



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

FIRST SECTION

CASE OF MAAYEVY v. RUSSIA

(Application no. 7964/07)

JUDGMENT

STRASBOURG

24 May 2011

FINAL

28/11/2011

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

In the case of Maayevy 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 7964/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Ms Malika Maayeva and Mr Suleyman Maayev (“the applicants”), on 15 February 2007.

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 15 May 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 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 mother and the second applicant is the father of Mr Isa Maayev, born in 1975. The applicants were born in 1957 and 1942 respectively. They live in the town of Urus-Martan, in the Chechen Republic.

A. Disappearance of Isa Maayev

1. The applicants' account

6. At the material time the applicants and Isa Maayev resided at 64 Titova Street in Urus-Martan. Their property consisted of two houses.

7. On 10 March 2003 the applicants and Isa Maayev were at home in one of the houses.

8. At about 2 a.m. on 10 March 2003 about ten men in camouflage uniforms burst into the applicants' bedroom. All of the intruders wore masks, were armed with sub-machine guns and spoke unaccented Russian. The intruders blinded the applicants with their flashlights. When the first applicant asked them why they were there, they ordered her in Russian to lie on the floor and pushed her to the ground. One of the intruders stepped on her back, pressed his gun against her neck and told her to remain quiet. At the same time several other armed men pushed the second applicant out of bed, tied his hands and asked him where he kept his weapons. He replied that there were no weapons in the house and they then ordered him to be silent. One of the armed men pressed his gun against the second applicant's head. While the applicants stayed on the ground, several intruders went into another room where Isa Maayev was sleeping. After a while the armed men in the applicants' bedroom ordered the applicants not to move and left the room.

9. The first applicant immediately ran to the window and saw four other men in the courtyard. One of them punctured the tyres of the applicants' car. Another man broke the lamp above the entrance to the house. All of the men then left the courtyard. The first applicant followed them outside and saw that they had turned right into Mayakovskogo Street. She then heard the noise of a vehicle and a sound as if someone was being thrown into it. When she returned home she realised that the armed men had taken Isa Maayev away and she started crying and shouting for help.

10. According to a written statement by M.K., enclosed by the applicants, on the night of 10 March 2003 she felt unwell and went outside.

She heard shouting coming from the applicants' house. Immediately thereafter she saw a group of men moving quickly from the applicants' house in the direction of Mayakovskogo Street. M.K. immediately rushed to the applicants' house.

11. According to a written statement by A.M., at about 2 a.m. on 10 March 2003 she was returning home from her late shift at a bakery where she worked at the time. On her way home she saw several UAZ vehicles parked at the corner of Mayakovskogo and Bolnichnaya streets, and a number of camouflaged men whom she identified as servicemen. The servicemen were armed and some of them were masked. They were standing one metre apart from each other and kept themselves in formation. She quickly passed by them without being stopped (despite the curfew) and initially went in the direction of her home, but then heard the first applicant's screaming and turned back to go to the applicants' house. She found the first applicant and M.K. there. A.M. untied the second applicant and then accompanied the applicants to the place where she had seen the UAZ vehicles, but by the time they arrived there the vehicles and the servicemen had already left.

12. According to the statement by M.K., all of the people present in the applicants' house heard the noise of departing vehicles and, after untying the second applicant, they tried to follow the vehicles by their noise but did so in vain. Their attempt brought them to the centre of Urus-Martan, where they reported the matter to the local police.

13. The applicants have had no news of Isa Maayev since 10 March 2003.

14. The above account of the events is based on the information contained in the application form; written statements by the applicants dated 22 December 2006; and written statements by M.K. and A.M. dated 21 December 2006.

2. The Government's account

15. The Government submitted that the domestic investigation had obtained no evidence that Isa Maayev had been abducted by State agents.

B. The search for Isa Maayev and the investigation

1. The applicants' account

(a) The applicants' search for Isa Maayev and the related events

16. Immediately after the intruders left with Isa Maayev, the applicants, accompanied by A.M. and M.K., went to the local police station and alerted

the police officers to the abduction. An on-duty police officer took note of their complaint and told them to return home.

17. On 10 March 2003 two police officers came to the applicants' house and questioned them about the circumstances of the abduction of Isa Maayev. The applicants were allegedly told that the police would not be able to help them find their son.

18. On the same date the applicants filed a written complaint about the abduction of Isa Maayev with the prosecutor's office for the Urus-Martanovskiy District ("the district prosecutor's office").

19. On 13 March 2003 the second applicant complained to the Special Envoy of the President of the Russian Federation in the Chechen Republic about the abduction of his son. He submitted, in particular, that Isa Maayev had been abducted by a group of armed camouflaged men who had arrived in several vehicles, including a UAZ vehicle and an armoured personnel carrier ("APC").

