



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

FIRST SECTION

CASE OF MATAYEVA AND DADAYEVA v. RUSSIA

(Application no. 49076/06)

JUDGMENT

STRASBOURG

19 April 2011

FINAL

15/09/2011

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

In the case of Matayeva and Dadayeva v. Russia,

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

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

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 29 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 49076/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Ms Satsita Matayeva and Ms Batu Dadayeva (“the applicants”), on 8 December 2006.

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

3. On 9 March 2009 the Court decided to apply Rule 41 of the Rules of Court, to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of the former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application and to the application of Rule 41 of the Rules of Court. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant is the wife and the second applicant is the mother of Mr Khamzat Tushayev, born in 1959. They live in the village of Duba-Yurt, the Shalinskiy District, in the Chechen Republic.

A. The background to the case as described by the applicants

6. According to the applicants, since 1996 Khamzat Tushayev had been suffering from a mental disorder.

7. In autumn 1999, before the launching of the military operation in the Chechen Republic, the applicants and Khamzat Tushayev had been residing in the village of Duba-Yurt. At the time when Russian federal troops approached the village and most of its residents left, Mr Tushayev's brother stayed in the village and joined rebel fighters to resist the federal troops. Although Khamzat Tushayev also stayed behind, he did not join the rebels.

8. In 2000 Khamzat Tushayev left Duba-Yurt together with his brother's insurgent group and some other residents and joined his family which had meanwhile moved to an adjacent village. By March 2000 federal troops had regained control over Duba-Yurt and Khamzat Tushayev returned there together with his brother and the first applicant.

9. On an unspecified date in 2001 armed men broke into the first applicant's house. They came in several armoured personnel carriers (APCs) and were looking for Khamzat Tushayev and his brother. After the incident the brothers went into hiding. On several occasions armed men broke into the first applicant's house, searching for them. During yet another similar incident on 17 February 2002 Mr Tushayev's brother was allegedly killed while trying to escape.

10. Khamzat Tushayev stayed in hiding until June 2003, fearing reprisals for the fact of his leaving Duba-Yurt together with insurgents. In June 2003 the first applicant learnt from the head of the local administration that Khamzat Tushayev would be amnestied if he surrendered his arms. According to the applicants, he had never had any arms but bought a submachine gun and was provided with a walkie-talkie by an acquaintance who had found it somewhere.

11. On 12 June 2003 Khamzat Tushayev surrendered the gun and the walkie-talkie to the Department of the Federal Security Service in the Chechen Republic ("the Chechen Department of the FSB"). According to a certificate issued by that State authority on 12 June 2003, Khamzat Tushayev declared that he no longer participated in illegal armed groups and had surrendered his arms of his own free will. It was further stated that

an inquiry into his case was under way, that he had given an undertaking to appear before the Chechen Department of the FSB for questioning, that his right to freedom of movement had not been restricted, and that, should any law-enforcement authorities arrest him, they were to inform the Chechen Department of the FSB immediately.

12. At the turn of the year 2003 the first applicant and Khamzat Tushayev moved to Grozny.

13. On an unspecified date in March 2006 several persons who did not identify themselves broke into the flat occupied by the first applicant and Khamzat Tushayev and took him away. Eight days later his relatives found out that he was being held at the Shali district police station and that a criminal case (no. 56006) had been opened against him on suspicion of participation in illegal armed groups. On an unspecified date Khamzat Tushayev was released on an undertaking not to leave his place of residence.

B. Disappearance of Khamzat Tushayev

1. The applicants' account

14. On 7 June 2006 the first applicant received a call on her mobile phone from a hidden number. A man who introduced himself as "Sergey Aleksandrovich", an official of the prosecutor's office of the Leninskiy District in Grozny (hereafter "the Leninskiy district prosecutor's office"), asked the first applicant to tell her husband that he was to report to the Leninskiy district prosecutor's office at 10 a.m. on 8 June 2006 in connection with criminal case no. 56006 (also referred to as 56049). When she asked if he could come a week later the man refused, saying that Khamzat Tushayev was already under a very lenient preventive measure – an undertaking not to leave his place of residence.

15. The first applicant was not surprised by the call because she had previously given her phone number to investigator R.Ya. of the prosecutor's office of the Shalinskiy District ("the Shalinskiy district prosecutor's office"), who was in charge of the investigation in case no. 56006. According to the first applicant, on several occasions R.Ya. had already summoned Khamzat Tushayev for interviews via her mobile phone. Moreover, an official of the Department of the Interior of the Shalinskiy District had also summoned Khamzat Tushayev for an interview by contacting the first applicant on her mobile and asking her to convey that message to her husband. On all those occasions, after having been interviewed, Khamzat Tushayev had always returned back home.

16. On 8 June 2006 Khamzat Tushayev and the first applicant went to the complex of government buildings in Grozny, the Leninskiy district prosecutor's office being situated within its secure grounds. According to

the applicants, the perimeter of the complex was guarded and it was only possible to enter the premises through a number of check points. At one of the check points an on-duty officer called the Leninskiy district prosecutor's office and enquired whether Khamzat Tushayev had an appointment and should be issued with an entry permit. Several minutes later the officer called Khamzat Tushayev inside the check point, recorded his passport data and authorised him to pass through. He then showed Khamzat Tushayev the building in which the Leninskiy district prosecutor's office was situated and at about 10 a.m. the latter passed the check point. The first applicant stayed outside to wait for her husband.

