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La CEDU sul rapimento ed omicidio di una nota attivista russa per i diritti umani
(CEDU, sez. III, sent. 31 agosto 2021, ric. n. 15122/17)

La Corte Edu si pronuncia sul caso riguardante il rapimento e l'omicidio di una nota attivista per i diritti umani e l'efficacia delle successive indagini. La ricorrente, sorella della vittima, ha sostenuto di non essere stata in grado di provare alcun coinvolgimento dello Stato nel rapimento e nell'omicidio della donna a causa del mancato deposito da parte del governo russo di una copia completa del fascicolo penale innanzi alla Corte, inadempimento che aveva minato anche la possibilità di valutare la qualità dell'indagine interna condotta.
In conseguenza di tale circostanza, i Giudici di Strasburgo hanno affermato di non aver avuto a disposizione elementi idonei a concludere nel senso del carattere efficace ed approfondito dell'indagine eseguita ed hanno riscontrato una violazione dell'art.2 Cedu sotto il profilo procedurale, non avendo il governo russo rispettato il proprio obbligo di fornire tutti gli strumenti necessari per l'esame del caso.
In considerazione del fatto che la relativa indagine penale risulta ancora aperta, la Corte ha disposto che le autorità russe provvedano, per quanto possibile, ad accertare le circostanze del rapimento e dell'omicidio della signora XXXXX e ad identificare e punire, se del caso, i colpevoli.

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

THIRD SECTION

CASE OF XXXXX v. RUSSIA
(*Application no. 42705/11*)

JUDGMENT
STRASBOURG
31 August 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Paul Lemmens, President,
Georgios A. Serghides,
Dmitry Dedov,
Georges Ravarani,
Darian Pavli,
Anja Seibert-Fohr,
Andreas Zünd, *judges*,
and Milan Blaško, *Section Registrar*,
Having regard to:
the application (no. 42705/11) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Svetlana Khusainovna XXXXX ("the applicant"), on 21 June 2011;
the decision to give notice to the Russian Government ("the Government") of the complaints concerning the alleged responsibility of the Russian authorities for the death of the applicant's sister, Natalia XXXXX, and concerning the ineffective investigation into the circumstances of her death;
the parties' observations;
the comments submitted by the Council of Europe Commissioner for Human Rights, who exercised his right to intervene in the proceedings and submitted written comments (Article 36 § 3 of the Convention and Rule 44 § 2);
Having deliberated in private on 11 May and 29 June 2021,
Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the abduction and murder of a well-known human rights activist, Ms Natalia XXXXX, and the effectiveness of the ensuing investigation.

THE FACTS

2. The applicant was born in 1962 and lives in Yekaterinburg. She is sister of Natalia XXXXX. The applicant was represented by Mr William Bowring, Mr Philip Leach, Ms Joanna Evans, Mr Furkat Tishayev, Ms Tatiana Chernikova, Ms Anastasiya Razhikova, and Ms Anna Sobko, lawyers of the Memorial Human Rights Centre ("the Memorial HRC") and the European Human Rights Advocacy Centre ("the EHRAC"), non-governmental organisations with offices in Moscow and London.
3. The Government were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, then by his subsequent successors in that office, Mr M. Galperin, and Mr A. Fedorov.
4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. Background

5. Natalia XXXXX was a Russian well-known human rights activist and board member of the Memorial HRC. She investigated cases of kidnappings, torture and extrajudicial killings in Chechnya.
6. Ms XXXXX denounced crimes committed by Chechen insurgents and by law-enforcement officers.
7. In particular, in a publication of 30 April 2009 she alleged that members of an illegal armed group "Shalazhi jamaat", including Mr Bashayev, had kidnapped a person and had recruited inhabitants of the Shalazhi settlement in Chechnya to join their group. As a result of that publication the fathers of the kidnapped and recruited men accused Mr Bashayev of having committed those crimes.
8. On 9 July 2009 Natalia XXXXX publicly alleged that a group of armed men, believed to be police officers, had abducted Mr A. and his son from a Chechen village. The armed men then paraded the son in a village square. They had asked him whether he had helped insurgents; after he had denied his involvement, they had shot him and warned observers that they would do the same to anyone who assisted insurgents.

II. Abduction and murder

9. On 15 July 2009, at approximately 8.30 a.m., Natalia XXXXX left her home in Grozny, Chechnya, to attend several meetings, including one with the head of the investigation committee of the Russian Prosecutor General's Office in the Chechen Republic. She was abducted near her apartment complex on her way to a bus stop.
10. When Ms XXXXX did not show up for the meetings, her colleagues departed for her apartment in a block of flats to check on her. According to the Memorial HRC staff in Grozny, they found two witnesses who reported that they had seen Ms XXXXX being pushed into a white Lada, VAZ-2107 model. She had shouted that she was being abducted.
11. The colleagues informed the Chechen Ministry of the Interior and the prosecutor's office about the abduction between noon and 1 p.m.
12. Natalia XXXXX's body was found at 4.30 p.m. in a field adjacent to the Kavkaz federal motorway in the neighbouring Republic of Ingushetia. She had been shot in the head and chest.

