant to lodge court complaints about any acts or omissions on the part of the investigating authorities and that she had availed herself of this remedy. Besides, she could have lodged a claim for civil damages. They also added that the applicant, having

officially complained to the prosecutor's office almost a year after the abduction, had undermined the efficiency of the investigation.

113. The applicant contested the Government's submission. She stated that the only effective remedy, the criminal investigation, had proved to be ineffective.

B. The Court's assessment

114. 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 and 74, 12 October 2006).

115. 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.

116. 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, §§ 119-21, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicant was not obliged to pursue a civil remedy. The Government's objection in this regard is thus dismissed.

117. As regards criminal-law remedies, the Court observes that the applicant complained to the law-enforcement authorities after the abduction of Ruslanbek Vakhayev, and that an investigation has been pending since 3 November 2002. The applicant and the Government dispute the effectiveness of the investigation of the incident.

118. 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 applicant's 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

119. The applicant maintained that it was beyond reasonable doubt that Ruslanbek Vakhayev had been detained by military servicemen at the

checkpoint and subsequently killed. In support of her complaint she referred to the fact that the Government did not dispute her account of the matter and that they had simply stated that she had failed to prove that her son was either dead or detained by State servicemen. She pointed out that numerous documents from the investigation file confirmed her theory that her son had been detained at the checkpoint and had then disappeared (see paragraphs 50, 64, 68, 77, 84, 85 and 88 above). She further stated that Ruslanbek Vakhayev had been missing for more than ten years and that, therefore, he could be presumed dead as he had been arrested under life-threatening circumstances.

120. The Government submitted that she had failed to prove beyond reasonable doubt that Ruslanbek Vakhayev was either dead or had been abducted by State servicemen. They stated that the applicant herself had not witnessed the events in question and that her application was based "on rumours" and that an investigation into the incident was ongoing. The Government argued that the applicant's belated complaint to the law-enforcement agencies about the alleged abduction had impeded the progress of the investigation.

B. The Court's evaluation of the facts

121. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of matters in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-09, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

122. The Court notes that despite its request for a copy of the entire contents of the investigation file into the abduction of Ruslanbek Vakhayev, the Government produced only some of the documents from it, without giving an explanation for the failure to provide the rest.

123. 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 applicant's allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicant's son can be presumed dead and whether his death can be attributed to the authorities.

124. The applicant alleged that her son Ruslanbek Vakhayev had been detained by State servicemen on 5 October 2001 at the military checkpoint and subsequently killed. The Government neither disputed the matter as presented by the applicant nor provided their own version of the events,

stating that the applicant's submission was unsubstantiated and based "on rumours".

125. The Court notes that little evidence has been submitted by the applicant, which is understandable in the light of the investigators' reluctance to provide her with copies of important investigation documents. Nevertheless, the Court notes that the applicant's allegation is supported by the numerous witness statements collected in the course of the investigation (see paragraphs 51, 59, 65-69, 80, 82-85 and 98 above). The investigators also accepted the factual description presented by the applicant, and attempted to verify whether military servicemen had indeed detained the applicant's son under the alleged circumstances (see paragraphs 52 and 77 above), but it does not appear that these requests for information were meaningful and consistent enough to bring a tangible result.

126. 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)).

127. Taking into account the above elements, the Court is satisfied that the applicant has made a prima facie case that her son was arrested at the checkpoint by State servicemen. The Government's general statement to the effect that her application was based on rumours 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 Ruslanbek Vakhayev was arrested by State servicemen at the military checkpoint on 5 October 2001.

128. There has been no reliable news of Ruslanbek Vakhayev since the date of the arrest. His name has not been found in any official detention facility records. The Government have not submitted any explanation as to what happened to him afterwards.

129. Having regard to a number of similar cases concerning disappearances after arrest at a military checkpoint in Chechnya (see, among many others, *Khaydayeva and Others v. Russia*, no. 1848/04, 5 February 2009; *Sadulayeva v. Russia*, no. 38570/05, 8 April 2010; *Abayeva and Others v. Russia*, no. 37542/05, 8 April 2010; *Malika Alikhadzhiyeva v. Russia*, no. 37193/08, 24 May 2011; *Makharbiyeva and Others v. Russia*, no. 26595/08, 21 June 2011; and *Sambiyeva v. Russia*,

no. 20205/07, 8 November 2011), the Court finds that in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Ruslanbek Vakhayev or of any news of him for more than ten years supports this assumption.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

131. The applicant complained under Article 2 of the Convention that her son had been deprived of his life by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

A. The parties' submissions

132. The Government contended that the domestic investigation had obtained no evidence to prove that Ruslanbek Vakhayev was dead or that any State servicemen had been involved in his alleged abduction or killing. The Government claimed that the investigation into the abduction of the applicant's son had met the Convention requirement of effectiveness.