17. On the same day, two hours later, worried about her husband's absence, the first applicant asked the on-duty officer to call the Leninskiy district prosecutor's office. After a telephone conversation the officer told her that Khamzat Tushayev had not entered the premises of the Leninskiy district prosecutor's office and had not been registered at that authority's own checkpoint. The first applicant waited at the check point until the end of the working day. At about 5 p.m. the on-duty officer told her to leave, which she did.

2. The Government's account

18. The Government did not dispute the applicants' description of the events but stated that before the conclusion of the domestic investigation (see below) the circumstances of the disappearance of the applicants' relative could not be established with sufficient certainty.

C. The applicants' search for Khamzat Tushayev and the official investigation

1. The applicants' account

19. On 9 June 2006 the first applicant called investigator R.Ya. of the Shalinskiy district prosecutor's office and told him about the disappearance of her husband. Ya. allegedly told her that she and her husband had visited a "dangerous place" and that she should have called Ya. before going to the Leninskiy district prosecutor's office. He also said that several departments of the FSB had inquired about Khamzat Tushayev and advised her to complain about his disappearance to the authorities.

20. On the same day the first applicant complained about the disappearance of her husband to the Prosecutor of the Chechen Republic and the acting prosecutor of the Leninskiy District of Grozny.

21. On 9 June 2006 the first applicant applied to the representation of the Memorial Human Rights Centre in Grozny for assistance in the search for her husband. Its members contacted Mrs S. Gannushkina, member of the

Human Rights Commission with the President of Russia. She immediately called the acting prosecutor of the Leninskiy District of Grozny, Mr T.M., who told her over the phone that Khamzat Tushayev had not been summoned to the Leninskiy district prosecutor's office and that he had come there to submit an unspecified complaint. About half an hour after Khamzat Tushayev had been let through the first check point, an on-duty officer from another check point had called T.M. and informed him that Khamzat Tushayev had not passed the second check point. When Mrs Gannushkina's asked whether it was possible to disappear without leaving any trace from the grounds of the government complex, T.M. stated that it was impossible.

22. On 14 June 2006 the head of the Department for supervision of the investigation of crimes by the prosecutor's office forwarded the first applicant's complaint about the disappearance of Khamzat Tushayev to the acting prosecutor of the Leninskiy District of Grozny.

23. On 26 June 2006 the prosecutor's office of the Staropromyslovskiy District of Grozny ("the district prosecutor's office") initiated a criminal investigation into the abduction of Khamzat Tushayev from the grounds of the government complex in Grozny under Article 126 § 1 of the Criminal Code (abduction). The case was given the number 53092. By a letter of 27 June 2006, investigator D. informed the first applicant about the opening of the investigation.

24. On 30 June 2006 the first applicant was granted victim status in connection with the proceedings in case no. 53902. She was notified of that decision on the same day.

25. On 11 July 2006 the deputy prosecutor of the Chechen Republic informed the first applicant that the investigation into the disappearance of Khamzat Tushayev had been entrusted to investigator D. of the district prosecutor's office and that unspecified investigative and operational measures aimed at establishing the whereabouts of her husband were being carried out.

26. On 11 August 2006 Mrs Gannushkina wrote on behalf of the first applicant to the Prosecutor of the Chechen Republic and investigator D., requesting them to take a number of basic investigative steps, such as interviewing the personnel on duty at the check points on 8 June 2006, verifying the phone number of the person who had called the first applicant on 7 June 2006, identifying the owner of the phone and interviewing that person. It is unclear whether the request prompted any reaction on the part of the authorities.

27. On 25 October 2006 the acting head of the Department for supervision of the investigation of crimes by the prosecutor's office informed the first applicant that her repeated complaint about the disappearance of her husband had been forwarded to the district prosecutor's office.

28. According to the first applicant, she often came to the district prosecutor's office to enquire about the progress of the investigation but never received any meaningful information. During a visit in August 2006 investigator D. had allegedly reassured her that the investigation was "following hard on the heels" of the abductors of her husband and that the suspects were members of the FSB. However, in a conversation which took place on an unspecified date later, D. allegedly told the first applicant that the investigation was very dangerous and that D. himself ran a risk of being killed. According to the first applicant, on an unspecified date D. must have been replaced by another investigator.

2. The Government's account

(a) The Government's refusal to provide a copy of the entire criminal file no. 53902

29. The Government refused to submit a copy of the entire criminal file no. 53092 opened into the abduction of Khamzat Tushayev, providing only copies of several decisions to open and suspend the investigation, witness' interview records, the investigators' requests to various State authorities to provide information on Khamzat Tushayev's whereabouts and replies to them and some other documents. Some of the documents furnished by the Government are illegible; some are legible only in part. Insofar as the documents submitted by the Government are legible, the information contained in them can be summarised as follows.

(b) Opening of the investigation

30. On 26 June 2006 the district prosecutor's office instituted an investigation into the abduction of Khamzat Tushayev under Article 126 § 1 of the Criminal Code (kidnapping). The decision stated, among other things, that the district prosecutor's office had received the first applicant's complaint about the abduction of her husband on 9 June 2006.

(c) Interviewing of witnesses

(i) The first applicant

31. On 30 June 2006 the first applicant was granted victim status in the proceedings in case no. 53092 and interviewed. She stated that on 7 June 2006 she had received a call from a hidden number on her mobile phone. A man, who had introduced himself as "Sergey Aleksandrovich", an official of the Leninskiy district prosecutor's office, had told her that her husband was to come to the district prosecutor's office to be interviewed. The man had spoken unaccented Russian. When the first applicant had asked him if Khamzat Tushayev could come for interview the following week, the man

had insisted on him coming on 8 June 2006, saying that the authorities had already been very lenient on him by applying an undertaking not to leave his place of residence instead of detention as a preventive measure in connection with the proceedings in case no. 56049 concerning his membership of illegal armed groups.