III. investigation

A. Overview

13. On 15 July 2009 the Leninskiy Inter-district Investigative Department in Grozny opened criminal proceedings into the abduction and murder of Ms XXXXX. The next day the case was transferred to a team of investigators from the Investigating Committee of the Southern Federal Circuit in the Town of Yessentuki, the Stavropol Region. Given the high profile of the case the investigation was under the control of the chief of the Russian Investigative Committee of the Prosecutor General's Office.
14. The investigators identified and followed several lines of inquiry including the murder of Ms XXXXX by members of illegal armed group and her unlawful killing by State agents. In doing so they interviewed several hundred witnesses, including human rights defenders, Ms XXXXX's

relatives and colleagues as well as law-enforcement agents. They ordered more than fifty expert examinations and took other investigative steps.

15. The final investigators' theory was that the Shalazhi jamaat, including Mr Bashayev had been responsible for the abduction and murder, which had been committed out of revenge for Ms XXXXX's publication of 30 April 2009 (see paragraph 7 above) and was also aimed at smearing the Chechen authorities. Mr Bashayev was charged with murder on 3 February 2010. On 9 February 2010 the Leninskiy District Court of Grozny ordered his arrest. His whereabouts are unknown. Many members of the Shalazhi jamaat were killed on 13 November 2009 by a bombing-missile air attack. It appears that the investigation is still ongoing.

B. Investigative steps

16. The Government provided the Court with copies of more than 1,500 pages out of more than 10,000 pages from the criminal case file, including the first two volumes. They stated that it would be sufficient for the examination of the case on the merits and that the disclosure of the remainder of the materials might jeopardise the investigation. In addition, the applicant submitted copies of more than 1,000 pages from the criminal case-file, including copies of volumes nos. 20-23, 72-75, and 95. From the materials in the Court's possession it appears that the investigation proceeded as follows.

1. Examination of the crime scenes and witness evidence

17. At 5 p.m. on 15 July 2009 the investigators arrived at the place where Ms XXXXX's body was found and examined it in the presence of experts and witnesses. In the vicinity of the body they found a bullet, two bullet cartridges, a piece of rubber from a gun silencer, three unidentified pieces of metal, and Natalia XXXXX's personal belongings. Those items were collected by the investigators, who also took samples of Ms XXXXX's finger-nail scraping, blood, plants and soil from the crime scene. Subsequently the investigators re-examined the area. They found a bullet with a bullet cartridge on 16 July 2009 and three bullet cartridges on 22 July 2009. A ballistic expert examination of the bullets and the cartridges from the place of the incident was carried out on 8 April 2010. The experts were unable to establish whether those objects had been parts of the same firearm ammunition, or not.

18. In the morning of 16 July 2009 in the presence of an eyewitness of Ms XXXXX's abduction, the investigators examined the area around her block of flats from where she had been abducted. No evidence of abduction was found.

19. On the same day the investigators questioned the eyewitnesses of the abduction. It appears that one of them mentioned that the white VAZ-2107 model car was followed by a dark green VAZ-21012 car.

2. Autopsy

20. On 16 July 2009 an expert from the Bureau of Forensic medical examinations in the town of Nazran, the Republic of Ingushetia, examined the body of Natalia XXXXX. He noted several gunshot

wounds on her head and her chest, as well as other injuries (scratches on the left elbow and the chest as well as bruises on the left hip, wrists, left forearm, right shoulder, left shin and around the mouth). He concluded that Ms XXXXX had been shot to death between twenty and twenty-four hours before the examination (between 9 a.m. and 1 p.m. on 15 July 2009).

3. Reconstruction of the perpetrators' itinerary

21. The investigators identified more than ten possible itineraries between the place of Natalia XXXXX's abduction and her death. The perpetrators could use federal motorways which had checkpoints or small roads without the latter.

4. Search for illegal stock of firearms and its subsequent expert examination

22. On 13 January 2010 in the context of a different investigation, investigators from the Urus-Martan police department searched a house in Shalazhi where Mr Bashayev had reportedly hidden firearms. They found two guns with ammunition, three grenade launchers and a police officer ID for Mr E.'s name with Mr Bashayev's photograph placed above the photograph of Mr E.
23. A ballistic expert concluded on 28 January 2010 that the bullets which had been found at the crime scene and in Natalia XXXXX's body, as well as cartridges collected from the crime scene had been shot from one of the guns found on 13 January 2010.
24. According to police information, Mr E. had been killed by members of an illegal armed group in 2008 and his police ID had gone missing.

5. Witness interviews

25. On 18 January 2010 the investigators interviewed a village resident from Shalazhi. He stated that Mr Bashayev had visited him in a white VAZ-2107 car with a registration plate containing numbers 515. Mr Bashayev recruited his son to an illegal armed group and asked for a firearm.
26. On 22 January 2010 the investigators established that the legal owner of a white VAZ-2107 car with a registration plate B515YH95 was Mr M. They interviewed him five days later, on 27 January 2010. He submitted that in May 2009 he had sold his car to a man, who introduced himself as Mr E. and had shown his police ID. No formal papers had been signed. The investigators then showed him photographs of several people, including Mr Bashayev. He identified the latter as the buyer of his car.
27. On 30 January 2010 the investigators interviewed road police officer N., who had been on duty at a road checkpoint in the vicinity of the place where Ms XXXXX's body had been found. That checkpoint had not been equipped with traffic cameras. Officer N. stated that on 15 July 2009 at around noon he had stopped a car with an unfamiliar police officer inside, who showed him a police officer ID. After the interview, the investigators organised an identification parade with the use of Mr Bashayev's photograph. Officer N. recognised the unfamiliar police officer in him.
28. On 2 February 2010 the investigators identified one of Mr Bashayev's remote relatives (Mr R.), who had been invited by Mr Bashayev to join the Shalazhi jamaat and interviewed him. According to the witness, Mr Bashayev had a gun modified for the use with a silencer. He also had a white

