



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

FIRST SECTION

CASE OF MUTAYEVA v. RUSSIA

(Application no. 43418/06)

JUDGMENT

STRASBOURG

22 April 2010

FINAL

04/10/2010

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

In the case of Mutayeva v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 43418/06) 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 Ms Savdat Mutayeva, a Russian national, (“the applicant”), on 18 October 2006.

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

3. On 19 June 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. The President of the Chamber acceded to the Government's request not to make publicly accessible the documents from the criminal investigation file deposited with the Registry in connection with the application (Rule 33 of the Rules of Court).

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 applicant was born in 1948. She lives in the village of Assinovskaya, in the Chechen Republic. The applicant is the mother of Luiza Mutayeva, born in 1984.

A. Disappearance of Luiza Mutayeva

1. The applicant's account

6. The applicant, with her husband and two daughters, Luiza and Madina, lived at 60 Bershchanskaya Street in the village of Assinovskaya, in the Achkhoy-Martanovskiy district (in the submitted documents the district is also referred to as Sunzhenskiy district), in the Chechen Republic. Their house was located near a local hospital. At the material time the village was under the firm control of the federal forces, which maintained manned checkpoints at the entry and exit points to and from the village.

7. In the night of 19 January 2004 (in the submitted documents the date is also referred to as 9 January 2004) the family was sleeping in their house at the above address.

8. At about 2.30 a.m. on 19 January 2004 the applicant and her family members were woken up by someone knocking at the entrance door. The applicant approached the door and asked in Chechen: "Who is it?" The answer was given in Russian: "Passport check". When the applicant wondered why the passport check was being conducted so late at night, she was told: "You better open the door; we have an order!" The applicant opened the door and fifteen to twenty armed men in camouflage uniforms without insignia entered the house. All but five or six of the intruders were wearing masks. The applicant and her relatives noticed that the men without masks were of Slavic appearance. The intruders spoke unaccented Russian. The applicant inferred that they were Russian servicemen.

9. The servicemen asked the applicant whether there were any men in the house. The only man in the household was the applicant's husband, a disabled person with one leg. The servicemen checked the family's passports and returned them to the applicant. Then the unmasked servicemen said to their colleagues that they should leave the applicant's house as no men were to be found there. However, one of the masked servicemen told them that they should search the house. The servicemen searched the house, turning everything upside down. It appears that they did

not find anything of interest to them other than a few video cassettes which they took away.

10. Having searched the house, the servicemen ordered the applicant's daughters, Luiza and Madina, to put on warm clothing as they were being taken to the vehicles for questioning. The applicant's younger daughter, fifteen-year old Madina, started crying. One of the masked servicemen told her: "Do not be afraid; we will just question you and will let you go. I promise that nothing will happen to you." Before leaving the house, Luiza Mutayeva insisted that she should be the only one to go for questioning. The servicemen let Madina stay in the house; they took Luiza outside to the vehicles.

11. The applicant managed to run outside and saw that Luiza Mutayeva was handcuffed and was standing next to a white GAZ minivan. Beside the minivan the applicant saw a white VAZ-2107, two grey UAZ vehicles, two military all-terrain UAZ vehicles ("*маблемка*") and a grey VAZ-2109 vehicle, which were all parked around the applicant's house. The vehicles did not have number plates. According to the applicant, further vehicles belonging to the intruders were parked near her house but she was unable to recall their models or their colour. The applicant shouted at the servicemen and asked them to take her for questioning with her daughter. In response they pushed her away. Luiza Mutayeva was put into the GAZ minivan and the intruders drove away.

12. A number of people witnessed the abduction of Luiza Mutayeva. In particular, M.K., who was a patient in the hospital across the street, was woken up by shouting coming from the applicant's courtyard and rushed outside. She saw that the applicant's house was surrounded by armed men in masks and camouflage uniforms. The men did not allow her to approach and pushed her back into the hospital. While they were doing so, she saw them take Luiza Mutayeva away.