32. On the following day the first applicant and her husband had gone to the complex of governmental buildings. At checkpoint no. 1 they had informed an on-duty officer that Khamzat Tushayev had been summoned to the Leninskiy district prosecutor's office. The officer had called T.M., the prosecutor of the Leninskiy district, and some five minutes later told them that Khamzat Tushayev would be let through. The first applicant had stayed outside, whilst Khamzat Tushayev had passed the checkpoint where servicemen explained him that the entry to the Leninskiy district prosecutor's office was near an APC. Some two to three hours later the first applicant had asked the officer on duty to call the prosecutor's office to ask for her husband. Having called them, the officer had told her that Khamzat Tushayev had not entered the premises of the prosecutor's office. The first applicant had waited at the checkpoint until 5.30 p.m., but her husband had not returned.

33. On the next day the first applicant had called investigator Ya. of the Shalinskiy district prosecutor's office and he had assured her that he had not arrested Khamzat Tushayev and had not instructed any authority to do so. Lastly, the first applicant also stated that her husband's brother had been an active member of illegal armed groups and had been killed in a special operation in 2002. She also submitted that after her husband had been arrested by officers of Operational and Search Bureau no. 2 (ORB-2) in March 2006, he had told her that they had asked him about their daughter, A.T., who had been killed in 2002 in Moscow along with other rebel fighters during the rescue operation of Nord-Ost.

34. When interviewed on 12 February and 25 June 2007, the first applicant confirmed her previous statement concerning the circumstances of the disappearance of her husband.

(ii) Servicemen of checkpoint no. 1

35. On 5 July 2006 the investigators interviewed D.D. as a witness. He stated that on 8 June 2006 he had been on duty at checkpoint no. 1 at the government complex and that he did not remember having seen Khamzat Tushayev there. According to D.D., checkpoint no. 1 was located at the entry to the grounds of the governmental complex from the side of the Staropromyslovskoye highway. If a person wished to get access to the Leninskiy district prosecutor's office, an on-duty officer from checkpoint no. 1 had to call officers at the checkpoint of the district prosecutor's office. The latter would then call the reception of the district prosecutor's office and inform them that they had a visitor, following which an official of the

prosecutor's office would call checkpoint no. 1 back and inform them whether they authorised the visitor to enter the premises of the prosecutor's office. After that an on-duty officer at checkpoint no. 1 had to enter the visitor's name, as well as the date and time of his entry, in a special logbook and let him through.

36. Serviceman S.S., interviewed as a witness on 6 July 2006, made a statement similar to that of D.D.

(iii) Servicemen of the checkpoint at the Leninskiy district prosecutor's office

37. On 13 July 2006 the investigators interviewed officer V.S. as a witness. She stated that from 9 a.m. on 8 June 2006 she had been on duty at the checkpoint of the Leninskiy district prosecutor's office. At about 10.10 a.m. servicemen from checkpoint no. 1 had called her and informed her that Khamzat Tushayev had come for an appointment with T.M., the prosecutor of the Leninskiy district. She had called T.M. and he had told her to let Khamzat Tushayev through, following which she had called officers from checkpoint no. 1 and conveyed that information to them. Some two hours later V.S. had received a call from checkpoint no. 1, its servicemen asking whether Khamzat Tushayev had entered the premises of the prosecutor's office through her checkpoint. V.S. had checked the relevant logbook but found no entries indicating that he had passed through her checkpoint. She had then called T.M. and he had told her that Khamzat Tushayev had not visited him either, of which V.S. had immediately informed her interlocutors at checkpoint no. 1. V.S. also gave to the investigators the names of the colleagues who had been on duty with her on the day of Khamzat Tushayev's disappearance.

(iv) Servicemen of checkpoint no. 102

38. On 6, 9, 15, 16 and 18 July 2006 investigators interviewed as witnesses servicemen S.G., A.P., N.K., I.L., A.N. and M.N., who were on duty at checkpoint no. 102 on 8 June 2006. They stated that their checkpoint was used for entry by officials of the State authorities located in the government complex, such as the Federal Security Service (FSB) or the prosecutor's office, in possession of special permits, and that other persons wishing to enter the secure grounds were directed to checkpoint no. 1. Persons leaving the government complex would be let through the checkpoint no. 102 if they did not raise suspicions; their documents would not be checked. They also submitted that they did not recognise Khamzat Tushayev in the picture shown to them.

(v) Witnesses interviewed in connection with criminal proceedings in case no. 56049 against Khamzat Tushayev

39. On 31 January 2007 the investigators interviewed L.Ts. as a witness. She submitted that she held the post of the senior inspector with the

information department of the Ministry of the Interior of the Chechen Republic and that on an unspecified date in April 2006 she had gone, together with members of a film crew, to the Department for the Fight against Organised Crime (“UBOP”) of the Chechen Republic. While the crew had been filming, an UBOP officer had been questioning a group of detained persons, one of whom had been Khamzat Tushayev. The latter had told the officer, among other things, about his daughter, who had participated in the Nord-Ost hostage taking in Moscow. Shortly after the recording L.Ts. had submitted the related recordings, as well as an article about the detained persons, to the Ministry of the Press of the Chechen Republic. However, her article had been published in a newspaper “Stolitsa plus” (*Столица плюс*) only on 2 December 2006 and she was not aware of the reasons for that delay.