20. On 17 March 2003 the applicants allegedly found a note bearing the handwriting of Isa Maayev at the entry to their house. The note stated that the applicants were to pay 1,000 United States dollars to an unidentified person, upon which Isa Maayev would be released. The applicants were instructed to pay half of the sum before the referendum on the Constitution for Chechnya which was to take place on 23 March 2003. The remaining amount was to be paid after the referendum. The applicants obtained the money and made preparations to pay it but no one showed up to collect it.

21. On 18 March 2003 the applicants' relative, Mr I., told them that on 10 March 2003 Mr A., who was a police officer and a friend of Mr I., had been on duty together with other police officers at the local school building. The police had been guarding the building because it was to be used as a polling station in the forthcoming referendum. Mr I. said that Mr A. had told him that on the night of 10 March 2003 he had seen a big group of Russian servicemen in camouflage uniforms. They had been leading a man away and urging him to hurry. Mr A. had allegedly also heard the servicemen throw the man into a vehicle. According to Mr A., on 16 March 2003 during the night, when he was again on guard duty at the school building, the police officers had spotted an UAZ car parked between the school and the applicants' house. There had been three people in the car. The police officers had contacted the local police and had been advised that those people were members of the Federal Security Service ("the FSB"), that they were carrying out a special operation in Urus-Martan and that the police officers were not to interfere.

22. Subsequently, the applicants contacted two military servicemen from a military unit located near Urus-Martan. The applicants did not give their names. Those servicemen allegedly claimed that a "Sergey" from the FSB department in Urus-Martan had "[taken] over" the case concerning the applicants' son.

(b) The investigation into the abduction of Isa Maayev

23. On 20 March 2003 the district prosecutor's office instituted an investigation into the abduction of Isa Maayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case was assigned the number 34032.

24. On 9 April 2003 the first applicant was granted victim status in the proceedings in case no 34032.

25. On 11 June 2003 the head of the Urus-Martanovskiy District Department of the Interior ("the ROVD") informed the first applicant that his service was carrying out various operational and search measures aimed at establishing the whereabouts of Isa Maayev and identifying those responsible for his abduction.

26. By a letter of 21 July 2003 the Department for the Supervision of the Investigation of Crimes in the Chechen Republic ("the supervision department") notified the second applicant that on 20 May 2003 the investigation of case no 34032 had been suspended owing to a failure to identify the perpetrators.

27. On 4 August 2003 the second applicant complained of the abduction of his son to a number of State authorities. In his complaint he submitted, in particular, that Isa Maayev had been abducted by armed men in camouflage uniforms and masks who had arrived in several UAZ and VAZ-2109 vehicles.

28. On 27 August 2003 the Chechen Department of the FSB notified the second applicant that the department's officials had not arrested Isa Maayev and that the department was carrying out various search measures aimed at establishing his whereabouts.

29. On 6 September 2003 the supervision department forwarded the second applicant's complaint of the abduction of Isa Maayev to the district prosecutor's office and ordered it to verify his submissions and to inform him accordingly.

30. On 8 September 2003 the district prosecutor's office responded to the supervision department that it had already verified the information contained in the second applicant's complaint and that those submissions did not contain new evidence which would prompt the resumption of the investigation. The letter also stated that the district prosecutor's office had taken all investigative steps which could be carried out in the absence of information as to the persons implicated in the abduction. A copy of the letter was forwarded to the second applicant.

31. On 14 October 2003 a prosecutor from military unit no. 20102 informed the first applicant that the inquiry conducted by the prosecutor's office of that military unit had not established that the federal military were implicated in the abduction of Isa Maayev.

32. On 20 October 2003 the military commander of the Urus-Martanovskiy District notified the second applicant that the military

commander's office had not had any information on either the whereabouts of Isa Maayev or the eventual implication of officers from the Ministry of the Interior in his disappearance.

33. By a letter of 8 December 2003 the supervision department informed the second applicant that on 24 November 2003 the district prosecutor's office had set aside the decision to suspend the investigation of case no. 34032 and that operational and search measures aimed at identifying the persons responsible for the abduction of Isa Maayev and establishing his whereabouts were under way.

34. On 10 March 2004 the supervision department forwarded the first applicant's complaint about the abduction of Isa Maayev to the district prosecutor's office and requested that it activate the investigation.

35. By a letter dated 23 August 2004 the Prosecutor's Office of the Chechen Republic notified the first applicant that they had examined her complaint of the abduction of Isa Maayev, which had been forwarded to them by the State Duma. They informed her that the investigation of case no. 34032 had been suspended on an unspecified date and that various operational measures aimed at establishing the whereabouts of her son and identifying the perpetrators were under way.

36. By a letter of 30 November 2004 the district prosecutor's office informed the first applicant that it had examined her complaint, which had been forwarded to it by the Prosecutor's Office of the Chechen Republic. The letter further stated that the investigation of case no. 34032 had been suspended on 9 March 2004.