13. At about 3 a.m. on 19 January 2004 the applicant's neighbours, B.M. and S.B., were woken up by the noise of armoured vehicles and the applicant's shouting and saw armoured and other vehicles stationed at the street. B.M. and S.B. were afraid to approach the persons in camouflage uniforms and masks because they were armed. Another neighbour, Yu.D., who was woken up by a woman's shouting at about 3 a.m. on 19 January 2004, got outside and saw armoured and other vehicles parked on the street at the applicant's house; women at the entry gate to the applicant's house were shouting at several men wearing camouflage uniforms and masks. Afraid of the camouflaged men because of their weapons, Yu.D. returned home. When it was quiet he went to see the applicant and learnt from her that Luiza Mutayeva had been kidnapped.

14. The applicant has had no news of Luiza Mutayeva since 19 January 2004.

15. The description of the events above is based on the applicant's application form and written statements by M.K., B.M., S.B. and Yu.D., made on 19 October 2005.

2. Information submitted by the Government

16. The Government submitted that on 19 January 2004 Luiza Mutayeva had been abducted by unidentified persons.

B. The search for Luiza Mutayeva and the investigation

1. The applicant's account

(a) The applicant's search for Luiza Mutayeva

17. On the morning of 19 January 2004 the applicant complained about her daughter's abduction to a number of law-enforcement agencies in Achkhoy-Martan. In particular, she complained to the Achkhoy-Martan District Department of the Interior (the ROVD), to a local department of the Federal Security Service (the FSB) and the security service of the Chechen President. The authorities denied having any information about the whereabouts of the applicant's daughter. However, unspecified officers from the security service of the Chechen President suggested to the applicant that her daughter had most likely been abducted by officers of the FSB Special Forces from Khankala, Chechnya.

18. The applicant also complained about the abduction of Luiza Mutayeva to T., head of the local administration. The latter also suggested that her daughter had been probably taken to Khankala.

19. Every day between 19 and 26 January 2004 the applicant went in person to a number of State authorities in Achkhoy-Martan, trying to obtain information concerning her daughter's whereabouts. It appears that her attempts produced no results.

20. The applicant also contacted, both in person and in writing, various official bodies, such as the Chechen administration, military commanders' offices and prosecutors' offices at different levels, describing in detail the circumstances of Luiza Mutayeva's abduction and asking for help in establishing her whereabouts. The applicant retained copies of a number of those letters and submitted them to the Court. An official investigation was opened by the local prosecutor's office. The relevant information is summarised below.

(b) The official investigation into the abduction of Luiza Mutayeva

21. On 27 April 2004 the prosecutor's office of the Achkhoy-Martanovskiy district ("the district prosecutor's office") instituted an

investigation into the abduction of Luiza Mutayeva under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given number 49516. It does not appear that the applicant was informed about the decision.

22. By a decision of 28 April 2004 the district prosecutor's office granted the applicant victim status in connection with criminal case no. 49516. The decision stated, among other things, that at about 2.30 a.m. on 19 January 2004 about fifteen unidentified armed men in camouflage uniforms and masks had arrived at the applicant's home at 60 Bershchanskaya Street in a GAZ minivan, a UAZ vehicle, two military all-terrain UAZ vehicles (“*таблетка*”), a VAZ-2109 and a VAZ-2107 and had taken Luiza Mutayeva to an unknown destination. The applicant was accordingly provided with a copy of the decision.

23. On 27 August 2004 the district prosecutor's office informed the applicant that on that date the investigation in criminal case no. 49516 had been suspended for failure to identify the perpetrators; the operational and search measures aimed at solving the crime were under way.

24. On 14 May 2005 the applicant's representatives from SRJI wrote to the district prosecutor's office, complaining about the lack of information concerning the investigation. They requested to be informed about its progress; the specific actions taken to solve the crime since the opening of the criminal case and during the eight months after the decision to suspend the investigation; the reasons for the suspension of the investigation, and the reasons for Luiza Mutayeva's arrest. They further requested to be informed whether the investigating authority had interviewed the witnesses of the abduction and had requested information from various remand centres on Luiza Mutayeva's eventual detention. Lastly, they submitted that the applicant had not been provided with the decision to open the investigation and requested that she be provided with a copy.

