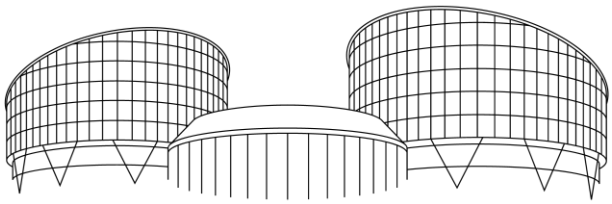

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TAYMUSKHANOVY v. RUSSIA

(Application no. 11528/07)

JUDGMENT

STRASBOURG

16 December 2010

FINAL

20/06/2011

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

In the case of Taymuskhanovy v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 25 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 11528/07) 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 three Russian nationals, Ms Zakhra Taymuskhanova, Mr Magomed Taymuskhanov and Mr Ibragim Taymuskhanov ("the applicants"), on 2 March 2007.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative ("SRJI"), an NGO based in the Netherlands with a representative office in Russia. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 8 April 2009 the President of the First Section 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. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1956. The second and third applicants were born in 2001 and 2003, respectively. They live in the village of Prigorodnoe, the Groznenskiy District, in the Chechen Republic.

6. The first applicant is the mother of Mr Ruslan Taymuskhanov, born in 1981. Ruslan Taymuskhanov is the father of the second and third applicants.

A. Abduction of Ruslan Taymuskhanov

1. The applicants' account

7. On the morning of 30 December 2002 the first applicant, Ruslan Taymuskhanov and Mr Z., a police officer, were driving home in a UAZ SUV vehicle. At some point they passed by the village of Starye Atagi, where the special task force units of the Chechen Republic and the Russian federal troops had been carrying out a special "sweeping" operation.

8. At the military checkpoint near Starye Atagi federal servicemen stopped the UAZ SUV car. Some of the servicemen were wearing masks and camouflage uniforms; they all spoke Russian. The servicemen ordered the first applicant, Ruslan Taymuskhanov and Mr Z. to get out of the car, searched them and tied Ruslan Taymuskhanov and Mr Z.'s arms behind their backs.

9. The servicemen put the first applicant, Ruslan Taymuskhanov and Mr Z. in a UAZ minivan. The first applicant noticed that its registration number contained the digits "655". The minivan drove off in the direction of Grozny. It was followed by a Gazel vehicle. While the minivan was moving, one of the servicemen made a phone call. The first applicant overheard the words "woman, woman". Shortly afterwards the servicemen pushed her out of the minivan.

10. The first applicant lost consciousness as a result of the fall. Some passers-by discovered her lying by the side of the road and took her home. Four or five hours later the first applicant recovered her senses.

11. At some point Mr Z. was thrown out of the UAZ minivan.

12. The first applicant has not seen her son since.

2. The Government's account

13. At about 11 a.m. on 30 December 2002 in the vicinity of the village of Starye Atagi unidentified armed persons wearing camouflage uniforms

abducted Ruslan Taymuskhanov and took him away to an unknown destination.

B. Investigation into Ruslan Taymuskhanov's kidnapping

1. The applicants' account

14. At some point Mr D., Mr Z.'s uncle, suggested that the first applicant contact Mr G., the head of the special task force unit who had been in charge of the special "sweeping" operation of 30 December 2002 in Starye Atagi. Mr G. promised to release Ruslan Taymuskhanov, but then left for a business trip; at some point he died. Later Mr G.'s deputy denied that Ruslan Taymuskhanov had been arrested.

15. On 31 March 2003 the prosecutor's office of the Groznenskiy District ("the district prosecutor's office") instituted an investigation in case no. 42061 into the kidnapping of Ruslan Taymuskhanov.

16. On 21 April 2003 the first applicant complained about her son's abduction to the prosecutor's office of the Chechen Republic and the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office").

17. On 24 April 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the district prosecutor's office.

18. On 30 April 2003 the UGA prosecutor's office forwarded the first applicant's complaint to the prosecutor's office of Grozny.

19. On 30 November 2003 the district prosecutor's office suspended the investigation in case no. 42061 for failure to identify those responsible.

