



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

FIRST SECTION

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

*(Application no. 25654/08)*

JUDGMENT

STRASBOURG

31 July 2012

**FINAL**

*17/12/2012*

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



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

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 10 July 2012,

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

## PROCEDURE

1. The case originated in an application (no. 25654/08) 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 the six Russian nationals listed below (“the applicants”), on 14 April 2008.

2. The applicants were represented by Mr D. Itslyayev, a lawyer practising in Grozny. 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 22 April 2010 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application. On the same date 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.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are:

- (1) Ms Aset Umarova, who was born in 1959;
- (2) Ms Laura Alkhastova, who was born in 1981;
- (3) Ms Luiza Umarova, who was born in 1983;
- (4) Mr Ibragim Umarov, who was born in 1987;
- (5) Mr Said-Ibragim (also spelled as Sayd-Ibragim) Umarov, who was born in 1991; and
- (6) Ms Larisa Umarova, who was born in 1985.

The applicants live in Achkhoy-Martan, Chechnya. The first applicant is the wife of Khamzat Umarov, who was born in 1956; the second, third, fourth, fifth and sixth applicants are his children.

### **A. Abduction of the applicants' relative and subsequent events**

#### *1. Information submitted by the applicants*

##### **(a) Abduction of Khamzat Umarov**

6. At the material time Achkhoy-Martan was under the full control of federal military forces. Checkpoints were located on the roads leading to and from the settlement. The area was under curfew. Military units of the 58th Russian army were stationed in the fields next to Achkhoy-Martan. At the time, Khamzat Umarov was working as the head of the State Roads Administration in Achkhoy-Martan.

7. On the night of 29 July 2001 (in the documents submitted the date was also referred to as 30 July and 31 July 2001) the applicants and Khamzat Umarov were at home, at 29 Sadovaya Street in Achkhoy-Martan. That night the applicants' friend, Mr S.I., who worked for the Danish Refugee Council, also stayed at the house.

8. At about 4 a.m. on 30 July 2001 the first applicant was woken up by a noise coming from outside. She heard what sounded like someone trying to quietly open the gates to their yard. When the applicant asked in Chechen: 'Who's there?' she heard no response. Then her husband, Khamzat Umarov, looked out from the window and told her that there were Russians with flashlights.

9. The men outside demanded that the applicants open the gates. The first applicant told them that they would wake up the children and asked them to return in the morning. In response, the men forced the gates open and a group of about twenty to twenty-five men in camouflage uniforms rushed into the yard. Approximately fifteen men ran into the house. The rest remained outside. Some of them went into the yard of the applicants' neighbours, the family of Ms R.Z., and ordered the neighbours to stay inside. Some men remained in the street and kept ordering other neighbours to get back inside.

10. All of the intruders were equipped with flashlights and armed with automatic weapons (*винтопез*). They forced the applicants into different rooms; two of them guarded the first applicant. Some of the men were wearing masks; those without masks were of Slavic appearance. The men spoke unaccented Russian. The applicants thought that they were Russian military servicemen.

11. After breaking into the house the intruders talked amongst themselves about their search for 'two men'. The first applicant thought that the officers were talking about her husband and Mr S.I. After the servicemen found the room which the two men were in, they rushed into it and searched it for five or six minutes. After that the servicemen took Khamzat Umarov and Mr S.I. outside. The first applicant followed them. Two UAZ vehicles were parked in the street. One of the vehicles had an antenna and a portable radio transmitter on the roof. The officers put Khamzat Umarov in one of the cars, but left Mr S.I. behind. Immediately afterward both cars drove away in the direction of Lenina Street, where the Achkhoy-Martan District Department of the Interior ("the ROVD"), the Achkhoy-Martan Temporary District Department of the Interior ("the VOVD") and the Achkhoy-Martan Department of the Federal Security Service ("the FSB") were situated at the time.

12. Mr S.I., who had been left by the abductors in the street, returned to the house and told the applicants that the abductors had threatened to shoot him if he followed them.