25. On 21 June 2005 the prosecutor's office of the Chechen Republic (“the republican prosecutor's office”) replied to the applicant's representatives that the district prosecutor's office had instituted an investigation into the abduction of Luiza Mutayeva and the applicant had been granted victim status in the criminal proceedings; the operational and search measures aimed at solving the crime were under way. The letter also stated that pursuant to Article 161 of the Code of Criminal Procedure any information about the investigation was confidential and was not to be disclosed.

26. On 20 July 2005 the applicant's representatives wrote to the republican prosecutor's office and to the Prosecutor General's office. Referring to the case-law of the European Court of Human Rights, they pointed out that the authorities' letter of 21 June 2005 had failed to provide the requested information or any plausible explanations for the authorities' failure to provide the applicant with copies of basic investigative decisions.

The applicant's representatives repeated their request for information about the progress of the investigation and copies of those decisions.

27. On 17 August 2005 the Prosecutor General's office informed the applicant's representatives that their request of 20 July 2005 had been forwarded to the republican prosecutor's office for examination.

28. On 27 October 2005 the applicant wrote to the district prosecutor's office. In her letter she described the circumstances of her daughter's abduction by armed persons in camouflage uniforms and masks, who had arrived in "ordinary" and armoured vehicles and complained that she had had no information concerning the investigation. She pointed out that her numerous requests to various State authorities had failed to produce any results and requested, among other things, to be provided with the following information: the number of the criminal case opened in connection with the abduction of Luiza Mutayeva; the prosecutor's office and the name of the person in charge of the investigation; the investigative measures taken by the authorities; whether witnesses to the abduction had been questioned by the investigation; whether the investigation had been suspended; whether the investigation had established how a convoy of military and civil vehicles with the abducted Luiza Mutayeva had managed to drive through the numerous Russian federal forces checkpoints located in the Achkhoy-Martanovskiy district and, in particular, on the road to and from the village of Assinovskaya; whether the investigation had examined the theory of possible implication of Russian servicemen or representatives of Russian special forces in the abduction of Luiza Mutayeva and whether the authorities had obtained information from various detention centres in Chechnya concerning her eventual detention. Lastly, she requested to be provided with the decision to suspend the investigation, which the authorities had not sent to her.

29. On 28 October 2005 the district prosecutor's office replied to the applicant. The letter stated that on 27 April 2004 the district prosecutor's office had opened criminal case no. 49516 into the abduction of Luiza Mutayeva and that the investigation had undertaken the following measures: examination of the crime scene; the applicant had been granted victim status; an unspecified number of the applicant's relatives, acquaintances and neighbours had been interviewed; unspecified investigative measures had been undertaken in collaboration with a number of other law-enforcement agencies; instructions had been given to the ROVD to conduct operational and search measures; the district prosecutor had issued instructions aimed at solving the crime. According to the letter, the investigation had been examining the thesis of possible involvement of servicemen or members of special forces in the crime. In addition, the investigation was examining the theory that Luiza Mutayeva had been kidnapped for ransom. Finally, the letter stated that the above measures had failed to produce any results and on 27 August 2004 the investigation in

criminal case no. 49516 had been suspended for failure to establish the identity of the perpetrators.

30. On 13 June 2006 the applicant's representatives wrote to the republican prosecutor's office. Referring to the case-law of the European Court of Human Rights, they complained about the lack of information concerning the investigation into the abduction of the applicant's daughter and pointed out that the applicant had not received copies of the decisions to open the criminal case and to grant her the victim status in the criminal proceedings. The letter requested the authorities to provide the applicant with the following information: the status of the criminal investigation; the reasons for Luiza Mutayeva's abduction; whether witnesses to the abduction had been questioned by the authorities; measures undertaken by the investigation between 21 June 2005 and 13 June 2006 and whether the authorities had carried out an examination of detention centres in the region to establish the whereabouts of the applicant's daughter. Finally, the letter requested that the applicant be provided with copies of basic investigative decisions, including the one granting the applicant victim status in the criminal case.