20. On 5 March 2004 the district prosecutor's office issued a report stating the following. At about 11 a.m. on 30 December 2002 in the area of Starye Atagi unidentified masked persons in camouflage uniforms armed with machine guns had arrested Ruslan Taymuskhanov and taken him away to an unknown destination. The whereabouts of the missing person had not been established. On 31 March 2003 the district prosecutor's office had opened an investigation into the kidnapping in case no. 42061. Ruslan Taymuskhanov's wife had been granted victim status.

21. On 10 June 2005 the prosecutor's office of the Chechen Republic forwarded a letter from the first applicant to the district prosecutor's office and requested an update on progress in the investigation.

22. On 18 June 2005 the district prosecutor's office informed the first applicant that an investigation into Ruslan Taymuskhanov's kidnapping had been opened under the number 42061 and that measures were being taken to establish her son's whereabouts.

23. On 8 September 2005 the first applicant wrote to the district prosecutor's office describing the circumstances of her son's abduction and asking for the incident to be investigated.

24. On 15 September 2005 the Groznenskiy District Court, on the first applicant's request, declared Ruslan Taymuskhanov missing.

25. On 3 October 2005 the first applicant was informed that her son had not been held in any of the penitentiary facilities of the Rostov Region.

26. On 20 October 2005 the prosecutor's office of the Chechen Republic informed the first applicant that the investigation was pending with the district prosecutor's office.

27. On 24 October 2005 and 25 February 2006 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaints to the district prosecutor's office.

28. On 3 March 2006 the district prosecutor's office informed the first applicant that the investigation in case no. 42061 into her son's kidnapping had been commenced on 31 March 2003 and had then been suspended on an unspecified date. However, measures were being taken to find Ruslan Taymuskhanov and his kidnappers.

29. On 10 July 2006 the first applicant requested the district prosecutor's office to grant her victim status, to provide her with copies of the decisions on the institution and suspension of the investigation, to allow her access to the case file and to keep her updated on any progress in the proceedings.

30. On 8 September 2006 the SRJI requested an update on case no. 42061 from the district prosecutor's office.

31. It is not clear whether the investigation in case no. 42061 has been completed to date.

2. The Government's account

32. On 21 March 2003 the district prosecutor's office received a complaint from the first applicant about the disappearance of her son.

33. Between 24 and 31 March 2003 requests were sent to the heads of law-enforcement units to establish whether any special operations had been carried out in Starye Atagi on 30 December 2002 and whether Ruslan Taymuskhanov had been arrested or involved in the activities of illegal armed groups.

34. On 31 March 2003 the district prosecutor's office instituted criminal proceedings in case no. 42061 under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping).

35. On 15 April 2003 the first applicant was granted victim status and questioned.

36. On 22 April 2003 the prosecutor's office of the Chechen Republic received a statement from the first applicant concerning her conversation with Mr G.

37. On 28 April 2003 the district prosecutor's office ordered the police to establish Mr Z.'s whereabouts and to identify the owners of the UAZ minivan and Gazel vehicle.

38. On 27 May 2003 the Ministry of the Interior of the Chechen Republic received instructions to carry out an internal inquiry into the kidnapping of Ruslan Taymuskhanov and the head of the Groznenskiy district department of the Federal Security Service ("FSB") was ordered to establish the identities of the kidnappers and witnesses to the crime. The replies, received on unspecified dates, indicated that there was no information concerning the first applicant's son's whereabouts and that no witnesses had been found.

39. On 31 May 2003 the investigation in case no. 42061 was suspended for failure to identify those responsible.

40. On 29 August 2003 the district prosecutor's office quashed the decision of 31 May 2003 and resumed the investigation.

41. On 10 September 2003 the Ministry of the Interior of the Chechen Republic was ordered to establish the identity of Mr Z. and to carry out an internal inquiry into Mr Z.'s arrest.

42. The district prosecutor's office asked whether a UAZ minivan with registration number "566" had been owned by the Ministry of the Interior of the Chechen Republic. The reply received was negative.

43. On 20 and 21 September 2003 the district prosecutor's office requested the heads of the task force unit of the Ministry of the Interior of the Chechen Republic and of the Groznenskiy district department of the FSB to establish whether Ruslan Taymuskhanov had been arrested or involved in the activities of illegal armed groups. The replies received indicated that the first applicant's son had not been arrested and there was no information on his involvement in illegal armed groups.