40. On 2 February 2007 the investigators interviewed R.Ya. as a witness. He stated that on 4 April 2006 he had instituted criminal case no. 56049 against a number of persons, including Khamzat Tushayev, on suspicion of participation in illegal armed groups. On the same date Khamzat Tushayev and other suspects had been arrested and remanded in custody. Some of the arrested persons had initially stated that Khamzat Tushayev had been an emir of the village of Duba-Yurt but they had subsequently retracted those statements. On 6 April 2006 Khamzat Tushayev had been released on an undertaking not to leave his place of residence. The preventive measure applied to him had been changed because there had not been conclusive evidence of his implication in the imputed crime. On an unspecified date R.Ya. had interviewed Khamzat Tushayev for a second time and on 4 June 2006 he had closed the criminal case against him. R.Ya. specified that he had learnt about the abduction of Khamzat Tushayev from the first applicant and that he had not instructed any one in the Leninskiy district prosecutor’s office to interview Khamzat Tushayev.

41. Police officer A.A., interviewed as a witness on 2 February 2007, submitted that on 3 April 2006 he had participated in the arrest of a number of presumed members of illegal armed groups, including Khamzat Tushayev. A film crew from the Ministry of the Interior had been present and filmed the arrestees. On 4 April 2006 the arrested persons had been transferred to a remand centre. According to A.A., he had no information on the outcome of the proceedings against Khamzat Tushayev and had learnt about his abduction from his wife.

42. Police officer M.-A.D., interviewed as a witness on 6 February 2007, stated that he did not know why information on Khamzat Tushayev’s arrest in April 2006 had been published in December of the same year but that similar situations occurred from time to time owing to a lack of cooperation between the Ministry of the Interior and the Ministry of the Press of the Chechen Republic.

(vi) Other witnesses

43. On 16 June 2006 the investigators interviewed S.M. and I.V. as witnesses. According to their interview records, they resided in the same block of flats as Khamzat Tushayev and his family in Grozny and knew about his arrest in March 2006 by the law-enforcement authorities but had no information concerning his ensuing disappearance.

44. On 6 and 9 July 2006 investigators interviewed S.-Kh.E., V.Sh. and S.E. as witnesses. They stated that they were distant relatives of Khamzat Tushayev and resided in Duba-Yurt. According to them, Khamzat Tushayev had had some psychological problems, but they characterised him as a positive person overall.

45. Witness D.T., interviewed on 18 July 2006, stated that she worked as a nurse in a psychiatric hospital in the village of Samashki. From 11 to 25 April 2006 Khamzat Tushayev had undergone inpatient treatment in the hospital. She specified that his condition had not been serious and that he had been largely in control of his actions.

46. On 27 January 2007 the investigators interviewed T.M., the prosecutor of the Leninskiy district, as a witness. He submitted that on 8 June 2006, when servicemen from the reception of the prosecutor's office had informed him that servicemen from checkpoint no. 1 were looking for Khamzat Tushayev and it had been revealed that he had not entered the premises of the prosecutor's office, he had instructed the servicemen in charge of the prosecutor's office to examine the logbooks of checkpoint no. 1. Having done so, they had reported that the logbook, indeed, contained the data concerning Khamzat Tushayev, including his passport number and confirmed the fact that he had been let through with a view to appearing for an appointment at the prosecutor's office. However, he had never entered the premises of that authority. The servicemen at the prosecutor's office had been interviewed and the incident had been reported to the district and the republican prosecutor's offices. There were no pending criminal cases against Khamzat Tushayev in the Leninskiy district prosecutor's office, none of its investigators had summoned him for an interview there and there was no investigator named "Sergey Alexandrovich".

(d) Further investigative steps

47. On 9 June 2006 investigator D. of the district prosecutor's office inspected the crime scene. According to D.'s report of the same date, entry to the grounds of the government complex was possible through a checkpoint (apparently, checkpoint no. 1), equipped with a barrier to control the entry of vehicles. The checkpoint had a special room for the registration of visitors. At about 200 metres distance from the checkpoint, on the grounds of the government complex, was located the building of the military commander's office of the Leninskiy district of Grozny and near it was located the building of the Leninstiy district prosecutor's office, the

premises of which could only be entered through its own checkpoint. The building of the Chechen Department of the FSB was located near the building of the prosecutor's office.

48. On 21 June 2006 the Staropromyslovskiy department of the interior ("the ROVD") informed the district prosecutor's office that they had established the hidden number from which on 7 June 2006 the first applicant had received a call with an instruction for her husband to come to the Leninskiy district prosecutor's office for an interview on 8 June 2006. The call had been made at 4.40 p.m. on 7 June 2006 and the number of the caller was 8 928 29 06 28. However, the mobile network provider had refused to furnish information on the owner of the number.

49. On 27 June 2006 investigators of the district prosecutor's office instructed the Staropromyslovskiy Department of the Interior (the ROVD) to identify possible witnesses to the abduction of Khamzat Tushayev and the personnel who had been on duty at the checkpoint on 8 June 2006 and to summon them to the district prosecutor's office for interviews.

50. Between 27 June and 15 July 2006 investigators of the district prosecutor's office requested a number of State authorities, including prosecutor's offices and departments of the interior of various districts of the Chechen Republic, to provide information on Khamzat Tushayev's whereabouts, his eventual arrest or detention or on whether they had instituted criminal proceedings against him. It appears that those requests yielded no results.