31. On 17 June 2006 the republican prosecutor's office forwarded the request of the applicant's representatives to the district prosecutor's office for examination.

32. On 3 July 2006 the republican prosecutor's office informed the applicant's representatives that they had examined their request. According to the letter, the investigation had been undertaking measures aimed at solving the crime. Referring to unspecified provisions of Russian legislation the letter stated that copies of basic investigative decisions could not be provided to the applicant's representatives; under Article 42 § 13 only the applicant was entitled to receive in person copies of the decisions concerning opening of the criminal proceedings, grant of the victim status and suspension of the investigation.

2. Information submitted by the Government

33. On 20 April 2004 the district prosecutor's office received from the NGO Memorial information concerning the abduction of Luiza Mutayeva.

34. On 27 April 2004 the district prosecutor's office launched an investigation into the abduction of Luiza Mutayeva under Article 126 § 2 of the Criminal Code (aggravated kidnapping).

35. On 28 April 2004 the district prosecutor's office requested prosecutor's offices of various levels, departments of the interior in the Chechen Republic and the Criminal Police of the Temporary Operational Group of Authorities and Departments of the Ministry of the Interior of the Russian Federation in the Caucasus Region (*“Служба Криминальной милиции МВД Временной оперативной группировки органов и подразделений МВД в Северо-Кавказском регионе”*, “the CP”) to provide

information on whether Luiza Mutayeva had been arrested. From the replies of those State authorities it appeared that the applicant's daughter was not being held in the ROVDs of the Chechen Republic; she had not applied to medical institutions for assistance; there were no compromising materials (*“компрометирующий материал”*) on her.

36. According to a reply from the deputy head of CP, that authority had not carried out any special operations in Assinovskaya on 19 January 2004; Luiza Mutayeva had not been taken to any penal institutions in the North Caucasus Region.

37. On 28 April 2004 the applicant was granted victim status in criminal case no. 49516 and her procedural rights and obligations were explained to her.

38. Being interviewed as a victim on 28 April 2004, the applicant submitted, among other things, that on 19 January 2004 unidentified persons had told her to open the door for an identity check. Subsequently, several armed men in camouflage uniforms and masks burst into the house. They had asked the applicant in Russian where the men were. The applicant had pointed at her husband, explaining that he was the only man in the household. The intruders had checked the family members' identity papers and told the applicant's daughters to get dressed. Meanwhile the intruders had turned everything in the house upside down. They had told Luiza Mutayeva to follow them to their vehicle for questioning. When the applicant protested the armed men replied that they would question Luiza Mutayeva and then let her go. The applicant had wanted to follow her daughter outside but had been held in the house. Having nonetheless managed to get outside, she had seen Luiza Mutayeva, handcuffed, near a white GAZ minivan without number plates. The applicant had also seen about six or seven vehicles, including an UAZ vehicle, two UAZ military all-terrain vehicles (*“таблетка”*), a VAZ-2109 and a VAZ-2107 vehicle. Despite the applicant's attempts to stop them, the abductors had left with her daughter. The applicant also submitted that in December 2003, according to local custom, Luiza Mutayeva had been abducted for marriage by a man from Urus-Martan. She had only stayed with that man for two weeks. When the elders had come to the applicant to pay the bride-price and the family had learnt about Luiza's whereabouts, they had taken her back home.

39. The applicant's husband and daughter Madina, questioned on 28 April 2004, gave similar descriptions of the circumstances of Luiza Mutayeva's abduction.

40. B.A., the applicant's neighbour, interviewed as a witness on 28 June 2004, submitted that he had learnt from the applicant that at about 3 a.m. on 19 January 2004 about fifteen armed men in masks and camouflage uniforms had abducted Luiza Mutayeva from her parents' house in Assinovskaya. The intruders had arrived in a convoy of vehicles,

including a Gazel minivan, several UAZ and VAZ-2107 and VAZ-2109 vehicles.

41. The applicant's neighbour, L.V., interviewed as a witness on an unspecified date, stated that during the night of 18-19 January 2004 she had heard several vehicles in the street. On 20 January 2004 she had learnt from the applicant about the abduction of Luiza Mutayeva by armed men in camouflage uniforms.