44. On 22 September 2003 the first applicant was again questioned as a victim.

45. On 6 and 17 October 2003 the district prosecutor's office requested several law-enforcement agencies to submit information on the whereabouts of Ruslan Taymuskhanov and Mr Z. and to establish whether servicemen of the task force unit of the Ministry of the Interior of the Chechen Republic had been involved in the applicants' relative's kidnapping. It followed from the replies received that no such involvement had been established.

46. On 30 October 2003 the investigation in case no. 42061 was suspended for failure to identify those responsible.

47. On 1 October 2005 the district prosecutor's office quashed the decision of 30 October 2003 and resumed the investigation.

48. On 11 October 2005 Ms D., the wife of Ruslan Taymuskhanov and the mother of the second and third applicants, was granted victim status and questioned.

49. On 12 October 2005 Mr V.G., the head of the local authority of Starye Atagi, was questioned as a witness. He submitted that in December 2002, before New Year's Eve, a special operation had been carried out by the task force unit of the Chechen Republic in his village for some ten or

twelve days. Several villagers had been arrested but none of them had disappeared. Mr V.G. vaguely recollected that two men had been kidnapped near Starye Atagi on 30 December 2002 but in his opinion servicemen of the task force unit had not been involved in the kidnapping.

50. Two police officers were questioned as witnesses in October 2005. They stated that a special operation had been carried out in Starye Atagi in December 2002 by the task force unit and that they had heard about Ruslan Taymuskhanov's kidnapping but had not known anything about it.

51. On 16 and 17 October 2005 the first applicant and Ms D. were questioned again. They did not provide any new information.

52. Between 3 and 17 October 2005 the district prosecutor's office sent requests to a number of law-enforcement agencies to provide information on whether Ruslan Taymuskhanov had been arrested, whether any special operations had been carried out in Starye Atagi at the material time and whether any unidentified dead bodies resembling Ruslan Taymuskhanov had been discovered, and to establish the whereabouts of Mr Z. and a certain Mr D. It followed from the replies received that no criminal proceedings had been instituted against Ruslan Taymuskhanov, that he had not been arrested by the task force unit or detained in a penitentiary institution; Mr Z. had been killed in autumn 2004; Mr D. lived in Moscow.

53. On 25 October 2005 Mr M., a police officer responsible for the applicants' home village of Prigorodnoe, was questioned as a witness and stated that Ruslan Taymuskhanov had been a member of an illegal armed group.

54. Five more people were questioned as witnesses in October 2005. They did not report any new information.

55. On 28 October 2005 the district prosecutor's office ordered the police to check if Ruslan Taymuskhanov had had any connections with illegal armed groups.

56. On 1 November 2005 the district prosecutor's office ordered the Groznenskiy district department of the FSB to check if Ruslan Taymuskhanov had had any contact with any of the leaders of illegal armed groups. It followed from the reply received that since 2002 Ruslan Taymuskhanov had been a member of an illegal armed group.

57. On 3 November 2005 the investigation was again suspended.

58. On 24 August 2006 the first applicant requested the district prosecutor's office to grant her victim status.

59. On 2 September 2006 the first applicant was informed that she had been granted victim status on 15 April 2003.

60. On 5 March 2009 the Groznenksiy inter-district investigating unit of the investigating department of the Investigating Committee of the Russian Prosecutor's Office for the Chechen Republic (“the investigating unit”) quashed the decision of 3 November 2005 and notified the first applicant accordingly.

61. On 11 March 2009 the investigating unit ordered the police to establish Mr D.'s place of residence and the circumstances surrounding the death of Mr Z., as well as to take steps to establish the whereabouts of Ruslan Taymuskhanov and find witnesses to his kidnapping.

62. On 11 March 2009 the investigating unit requested the traffic police to establish whether registration numbers "566" or "655" had belonged to law-enforcement agencies. According to the replies received, one vehicle with registration number "566" and three vehicles with registration numbers "655" belonged to various branches of the Ministry of the Interior of the Chechen Republic. The types of those vehicles were not specified.

63. On 11 March 2009 the investigating unit asked the Ministry of the Interior of the Chechen Republic if on 30 December 2002 they had had a UAZ minivan with registration numbers "566" or "655". The reply was negative.

64. On 25 March 2009 the investigating unit requested information concerning the death of Mr Z. It turned out that his dead body had been found on 2 January 2005 and that an investigation into the murder was pending.