VAZ-2107 car with registration plates containing numbers 515, which he had bought for the needs of the Shalazhi jamaat. Once Mr Bashayev showed Mr R. his forged police ID, saying that it gave him an opportunity to move freely in the region. When police officers demonstrated Mr R. a gun and the police ID, which had been found on 13 January 2010, the latter identified them as those belonging to Mr Bashayev. Lastly, Mr R. provided the investigators with information about certain activity of the Shalazhi jamaat and identified several participants of that group on photographs.

6. Search at Mr Bashayev's address

29. On 29 January 2010 the investigators searched a house in Grozny where Mr Bashayev had resided. They found and seized camouflage uniforms with police insignia on it. Its subsequent examination on 9 March 2010 by experts showed that it could have been in contact with Natalia XXXXX's clothes as similar fibres were present on it.

7. Search for the VAZ-2107 car and its expert examination

30. On 7 February 2010 with the use of information from Mr R. the police found a white VAZ-2107 in a garage in Grozny. The investigators searched the car and found in its trunk registration plates B515YH95; behind the front panel of the audio unit they found a gun silencer; in one of the ashtrays they found a cigarette butt; they also found sunflower husks, and a man's sport footwear print on the car's mats. The investigators collected pieces of fibre from the car, samples of road dust and elements of plants from the inside and the outside of the vehicle.

31. The evidence from the car had been submitted to several expert examinations in February - April 2010. The experts concluded that the silencer from the car could have been used with the gun found on 13 January 2010. The rubber elements on the silencer matched a piece of rubber which had been collected at the crime scene. The ballistic experts, however, concluded that the bullets from the crime scene had not been shot from the silencer. The elements of fibres from the car could have belonged to Natalia XXXXX's clothes. The plants' seeds found at the bottom of the car belonged to six plants which had flourished in 2009 in the area where Ms XXXXX's body had been found. Two types of the plants' samples matched those from the crime scene. The soil particles found at the outer part of the vehicle did not correspond to that from the crime scene.

8. Charges against Mr Bashayev and his registration on the wanted list

32. On 3 February 2010 the investigators charged Mr Bashayev with participation in an unlawful armed group, illegal storage of firearms and ammunition, abduction of Natalia XXXXX, and her murder. On the same day he was put on the international wanted list. On 10 February 2010, the Leninskiy District Court of Grozny ordered his arrest and placement in custody. His whereabouts are unknown.

9. DNA tests

33. Between 15 December 2009 and 9 February 2010 at the investigators' request experts examined fingernails' swabs from Natalia XXXXX. They found blood which belonged to three or more people of male and female sex, one of whom could be Natalia XXXXX. According to the applicant, the original DNA sample had later been lost.
34. On 7 November 2011 the experts concluded that there had been no traces of Mr Bashayev's DNA in the blood from the fingernails' swabs, in the saliva from the cigarette butt found in the car or sweat from Ms XXXXX clothes.
35. On various dates in September – November 2011 at the request of the applicant's representative and human rights activists the investigators ordered dozens of expert examinations to check if any of DNA samples from the case file could belong to law-enforcement agents. No matches were identified.
36. In April 2013 the investigators obtained blood samples from several members of the Shalazhi jamaat and their relatives. They did not match those from the alleged perpetrators.

C. Access to case file documents and court proceedings against the investigators

37. On 31 March 2010 the applicant asked the investigators to grant her victim status in the proceedings and to allow her lawyer's access to the case-file documents. On the same day the access to the documents was given. As regards victim status, the investigators replied that it had already been granted on 18 July 2009.
38. On 28 June 2010 the applicant's lawyer asked the authorities to allow him access to the criminal case file.
39. Three days later the investigators rejected the request, noting that "tactical purposes" precluded provision of the file to the applicant before the completion of the investigation.
40. On 2 August 2010 the applicant appealed against the above decision to the Leninskiy District Court of Vladikavkaz ("District Court"). She also complained that the official investigation was focusing solely on the theory that Natalia XXXXX had been murdered by members of the Shalazhi jamaat. The applicant stated that the theory concerning the involvement of Mr Bashayev in the abduction and murder was not plausible.
41. On 15 October 2010 the District Court dismissed the complaint, stating that a large amount of work had been carried out, that an investigative group composed of seven investigators had been created for the purposes of the investigation, and that the case had not been suspended on a single occasion. The court specifically stated that under the Code of Criminal Procedure a victim was only able to have full access to a criminal case file upon the completion of the preliminary investigation. The District Court further reasoned that disclosing certain information in the criminal case file to the public could have had a detrimental effect on the investigation.
42. On 23 October 2010 the applicant appealed against the decision to the Supreme Court of the Chechen Republic, which fully endorsed the District Court's reasoning and dismissed the applicant's appeal on 22 December 2010. The court also reiterated that the applicant's lawyer had been granted partial access to the criminal case file and that allowing him access to the part he had specifically requested could have undermined the investigation.