37. On 17 June 2005 the deputy prosecutor of the Urus-Martanovskiy District notified the first applicant that operational and search measures in connection with the proceedings concerning case no. 34032 were under way. Letters along the same lines from the supervision department and the Urus-Martanovskiy ROVD were sent to the first applicant on 27 June and 13 July 2005.

38. On 20 September 2005 the first applicant complained to the prosecutor of the Urus-Martanovskiy District that the investigation into the abduction of Isa Maayev had not produced any results. She submitted that Isa Maayev had been abducted by armed men in camouflage uniforms who had arrived in UAZ and VAZ-2109 vehicles. She requested that the investigation be resumed and that she be granted access to the materials of case file no. 34032 and be given information on the progress of the investigation. It appears that her complaint was left without reply.

2. Information submitted by the Government

(a) The Government's refusal to furnish a copy of the entire case file no. 34032

39. Despite specific requests by the Court, the Government did not disclose most of the contents of criminal case no. 34032, referring to Article 161 of the Russian Code of Criminal Procedure. They only provided copies of: several decisions to open, suspend and resume the investigation; records of several witness interviews; a crime scene inspection report; and requests for information addressed to various State authorities and some of the replies to them. Some of the documents submitted by the Government were illegible and some were legible only in part. It appears that the latest document provided by the Government was dated 24 May 2007. In so far as the documents submitted by the Government were legible, the information contained therein may be summarised as follows.

(i) Opening of the investigation

40. On 10 March 2003 the applicants complained of the abduction of Isa Maayev to the ROVD. According to the stamp on their complaint, it was received by that authority on the same date.

41. On 20 March 2003 the town prosecutor's office instituted an investigation into the abduction of Isa Maayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping).

(ii) Interviewing of witnesses

42. On 1 April 2003 the first applicant was interviewed. She stated that at about 2 a.m. on 10 March 2003 a group of about ten to twelve armed men in camouflage uniforms and masks had burst into her house at 64 Titova Street, where she had been staying with her husband and Isa Maayev. They had ordered the first applicant and her husband to lie down, speaking unaccented Russian. The first applicant had inferred that the intruders were servicemen. They had tied her husband up and had taken away her son. Before leaving, they had punctured the tyres of the applicants' car and had broken the lamp over the entry to the house. The intruders had left by foot. Shortly thereafter the second applicant had gone to the ROVD and alerted the police to the abduction.

43. On 1 April 2003 the investigators interviewed the second applicant as a witness. He stated that at about 2.30 a.m. on 10 March 2003 a group of armed people in camouflage uniforms and masks had burst into his house. The intruders had blinded the applicant with their flashlights, pushed him face down on the floor and tied his hands. They had turned everything in the house upside down and had taken away Isa Maayev. Once they had left, the second applicant had gone to the ROVD and alerted them to the abduction.

An on-duty officer from the ROVD had called the military commander's office in the second applicant's presence and had informed them of the kidnapping. The second applicant thought that the intruders must have left by foot, as he had not seen any vehicles.

44. On 3 October 2003 the second applicant was again interviewed as a witness. He stated that at about 2.30 a.m. on 10 March 2003 a group of ten to fifteen armed people in camouflage uniforms and masks had burst into his house, blinded him with their flashlights, tied up his hands and pushed him and his wife to the floor. Meanwhile some of the intruders had entered an adjacent room where Isa Maayev was sleeping. The intruders had spoken unaccented Russian. Several minutes later they had taken Isa Maayev outside and left. The applicants had not been able to see anything because they had been lying face down on the floor. When the second applicant had managed to stand up, he had seen through the window that the armed men were leaving the second house. Shortly thereafter the second applicant had gone to the ROVD to complain of the abduction of his son.

45. On 9 April 2003 the first applicant was granted victim status in the proceedings concerning case no. 34032 and was interviewed. She submitted that on 10 March 2003 her family, including her husband, Isa Maayev and herself, had stayed at home at 64 Titova Street. At about 2 a.m. she had been woken up by some noise and had seen a group of armed men in camouflage uniforms and masks. They had pushed her family members to the floor and had taken away her son, without explaining the reasons for his detention. The first applicant had heard the noise of departing vehicles.

46. On 27 November 2003 the investigators re-interviewed the first applicant. She confirmed her previous accounts of the events of 10 March 2003 and submitted, in addition, that the intruders had broken a lamp above the entrance to the house. She also stated that the intruders had come and gone by foot and that she had discovered the absence of Isa Maayev after they had left.