65. On 4 April 2009 the investigating unit suspended the investigation.

66. On 14 May 2009 the district prosecutor's office pointed out that the investigation in case no. 42061 had been flawed because the following investigative steps had not been taken: Mr D., who had allegedly negotiated Ruslan Taymuskhanov's release with the task force unit, had not been questioned, Mr Z.'s car had not been found and documents concerning his death had not been included in the case file.

67. On 20 May 2009 the investigation in case no. 42061 was resumed.

68. On 3 June 2009 Mr D. was questioned as a witness. He stated that on 1 January 2003 he had been told that his nephew, Mr Z., had been kidnapped. On 3 January 2003 he had found out that Mr Z. had been released. The first applicant had asked Mr D. to help find her son. Mr D. had talked to the head of the task force unit who had said that his subordinates had not arrested Ruslan Taymuskhanov.

69. Despite specific requests by the Court the Government did not disclose most of the materials from the investigation file in case no. 42061. They submitted copies of the decisions to open, suspend and re-open the investigation, records of witnesses' interviews and several replies by the authorities to the applicant and explained that they had provided the "main case-file materials".

II. RELEVANT DOMESTIC LAW

70. For a summary of the relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007).

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

71. The Government submitted that the investigation into Ruslan Taymuskhanov's kidnapping had not yet been completed. They further argued that it had been open to the applicants to challenge in court any acts or omissions of the investigating authorities. They also submitted that the applicants could have brought civil claims for damages but had failed to do so.

72. The applicants contested that objection and stated that the remedies referred to by the Government were ineffective.

B. The Court's assessment

73. 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).

74. 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.

75. 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. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see, among many other authorities, *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.

76. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that an investigation into the kidnapping of Ruslan Taymuskhanov has been pending since 31 March 2003. The

applicants and the Government disputed the effectiveness of the investigation in question.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

A. Submissions by the parties

1. The Government

79. The Government argued that the domestic investigation had obtained no evidence that State agents had been involved in the abduction of Ruslan Taymuskhanov.

80. They acknowledged that a special operation had been carried out by servicemen of the task force unit of the Ministry of the Interior of the Chechen Republic from mid-December until 30 December 2002 in Starye Atagi. However, in their submission it had not been proven that Ruslan Taymuskhanov had been arrested in the course of that operation.

81. The Government further claimed that it had not been proved that the applicants' relative was dead. The applicants' submissions that he had been kidnapped by servicemen were unfounded. The fact that the abductors had been wearing camouflage uniforms and had been armed did not prove that

they were servicemen, because camouflage uniforms could be freely purchased everywhere in Russia and the weapons could have been stolen or obtained illegally.

82. The Government further submitted that the investigation into the abduction of Ruslan Taymuskhanov conducted by the domestic authorities had satisfied the Convention requirements. The mere fact that the applicants had not been provided with detailed information on the course of the investigation did not render the investigation ineffective. Suspension of the investigation did not indicate its ineffectiveness. An important number of requests for information had been directed to various State bodies and further investigative steps were being taken. The Government stressed that the obligation to investigate was not an obligation of result but of means.

2. The applicants

83. The applicants claimed that they had made out a prima facie case that their relative had been detained by State agents and that he must be presumed dead following his unacknowledged detention.

84. They submitted that in the end of 2002 only State agents had been allowed to carry weapons, wear camouflage uniforms and use military vehicles. At that time the village of Starye Atagi had been under the total control of the federal military. There had been checkpoints at the entrance and exit to and from the village. Moreover, the Government had acknowledged that a special operation had been carried out in Starye Atagi at the material time. Ruslan Taymuskhanov had been involved in an illegal armed group and could have been wanted by the authorities.

85. The applicants further stated that their family member must be presumed dead because several years had lapsed since the moment of his abduction in life-threatening circumstances.

86. As to the investigation, the applicants argued that it had been ineffective because the authorities had failed to take the necessary investigative steps. In particular, they had failed to question the State agents who had been manning the checkpoint near Starye Atagi on 30 December 2002. The applicants had not been provided with sufficient access to the investigation.