133. The applicant argued that Ruslanbek Vakhayev had been detained at the military checkpoint by State servicemen and should be presumed dead in the absence of any reliable news of him for more than ten years. She also alleged that the investigation had not met the requirements laid down by the Court's case-law, as it had been ineffective and protracted. She pointed out that the investigators had not taken some crucial investigative steps, such as identification of the military servicemen who had manned the checkpoint on the date of the abduction, or identification of witnesses among the local

residents who had been waiting to go through the checkpoint and had witnessed the incident.

B. The Court's assessment

1. Admissibility

134. 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 of the effectiveness of the investigation should be joined to the merits of the complaint (see paragraph 118 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 Ruslanbek Vakhayev

135. The Court has already found that the applicant's son must be presumed dead following unacknowledged detention by State servicemen. In the absence of any justification put forward by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of Article 2 in respect of Ruslanbek Vakhayev.

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

136. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-19).

137. In the present case, the abduction of Ruslanbek Vakhayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

138. The Court notes at the outset that only part of the documents from the investigation file was disclosed by the Government.

139. The Court notes that, as can be seen from the decisions of the supervising prosecutors and the domestic courts (see paragraphs 58, 63, 71, 73, 76, 88, 105 and 110 above), the investigators failed to take a number of essential steps such as establishing the identities of the servicemen who had manned the checkpoint on the date of the abduction, identifying and questioning the eyewitnesses to the abduction and taking measures to find

Mr M.D.'s car, which had allegedly been seen after the abduction on the premises of the military commander's office. These measures should have been taken immediately or as soon as possible after the investigation had been initiated. From the submitted documents it follows that in spite of the direct orders these crucial steps were not taken by the investigators (see paragraphs 88, 93 and 110 above). Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

140. The Court also notes that even though the applicant was granted victim status in the investigation concerning her son's abduction, she was only sporadically and in a few words informed of the progress in the proceedings (see, for example, paragraphs 36, 95-97 and 99 above), and mostly only of their suspensions and resumptions. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, and to safeguard the interests of the next of kin in the proceedings.

141. Lastly, the Court notes that the investigation was suspended and resumed at least seven times; there were lengthy periods of inactivity on the part of the authorities when no proceedings were pending. For instance, the investigation was suspended between 4 November 2005 and 9 September 2010; thus, for almost five years no meaningful investigative steps were taken by the authorities.

142. The Government alleged that the applicant had sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies and that she should have continued to avail herself of this remedy. They further argued that the applicant, having belatedly complained to the authorities about the abduction, had undermined the efficiency of the investigation.

143. As for the judicial review of the investigators' decisions, the Court observes that the applicant indeed challenged acts and omissions on the part of the investigating authorities before the domestic courts and as a result the investigators were ordered to take a number of necessary steps (see paragraphs 105 and 110 above). However, from the documents submitted it follows that these orders were effectively ignored by the investigators and therefore they failed to yield any tangible results. If the applicant had continued to lodge court complaints against the investigators, and if the investigators had actually complied with the courts' orders and carried out the required steps, it is highly doubtful that the applicant's complaints would have brought meaningful results, as certain measures that should have been carried out much earlier could no longer usefully be conducted. In addition, the applicant was neither properly informed about the progress

of the criminal proceedings nor provided with timely access to the case file (see paragraph 140 above). In such circumstances, it is highly doubtful that the remedy relied on would have had any prospects of success.

144. As for the argument concerning the applicant's allegedly belated complaint about the abduction, the Court notes that although she may not have lodged a complaint with the authorities shortly after the abduction (see the applicant's assertion to the contrary in paragraph 22 above), the Court notes that prior to the lodging of her presumably first official written complaint with the prosecutor's office on 27 July 2002 (see paragraph 49 above), the applicant had complained about the incident to a number of authorities on earlier dates, starting from 2 June 2002 (see paragraphs 23-26 above). In their submission to the Court the Government did not contest this information. Furthermore, even if the authorities had been unaware of the abduction prior to June 2002, the delay between the applicant's written complaint of 2 June 2002 and the opening of the official investigation on 3 November 2002 comprised more than five months. Such a long delay in reacting to the information concerning a life-threatening crime, along with the subsequent protracted conduct of the criminal proceedings, cannot allow the Court to conclude in the circumstances of the case that it was the applicant's belated complaint which seriously impeded the conduct of the investigation.