47. On 27 November 2003 the investigators interviewed S.M. as a witness. He stated that he was the missing person's brother and that on the night of 10 March 2003 he had been woken up by the crying and shouting of the first applicant. When S.M. had entered his parents' room, the first applicant had told him that a group of about ten to fifteen armed men in camouflage uniforms and masks had taken away Isa Maayev. S.M. submitted that he had heard the intruders break the lamp which was outside. When he looked outside he had not been able to see anything.

48. On 28 November 2003 the investigators interviewed A.S. as a witness. She stated that she was Isa Maayev's wife and that on the night of his abduction Isa Maayev had been sleeping in the house with his parents, while she had stayed with the children in another house. At about 2 a.m. on 10 March 2003 a group of ten to fifteen armed men in camouflage uniforms and masks had burst into A.S.'s room. They had spoken unaccented

Russian. A.S. had started shouting but had been told to remain silent. The intruders had searched her room and had turned everything there upside down. When they had been leaving, A.S. had seen one of them break the lamp above the entrance to the house. After their departure the first applicant had told A.S. that the intruders had abducted Isa Maayev.

49. On 11 February 2004 the first applicant was interviewed again. She stated that on 10 March 2003 a group of twenty to thirty armed men in camouflage uniforms and masks had burst into her room and had abducted her son. She also stated that the abductors had come and gone by foot because she had not heard the noise of either military or other vehicles.

50. On 14 February 2004 A.M. was interviewed as a witness. She stated that she was the applicants' neighbour, that she herself knew nothing of the circumstances of the abduction of Isa Maayev and that she had learnt about it from his relatives. On the night of 10 March 2003 A.M. had been sleeping in her house. At a certain point her neighbour M.K. had woken her up, saying that there was noise from vehicles outside. Together they had gone to the Maayevs' home. Someone there had told A.M. that armed men in camouflage uniforms, who had arrived in two UAZ vehicles, had abducted Isa Maayev. When A.M. had gone to the applicants' home, she had not herself seen either the abductors or their vehicles. According to A.M., the people who had seen the vehicles had been unable to identify them because they had not had licence plates.

51. On 17 February 2004 the investigators interviewed M.K. as a witness. She stated that she had been living in the vicinity of the applicants' house and that at about 3 a.m. on 10 March 2003 she had been woken up by shouting coming from there. At the same time, she had heard the noise of vehicles travelling along Mayakovskogo Street and had then seen several vehicles that had looked like trucks, but she was unable to identify their make. When she had arrived at the applicants' home, the first applicant had told her that a large group of armed men in camouflage uniforms and masks had abducted Isa Maayev and that the abductors had spoken unaccented Russian. The applicants had immediately gone to the ROVD to complain of his abduction.

52. On 2 March 2004 the investigators interviewed the second applicant for the third time. He confirmed his previous accounts of the events of 10 March 2003 and stated, in addition, that the abductors had come to his house by foot and that he did not know if they had come in military or other vehicles because he had not seen them.

53. On 26 April 2007 the investigators interviewed L. Ya. as a witness. He stated that he was the applicants' neighbour and that he had learnt of the abduction of Isa Maayev from unspecified individuals. L. Ya. had not heard any noise of military or other vehicles on the night of the abduction.

54. On 11 May 2007 the first applicant was interviewed for the fourth time. She confirmed her previous accounts of the events given to the

investigation. She stated, in addition, that she had heard the noise of vehicles outside shortly after the abduction of Isa Maayev and suggested that the noise had come from Mayakovskogo Street, which ran parallel to Titova Street. However, she could not provide more detailed information concerning the vehicles or their make.

(iii) Further investigative steps

55. Between 20 March and 10 October 2003 the district prosecutor's office requested that a number of law-enforcement authorities, including the FSB, the Ministry of the Interior and the military commander's office, inform it whether they had information on Isa Maayev's whereabouts, whether they had conducted special operations in the area and whether they had arrested the applicants' son. It appears that no relevant information was obtained in reply.

56. On 24 November 2003 the investigators inspected the crime scene. According to the crime scene inspection report of the same date, no objects of interest to the investigation were discovered during the inspection.

57. Between 24 and 26 March 2004 and 2 and 3 May 2007 the investigators sent out further requests to a number of State authorities, seeking information on Isa Maayev's whereabouts. There is no indication that any relevant information was obtained in reply.

58. On 19 May 2007 the chief of police for the Urus-Martanovskiy district replied to the Urus-Martanovskiy district prosecutor, stating that it had been impossible to establish what power structures and military departments of the Urus-Martanovskiy district had been equipped with Ural and UAZ vehicles in 2003, to identify heads of departments equipped with such vehicles, or to verify whether the security forces in the Urus-Martanovskiy district had kept logbooks concerning the use of such vehicles, in order to identify the vehicles which had left the premises of the State authorities in question at the time of the abduction of Isa Maayev. Information concerning the heads of the military commander's office, the FSB department and the police was restricted.