42. Ms L.G., interviewed as a witness on an unspecified date, submitted that she had learnt from fellow residents in Assinovskaya that on 19 January 2004 Luiza Mutayeva had been abducted by armed men in camouflage uniforms, who had arrived in a GAZ minivan and several UAZ and VAZ vehicles without number plates. Similar submissions had been made by the applicant's neighbours and acquaintances Kh.A., S.M., Kh.G., T.D., Kh.M., A.B., A.M., A.A., I.M., M.M., A.At., D.M., Kh.Yu., P.T., M.Me., L.A., A.Am., R.A., M.Kh., M.S., M.D., Z.B., M.T., B.B., Kh.D., F.D., R.Kh., A.Al., Kh.G., T.K., B.A., S.A., A.S., L.Ts., S.Am., M.T., Sh.A., R.Ts., M.A., B.Ts., who were interviewed as witnesses on unspecified dates.

43. According to replies from the Operational and Search Bureau of the North Caucasus operational department of the Main Directorate of the Ministry of the Interior of the Russian Federation in the South Federal Circuit ("*Оперативно-Розыскное Бюро Северо-Кавказского управления Главного управления МВД РФ по Южному федеральному округу*") and the FSB department in the Chechen Republic, those authorities had not arrested Luiza Mutayeva and had no compromising materials on her.

44. On 1 May 2004 the military prosecutor of military unit no. 20102 was instructed to verify the following information: whether federal troops had carried out a special operation in Assinovskaya on 19 January 2004; whether they had arrested Luiza Mutayeva, and whether the military units stationed in the Achkhoy-Martan district and the Khankala settlement were equipped with GAZ minivans, UAZ, VAZ-2109 and VAZ-2107 vehicles. According to the military prosecutor's reply dated 22 June 2004, federal forces had not carried out any special operations in the village of Assinovskaya on 19 January 2004 and had not arrested Luiza Mutayeva. The military forces in question were equipped with GAZ minivans, UAZ and VAZ-2107 and VAZ-2109 vehicles. However, in the absence of information about their number plates it was impossible to establish which military unit owned the vehicles mentioned in the district prosecutor's office' request for information.

45. On 1 May 2004 heads of unspecified remand prisons in Stavropol, Nalchik, Chernokozovo, Nazran and Pyatigorsk were requested to provide information as to whether Luiza Mutayeva had been detained in those facilities. No relevant information was provided by those persons.

46. On 3 May 2004 the district prosecutor's office requested the military commander's office of the Achkhoy-Martan district, the Ministry of the Interior of the Chechen Republic, the Ministry of the Interior internal troops office in the North Caucasus Circuit, FSB departments in the Chechen Republic, Ingushetiya, North Ossetia-Alania and Dagestan, and the ROVD and police offices of the Dagestan and Kabardino-Balkariya Republics, to find out whether those State authorities had carried out special operations in Assinovskaya on 19 January 2004 and had arrested Luiza Mutayeva. No relevant information had been received from those State bodies.

47. The investigation in criminal case no. 49516 had been suspended on numerous occasions for failure to identify the culprits and reopened to check the information obtained as a result of operational and search measures.

48. The investigation in case no. 49516 is pending.

49. Despite a specific request by the Court the Government did not disclose most of the contents of criminal file no. 49516, providing only copies of the following documents:

- letter of 20 April 2004 by the Achkhoy-Martan deputy prosecutor, addressed to the head of the ROVD and requesting the latter to verify the information on the abduction of Luiza Mutayeva, submitted by the Memorial NGO on an unspecified date;
- a report by a police officer of the ROVD, dated 25 April 2004 to the effect that there were indications that a crime had been committed against Luiza Mutayeva;
- records of interviews with the applicant, her husband and her daughter Madina, dated 28 April 2004 and a record of an interview with B.A., dated 28 June 2004;
- a reply from the military prosecutor's office of military unit no. 20102 dated 22 June 2004;
- replies from various State authorities to the effect they had not carried out special operations in Assinovskaya on 19 January 2004, had not arrested Luiza Mutayeva, had not held her in detention and had no compromising materials on her or information on her whereabouts.