43. On an unspecified date the applicant's lawyer was granted access to the investigation file against written undertaking not to disclose its content.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

44. For a summary of the relevant domestic law and international material see Aslakhanova and Others v. Russia (nos. 2944/06 and 4 others, §§ 43-59 and §§ 69-84, 18 December 2012), and Turluyeva v. Russia (no. 63638/09, §§ 56-74, 20 June 2013).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

45. The applicant complained under Articles 2 and 13 of the Convention of the murder of her sister and the authorities' failure to thoroughly, effectively and speedily investigate her death. The Court finds it appropriate to examine the applicant's complaints solely under Article 2 of the Convention, the relevant part of which reads as follows:

"1. Everyone's right to life shall be protected by law."

A. Admissibility

46. The parties did not make any comments on the admissibility of the complaints. In the Court's view they are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

47. The applicant stated that Natalia Estemtirova had made allegations against law-enforcement agents which caused disquiet among the Chechen authorities (see paragraph 8 above). She received threats from various officials but had not reported them. According to the statements of Ms XXXXX's former colleague, Mr G., the Memorial office had been under surveillance of security officers. In August 2009 he had been stopped by men in military uniforms in a VAZ-2107 car, who checked his personal documents and the next day together with other men in three personal armoured vehicles arrived at his home to search it. Six years after her death an unidentified person told him that she had seen the abduction of Ms XXXXX. It had been perpetrated by military officers at the eyes of the police, who had been patrolling the area. Another unidentified person told one of the eyewitnesses of the events that she had also seen how Ms XXXXX had been pushed into the vehicle by a group of armed men.

48. Moreover, according to the applicant, only law-enforcement officers were able to pass unnoticed the road checkpoints in Chechnya due to the regime of enhanced security, which had been put in

place after several attacks by members of illegal armed groups. During informal exchanges the investigators said that the murder had been perpetrated by "the people of the Chechen President".

49. In the circumstances the burden of proof was on the Government, who had to provide a satisfactory and convincing explanation of the events in question. The Government failed to discharge that burden, because their version was not credible. It did not explain: (i) why Mr Bashayev's DNA had not been present on Ms XXXXX's body or at the crime scene; (ii) how the investigators had identified the perpetrators' car's registration plates; (iii) why Mr Bashayev had not been registered as the legal owner of the car; (iv) how it had been possible for officer N. to remember Mr Bashayev's face six months after the events in question and why he had not noticed that his documents had been forged; (v) why the bullets found at the crime scene had not matched the cartridges shot from the gun allegedly belonging to Mr Bashayev; (vi) why, according to an expert report, those bullets had not been shot from the silencer, allegedly belonging to Mr Bashayev; (vii) why the soil from the VAZ-2107 car had not matched the soil form the crime scene; and (viii) who had been the driver of the car which followed the perpetrators from the scene of abduction.

50. The applicant also submitted that her lawyer arranged testing of a DNA sample from one of Mr Bashayev's brothers, who had been living in France. It was then compared with DNA samples from the perpetrators' car and the victim's body. No correspondence had been identified.

51. The investigation in the applicant's view was ineffective because the authorities failed to properly follow all possible theories, including the murder by State agents. The applicant also submitted a report prepared by a senior police officer and homicide investigator in England and Northern Ireland, Mr P. Johnston, who concluded that the investigation had not been based on thorough, objective and impartial analysis of relevant elements of the case and was plagued with significant delays. He noted, inter alia, that the investigators failed to: (i) examine the scene of abduction at the day of the incident; (ii) ensure the required level of crime scene management discipline; (iii) wear protective clothes during the examination of the crime scene; (iv) order X-ray examination of Ms XXXXX's body to determine whether bullets had fragmented on impact with hard surfaces; (v) swab the impact areas on Ms XXXXX's body; (vi) secure original DNA samples; (vii) compare the footprint which had been found in the vehicle with Natalia XXXXX's footwear; etc.

52. The applicant was also dissatisfied with her late notification of her victim status and limited access to the case file materials.

53. In addition to the above, in her comments on the Government's observations she alleged that there had been a breach of the State's positive obligations under Article 2 of the Convention on account of the authorities' failure to protect the life of Natalia XXXXX.

(b) The Government

54. The Government submitted that the pieces of evidence to which the applicant had referred were not credible. The identities of unidentified witnesses had not been disclosed either to the authorities or to the Court, therefore it was impossible to interview those witnesses. Mr G. had been questioned on several occasions. The investigators had taken measures to check the veracity of his submission but found no evidence in its support.