51. On 14 July 2006 the investigators formally seized the visitors' logbook from checkpoint no. 1. The decision stated that the preliminary investigation had established that at 10 a.m. on 8 June 2006 Khamzat Tushayev had passed through checkpoint no. 1 and that the checkpoint logbook contained a record to that effect.

52. According to a record of inspection of documents (*протокол осмотра документов*) of 15 July 2006, page 67 of the visitors' logbook of checkpoint no. 1, in the section concerning persons who had passed through the checkpoint, contained an entry relating to Khamzat Tushayev in which it was noted that he had passed through the checkpoint at 10.03 a.m. on 8 June 2006. The entry also contained his passport number and indicated that he was going to the prosecutor's office. The logbook was appended to criminal file no. 53092 on 15 July 2006.

53. On an unspecified date in July 2006 the Ministry of the Interior informed the district prosecutor's office that the following authorities' buildings were located in the secure grounds of the government complex in Grozny: the military commander's office of the Chechen Republic, the military commander's office of Grozny, the military commander's office of the Leninskiy district of Grozny, the Chechen Department of the FSB and the 349th special purpose battalion of the 46th special purpose brigade.

54. By a letter of 21 August 2006 the Chechen Department of the FSB replied to the request of the district prosecutor's office and informed them that its officers had not arrested Khamzat Tushayev on the grounds of the governmental complex. The letter further stated that the Chechen Department of the FSB had arrested Khamzat Tushayev on 5 February 2003 during a special operation and that its officers had seized a submachine gun and several full cartridges for it from his house. On an unspecified date in August 2003 Khamzat Tushayev had been amnestied in relation to unspecified charges. On 3 April 2006 officers of the UBOP had arrested Khamzat Tushayev on suspicion of participation in illegal armed groups along with other persons. At 10 a.m. on 8 June 2006 Khamzat Tushayev had entered the grounds of the government complex in Grozny and had never left those grounds; his whereabouts remained unknown.

55. On 5 September 2006 the investigation in case no. 53092 was entrusted to investigator Kh. of the district prosecutor's office owing to the departure of investigator D. to the prosecutor's office of the Chechen Republic.

56. On 6 February 2007 the investigators seized a video recording of the arrest of Khamzat Tushayev and other persons in April 2006 from the archives of the Ministry of the Interior of the Chechen Republic.

57. Between 2 and 12 February 2007 the investigators requested a number of State authorities to inform them whether they had arrested Khamzat Tushayev or had information on his whereabouts. It appears that no relevant information was obtained.

58. On 17 May 2007 the deputy head of the Chechen Department of the FSB informed the military commander of military unit no. 20102 that the unspecified mobile number mentioned in the latter's request for information was not being used by the personnel of the department.

(e) Information relating to the decisions to suspend and resume the investigation

59. On 15 January 2007 the deputy prosecutor of the Staropromyslovskiy District of Grozny set aside the decision of 26 November 2006 to suspend the investigation in case no. 53092 as unfounded and premature. The investigators were instructed to carry out the following investigative measures: compile an up-to-date plan of investigative steps; interview the first applicant on the circumstances of the disappearance of her husband more thoroughly; identify the individuals who had been at checkpoint no. 1 on 8 June 2006 when Khamzat Tushayev had passed through it and interview them as witnesses; establish the manner in which visitors were admitted to the secure grounds of the government complex; interview the prosecutor of the Leninskiy district of Grozny as to the reasons for Khamzat Tushayev's visit to the prosecutor's office and the circumstances of his disappearance; establish whether the Leninskiy district

prosecutor's office had investigated any criminal cases against Khamzat Tushayev or had been in possession of any materials which might have prompted it to summon him to it; instruct the military prosecutor to identify the owner of mobile number 8 928 290 06 28, because the materials of case file no. 53092 contained information to the effect that that number had been in use by the personnel of the Chechen Department of the FSB; interview staff of the newspaper "Stolitsa plyus" in connection with their article published on 2 December 2006 and mentioning Khamzat Tushayev and his arrest; identify and interview the UBOP officers who had arrested presumed members of illegal armed groups, including Khamzat Tushayev, in April 2006; and comply in full with the written instructions given by the district prosecutor's office on 26 June 2006.

60. On 18 February 2007 the investigation in case no. 53092 was suspended owing to the failure to identify the perpetrators.

61. On 21 March 2007 the deputy prosecutor of the Staropromyslovskiy district prosecutor's office quashed the decision of 18 February 2007 as unfounded and premature and instructed the investigators to take, among other things, the following investigative steps: compile an updated plan of investigative measures; identify the owner of mobile phone, from which the first applicant had received the call instructing her husband to appear at the Leninskiy district prosecutor's office for an interview on 8 June 2006 and interview that person; and obtain replies to the requests for information from all the relevant State authorities.

62. On 26 April 2007 the investigation in case no. 53902 was suspended because of the failure to identify the perpetrators.

63. On 20 June 2007 the deputy prosecutor of the Staropromyslovskiy district set aside the decision of 26 April 2007 as premature and unfounded.

64. On 20 July 2007 the investigation in case no. 53092 was adjourned because of the failure to identify those responsible.

65. It appears that on an unspecified date case no. 53092 was transferred for investigation to the investigation department of the Investigating committee with the prosecutor's office of the Russian Federation in the Chechen Republic ("the investigation department").