145. Taking into account the above, the Court finds that the remedy referred to by the Government was ineffective in the circumstances of the case and dismisses their argument as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

146. 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 Ruslanbek Vakhayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

147. The applicant relied on Article 3 of the Convention, submitting that as a result of her son's disappearance and the State's failure to investigate it effectively she 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

148. The Government argued that the State authorities had not subjected the applicant to inhuman or degrading treatment prohibited by Article 3 of the Convention.

149. The applicant maintained her submissions.

B. The Court's assessment

1. Admissibility

150. 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

151. 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 v. Russia*, no. 7615/02, § 164, ECHR 2006-XIII (extracts)).

152. In the present case the Court notes that the applicant is the mother of the disappeared person. For more than ten years she has not had any news of him. During this period the applicant has made enquiries of various official bodies, both in writing and in person, about her missing son. Despite her attempts, she has never received any plausible explanation or information about what became of him following his abduction. The responses she received mostly denied State responsibility for her son's abduction or simply informed her that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

154. The applicant further stated that Ruslanbek Vakhayev 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

155. The Government asserted that no evidence had been obtained by the investigators to confirm that Ruslanbek Vakhayev had been arrested or detained.

156. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

157. 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

158. The Court has previously noted the fundamental importance of the guarantees contained in Article 5, which 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)).

159. The Court has found that Ruslanbek Vakhayev was detained by State servicemen on 5 October 2001 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

160. The Court further considers that the authorities should have been more alert to the need for a thorough investigation of the applicant's complaints that her son had been abducted 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 effective measures to safeguard him against the risk of disappearance.

161. In view of the foregoing, the Court finds that Ruslanbek Vakhayev 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

162. The applicant complained that she 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

163. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The applicant

had had an opportunity to challenge the acts or omissions of the investigating authorities in court as well as claim damages in civil proceedings.

164. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

165. 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

166. The Court reiterates that in circumstances where, as here, a criminal investigation into a disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

168. As regards the applicant's 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

169. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

170. The applicant claimed damages in respect of loss of earnings by her son after his arrest and subsequent disappearance. She submitted that as his mother she would have been entitled to at least 30% of his earnings. The

applicant claimed a total of 679,431 Russian roubles (RUB) under this heading (approximately 17,550 euros (EUR)).

171. She claimed that her son had been unemployed at the time of the abduction and that, in accordance with established practice in such cases, the calculation should be made on the basis of the subsistence level established by national law. She calculated his earnings for the period, taking into account an average inflation rate of 10%. Her calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("the Ogden tables").

172. The Government regarded these claims as unsubstantiated, pointing out that the applicant had failed to provide documents demonstrating that Ruslanbek Vakhayev had been the family breadwinner. They also referred to the existence of domestic statutory machinery for the provision of a pension for the loss of the family breadwinner.

173. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. The Court further finds that the loss of earnings also applies to elderly parents and that it is reasonable to assume that Ruslanbek Vakhayev would eventually have had some earnings from which the applicant would have benefited (see, among other authorities, *Imakayeva,* cited above, § 213). Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicant's son and the loss by the applicant of the financial support which he could have provided. Having regard to the applicant's submissions, the Court awards EUR 12,000 to the applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

174. The applicant claimed EUR 100,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her son, the indifference shown by the authorities towards her and the failure to provide her with any information about the fate of her family member.

175. The Government found the amount claimed excessive.

176. 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 applicant's son. The applicant herself has been found to have been the victim of a violation of Article 3 of the Convention. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant EUR 60,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

177. The applicant was represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 6,821.

178. The Government disputed the amount claimed. They pointed out that the applicant's representatives had submitted their observations on the admissibility and merits of the application in one set of documents, that they had made extensive use of phrases already used in previsions observations in similar cases and that, therefore, legal research had not been necessary to the extent claimed by the representatives.

179. The Court has to establish first whether the costs and expenses indicated by the applicant's 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).

180. Having regard to the details of the information and legal representation contract submitted by the applicant, the Court is satisfied that these rates are reasonable. As to whether they were necessary and actually incurred, the Court notes that even though this case required a certain amount of research and preparation, due to the similarity of the observations on the admissibility and merits of this application to those in a number of other applications submitted in similar cases, legal research by the applicant's representatives was not necessary to the extent claimed.

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

D. Default interest

182. 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 as to 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 Ruslanbek Vakhayev;

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 Ruslanbek Vakhayev disappeared;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;

6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ruslanbek Vakhayev;

7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;

8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5 of the Convention;

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 on the date of settlement, save in the case of the payment in respect of costs and expenses:

(i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the applicant;

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

(iii) EUR 2,500 (two thousand and five hundred euros), plus any tax that may be chargeable to the applicant, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President