55. There had been no regime of enhanced security on roads between the scenes of abduction and murder, because the attacks to which the applicant referred had taken place in remote regions and did not affect the area in question.
56. The Government contested the applicant's argument that the investigator's final theory was not credible. They pointed out that: (i) the absence of Mr Bashayev's DNA on Ms XXXXX's body or inside the car did not contradict the official theory of murder by a group of people; (ii) the investigators had not fabricated the evidence regarding the perpetrators' car – they became aware of its registration plates from the witness statement by a Shalazhi resident; (iii) the fact that Mr Bashayev had not been registered as the legal owner of the VAZ-2107 car could be explained by Chechen customs which did not require to sign a contract; (iv) Officer N. had been able to identify Mr Bashayev despite the time elapsed from the incident; (v) the applicant had wrongfully submitted that the bullets from the crime scene had not matched cartridges which had been shot from Mr Bashayev's gun. In fact, the experts had been unable to make any conclusion in that regard; (vi) the experts made a wrong conclusion that the bullets found at the place of the incident had not been fired from the silencer which belonged to Mr Bashayev; (vii) the soil found in the VAZ-2107 car had not matched soil from the crime scene, because of the lengthy journey from the crime scene to Grozny.
57. As regards the effectiveness of the investigation, the Government pointed out that the investigators had immediately opened a criminal case, that they had found Natalia XXXXX's body within several hours from the reported abduction; that the investigators had duly considered various crime theories including the murder by State agents. The allegation that Ms XXXXX had been killed by members of Shalazhi jamaat, including Mr Bashayev was supported by solid and consistent evidence.
58. Lastly, the Government noted that Mr P. Johnston's report had been prepared without any knowledge of the Russian law and that its conclusions had not been substantiated.

(c) Third party

59. The Council of Europe Commissioner for Human Rights pointed out that the murder of Natalia XXXXX should be seen as part of a pattern of killings and intimidation of human rights defenders in the North Caucasus. He noted that the most serious human rights violations against human rights defenders had not been prevented or addressed appropriately.
60. The Russian authorities imposed a series of obstacles upon the activity of human rights defenders leading to their marginalisation, particularly in Chechnya. The consistent impediments to the legitimate work of the latter ran contrary to the state's positive obligation to create a safe and enabling environment for human rights defenders.
61. The above created a situation which was incompatible with the European standards. The Commissioner considered that in order to strengthen the capacity to create a safe and enabling environment for human rights defenders, the authorities of the Russian Federation on both federal and regional level must adopt a series of measures at institutional, legal, political and other levels. In particular, these measures should include adoption of a specific legal framework, of a comprehensive public policy and a national action plan aimed at protecting human rights defenders

at risk and at promoting an enabling environment for their work. Such measures may also include the creation of a special body or empowering existing national human rights institutions with a view to installing, in cooperation with federal law-enforcement bodies, a fully functional rapid response mechanism or a protection programme for human rights defenders. Finally, these measures should also include an awareness-raising policy promoting the legitimacy and facilitating the work of human rights defenders.

2. The Court's assessment

(a) The scope of the case

62. In the comments on the Government's observations the applicant alleged a violation of Article 2 of the Convention on account of the authorities' failure to protect the life of Natalia XXXXX. That complaint had not been raised in the application form and the Government had not been informed thereof. The Court therefore will not examine it (see, among recent examples, Mándli and Others v. Hungary, no, 63164/16, §§ 15-18, 26 May 2020, and Markus v. Latvia, no. 17483/10, § 63, 11 June 2020). In any event, it appears unsubstantiated.

(b) Alleged responsibility of the State for abduction and murder

63. The Court has adjudicated a series of cases concerning allegations of disappearances in the Russian North Caucasus. It has concluded that it would be sufficient for the applicants to make a prima facie case of abduction by State agents, thus falling within the control of the authorities, and it would then be for the Government to discharge their burden of proof, either by disclosing documents in their exclusive possession or by providing a satisfactory and convincing explanation of how the events in question occurred (see Tsechoyev v. Russia, no. 39358/05, 15 March 2011; Kushtova and Others v. Russia (no. 2), no. 60806/08, § 76, 21 February 2017; Alikhanovy v. Russia, no. 17054/06, § 71, 28 August 2018; and Tsakoyevy v. Russia, no. 16397/07, § 116, 2 October 2018). If the Government failed to discharge its burden of proof, this would entail a violation of Article 2 of the Convention in its substantive part. Conversely, if the applicants failed to make a prima facie case, the burden of proof could not be reversed (see, for example, Shafiyeva v. Russia, no. 49379/09, § 71, 3 May 2012).

64. The Court established prima facie case of abduction by State agents where there had been credible allegations that the perpetrators had abducted a person during a special operation by security forces (see Nazyrova and Others v. Russia, no. 21126/09 and 4 others, §§ 129 and 135, 9 February 2016; Gaysanova v. Russia, no. 62235/09, § 113, 12 May 2016; and Ortsuyeva and Others v. Russia, nos. 3340/08 and 24689/10, §§ 46, 54 and 85, 22 November 2016); used special service vehicles, such as armoured personnel carriers (see Nazyrova and Others, cited above, §§ 71, 75, 88, 92, 138 and 141); took a man to a police department (see Tsakoyevy, cited above, § 118); or abducted men in broad daylight in the vicinity of a road police station in the presence of police officers (see Kushtova and Others, cited above, § 79, and Alikhanovy, cited above, § 72).