66. On 26 May 2009 the deputy head of the investigation department instructed his subordinates in charge of the investigation to take, the following investigative steps: resume the investigation; compile an up-to-date plan of investigative measures; locate and interview a certain S.M. and I.V., who had stated on an unspecified date that Khamzat Tushayev had not been abducted; identify and interview the persons who had been at checkpoint no. 1 on 8 June 2006 when Khamzat Tushayev had passed through it; obtain the case file containing a printout of the conversation between the first applicant and the owner of mobile number 8 928 290 06 28, identify and interview all persons to whom that phone number had been registered or who had used or owned it at the material

time; establish how visitors entered the grounds of the secure government complex; send a formal request to verify whether an official named “Sergey Alexandrovich” had indeed worked in the Leninskiy district prosecutor’s office and if so, interview him; identify possible eyewitnesses to the abduction of Khamzat Tushayev on the grounds of the government complex.

67. On 3 June 2009 the investigation in case no. 53092 was resumed.

68. According to the Government, the investigation into the abduction of Khamzat Tushayev is pending.

II. RELEVANT DOMESTIC LAW

69. 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

70. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Khamzat Tushayev had not yet been completed. They further argued that the first applicant had been granted victim status and thus must have been able to participate effectively in the investigation procedure. Although the second applicant had not been granted that status, it had been open to her, as well as to the first applicant, to complain about the investigation omissions to courts. In that connection the Government relied on court decisions in cases of a certain A., S. and E., without providing copies of those decisions. Furthermore, in their submission, the applicants could have applied to the civil courts for compensation under Articles 151 and 1069 of the Civil Code. In that connection the Government referred to the cases of Mr Khashiyev and a third person whose name they omitted to mention, without providing copies of the decisions issued in those cases.

71. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that the effectiveness of the investigation had been undermined in its early stages by the authorities’

failure to take the relevant steps in due time. With reference to the Court's practice, they argued that they were not obliged to apply to the civil courts in order to exhaust domestic remedies.

B. The Court's assessment

72. 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).

73. 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.

74. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). 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.

75. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities immediately after the kidnapping of Khamzat Tushayev and that an investigation has been pending since 26 June 2006. The applicants and the Government dispute the effectiveness of the investigation of the abduction.

76. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation in question 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

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

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

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

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Submissions by the parties

1. The Government

78. The Government argued that the domestic investigation had obtained no evidence that the applicants’ relative had been abducted by State agents or that he should be presumed dead. The applicants had not eyewitnessed his abduction and his body had not been discovered. None of the witnesses interviewed by the domestic investigation had been able to describe Khamzat Tushayev’s abductors or convey any relevant information concerning the circumstances of the abduction. The investigation had not established that he had been arrested or remanded in custody by State agents. The criminal proceedings in case no. 56049 against Khamzat Tushayev had been discontinued on 4 June 2006, that is, before his disappearance. It followed that Khamzat Tushayev had been kidnapped by unidentified persons.

79. In the Government’s submission, the domestic investigation satisfied the Convention requirements. It had carried out an important number of investigative measures to solve the crime. In particular, the investigators had inspected the crime scene, interviewed numerous witnesses and inquired with various State authorities about the missing person’s whereabouts. The domestic authorities were not to blame for the fact that none of those investigative steps yielded results.

2. The applicants

80. The applicants maintained that there existed evidence “beyond reasonable doubt” that their relative had been abducted by State agents and that he should be presumed dead following his unacknowledged detention. The documents submitted by the Government confirmed that Khamzat Tushayev had been abducted from the secure grounds of the government complex in Grozny, which was a heavily guarded and clearly delimited “zone” where only State authorities’ offices were located. Access to the grounds was possible exclusively through checkpoints with the authorities’

special permission. The Government had not adduced any alternative explanation as to what had happened to the applicants' relative. They also invited the Court to draw inferences from the Government's failure to provide all the documents requested from them.

81. As regards the investigation, the applicants claimed that it was neither prompt nor effective. The authorities had opened the criminal case into the kidnapping of Khamzat Tushayev with a considerable delay. The owner of the number from which the first applicant had received a call summoning her husband had not been identified. T.M. had been interviewed with a considerable delay and the investigators had not attempted to interview him about the circumstances of Khamzat Tushayev's summoning to the prosecutor's office. Despite contradictions in his statement and the statement of V.S., no confrontation between them had been arranged. The investigators had failed to verify independently if a man named "Sergey Alexandrovich" had indeed worked in the Leninskiy district prosecutor's office.

B. The Court's assessment

1. Admissibility

82. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 76 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Khamzat Tushayev

(i) General principles

83. 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, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006).

84. It specifically 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. It has held on many

occasions that, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. 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 within their control in detention, strong presumptions of fact will arise in respect of injuries and death of such persons. 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).

85. The above-mentioned principles also apply to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation as to what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005–VIII).

86. 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).

(ii) Application of these principles to the present case

87. Turning to the circumstances of the present case, the Court observes that the Government denied that State agents had been involved in the abduction of Khamzat Tushayev, referring to the absence of conclusions from the ongoing investigation. At the same time, they did not dispute any of the specific facts underlying the applicants' version of their relative's disappearance.

88. In the first place it is undisputed between the parties and appears to be confirmed by the materials at the Court's disposal that the secure grounds of the government complex represented a delimited and guarded territory in which only offices of a number of law-enforcement authorities were located and that access to those grounds was possible solely through a number of checkpoints. Moreover, if a private person wished to enter the grounds, the servicemen at checkpoint no. 1, specifically responsible for private visitors, not only had to enter all information concerning the visitor, including his or her personal data and the time and purpose of the visit, but also to obtain from the authority the visitor was heading to confirmation that that person

indeed had an appointment with it. It also transpires that the building of the Leninskiy district prosecutor's office was located at about 200 metres distance from checkpoint no. 1, through which access for private individuals to that State authority was possible (see paragraphs 35-37, 47 and 52 above).