B. The Court's assessment

1. Admissibility

87. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the

alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 77 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 Ruslan Taymuskhanov

(i) General principles

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

(ii) Establishment of the facts

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

90. The Court notes that despite its requests for a copy of the entire investigation file into the abduction of Ruslan Taymuskhanov, the Government did not produce most of the documents from the case file. Instead they sent copies of what they described as “the main case file materials” without giving any reasons for withholding the remaining documents. As the Government failed to specify the nature of the documents and the grounds on which they could not be disclosed, the Court considers that they did not justify their unwillingness to submit key information specifically requested by the Court.

91. In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations.

92. The applicants alleged that the persons who had taken Ruslan Taymuskhanov away on 30 December 2002 were State agents.

93. Their hypothesis is confirmed first and foremost by the fact that the Government acknowledged that a special operation had been carried out by the task force unit in Starye Atagi on 30 December 2002 (see paragraph 80 above). Moreover, it follows from the records of witnesses' interviews that took place in the course of the domestic investigation that the fact that the task force unit had been in charge of the special operation was common knowledge among the local population (see paragraphs 49 and 50 above).

94. The Court takes note of the Government's submission that camouflage uniforms could be bought by anyone and that weapons could be stolen. However, it considers it unlikely that insurgents dressed up as servicemen and armed with machine guns could pass by a manned checkpoint in a paramilitary vehicle unnoticed and proceed to kidnap two civilians and one police officer unimpeded. Such an assumption would appear even less plausible considering that the full-scale security operation was carried out by the task force unit in the village next to the checkpoint in question on the day of the incident.

95. 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)).

96. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their family member was abducted by State servicemen. The Government's statement that the investigation had not uncovered any evidence to support the theory that servicemen were involved in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents, which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Ruslan Taymuskhanov was arrested on 30 December 2002 by State servicemen during a special security operation.

97. There has been no reliable news of Ruslan Taymuskhanov since the date of the kidnapping. His name has not been found in any official

detention facility records. Lastly, the Government have not submitted any explanation as to what happened to him after his arrest.

98. Having regard to the previous cases concerning disappearances of people in the Chechen Republic which have come before the Court (see, for example, *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII), it considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Ruslan Taymuskhanov or any news of him for almost eight years corroborates this assumption even though his body has not been found.

99. Accordingly, the Court finds it established that on 30 December 2002 Ruslan Taymuskhanov was abducted by State servicemen and that he must be presumed dead following his abduction.

(iii) The State's compliance with Article 2

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

101. The Court has already found it established that the applicants' family member must be presumed dead following unacknowledged detention by State servicemen (see paragraph 99 above). Noting that the authorities do not rely on any ground of justification in respect of any use of lethal force by their agents, it follows that liability for his presumed death is attributable to the respondent Government.

102. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Ruslan Taymuskhanov.

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

103. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, mutatis mutandis, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments*

and Decisions 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family and carried out with reasonable promptness and expedition. It should also be effective in the sense that it is capable of leading to a determination of whether or not the force used in such cases was lawful and justified in the circumstances, and should afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

104. In the present case, the kidnapping of Ruslan Taymuskhanov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

105. The Court notes at the outset that the Government refused to produce most of the documents from case file no. 42061. It thus has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the sparse information on its progress presented by the Government.

106. It is common ground between the parties that the investigation in case no. 42061 was opened on 31 March 2003, that is, three months after the abduction of the applicants' family member. The Court observes in this connection that it remains unclear from the applicants' submissions whether they officially reported Ruslan Taymuskhanov's kidnapping to the investigating authorities prior to 21 March 2003 (see paragraph 32 above). It points out that the applicants did not put forward any explanation for such a significant delay and considers therefore that the authorities could not be held responsible for not commencing the investigation before receipt of the first applicant's complaint on 21 March 2003. However, the fact that it took the district prosecutor's office ten days to open the investigation of the kidnapping in life-threatening circumstances is in itself regrettable and was liable to adversely affect the proceedings.

107. The Court observes that a number of important investigative steps were significantly delayed. For example, the first applicant, a witness to her son's kidnapping, was questioned for the first time only two weeks after the investigation was opened (see paragraph 35 above). It took the district prosecutor's office almost a month to order that basic investigative measure as to attempt to establish the identities of the owners of the UAZ minivan in which Ruslan Taymuskhanov had been taken away (see paragraph 37 above). The first steps towards finding Mr Z., a key witness who had been kidnapped together with the applicant's family member, were only taken on 10 September 2003, that is, more than five months after the proceedings had been opened (see paragraph 41 above). The investigators began to search for

another important witness, Mr D., who could relate important information concerning the involvement of the task force unit in the kidnapping, as late as 11 March 2009, that is, almost six years after the investigation had been commenced (see paragraph 61 above). The Government advanced no explanation for those delays.