(iv) Information relating to the decisions to suspend the investigation

59. On 20 May 2003 the investigation of case no. 34032 was suspended owing its failure to identify the perpetrators. A letter informing the first applicant of that decision was sent to her on 23 May 2003.

60. On 1 October 2003 the Urus-Martanovskiy District prosecutor quashed the decision of 20 May 2003 as premature and unfounded.

61. On 1 November 2003 the investigation was suspended because of its failure to identify those responsible for the abduction.

62. On 24 November 2003 the Urus-Martanovskiy District prosecutor set aside the decision of 1 November 2003 to suspend the investigation,

finding that it had been issued despite a failure to take all relevant investigative steps and in breach of the applicable legislation.

63. On 24 December 2003 the investigation of case no. 34032 was suspended because of its failure to identify those responsible for the abduction.

64. On 5 February 2004 the deputy prosecutor of the Chechen Republic quashed the decision of 24 December 2003 and ordered the district prosecutor's office to resume the investigation.

65. On 9 March 2004 the investigation was suspended due to its failure to establish the identities of those involved in the abduction of Isa Maayev.

66. On 21 November 2005 the investigation of case no. 34032 was resumed, owing to the need to examine the first applicant's complaint in which she sought access to the case file and requested that the investigation be resumed.

67. On the same date the investigators dismissed the applicant's complaint as unfounded.

68. On 22 November 2005 the investigation was suspended.

69. On 24 April 2007 the investigation of case no. 34032 was resumed, owing to a need to rectify unspecified shortcomings.

70. On 24 May 2007 the investigation of case no. 34032 was suspended.

71. According to the Government, the investigation into the abduction of Isa Maayev is pending.

C. Court proceedings against the law-enforcement officials

72. On 11 January 2006 the first applicant complained to the Urus-Martan Town Court ("the Town Court") of the inaction of the investigating authorities, their failure to provide her access to case file no. 34032 and their refusal to allow her to make copies of the case file materials.

73. On 25 April 2006 the Town Court granted the first applicant's claim in part. It declared unlawful the investigating authorities' refusal to provide the first applicant access to the case file and ordered them to remedy that shortcoming in so far as documents concerning investigative measures carried out with her participation were concerned. At the same time it found that the district prosecutor's office had carried out all relevant operational and search measures and dismissed the first applicant's complaint of the ineffectiveness of the investigation, without providing any further details or specifying what measures had been taken. It also rejected the first applicant's request for permission to copy documents from the case file.

74. The first applicant appealed. She referred to various specific omissions on the part of the district prosecutor's office and alleged that the investigation into the abduction of Isa Maayev had been ineffective. She also sought permission to copy documents from the investigation case file.

75. On 16 August 2006 the Supreme Court of the Chechen Republic (“the Supreme Court”) dismissed the first applicant’s appeal.

II. RELEVANT DOMESTIC LAW

76. 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

77. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into Isa Maayev’s disappearance had not yet been completed. They further claimed that the applicants had not challenged the decisions of the Town Court and the Supreme Court by way of supervisory review. Moreover, it had been open to the applicants to pursue civil complaints for compensation under Articles 151 and 1069 of the Civil Code or to apply to the civil courts to have Isa Maayev declared a missing person or dead but that they had failed to do so.

78. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect had been futile. They argued that an appeal, by way of supervisory review, against the decision of the Town Court, as upheld by the Supreme Court, could not be considered an effective remedy. With reference to the Court’s practice, they claimed that they were not obliged to apply to the civil courts in order to exhaust domestic remedies.

B. The Court’s assessment

79. 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).

80. As regards a civil action to obtain redress for damage sustained through the allegedly 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 Court's view, the same holds true for their submission concerning the applicants' ability to apply to the civil courts to have their relative declared a missing person or dead. In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

81. In so far as the Government argued that the applicants should have appealed against the decision of the Town Court, as upheld by the Supreme Court, by way of supervisory review, the Court notes, with reference to its extensive case-law, that such extraordinary remedies cannot, as a general rule, be taken into account for the purpose of applying Article 35 of the Convention (see, among many other authorities, *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II (extracts)). It finds nothing in the present case to depart from those findings.

82. Therefore, the Court dismisses the Government's objection in this part.

83. As regards the parties' submissions concerning the criminal investigation, the Court observes that the applicants complained to the law-enforcement authorities immediately after the kidnapping of Isa Maayev and that an investigation has been pending since 20 March 2003. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

85. The applicants complained that Isa Maayev had been arrested by Russian servicemen, that he had then disappeared, and that the domestic authorities had failed to carry out an effective investigation of the matter. They relied on Article 2 of the Convention, which 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

86. The applicants claimed that there existed evidence “beyond reasonable doubt” that Isa Maayev had been abducted on 10 March 2003 by servicemen and should be presumed dead. In particular, they claimed that his abductors had spoken Russian and had worn camouflage uniforms and masks. They had used UAZ vehicles, which they had driven in an area under curfew and where the authorities had maintained manned checkpoints. The applicants’ son had been abducted in the immediate vicinity of school no. 6 where, at the material time, a number of police officers had been stationed. Moreover, those police officers claimed to have seen unidentified servicemen leading away a detainee. The applicants also averred that the Government had failed to submit an entire copy of the investigation file for case no. 34032.