**(b) The subsequent events**

13. Immediately after the abductors were gone, the first applicant managed to call the VOVD. An officer there told her to call the ROVD and gave her their number. Then the first applicant called the ROVD and informed the officers there of the abduction. The officers told her that there was no need to worry, as Khamzat Umarov was not the only man who had been detained that night. After that, the applicant was told to come to the ROVD in the morning as the area was under curfew at night.

14. In the morning the first applicant told her husband's relatives about what had happened and they went together to the ROVD, where they were told that Khamzat Umarov had not been arrested by their officers and that he was not detained on their premises. On the same day, 30 July 2001, the applicants lodged written complaints about the abduction of Khamzat Umarov to a number of local law-enforcement agencies, including the ROVD, the FSB and the Achkhoy-Martan Inter-District Prosecutor's Office ("the district prosecutor's office").

15. On 31 July 2001 a number of residents of Achkhoy-Martan gathered in front of the FSB's office. They blocked the road and demanded to speak with the officials. At some point the head of the office came out from the building and spoke with the crowd. He told the applicants and their fellow

villagers that Khamzat Umarov must have been taken away by officers of the 58th Russian army, whose units were stationed in the fields next to the settlement. The officer promised the crowd that he would find out Khamzat Umarov's whereabouts.

16. After that, the head of the Achkhoy-Martan District administration, Mr B., and the head of the ROVD, officer K., arrived at the FSB's premises and asked the residents to go home. Having spent two days next to the FSB building, the crowd left on 1 August 2001.

17. About a month later a group of employees of the Danish Refugee Council visited the applicants' home together with a number of journalists.

18. Within a certain period of time, starting from the end of August 2001, military servicemen searched the applicants' house on several occasions.

19. On 22 November 2001 military servicemen took away Khamzat Umarov's brother, Mr Ramzan Umarov, who has not been seen since.

20. In support of their application the applicants submitted the following documents: a statement by the first applicant dated 16 September 2008; three statements by the applicants' neighbours, Ms L. Kh., Ms R. Zh. and Ms R. G., all dated 28 July 2008; and copies of the documents received from the authorities.

## *2. Information submitted by the Government*

21. The Government did not challenge the version of events presented by the applicants. At the same time, they stated that no special operations had been carried out in Achkhoy-Martan between 29 and 30 July 2001.

## **B. The official investigation into the abduction**

22. On 30 July 2001 the first applicant complained about the abduction to the district prosecutor's office. In her complaint she stated that the abductors had been in camouflage uniforms and masks, that they had spoken unaccented Russian and had threatened her and her children with firearms.

23. On 10 August 2001 the district prosecutor's office informed the applicants that their inquiry had established that Khamzat Umarov had not been arrested by local law-enforcement agencies and that he was not detained in the local temporary detention centre.

24. On 28 August and 10 September 2001 the Chechnya prosecutor's office forwarded the applicants' complaint about the abduction to the district prosecutor's office for examination.

25. On 4 and 14 September 2001 the district prosecutor's office instructed the VOVD to take operational-search measures to establish the whereabouts of Khamzat Umarov.

26. On 9 September 2001 investigators from the VOVD questioned the applicants' neighbour, Mr A., who stated that on the morning of 30 July 2001 he had found out that Khamzat Umarov had been abducted by military servicemen earlier the same morning.

27. On 9 September 2001 the investigators questioned the first applicant, who described the circumstances of her husband's abduction by military servicemen.

28. On 25 January 2002 (in the documents submitted the date was also referred to as 2 and 28 January 2002) the district prosecutor's office instituted an investigation into the abduction of Khamzat Umarov under Article 127 § 2 of the Criminal Code (unlawful deprivation of liberty). From 27 April 2002 onwards, the investigation was based on Article 126 § 2 of the Criminal Code (aggravated abduction). The case file was given the number 63008.

29. On 25 January and then on 8 February 2002 the investigators again questioned the first applicant, who provided a detailed description of the abduction and stated that the abductors had been armed with machine guns, had spoken unaccented Russian and that some of them had worn masks.