89. It is furthermore common ground between the parties that at about 10 a.m. on 8 June 2006 Khamzat Tushayev entered the secure grounds of the government complex through checkpoint no. 1 in order to appear for an interview at the Leninskiy district prosecutor's office. In that respect it is significant for the Court that the applicants' submissions concerning the circumstances of their relative's entering the grounds remained consistent both throughout the domestic proceedings and the proceedings before it (see paragraphs 14-17 and 31-34 above) and that that fact is further confirmed by those materials from criminal case no. 53092 that were made available to the Court by the Government (see paragraph 31 above). It also does not lose sight of the fact that, according to an official document issued by the deputy prosecutor of the Staropromyslovskiy district, the materials of case file no. 53092 contained evidence that the number from which the first applicant received a call for her husband to be summoned to the Leninskiy district prosecutor's office on 8 June 2008 had been used by the personnel of the Chechen Department of the FSB (see paragraph 59 above). However, it transpires that the investigation took no genuine steps to verify that information or, at the very least, to establish the owner of the mobile phone from which the call had been received (see below).

90. The Government did not argue that after having entered the secure grounds, the applicants' relative had at any point left the premises unimpeded. Neither did they furnish any evidence to that effect. On the contrary, they acknowledged that Khamzat Tushayev had been abducted while on the secure grounds of the government complex, albeit stating that his kidnappers had been unidentified persons (see paragraph 78 above). However, bearing in mind the considerations set out in paragraph 88 above, the Court cannot accept their unsupported submission as convincing.

91. The Court also takes into account the fact that, despite its requests for a copy of the investigation file into the abduction of Khamzat Tushayev, the Government produced only a part of the documents requested from them and that they failed to give any reasons for their refusal to do so. In view of this and bearing in mind the principles referred to above, the Court considers that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations.

92. In sum, the Court has regard to the elements enumerated above and the Government's unjustified refusal to furnish all the documents requested from them. It also takes into account their failure to provide a convincing explanation of what happened to Khamzat Tushayev after he had entered the secure grounds of the government complex and to show that he was not

detained by the authorities, but left the premises without subsequently being deprived of his liberty. Against this background the Court finds it established that on 8 June 2006 the applicants' relative was detained on the secure grounds of the government complex by unidentified State agents during an unacknowledged operation.

93. It remains to be ascertained whether Khamzat Tushayev should be presumed dead following his unacknowledged detention.

94. In this respect it is reiterated that in a number of cases concerning disappearance of people in the Chechen Republic the Court has repeatedly held that when a person is detained by unidentified State agents without any subsequent acknowledgement of the detention, this can be regarded as life-threatening (see, among many other authorities, *Bazorkina v. Russia*, cited above; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-XIII (extracts); *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007; and *Mutayeva v. Russia*, no. 43418/06, 22 April 2010).

95. The Court has, moreover, confirmed those considerations in situations where, as in the present case, applicants disappeared from places and premises under the authorities' full control (see *Yusupova and Zaurbekov v. Russia*, no. 22057/02, § 55, 9 October 2008; *Magomadov v. Russia*, no. 68004/01, § 98, 12 July 2007; and *Asadulayeva and Others v. Russia*, no. 15569/06, § 94, 17 September 2009). The absence of any news from Khamzat Tushayev for over four and a half years corroborates this assumption. Moreover, his name has not been found in any official detention facility's records and the Government did not submit any reasonable explanation as to what had occurred to him after his unacknowledged detention.

96. Hence, the Court finds it established that Khamzat Tushayev should be presumed dead following his unacknowledged detention by State agents on 8 June 2006.

97. The Court notes that, in addition to the absence of any plausible explanation on the part of the Government as to the circumstances of Khamzat Tushayev's death, they also have not relied on any exceptions to the right to life listed in Article 2 § 2. It follows that the respondent State's responsibility for his death is engaged.

98. Accordingly, there has been a violation of Article 2 under its substantive limb in respect of Khamzat Tushayev.

(b) The alleged inadequacy of the investigation into the abduction

(i) General principles

99. 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 v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324, 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).

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

100. The Court notes at the outset that the Government refused to produce the entire copy of case file no. 53902 and furnished only copies of the documents summarised above. It therefore has to assess the effectiveness of the investigation on the basis of the sparse information submitted by the Government and the few documents available to the applicants that they provided to the Court.

101. In the instant case the applicants notified the authorities about the abduction of their relative promptly after it had occurred, that is, on 9 June 2006. The investigation into his abduction was, however, opened only on 26 June 2006, that is, more than two and a half weeks later. Such a postponement *per se* is liable to affect the investigation of an abduction in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

102. It is further noted that a number of investigative steps were taken with a considerable delay, for which the Government provided no explanation. Among other things, it is unclear why the investigators had to wait for seven months to interview investigator R.Ya., who might have provided relevant information on the criminal proceedings against Khamzat Tushayev on suspicion of his participation in illegal armed groups, despite the fact that while being interviewed on 30 June 2006 the first applicant informed them of that fact and gave them R.Ya.’s name. In the same vein, although from officer V.S.’s interview record of 13 July 2006 it followed that the prosecutor of the Leninskiy district had been aware of Khamzat

Tushayev's visit, the investigators did not interview T.M. until some months later.