65. The Court cannot accept the applicant's allegation that the circumstances of her sister's abduction amounted to a prima facie case of abduction by State agents. Her theory was built on

witness evidence that Natalia XXXXX had been abducted by military officers in front of police officers patrolling the area (see paragraph 47 above). That evidence is, however of low evidential value, because it is based on a hearsay statement from an unidentified source obtained more than six years after the murder. The Court prefers to give credence to the statements of eyewitnesses made shortly after the incident (see paragraph 8 above). They convincingly show that the circumstances of Ms XXXXX's abduction are different from the cases cited in paragraph 64 above. She had been seized by a small group of people who had arrived in a civilian car in the early morning and perpetrated the abduction away from the eyes of many witnesses (compare Shafiyeva, cited above, §§ 71-73; Dobriyeva and Others v. Russia, no. 18497/10, §§ 59-61 and 66, 19 December 2013; Salikhova and Magomedova v. Russia, no. 63689/13, §§ 70-72, 26 January 2016; and Ibragim Tsechoyev v. Russia, no. 18011/12, § 58, 21 June 2016; see by contrast, as far as relevant Orlov and Others v. Russia, no. 5632/10, §§ 95-98, 14 March 2017). In the case file materials the Court does not see convincing evidence to conclude that the passage through the road checkpoints at the time was restricted. In any event, it appears that the perpetrators were able to avoid them (see paragraph 21 above) or pass through them unhindered using forged documents (see paragraph 28 above).

66. The Court acknowledges that the circumstances of the case should not be seen in isolation from Natalia Estamirova's professional activity as a human rights defender. It takes note of the attacks against other members of human rights organisations in Russia, including Ms Politkovskaya (see Mazepa and Others v. Russia, no. 15086/07, 17 July 2018) and Mr Orlov (see Orlov and Others, cited above). However, on the basis of its case-law and the applicant's submissions the Court cannot discern sufficient elements to establish the presumption of state agents' involvement in attacks on human rights activists and to shift on that account the burden of proof to the Government.

67. Having regard to the case-file material and the parties' submissions the Court considers that it has not been established to the required standard of proof – "beyond reasonable doubt" – that the State agents had perpetrated the crime. It follows that there has been no violation of Article 2 of the Convention under its substantive limb.

(c) Effectiveness of the investigation

68. The Court notes at the outset that most of the materials from the investigation file were not disclosed by the Government (see paragraph 16 above). From the documents in the Court's possession it follows that the investigators did not remain idle. They opened the investigation within several hours from the incident (see paragraph 13 above) (see, by contrast cases, where the opening of the criminal case was delayed: Savriddin Dzhurayev v. Russia, no. 71386/10, § 193, 25 April 2013; Dobriyeva and Others, cited above, § 73; Turbylev v. Russia, no. 4722/09, § 70, 6 October 2015; Zakharin and Others v. Russia, no. 22458/05, § 66, 12 November 2015; Khamidkariyev v. Russia, no. 42332/14, § 156, 26 October 2017; and Tsakoyevy, cited above, § 124). Many investigative steps were promptly made within the first days after the murder (see paragraphs 17-20 above). Eventually, the investigators identified one of the alleged perpetrators and charged him with participation in an unlawful armed group, illegal storage of firearms and ammunition, abduction of Natalia XXXXX and her murder (see paragraph 32 above). The identities of other perpetrators remained unknown.

69. Notwithstanding the above, the documents in the Court's possession cast doubt on the thoroughness of the investigation, particularly on the quality of the investigators' analysis of evidence and the justification of their conclusion on which the Government relied. The Court notes that the investigators' theory was corroborated by only few pieces of hard evidence. Those pieces of evidence were submitted to expert examinations, but some of the experts' conclusions in their respect, which formed a basis for the investigators' theory appeared to be inconclusive or even contradictory. For example, the experts were unable to conclude with sufficient certainty whether: (i) the bullets and the cartridges from the place of the incident had been parts of the same firearm ammunition (see paragraph 17 above); (ii) the camouflage uniforms from Mr Bashayev's address had been in contact with Ms XXXXX's clothes (see paragraph 29 above); (iii) the silencer had been used with the gun which allegedly belonged to Mr Bashayev (see paragraph 31 above); or (iv) the elements of fibres from the car belonged to Ms XXXXX (see ibid.). The experts' finding that the bullets from the crime scene had not been shot from the silencer and the absence of soil from the crime scene on the outer parts of the car contradicted the investigators' version of the murder. The Court cannot discern how that contradiction was solved or explained. Moreover, it cannot be overlooked that the investigators did not explain why no traces of Mr Bashayev's DNA or DNAs of other members of the illegal armed group had been found on Ms XXXXX's body, at the crime scene or inside the car. More generally, the Court does not see whether the investigators made a genuine attempt to identify all the members of that group.

70. Taking into account the above shortcomings, and given the Government's failure to submit the entire investigation file, capable of corroborating or refuting the applicant's allegation of ineffectiveness of the investigation, the Court is not in a position to conclude that the investigation was adequate.

71. In the light of the foregoing, the Court concludes that the authorities failed to investigate effectively the abduction and killing of Natalia XXXXX. In such circumstances there is no need to address separately the applicant's arguments concerning her insufficient access to the case file or public scrutiny.