30. On 28 January 2002 the investigators questioned another of Khamzat Umarov's brothers, Mr Ru. Umarov, who stated that he had not witnessed the abduction and had learnt about it from his relatives.

31. On 26 February 2002 the first applicant was granted victim status in the criminal case.

32. On 6 March 2002 the Zavodskoy and the Oktyabrskiy ROVD in Grozny and the Grozny ROVD informed the investigators that they did not have information concerning either Khamzat Umarov's whereabouts or his detention on their premises.

33. On 25 March 2002 the investigators suspended the investigation of the criminal case for failure to identify the perpetrators. The applicants were not informed thereof.

34. Between March 2002 and March 2005 the investigation of the criminal case was suspended.

35. On 28 March 2005 the supervising prosecutor ordered that the investigation be resumed as the investigators had failed to take basic steps, including verification of the involvement of military servicemen in the abduction, identification of the abductors' vehicles and questioning of witnesses to the events. The applicants were not informed of this decision.

36. On 29 March 2005 the investigators examined the crime scene. No evidence was collected.

37. Between the end of March and the end of April 2005 the investigators questioned twenty of the applicants' neighbours and relatives, all of whom gave similar statements to the effect that in the summer of 2001 Khamzat Umarov had been abducted by armed masked men and that later,

in the autumn of 2001, his brother Ramzan had been also taken away by unidentified perpetrators; neither of them had returned home.

38. On 28 April 2005 the investigators suspended the investigation of the criminal case for failure to identify the perpetrators. The applicants were informed thereof.

39. On 10 September 2007 the supervising prosecutor criticised the investigation, stating that it was incomplete, and ordered that it be resumed owing to the need to take investigative steps. On 19 September 2007 the investigation was resumed.

40. On 24 September 2007 the investigators again granted the first applicant victim status in the criminal case and questioned her. A copy of her statement was not furnished by the Government.

41. On 17 October 2007 the investigators again questioned the brother of Khamzat Umarov, Mr Ru. Umarov, who reiterated his previously given statement.

42. On 19 October 2007 the investigation was again suspended for failure to identify the perpetrators. The applicants were informed thereof.

43. On 17 March 2008 the supervising prosecutor criticised the investigation, stating that it was incomplete, and ordered its resumption owing to the need to take investigative steps.

44. On 20 April 2008 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicants were informed thereof.

45. On 1 June 2008 the supervising prosecutor criticised the investigation, stating that it was incomplete, and ordered that it be resumed owing to the need to take investigative steps.

46. On 20 June 2008 the investigators again questioned the brother of Khamzat Umarov, Mr Ru. Umarov, who reiterated his previously given statements.

47. On the same date the investigators asked the Chechnya FSB to inform them whether they had any information about Khamzat Umarov and whether he had been suspected of membership in illegal armed groups. A reply in the negative was received.

48. On 25 June 2008 the investigators questioned the head of the criminal search division of the Achkhoy-Martan ROVD, Mr S.-M. Sh., who stated that he had no information about the whereabouts of Khamzat Umarov and that the latter had not been involved in a blood feud or suspected of illegal activities.

49. On 1 July 2008 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicants were informed thereof.

50. On 21 January 2009 the supervising prosecutor criticised the investigation, stating that it was incomplete, and ordered that it be resumed owing to the need to take investigative steps.



51. On 10 February 2009 the investigators questioned Mr S.Kh., who stated that in 2001 he had been the head of the Achkhoy-Martan village administration. The witness denied that in 2001 the head of the Achkhoy-Martan VOVD had confirmed to him that Khamzat Umarov had been detained on their premises for questioning.

52. On 17 February 2009 the investigators again questioned the brother of Khamzat Umarov, Mr Ru. Umarov, who reiterated his previously given statements.