87. The applicants further argued that the investigation into the abduction of their son had not satisfied the Convention requirements and had been neither prompt nor effective. It had been instituted after a considerable delay and had been pending without any tangible results for over 6 years. The investigators had failed to take steps to identify the owners of the UAZ vehicles or to interview officers from the law-enforcement authorities who might have had information in both that respect and also as regards any special operations conducted in Urus-Martan on the night of their son’s abduction. Residents of Urus-Martan who might have provided further details, including information on the route taken by the vehicles and the number of the abductors, had not been identified and interviewed. The applicants themselves had not been provided with sufficient information on the progress of the investigation.

88. The Government argued that the applicants had failed to submit evidence “beyond reasonable doubt” that their son had been abducted by State agents. The fact that the abductors had worn military uniforms and masks and had spoken Russian did not prove that they had belonged to the Russian military forces. None of the witnesses interviewed by the investigation had been able to describe the intruders. The body of Isa Maayev had not been discovered. The Government stressed that the UAZ vehicles had been available for free sale in Russia and that the applicants had, in any event, been unable to indicate either the licence plates or any other characteristics of the UAZ vehicles which could have permitted them

to establish that they had been used by members of federal forces on the night of the abduction.

89. As regards the investigation, in the Government's submission, the investigating authorities had taken all relevant investigative steps to solve the crime. They had interviewed numerous witnesses, had inspected the crime scene and had sent out a number of requests for information to various State authorities.

B. The Court's assessment

1. Admissibility

90. 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. 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 Isa Maayev

(i) General principles

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

(ii) Establishment of the facts

92. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when

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

93. The applicants alleged that at about 2 a.m. on 10 March 2003 their son, Isa Maayev, had been abducted by servicemen and had then disappeared. They invited the Court to draw inferences as to the well-founded nature of their allegations from the Government's failure to provide the documents requested from them. They submitted that several people had witnessed Isa Maayev's abduction and enclosed their written statements to support that submission.

94. The Government conceded that Isa Maayev had been abducted on 10 March 2003 by unidentified armed camouflaged men. It transpires that they also did not dispute that the abductors had arrived in several vehicles, including UAZ vehicles. However, they denied that the abductors had been servicemen, referring to the absence of conclusions from the ongoing investigation.

95. The Court notes that despite its requests for a copy of the investigation file into the abduction of Isa Maayev, the Government refused to produce most of the documents from the case file, referring to Article 161 of the Code of Criminal Procedure. The Court reiterates that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by it (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

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

97. It observes that in support of their account of the events the applicants relied, amongst other things, on a written statement by A.M. enclosed with their application. In that statement, she submitted that she had seen, at the time of the abduction of Isa Maayev, several UAZ vehicles parked near the applicants' house and a number of armed camouflaged men keeping in formation (see paragraph 11 above). It transpires at the same time that, while being interviewed by the investigators in 2004, A.M. stated that she had been sleeping at the time of the abduction and had learnt about its circumstances after having been woken up by a neighbour and going to the applicants' house on that night (see paragraph 50 above). Against this background, the Court considers that her statements cannot be considered reliable and will therefore not have regard to them in establishing the facts of the present case.

98. It further notes that the applicants furnished no evidence to support their submission that the abduction of their son had been witnessed by police officers allegedly stationed in a local school in the vicinity of their

house (see paragraph 21 above). Hence, their allegations in that respect are also without relevance for the Court's assessment.

99. Having regard to the applicants' own submissions, both before the domestic authorities and this Court, it finds that, although they were ambiguous as to the presence of vehicles at the crime scene, they remained consistent and coherent as to all other major elements in the description of the circumstances of the abduction of Isa Maayev (see paragraphs 43, 45, 46, 49, 52, 54). Moreover, it transpires that they were confirmed by the witness statements collected by the domestic investigation which the Government agreed to disclose to the Court (see paragraphs 47 and 48 above).

100. It is further observed that whilst the Government claimed that the applicants had been unable to indicate the number plates of the UAZ vehicles or to refer to any other elements which would have allowed them to establish whether they formed part of the equipment of the military forces in the area, they did not dispute the fact of the presence of those vehicles at the time and place of Isa Maayev's abduction (see paragraph 88 above). It is also significant for the Court that the investigating authorities appear to have found sufficient grounds to warrant verification of the information concerning the presence at the crime scene of specific vehicles, namely UAZ and Ural vehicles (see paragraph 58 above). In this respect, it should also be noted that in her statements before the domestic investigation and this Court witness M.K. also referred to the presence of a number of vehicles at the time of Isa Maayev's abduction (see paragraphs 10 and 51 above).