72. Accordingly, there has been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 38 OF THE CONVENTION

73. The applicant submitted that the Government's refusal to submit to the Court a copy of the entire investigation file would give rise to the violation of Articles 34 and 38 of the Convention. The Court will examine the complaint under Article 38 of the Convention, which reads as follows:

"The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

74. The Court reiterates in this regard the duty to cooperate of the High Contracting Parties set forth in Article 38 of the Convention and Rule 44A of the Rules of Court. Indeed, it is of the utmost importance for the effective operation of the system of individual application instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a

proper and effective examination of applications (see Janowiec and Others v. Russia [GC], nos. 55508/07 and 29520/09, § 202, ECHR 2013).

75. Turning to the circumstances of the present case, the Court observes that despite its explicit request, the Government submitted only some copies from the investigation file. They stated that it would be sufficient for the examination of the case. According to the Government, the disclosure of the remainder of the materials might jeopardise the investigation (see paragraph 16 above).

76. The Court cannot accept the Government's argument, because it is not for them to decide on the amount of the documents sufficient for the examination of the case by the Court. The selective approach to the submission of the investigative materials prevented the Court from having a full and undistorted picture of the investigation which it had to assess. The refusal to submit the complete investigation file could not be justified by the secrecy of the investigation to which the Government referred, because the Court's proceedings allow to ensure it (see Imakayeva v. Russia, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

77. Given that the Government's failure to comply with the Court's request on such a crucial point undermined its ability to examine the merits of the applicant's complaint by clarifying important issues related to the effectiveness of the investigation (see paragraph 69 above), the Court concludes that there has been a violation of Article 38 of the Convention (compare Khadisov and Tsechoyev v. Russia, no. 21519/02, §§ 178-79, 5 February 2009; Enukidze and Girgvliani v. Georgia, no. 25091/07, §§ 297-302, 26 April 2011; Nizomkhon Dzhurayev v. Russia, no. 31890/11, §§ 163-65, 3 October 2013; and Khamidkariyev v. Russia, no. 42332/14, §§ 105-09, 26 January 2017).

III. Application of article 41 of the Convention

78. Article 41 of the Convention provides:

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

A. Damage

79. The applicant claimed compensation for non-pecuniary damage in an amount to be determined by the Court.

80. The Government submitted that no award should be made under that head owing to the applicant's failure to specify the exact amount claimed.

81. The Court is satisfied by the manner in which the applicant formulated her claim. It has already granted claims formulated in the same manner in many cases (see D.N. v. Switzerland [GC], no. 27154/95, § 60, ECHR 2001-III; Bykov v. Russia [GC], no. 4378/02, § 111, 10 March 2009; Vladimir Ushakov v. Russia, no. 15122/17, § 109, 18 June 2019; and Gubasheva and Ferzauli v. Russia, no. 38433/17, § 64, 5 May 2020).

82. Having regard to its case-law on the matter (see M. and Others v. Croatia, no. 50175/12, § 100, 2 May 2017; Mustafayev v. Azerbaijan, no. 47095/09, § 90, 4 May 2017; and Mazepa and Others

v. Russia, no. 15086/07, § 88, 17 July 2018) the Court awards the applicant 20,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

83. The applicant claimed 17,238.97 pounds sterling (around EUR 20,300) and EUR 9,000 in respect of costs and expenses. She submitted her representatives' hourly rates, and the time billed for the preparation of the documents in this case, as well as invoices for translation services and calculation of administrative expenses (photocopying, printing, and postage) incurred by the representatives. The applicant asked to indicate that the award should be paid in pounds sterling and payed into the bank account of the EHRAC.
84. The Government submitted that the applicant's claim was excessive.
85. Given that the applicant did not submit documents showing that she had paid or was under a legal obligation to pay the fees billed by her representatives or the expenses incurred by them, the Court finds no basis to conclude that the costs and expenses have actually been incurred by the applicant (see Merabishvili v. Georgia [GC], no. 72508/13, § 327, 28 November 2017; Batiashvili v. Georgia, no. 8284/07, § 112, 10 October 2019; Dimitar Angelov v. Bulgaria, no. 58400/16, §§ 90-91, 21 July 2020; and Aghdgomelashvili and Japaridze v. Georgia, no. 7224/11, §§ 61-62, 8 October 2020). The claim under this head must therefore be rejected.

C. Default interest

86. 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.

IV. application of Article 46 of the Convention

87. Article 46 of the Convention provides as far as relevant:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

88. The applicant asked the Court to indicate to the Government, under Article 46 of the Convention that effective and expeditious investigation must be carried out in the case. She also asked to impose on the Government an obligation to adopt a specific legal framework, a comprehensive public policy and a national action plan aimed at protecting human rights defenders at risk and at promoting an enabling environment for their work. Lastly, the applicant submitted that the Government should create a rapid response mechanism or a protection programme for human rights defenders, as well as conduct awareness raising activity aimed at facilitating the work of human rights defenders.
89. The Government did not comment on this part of the submission.

90. By Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, inter alia, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see Guðmundur Andri Ástráðsson v. Iceland [GC], no. 26374/18, § 311, 1 December 2020, and the references therein).

91. The Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see Magnitskiy and Others v. Russia, nos. 32631/09 and 53799/12, § 295, 27 August 2019). Only exceptionally, with a view to helping the respondent State to fulfil its obligations under Article 46, will the Court seek to indicate the type of measure that might be taken in order to put an end to a violation it has found (ibid., § 296).