53. On 21 February 2009 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicants were informed thereof.

54. On various dates between 2002 and 2008 the investigators forwarded a number of information requests to various law-enforcement agencies and hospitals, asking whether Khamzat Umarov had sought medical help, whether his corpse had been discovered in their districts, whether he had crossed state borders and whether the agencies had information about his whereabouts or detention on their premises. Replies in the negative were received.

55. The materials submitted indicate that the investigation of Khamzat Umarov's disappearance has been suspended on at least six occasions and subsequently resumed due to the investigators' failure to take necessary steps. It has not been completed to date. The applicants have not been informed of the progress of the criminal proceedings other than of their suspension and reopening.

56. In reply to a request made by the Court, the Government furnished the partial contents of criminal case no. 63008, running to 534 pages. The copies of the documents provided had double numbering. According to the applicants, the Government failed to submit a copy of a number of important witness statements proving their allegations. The applicants also expressed their doubts as to the authenticity of the witness statements allegedly made by their neighbours and fellow villagers, submitting that those individuals had not resided at the addresses indicated by the investigators (see paragraph 37 above). The Government did not comment on this part of the applicants' submissions.

### **C. Proceedings against the investigators**

57. On 1 April 2008 the applicants complained to the Achkhoy-Martan District Court ("the district court") of a lack of effective investigation of the criminal case. They argued that Khamzat Umarov had been abducted by federal military servicemen and that the six-year investigation of his kidnapping had failed to produce any results. The applicants asked the court to order an effective and thorough investigation, and to order the resumption of the proceedings and the taking of necessary investigative measures.

58. On 10 April 2008 the district court refused to examine the applicants' complaint, stating that on 17 March 2008 the district prosecutor's office had resumed the investigation of the criminal case.

## II. RELEVANT DOMESTIC LAW

59. 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

60. The Government contended that the complaint should be declared inadmissible as premature, as the investigation of the disappearance of Khamzat 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 the courts about any acts or omissions on the part of the investigating authorities. They could also have claimed civil damages.

61. 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

62. 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).

63. 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.

64. 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.

65. 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 Khamzat Umarov and that an investigation has been pending since 25 January 2002. The applicants and the Government dispute the effectiveness of the investigation of Khamzat Umarov's disappearance.

66. 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

67. The Government contended that the domestic investigation had obtained no evidence to the effect that Khamzat Umarov was dead or that any representatives of law-enforcement agencies had been involved in his disappearance. They stressed that the applicants' relative could have been abducted by members of illegal armed groups impersonating State servicemen and that the applicants had been inconsistent in their descriptions of the abductors' appearance and their vehicles. The Government further claimed that the investigation into his disappearance had met the Convention requirement of effectiveness.

68. The applicants argued that Khamzat Umarov had been abducted by State agents and that he had subsequently disappeared. They further submitted that he should be presumed dead in the absence of any reliable news of him for more than ten years. In particular, they pointed out that Khamzat Umarov had been detained by a large group of armed men in camouflage uniforms who had arrived at his home late at night, which indicated that they had been able to circulate freely during a curfew and to pass through military checkpoints. The applicants stressed that the authorities had taken no urgent steps whatsoever to identify the persons who had carried out the abduction and submitted that the investigators had failed to advance any other theories concerning the abductors' identities that would contradict their submission that they had been agents of State authorities.

## **B. The Court's evaluation of the facts**

69. 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 facts on which the parties disagree. As to facts 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).

70. 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.

71. Bearing in mind the principles referred to above, the Court will proceed to examine aspects of the present case that will be crucial in deciding whether any responsibility for deprivation of the life of the applicants' relative can be attributed to the authorities.

72. The applicants alleged that Khamzat Umarov had been abducted on 30 July 2001 by State servicemen and subsequently killed. The Government neither disputed the version of events presented by the applicants nor provided any explanation of the matter other than stating that there was no reliable information concerning the arrest of Khamzat Umarov by representatives of the authorities.