108. Furthermore, it appears that a number of crucial steps were never taken. In particular, nothing in the Government's submissions warrants the conclusion that the servicemen of the task force unit of the Ministry of the Interior of the Chechen Republic have ever been questioned, although it was crucially important for the investigation to clarify whether they had been involved in Ruslan Taymuskhanov's abduction. There is likewise no indication that the investigation had tried to identify and interview the servicemen from the checkpoints.

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

110. The Court also notes that the applicants were not promptly informed of significant developments in the investigation and considers therefore that the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

111. Lastly, the Court notes that the investigation in case no. 42061 was repeatedly suspended and then resumed, which led to lengthy periods of inactivity on the part of the investigators. Most notably, no proceedings whatsoever were pending between 3 November 2005 and 5 March 2009. Such handling of the investigation could only have had a negative impact on the prospects of identifying the perpetrators.

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

113. The Government also mentioned that the applicants had the opportunity to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that, owing to the time that had elapsed since the events

complained of, certain investigative steps that ought to have been carried out much earlier could no longer be usefully conducted. The Court finds therefore that it is highly doubtful that the remedies relied on by the Government would have had any prospects of success and considers that they were ineffective in the circumstances of the case. It thus rejects the Government's objection in this part as well.

114. In the Court's opinion, the Government also failed to demonstrate how the fact of the first applicant's having victim status could have improved the above-described situation.

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

116. 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 Ruslan Taymuskhanov, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

117. The applicants complained that, as a result of their son and father's disappearance and the State's failure to investigate it properly, they had endured severe mental suffering. The applicants relied on Article 3 of the Convention, which reads:

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

A. The parties' submissions

118. The Government disagreed with these allegations and argued that the applicants had not been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

119. The applicants maintained their complaints.

B. The Court's assessment

1. Admissibility

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

2. Merits

121. The Court observes that the question whether a member of the family of a "disappeared person" is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that 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. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002).

122. In the present case the Court notes that the first applicant is the mother of the missing person and the second and third applicants are his sons. It is noteworthy that it was the first applicant who lodged petitions and enquiries with the domestic authorities in connection with her son's disappearance and dealt with the investigators. It is quite natural that the second applicant, who was under two years old at the time of his father's disappearance, and third applicant, who had not even been born at the material time, did not participate in any manner in the search for Ruslan Taymuskhanov (see, by contrast, *Luluyev and Others*, cited above, § 112). In the light of these circumstances, the Court, while accepting that the fact of being raised without their father may be a source of continuing distress for the second and third applicants, cannot assume that the mental anguish they experienced on account of Ruslan Taymuskhanov's disappearance and the authorities' attitude towards that incident was distinct from the inevitable emotional distress such a situation would entail, and that it was serious enough to fall within the ambit of Article 3 of the Convention (see *Musikhanova and Others v. Russia*, no. 27243/03, § 81, 4 December 2008).

123. As regards the first applicant, the Court notes that for almost eight years she has not had any news of her son. During this period she has applied to various official bodies with enquiries about him. Despite all her efforts, the first applicant has never received any plausible explanation or information as to what became of Ruslan Taymuskhanov following his arrest. The responses received by the first applicant mostly denied that the State was responsible or simply informed her that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

124. In view of the above, the Court finds that the first applicant suffered, and continues to suffer, distress and anguish as a result of the disappearance of her son and her inability to find out what happened to him. The manner in which her complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

125. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the first applicant, and no violation of this provision in respect of the second and third applicants.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

126. The applicants further stated that Ruslan Taymuskhanov 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

127. The Government asserted that no evidence had been obtained by the investigators to confirm that Ruslan Taymuskhanov had been deprived of his liberty by State agents.

128. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

130. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev*, cited above, § 122).

131. The Court has found that Ruslan Taymuskhanov was abducted by State servicemen on 30 December 2002 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and no official trace exists of his subsequent whereabouts or fate. In accordance with the Court's practice circumstances of this nature must be considered to disclose a most serious failing, since they enable 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).