101. The Court also points out that the Government did not dispute the applicants' submission that at the time of their son's abduction the town of Urus-Martan had been under curfew and that the authorities had maintained manned checkpoints on the roads in and out of it.

102. In the Court's view, the fact that a large group of armed men in camouflage uniforms, possibly driving in a convoy of several vehicles, was able to pass freely through checkpoints during curfew hours and proceeded to arrest the applicants' son in a manner similar to that of State agents strongly supports the applicants' allegation that they were State servicemen and that they were conducting a special operation in Urus-Martan on the night of Isa Maayev's abduction.

103. The Court notes that in their applications to the authorities the applicants consistently maintained that their son had been detained by unknown servicemen and asked the investigating authorities to look into that possibility. It further notes that after more than seven years the investigation has produced no tangible results.

104. The Court observes that where an applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively

why the documents in question cannot serve to corroborate the allegations made by the applicant, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts)).

105. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their son was abducted by State servicemen. The Government's statement that the investigation had not found any evidence to support the involvement of servicemen in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents requested, which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Isa Maayev was arrested on 10 March 2003 by State servicemen during an unacknowledged security operation.

106. There has been no reliable news of Isa Maayev since the date of the kidnapping. His name has not been found in any official detention facility records. Lastly, the Government have not submitted any explanation as to what happened to him after his arrest.

107. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among many others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-VIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Isa Maayev or of any news of him for more than seven years supports this assumption.

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

(iii) *The State's compliance with Article 2*

109. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities,

McCann and Others v. the United Kingdom, 27 September 1995, §§ 146-47 Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

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

111. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Isa Maayev.

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

112. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

113. The Court notes at the outset that the Government refused to produce most of the documents from case file no. 34032 and furnished only copies of several documents summarised above (see paragraphs 39-71 above). It therefore has to assess the effectiveness of the investigation on the basis of the very sparse information submitted by the Government and the few documents available to the applicants that they provided to the Court.

114. It is observed that the applicants complained of the disappearance of their relative shortly after it occurred, that is on 10 March 2003 (see paragraph 40 above). However, the investigation was instituted only on 20 March 2003, which was ten days later. Such a postponement *per se* is liable to affect the investigation of a kidnapping in life-threatening

circumstances, where crucial action has to be taken in the first days after the event.

115. A number of investigative steps were taken with considerable delay. In particular, the crime scene was inspected only on 24 November 2003 (see paragraph 56 above) – that is, eight months after the applicants' son's disappearance and the opening of the investigation. In the Court's opinion, this delay clearly undermined any useful effects that investigative measure might have had in establishing the circumstances of the abduction of the applicants' relative. It is also unclear why the investigators had to wait for eight months to interview the applicants' family members (see paragraphs 47 and 48 above) and a further ten months to interview the applicants' neighbours A.M. and M.K. A further four years lapsed before the investigators interviewed another of the applicants' neighbours, L. Ya. These delays, for which there has been no explanation in the instant case, constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

116. Furthermore, it appears that a number of investigative steps have not been taken at all. In particular, the Court is struck by the fact that, during more than seven years that the investigation has been pending, the investigators appear to have made no attempts to identify any eventual witnesses to the abduction other than the applicants and the three persons interviewed by them. It does not transpire that the investigators interviewed the applicants' other neighbours with a view to obtaining information on the abduction which might have been relevant for the investigation, such as a description of the abductors, their clothing or the direction in which they travelled upon leaving the applicants' home.

117. It also does not emerge from the materials available to the Court that the investigators made any genuine attempts to verify information concerning the use of a number of vehicles by the abductors and their eventual itinerary. In fact, it seems that the only attempt to verify that information was made in May 2007, four years after the abduction, and there is nothing to indicate that, having faced the refusal of the chief of police to provide the relevant information, the investigators took any further steps to pursue the matter (see paragraph 58 above).

118. On a more general level, having regard to the documents at its disposal, the Court cannot avoid the impression that the efforts of the investigating authorities have been, to a great extent, concentrated on interviewing and re-interviewing the applicants, and albeit it is prepared to accept that there may be circumstances calling for repeated interviewing of victims of a crime, particularly if they were eyewitnesses to it, it seems that in the present case this was at the expense of other investigative steps which ought to have been taken.

119. It is further pointed out that there is no indication that, although the first applicant was eventually granted victim status, the authorities ever considered granting that status to the second applicant. Furthermore, in view of the applicants' repeated requests for access to the case file and to be provided with information on the progress of the investigation (see paragraphs 38 and 72 above), the Court has serious doubts that they were informed of important developments in the investigation. Accordingly, 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).