73. The Court notes that little evidence has been submitted by the applicants in support of their application. Nevertheless, the Court notes that in addition to the documents enclosed with their submission, the applicants' allegation is supported by witness statements collected by the investigation into the abduction, which also accepted the version of events presented by the applicants and took steps to verify the allegation that Khamzat Umarov had been arrested by servicemen (see paragraphs 23, 26-27, 29, 32, 35, 37 and 48 above). However, it does not appear that those steps were able to yield a tangible result.

74. The Court observes that where an applicant makes out a *prima facie* case, it is for the Government 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)).

75. Taking the above into account, the Court is satisfied that the applicants have made out 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 State servicemen in Khamzat 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 provide another plausible explanation for the events in question, the Court finds that Khamzat Umarov was arrested on 30 July 2001 by State servicemen.

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

77. The Court finds that when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention and is then missing for a number of years, that situation can be regarded as life-threatening. The absence of Khamzat Umarov or of any news of him for more than ten years supports this assumption.

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

### III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

79. The applicants complained under Article 2 of the Convention that their relative Khamzat 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**

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

81. The applicants argued that Khamzat Umarov had been abducted by State representatives and that he had subsequently disappeared, and that he should be presumed dead because he had been missing for more than ten years. The applicants also argued that the investigation of the abduction had been ineffective. In particular, they alleged that the authorities had failed to take any urgent steps to follow up on the information submitted by the applicants immediately after the abduction, the criminal proceedings had only been initiated after a delay of more than five months and the crime scene had only been examined about four years after the incident. They also stressed that the investigators had not taken any steps to identify the abductors' vehicles or to identify and question any officials responsible for the observance of the curfew in order to identify which power structures had been given permission to drive freely in the area on the night of the abduction.

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

#### *1. Admissibility*

82. 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 66 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 Khamzat Umarov**

83. 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 Khamzat Umarov.

**(b) The alleged inadequacy of the investigation of Khamzat Umarov's disappearance**

*(i) General principles*

84. 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 v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324). 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 v. Turkey*, 27 July 1998, §§ 81-82, *Reports of Judgments and Decisions* 1998-IV, and *Ögur v. Turkey* [GC], no. 21954/93, §§ 91-92, ECHR 1999-III).

85. 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).

86. In this context, there must also be an implicit requirement of promptness and reasonable expedition (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-104, *Reports* 1998-VI, and *Çakici v. Turkey*, 8 July 1999, §§ 80, 87, 106, *Reports* 1999-IV). 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.

87. 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 v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII, 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(s) responsible will risk falling below this standard.

88. 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*, cited above, § 115).

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

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

90. The Court notes that the applicants reported the abduction to the authorities immediately after the incident (see paragraph 22 above). The official investigation was only initiated on 25 January 2002 – almost six months after the receipt of the applicants’ complaint. From the very beginning, the applicants alleged that their relative had been arrested by military servicemen (see paragraphs 22-23 and 27 above). Despite the fact that they received this information immediately, the investigators neither examined the crime scene at the place of arrest, nor checked the registration log of detainees held by the military unit who had allegedly taken the applicants’ relative (see paragraphs 15-16 above), nor did they follow up on the information relating to the perpetrators’ identities which was given to them by the applicants’ neighbour (see paragraph 26 above) or could have been provided by the local residents (see paragraphs 15 and 16).

91. Furthermore, from the documents submitted it is evident that on several occasions – in March 2005, in September 2007, March and June 2008 and then in January 2009 – the supervising prosecutors criticised the investigators for failure to take important investigative actions (see paragraphs 35, 39, 43, 45 and 50 above) and ordered that remedial measures be taken, which instructions 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).

92. As regards the overall conduct of the proceedings, the Court notes that after having been opened on 25 January 2002 the investigation was suspended on several occasions. 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 in which vital steps had not been taken by the investigators, undermined the investigators’ ability to identify and punish the perpetrators (see *Ögur*, cited above, § 88).

93. Turning to the requirement of public scrutiny, the Court notes that even though the first applicant was for some reason twice granted victim status in the criminal case (see paragraphs 31 and 40 above), it does not appear that she and the other applicants were duly informed by the



authorities about the progress of the proceedings, other than of their suspension and resumption.