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

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

133. The applicants complained that they had been deprived of effective remedies in respect of the alleged violations of Articles 2 and 5, 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

134. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge any acts or omissions on the part of the investigating authorities in court. In sum, the Government submitted that there had been no violation of Article 13.

135. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

137. The Court reiterates that in circumstances where, as here, a criminal investigation into a disappearance and ill-treatment 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 v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

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

139. As regards the applicants' reference to Article 5 of the Convention, the Court notes that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a violation of Article 5 of the Convention on account of unacknowledged detention. The Court therefore considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case (see *Khadzhialiyev and Others v. Russia*, no. 3013/04, § 140, 6 November 2008).

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

140. Lastly, the applicants complained under Article 14 of the Convention that they had been discriminated against on the grounds of their

ethnic origin. They also claimed that the investigation had been discriminatively ineffective because the crime in question had been committed by State agents.

141. Having regard to all the material in its possession, and as far as it is within its competence, the Court finds that the applicants' submissions disclose no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

142. 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

143. The second and third applicants claimed that they had sustained damage in respect of the loss of Ruslan Taymuskhanov's earnings following his abduction and disappearance. The second and third applicants submitted that by the time of his disappearance Ruslan Taymuskhanov had been unemployed and that in such cases the calculation should be made on the basis of the subsistence level established by national law. With reference to the relevant provisions of the Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government's Actuary Department in 2008 ("the Ogden tables"), the second applicant claimed a total of 297,127.51 Russian roubles (RUB) under this head (approximately 6,879 euros (EUR)), while the third applicant claimed RUB 333,969.91 (approximately EUR 7,732).

144. The Government argued that the second and third applicants were not entitled to compensation for the loss of a breadwinner because it had not been proved that Ruslan Taymuskhanov was dead. They concluded that the applicants' claims were unsubstantiated.

145. The Court reiterates that there must be a clear causal connection between damage claimed by an applicant and a violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its conclusions above, it finds that there is a direct causal link between the violation of Article 2 in respect of the second and third applicants' father and the loss to them of the financial support which he could have provided.

146. Taking into account the applicants' submissions and the fact that Ruslan Taymuskhanov was not employed at the time of his abduction, the Court finds it appropriate to award EUR 3,000 to the second and third applicants each in respect of pecuniary damage plus any tax that may be chargeable on these amounts.

B. Non-pecuniary damage

147. The applicants claimed EUR 100,000 jointly in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards them and the failure to provide any information about the fate of their close relative.

148. The Government found the amounts claimed exaggerated.

149. 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 first applicant herself has been found to have been a victim of a violation of Article 3 of the Convention on account of the mental suffering she endured as a result of the disappearance of her son and the authorities' attitude to that fact. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award in respect of non-pecuniary damage EUR 45,000 to the first applicant and EUR 10,000 to the second and third applicants each, plus any tax that may be chargeable on these amounts.

C. Costs and expenses

150. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for the SRJI lawyers and EUR 150 for the SRJI senior staff, as well as administrative expenses, translation and courier delivery fees. The aggregate claim in respect of costs and expenses related to the applicants' representation amounted to EUR 7,474.34, to be paid into the applicants' representatives' account in the Netherlands.

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

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

153. Having regard to the detailed information and legal representation contracts submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred.

154. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes, however, that the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that the case involved the amount of research claimed by the applicants' representatives

155. Having regard to the details of the claims submitted by the applicants, the Court awards them EUR 4,000 together with any value-added tax that may be chargeable to the applicants; the net award is to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

156. 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 Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;

2. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Ruslan Taymuskhanov;

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 Ruslan Taymuskhanov disappeared;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first applicant on account of her mental suffering;

6. *Holds* that there has been no violation of Article 3 of the Convention in respect of the second and third applicants on account of their mental suffering;

7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ruslan Taymuskhanov;

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

9. *Holds* that no separate issue arises under Article 13 of the Convention in conjunction with Article 5 of the Convention;

10. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 3,000 (three thousand euros) to the second and third applicants each in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(ii) EUR 45,000 (forty-five thousand euros) to the first applicant and EUR 10,000 (ten thousand euros) to the second and third applicants each in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(iii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;

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

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

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

Søren Nielsen Registrar	Christos Rozakis President