120. Lastly, it follows from the information submitted by the Government that the investigation was repeatedly suspended and then resumed (see paragraphs 59-70 above). The Court emphasises in this respect that while the adjourning or reopening of proceedings is not in itself a sign that the proceedings are ineffective, it appears in the present case that the decisions to adjourn were made without the necessary investigative steps being taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted.

121. Having regard to the part of the Government's objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for many years and has produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection in this part.

122. In so far as the Government argued that it had been open to the applicants to challenge the investigating authorities' acts or omissions before the courts, the Court observes that the applicants did, in fact, make use of that remedy. However, despite the defects in the investigation enumerated above, the domestic courts dismissed their complaints. In any event, as has already been pointed out, the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures. The investigation was repeatedly suspended and resumed, but it appears that no significant investigative measures were taken to identify those responsible for the kidnapping. In such circumstances, the Court considers that the applicants could not be required to challenge in court every single decision of the district prosecutor's office. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses

their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

123. 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 Isa Maayev, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

124. The applicants relied on Article 3 of the Convention, submitting that, as a result of their son's disappearance and the State's failure to investigate it properly, they had endured psychological distress in breach of Article 3 of the Convention, which reads:

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

A. The parties' submissions

125. The Government argued that there had been no breach of the applicants' rights under Article 3 because all their complaints had been examined in accordance with applicable legislation.

126. The applicants maintained the complaint.

B. The Court's assessment

1. Admissibility

127. 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

128. 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*, cited above, § 358, and *Imakayeva*, cited above, § 164).

129. In the present case, the Court notes that the applicants are the parents of the disappeared person and that both of them witnessed his

abduction. For more than seven years they have not had any news of their son. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing son. Despite their attempts, the applicants have never received any plausible explanation or information about what became of their son following his detention. The responses they received mostly denied State responsibility for their son'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.

130. 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

131. The applicants further stated that Isa Maayev 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

132. The Government asserted that no evidence had been obtained by the investigators to confirm that Isa Maayev had been deprived of his liberty by State agents. He had not been listed among the names of people kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

133. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

134. 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

135. 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).

136. The Court has found that Isa Maayev was abducted by State servicemen on 10 March 2003 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and no official trace of his subsequent whereabouts or fate exists. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, because 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).

137. 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 son 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.

138. In view of the foregoing, the Court finds that Isa Maayev 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

139. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations of Articles 2 and 5, contrary to Article 13 of the Convention, which provides:

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

A. The parties’ submissions

140. 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.

141. The applicants reiterated the complaint.

B. The Court’s assessment

1. *Admissibility*

142. 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*

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

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

145. As regards the applicants’ reference to Article 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in

respect of Article 13, read in conjunction with Article 5 of the Convention (see *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

146. 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

147. 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 son, the indifference shown by the authorities towards him and the authorities’ failure to provide any information about the fate of their close relative, leaving the determination of its amount to the Court.

148. 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.

149. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants’ son. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention on account of their mental suffering endured as a result of the disappearance of their relative and the authorities’ attitude to that fact. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to jointly award the applicants 60,000 euros (EUR) under this heading, plus any tax that may chargeable to them.

B. Costs and expenses

150. 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 829 pounds sterling (GBP), to be paid into the representatives’ account in the United Kingdom. The amount claimed was broken down as follows:

- (a) GBP 400 for 3 hours of legal drafting of documents submitted to the Court at a rate of GBP 100 and 150 per hour;
- (b) GBP 254.35 for translation costs, and

(c) GBP 175 for administrative and postal costs.

151. The Government pointed out that the applicants should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had actually been incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They submitted that the applicants had failed to furnish any documents in support of their administrative and postal expenses and that the documents produced by them had no seal.

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

153. Having regard to the documents submitted by applicants, it notes that they failed, indeed, to substantiate their claim in respect of postal and administrative expenses. At the same time, it has no reason to doubt the validity of the fee notes in respect of their representatives' and translators' services. It is further satisfied that the rates referred to are reasonable and reflect the expenses actually and necessarily incurred.

154. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award the applicants' representatives EUR 727 in respect of costs and expenses, plus any tax that may be chargeable to the applicants, the award to be paid into the representatives' bank account in the United Kingdom, as identified by the applicants.

C. Default interest

155. The Court considers it appropriate that 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 Isa Maayev;

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 Isa Maayev 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 Isa Maayev;
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 violation of Article 5 of the Convention;
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 60,000 (sixty thousand euros) to the applicants jointly, plus any tax that may be chargeable to them thereon, in respect of non-pecuniary damage;
 - (ii) EUR 727 (seven hundred and twenty-seven 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 24 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President