50. The Government submitted that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information on personal data concerning witnesses and other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

51. 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

52. 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 Luiza Mutayeva had not yet been completed. They further argued that it had been open to the applicant to challenge in court any acts or omissions of the investigating or other law-enforcement authorities, but that the applicant had not availed herself of that remedy. In that connection the Government referred to decisions of courts in the Chechen Republic on complaints by A., S. and E., where several district courts granted in part or in full those persons' complaints concerning the alleged omissions in the investigation. The Government did not furnish copies of those decisions. They also pointed out that the applicants had not lodged a claim for compensation of non-pecuniary damage under Articles 1069-70 of the Civil Code.

53. The applicant contested that objection. She stated that the criminal investigation had proved to be ineffective and that her complaints to that effect had been futile. With reference to the Court's practice, she argued that she was not obliged to apply to civil courts in order to exhaust domestic remedies.

B. The Court's assessment

54. 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).

55. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

56. 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 applicant was not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

57. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicant complained to the law-enforcement authorities about the kidnapping of Luiza Mutayeva and that an investigation has been pending since 27 April 2004. The applicant and the Government dispute the effectiveness of the investigation of the kidnapping.

58. 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

59. The applicant complained under Article 2 of the Convention that her daughter had been deprived of her life by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

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

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

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

A. The parties' submissions

60. The applicant argued that Luiza Mutayeva had been detained by State servicemen and should be presumed dead in the absence of any reliable news of her for several years. She maintained her previous submissions and pointed, among other things, to the Government's acknowledgement that the village of Assinovskaya was under the control of State authorities, which at the relevant time maintained manned checkpoints at all entry and exit points to it. Furthermore, the military prosecutor confirmed that the vehicles used for her daughter's abduction were part of

the usual equipment of the federal forces stationed in the vicinity but the investigating authorities failed to identify them and their owners. The applicant specified that she and her family members had mistakenly given 2003 as the year of Luiza's abduction for marriage when they were being interviewed by the investigating authorities in April 2004. In reality, Luiza Mutayeva had been abducted for marriage in December 2002 and had been returned home. She suggested that Luiza Mutayeva's abduction might have been connected to the alleged involvement of her other daughter, Malizha Mutayeva, in the terrorist attack in Dubrovka, Moscow, in October 2002. Lastly, the applicant invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

61. The applicant further argued that the investigation into Luiza Mutayeva's abduction had not met the effectiveness and adequacy requirements laid down by the Court's case-law. In particular, the authorities had waited several months before opening the investigation. Despite credible pieces of evidence of the involvement of servicemen in the abduction and instead of interviewing the servicemen who might have been implicated in it, the investigating authorities limited their activities to sending out written requests to various State bodies. The investigation had been suspended several times but after four years had failed to produce any meaningful results, the applicant being not properly informed of the basic investigative steps and having no access to the investigation documents.

62. The Government contended that the domestic investigation had obtained no evidence that Luiza Mutayeva was dead or that any servicemen had been involved in her kidnapping or alleged killing. The fact that the abductors were armed and wearing camouflage uniforms did not prove that they were State servicemen. Moreover, the applicant did not refer to insignia on their uniforms or submit that they had used specific military language. While several witnesses referred to the presence of armoured vehicles, the applicant herself did not mention those vehicles. Furthermore, in contrast to the application form, before the domestic authorities the applicant stated that the abductors spoke both Russian and Chechen. Whilst not disputing that the area in question was under the control of the authorities, the Government suggested that insurgents might have passed through the checkpoints located in the area, referring to the events in Beslan. Lastly, it could not be excluded that Luiza Mutayeva might have been abducted for marriage again by the persons who had previously abducted her with that aim. In that connection the Government also referred to the inconsistencies in the applicant's submissions concerning the year of Luiza Mutayeva's abduction for marriage.