103. Furthermore, it appears that a number of crucial investigative measures have not been taken at all. In particular, the Court is struck by the fact that, whilst as early as 21 June 2006 the investigators had identified the number of the mobile phone from which Khamzat Tushayev had been summoned to the Leninskiy district prosecutor's office (see paragraph 48 above), there is no indication that the owner of the number was identified. The Court finds this fact particularly disturbing, given that the higher-ranking prosecutors stated in official documents that the case-file materials contained information to the effect that the impugned number was being used by the personnel of the Chechen Department of the FSB (see paragraph 59 above) and that they had repeatedly instructed the investigators to pursue the matter (see paragraphs 61 and 66 above). In the Court's view, such an omission can only be characterised as indicative of a lack of a genuine determination on the part of the investigating authorities to solve the crime and identify those responsible.

104. The Court also expresses its concern by the fact that, although officer V.S. clearly stated in her interview that she could give the names of the colleagues who had been on duty with her on 8 June 2006, the investigators took no steps to identify those persons and interview them. Furthermore, bearing in mind possible discrepancies between the submissions of V.S. and T.M., the former stating that T.M. had instructed her to let Khamzat Tushayev through and the latter claiming that the applicants' relative had not been summoned to the prosecutor's office (see paragraphs 37 and 46 above), it remains unclear why the investigators took no steps to arrange for their confrontation to clarify, in particular, the extent to which T.M. had been aware of Khamzat Tushayev's visit to the Leninskiy district prosecutor's office and the purpose of that visit. In fact, besides interviewing T.M., the investigators appear to have made no attempt to carry out an independent verification of the purpose of the applicants' relative's visit to the Leninskiy district prosecutor's office and the officials who might have summoned him there.

105. 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 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).

106. The Court further notes that whilst the first applicant was eventually granted victim status in the proceedings in case no. 53092, there

is no indication that the authorities ever considered granting that status to the second applicant. It also has serious doubts as to whether the applicants were provided with meaningful information concerning any developments in the investigation (see paragraph 28 above). It thus transpires 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).

107. Lastly, the Court notes that the investigation was repeatedly suspended and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending (see paragraphs 59-67 above). The higher-ranking prosecutors criticised the deficiencies in the proceedings and repeatedly ordered the investigators to rectify the shortcomings and carry out a number of crucial investigative steps but it appears that their instructions were not complied with.

108. Having regard to the limb of the Government's preliminary 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 being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years having produced no tangible results.

109. Furthermore, the applicants, who had no access to the case file and were not properly informed of the progress of the investigation, could not have effectively challenged any acts or omissions on the part of the investigating authorities before a court. Moreover, owing to the time which had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer be usefully conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospect of success.

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

111. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Khamzat Tushayev, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

112. The applicants relied on Article 3 of the Convention, submitting that as a result of their relative's disappearance and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The parties’ submissions

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

114. The applicants maintained their submissions.

B. The Court’s assessment

1. Admissibility

115. The Court notes that this 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

116. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

117. In the present case the Court notes that the first applicant is the wife and the second applicant is the mother of the missing person. For more than four and a half years they have not had any news of their relative. During this period the first applicant has made enquiries of various official bodies, both in writing and in person, about her husband. The Court is prepared to accept that the second applicant was also to a certain extent involved in the search for her son. Despite their attempts, the applicants have never received any plausible explanation or information about what became of Khamzat Tushayev following his detention. The responses they received mostly denied State responsibility for their relative’s arrest or simply informed them that the investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

119. The applicants further stated that Khamzat Tushayev 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

120. The Government asserted that no evidence had been obtained by the investigators to confirm that Khamzat Tushayev had been deprived of his liberty. He was not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

121. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

122. 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*

123. 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).

124. The Court has found that Khamzat Tushayev was apprehended by State agents on 8 June 2006 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

125. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relative had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard him against the risk of disappearance.

126. In view of the foregoing, the Court finds that Khamzat Tushayev 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

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

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

A. The parties' submissions

128. 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.

129. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

130. 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

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

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

133. As regards the applicants' reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction with Articles 3 and 5 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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

135. The applicants did not submit any claims for pecuniary damage. They claimed 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 him and the failure to provide any information about the fate of their close relative, leaving the determination of its amount to the Court.

136. The Government submitted that, should the Court find a violation of the applicants' Convention rights, a finding of a violation would constitute sufficient just satisfaction.

137. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the first applicant 35,000 euros (EUR) and EUR 25,000 to the second applicant, plus any tax that may be chargeable to them.

B. Costs and expenses

138. The applicants were represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to 1,310 pounds sterling (GBP), to be paid into the representatives' account in the United Kingdom. The amount claimed was broken down as follows:

- (a) GBP 700 for 7 hours of legal drafting of documents submitted to the Court at a rate of GBP 100 per hour;
- (b) GBP 450 for translation costs, and
- (c) GBP 160 for administrative and postal costs.

139. 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).

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

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

142. As to whether the costs and expenses incurred for legal representation were necessary, the Court accepts that this case was rather complex and required a certain amount of research and preparation. It observes at the same time that applicants furnished translation fee notes only in respect of GBP 207, as opposed to the GBP 450 claimed.

143. Having regard to the details of the claims submitted by the applicants, the Court awards them EUR 1,215 together with any value-added tax that may be chargeable to them, the net award to be paid into the representatives' bank account in the United Kingdom, as identified by the applicants.

C. Default interest

144. 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 application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Khamzat Tushayev;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Khamzat Tushayev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Khamzat Tushayev;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2

of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:

- (i) EUR 35,000 (thirty-five thousand euros) to the first applicant and EUR 25,000 (twenty-five thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 1,215 (one thousand two hundred and fifteen euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the United Kingdom;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President