94. The Government argued that the first applicant had been granted victim status in the criminal case, and therefore that 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, not being properly informed of the progress of the investigation, could not have effectively challenged acts or omissions of the 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.

95. 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 Khamzat Umarov, in breach of Article 2 in its procedural aspect.

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

96. 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**

97. The Government disagreed with this allegation, 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.

98. The applicants maintained their submissions.

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

###### *1. Admissibility*

99. 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*

100. 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)).

101. In the present case the Court notes that the applicants are the wife and children of the disappeared person. For more than ten years they have not had any news of their missing relative. 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.

102. 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

103. The applicants submitted that Khamzat 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**

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

105. The applicants reiterated their complaint.

### **B. The Court’s assessment**

#### *1. Admissibility*

106. 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*

107. 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*, no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII (extracts)).

108. The Court has found that Khamzat Umarov was arrested by State servicemen on 30 July 2001 and has not been seen since. His arrest was not acknowledged, was not logged in any custody records and no official trace of his subsequent whereabouts or fate exists. 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).

109. 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.

110. In view of the foregoing, the Court finds that Khamzat 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

111. 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

112. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention. The applicants had had the opportunity to challenge the acts or omissions of the investigating authorities in court and could also have claimed damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

113. The applicants reiterated the complaint.

### B. The Court’s assessment

#### 1. Admissibility

114. 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

115. 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).

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

117. 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

118. 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

119. The fourth, fifth and sixth applicants claimed damages in respect of loss of earnings by their father Khamzat Umarov after his arrest and subsequent disappearance. They submitted that as his children each of them would have been entitled until the age of majority to a part of his earnings amounting to the minimum subsistence rate. The applicants claimed that they had based their calculations on the minimum subsistence rates in Chechnya published in November 2010. The fourth applicant claimed a total of 221,716 Russian roubles (RUB) under this heading (approximately 6,204 euros (EUR)). The fifth applicant claimed a total of RUB 498,861 (approximately EUR 11,710) and the sixth applicant claimed a total of RUB 95,741 (approximately EUR 2,247).

120. The applicants did not submit any documents either substantiating Khamzat Umarov's earnings or explaining their calculations.

121. The Government regarded these claims as unsubstantiated and speculative.

122. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants 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 children and that it is reasonable to assume that Khamzat Umarov would eventually have had some earnings from which the applicants 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 applicants' father and the loss by the applicants of the financial support

which he could have provided. Having regard to the applicants' submissions, the Court awards EUR 2,000 to the fourth, fifth and sixth applicants each in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

### **B. Non-pecuniary damage**

123. The applicants submitted that the amount of compensation should be determined by the Court on an equitable basis.

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

125. 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.

### **C. Costs and expenses**

126. The applicants were represented by Mr D. Itslyayev, a lawyer practising in Grozny. The applicants submitted a contract with their representative and an itemised schedule of costs and expenses that included legal research and drafting, as well as administrative and translation expenses. The overall claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,492. The applicants submitted the following breakdown of costs:

(a) EUR 6,768 for 42.3 hours of interviews and drafting of legal documents submitted to the Court and the domestic authorities, at the rate of EUR 160 per hour;

(b) EUR 140 of administrative expenses; and

(c) EUR 584 in translation fees based on a rate of EUR 80 per 1000 words.

127. The Government regarded the claim as unsubstantiated, pointing out that the relevant documents were not supported by documentary evidence.

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

129. Having regard to the details of the information submitted by the applicants, 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 applicants' representative was not necessary to the extent claimed.

130. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 3,000 together with any tax that may be chargeable to the applicants, the net award to be paid into their representative's bank account, as identified by the applicants.

#### **D. Default interest**

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

### **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Decides* to join to the merits the 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 Khamzat 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 Khamzat 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 Khamzat 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:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to each of the fourth, fifth and sixth applicants;

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

(iii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into their representative's bank account;

(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 31 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Nina Vajić  
President