92. Regard being had to the circumstances of the present case and the submissions by the parties, the Court does not consider it necessary to indicate any general measures that the State has to adopt for the execution of the present judgment. As regards individual measures, the Court notes that the criminal investigation is still open. With that in mind it considers that the authorities should continue in so far as this proves feasible their efforts aimed at elucidating the circumstances of Ms XXXXX's abduction and murder, identifying the perpetrators, and punishing those responsible, where appropriate.

FOR THESE REASONS, THE COURT,

1. Declares, unanimously, the application admissible;
2. Holds, unanimously, that there has been no violation of Article 2 of the Convention under its substantive limb;
3. Holds, by five votes to two, that there has been a violation of Article 2 of the Convention under its procedural limb;
4. Holds, unanimously, that the respondent State has failed to comply with its obligations under Article 38 of the Convention;
5. Holds, by six votes to one,

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

6. Dismisses, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 August 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President

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

P.L.
M.B.

JOINT DISSENTING OPINION OF JUDGES DEDOV AND ZÜND

1. We agree with the majority that the respondent State failed to comply with its obligations under Article 38, and we voted accordingly. If the Court so requests, the State is obliged to submit the complete criminal file.
2. However, we regret that we are unable to conclude from this failure that the investigation was not adequate and that there has been a violation of Article 2 under its procedural limb. We should not forget that the Court had at its disposal a significant volume of documents (running to hundreds of pages), covering the first stages of the investigation and other major developments (see paragraph 16 of the judgment). The applicant had full access to the file through her lawyer (see paragraph 43). If there had been a serious lacuna in the information about the investigation which the Government provided at the Court's request, the applicant would have pointed out this shortcoming. However, no such allegation has been made in this case by the applicant.
3. The procedural obligation is not one of result but of means. The investigators cannot therefore be blamed for their eventual failure to identify all of the perpetrators of the murder. It is clear that they made a meaningful attempt to find those who were responsible. They opened the investigation within several hours of the incident and located the body of Ms XXXXX shortly thereafter. Many investigative steps were taken promptly within the first few days after the murder. The investigation was not suspended prematurely or unreasonably. No defects in the investigative activities were found by the supervising authorities or the domestic courts. Despite the applicant's argument to the contrary, the investigators followed several lines of inquiry, including the theory that law-enforcement agents had been implicated in the crime. In doing so, the investigators not only questioned dozens of law-enforcement agents in the region, but also obtained and tested their DNA samples. The results of the investigation appeared to be convincing to the Court, as it has found unanimously that the applicant's submissions and the circumstances of the event as elucidated

during the investigation do not allow it to establish that State agents were involved in the abduction and the killing of Ms XXXXX, which was the applicant's main claim.

4. The investigation had a tangible outcome – it came up with a plausible theory of murder by Mr Bashayev, which was supported by hard evidence and statements from several witnesses. However, the majority, with reference to the results of the investigation as set out in paragraphs 17, 29 and 31 of the judgment, found that the experts had been unable to conclude with sufficient certainty that the bullets and the cartridges from the scene of the incident had been part of the same firearms ammunition, that the camouflage uniforms from Mr Bashayev's address had been in contact with Ms XXXXX's clothes, that the silencer had been used with the gun which belonged to Mr Bashayev or that the elements of fibres from the car belonged to Ms XXXXX.

5. We have another reading of the experts' findings. Their conclusions, formulated using the verb "could", do not suggest that the experts were unable to make any findings or that they had serious doubts. According to Russian doctrine and practice, experts cannot in principle say that something happened with 100% probability. Their conclusions are always formulated as "could" or "could not" (see, for example, Nikolay Fedorov v. Russia, no. 10393/04, § 25, 5 April 2011; Nigmatullin and Others v. Russia [Committee], nos. 47821/09 and others, § 58, 4 February 2020; and Romanova and Others v. Russia [Committee], nos. 21080/09 and others, § 33, 30 March 2021). Moreover, the experts' findings that the bullets from the crime scene had not been shot from the silencer do not undermine the credibility of the investigators' version of the murder. The rubber elements on the silencer matched a piece of rubber which had been collected at the crime scene. It is of course possible that the perpetrators carried the silencer with them without using it during the shooting.

6. Finally, even if there were some conflicts between pieces of evidence, they were not the result of the investigators' professional negligence; they do not relate to the key elements of the investigation and they cannot therefore cast doubt on the thoroughness of the investigation as a whole, particular regard being had to the complexity of the case and the requirement to apply the procedural duty under Article 2 realistically (see Hanan v. Germany [GC], no. 4871/16, § 200, 16 February 2021).

7. We ought to bear in mind that the Court should not assume the role or take place of the supervising investigating authority in the assessment of the quality of an investigation comparing hundreds of pieces of evidence or looking for inconsistencies in witness evidence, unless those defects are obvious. The Court normally focuses its assessment on the procedural defects (whether a criminal case was opened in a timely fashion, whether the proceedings were prematurely suspended, and so on), or repeats the criticism expressed by the domestic authorities in stating that the investigators failed to comply with their instructions. In this case the Court, however, went beyond its role in so far as it based its conclusion of a violation of Article 2 under its procedural limb on the insignificant contradictions in the evidence, which are a normal feature of a complex criminal investigation at the pre-trial stage of the proceedings.