63. The Government further argued that the investigation into the disappearance of Luiza Mutayeva was being carried out by an independent authority, which had launched it as soon as it had received the applicant's

complaint, forwarded to them by the Memorial NGO on 20 April 2004. The investigating authorities checked various versions of the abduction, interviewed more than twenty witnesses, including the immediate family of the missing person, and made numerous requests for information. The applicant was duly notified of the developments in the investigation. Although the investigation was suspended on several occasions, it did not mean that it was ineffective.

B. The Court's assessment

1. Admissibility

64. The Court reiterates, 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 criminal remedies should be joined to the merits of the complaint (see paragraph 58 above). The complaint under Article 2 must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Luiza Mutayeva

(i) General principles

65. 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 in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

(ii) Establishment of the facts

66. 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).

67. The applicant alleged that at about 2.30 a.m. on 19 January 2004 her daughter, Luiza Mutayeva, had been abducted by Russian servicemen and had then disappeared. She invited the Court to draw inferences as to the well-foundedness of her allegations from the Government's failure to provide the documents requested from them. She submitted that she had witnessed her daughter's abduction and enclosed statements by four witnesses to support her submissions.

68. The Government conceded that Luiza Mutayeva had been abducted by unidentified armed men on the night of 19 January 2004. However, they denied that the abductors were servicemen, referring to the absence of conclusions from the ongoing investigation.

69. The Court notes that despite its requests for a copy of the investigation file into the abduction of Luiza Mutayeva, 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 observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

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

71. The Government submitted that before the domestic authorities the applicant had stated that the abductors had spoken Russian and Chechen. However, no evidence was produced to support that assertion. In the materials available to the Court the applicant consistently stated that her daughter's abductors had spoken Russian. As to the lack of mention of armoured vehicles in the applicant's statements, it is observed that, besides enumerating specific vehicles, the applicant also stated that further vehicles had been present at the abduction scene; however she had not been able to memorise their models or their colours (see paragraph 11 above). In any event, the Government did not challenge the accuracy of the statements by witnesses who submitted that they had seen armoured vehicles at the applicant's gate on the night of 19 January 2004 (see paragraph 13 above). Regard being had to the statement by M.K., uncontested by the Government, to the effect that she had seen Luiza Mutayeva being taken away from her parents' house by armed men in camouflage uniforms in the

night of 19 January 2004 (see paragraph 12 above), the Court does not accord important weight to the inconsistencies in the applicant's submissions concerning the year of her daughter's abduction for marriage.

72. In sum, it considers that the applicant presented an overall coherent and convincing picture of the circumstances surrounding the abduction of Luiza Mutayeva on 19 January 2004.

73. In the Court's view, the fact that a large group of armed men in uniforms, moving in a convoy of several vehicles, including armoured vehicles, was able to pass freely through checkpoints, proceeded to check identity documents in a manner similar to that of State agents and spoke unaccented Russian strongly supports the applicant's allegation that those persons were State servicemen.

74. The Court notes that in her applications to the authorities the applicant consistently maintained that Luiza Mutayeva had been detained by unknown servicemen and requested the investigating authorities to look into that possibility. It further notes that after more than five years the investigation has produced no tangible results.

75. The Court observes that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts)).

76. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that her relative 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 and their vague reference to the possibility that Luiza Mutayeva had been kidnapped for marriage once again, particularly in view of the lack of any indication that this thesis had been examined by the domestic investigation (see paragraph 29 above), is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession, or to provide another plausible explanation for the events in question, the Court finds that Luiza Mutayeva was arrested on 19 January 2004 by State servicemen during an unacknowledged security operation.

77. There has been no reliable news of Luiza Mutayeva since the date of the kidnapping. Her name has not been found in any official detention

facility records. Finally, the Government have not submitted any explanation as to what happened to her after her arrest.

78. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII. (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 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 Luiza Mutayeva or of any news of her for more than five years supports this assumption.

79. Accordingly, the Court finds that the evidence available permits it to establish that Luiza Mutayeva must be presumed dead following her unacknowledged detention by State servicemen.

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

80. 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*, Series A no. 324, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

81. The Court has already found it established that the applicant's daughter must be presumed dead following 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 her presumed death is attributable to the respondent Government.

82. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Luiza Mutayeva.

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

83. 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* 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).

84. The Court notes at the outset that very few documents from the investigation were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of very scarce information submitted by the Government and a few documents available to the applicants that they provided to the Court.

85. Turning to the facts of the present case, the Court observes that, according to the applicant, on the morning of 19 January 2004 she notified a number of law-enforcement agencies in Achkhoy-Martan, including the ROVD, the local FSB department and the security service of the Chechen President, about the abduction of her daughter. According to the Government, the district prosecutor's office received the applicant's complaint about the abduction only on 20 April 2004. However, they failed to submit either a dated and stamped copy of the applicant's complaint or any other documents confirming that it had indeed been obtained by the prosecutor's office on the above-mentioned date. Bearing in mind its findings concerning the Government's unjustified refusal to provide the documents from the case file and the fact that it had been incumbent on the law-enforcement bodies to report the information on the abduction to the district prosecutor's office (see *Khalidova and Others v. Russia*, no. 22877/04, § 93, 2 October 2008), the Court cannot but conclude that the three-month delay in opening the investigation was attributable to the domestic authorities. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event.

86. The Court further has to assess the scope of the investigative measures taken. The Government submitted that the investigating authorities checked various versions of the abduction, interviewed more than twenty witnesses and made numerous requests for information. From the few documents submitted by them it transpires that the district prosecutor's office attempted to identify the vehicles used by the abductors; enquired of various law-enforcement agencies as to whether they had carried out special operations in Assinovskaya on the night of the applicant's

daughter's abduction, had arrested her or held her in detention, and interviewed the applicant, her husband and daughter Madina and a certain B.A. As regards the remaining witnesses allegedly questioned by the authorities, the Government failed to produce any related documents and hence it is impossible not only to establish how promptly those measures were taken but whether they were taken at all.

87. Furthermore, it appears that a number of crucial steps were never taken. In particular, it is striking that the district prosecutor's office made no attempts to interview servicemen from the roadblocks at the entry and exit points to the village or to examine the logbooks kept there with a view to obtaining information on the vehicles used by the abductors and also of their owners. There is no indication that the investigating authority interviewed patients or the personnel from the hospital located near the applicant's house, who might have had information on the circumstances of Luiza Mutayeva's abduction (see paragraph 12 above). In the same vein, there is nothing to suggest that the applicant's neighbours, and in particular those persons whose written statements she had enclosed with the application form, were ever questioned.

88. 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 serious matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

89. The Court also notes that even though the applicant was granted victim status in the investigation concerning the abduction of her daughter, it does not appear that she was informed of any significant 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.

90. Finally, it appears that the investigation was adjourned and resumed several times. It also appears that there were lengthy periods of inactivity on the part of the prosecuting authorities, when no investigative measures were being taken.

91. 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 with no tangible results. Furthermore, the applicant, having no access to the case file and not being properly informed of the progress of the investigation, could not have

effectively challenged acts or omissions of 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 usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospect of success. Accordingly, the Court finds that the remedies relied on by the Government were ineffective in the circumstances and dismisses their preliminary objection.

92. 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 Luiza Mutayeva, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

93. The applicant relied on Article 3 of the Convention, submitting that as a result of her daughter's disappearance and the State's failure to investigate it properly, she 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

94. The Government disagreed with these allegations and argued that the investigation had not established that the applicant had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention. Likewise, since it had not been established by the domestic investigation that Luiza Mutayeva had been abducted by State agents, the applicant's mental suffering could not be imputable to the State.

95. The applicant maintained her submissions.

B. The Court's assessment

1. Admissibility

96. 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

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

98. In the present case the Court notes that the applicant is the mother of the disappeared person who witnessed her abduction. For more than five years she has not had any news of her daughter. During this period of time the applicant has made enquiries of various official bodies, both in writing and in person, about Luiza Mutayeva. Despite her attempts, the applicant has never received any plausible explanation of information about what became of her daughter following her abduction. The responses she received mostly denied State responsibility for his relatives' arrest or simply informed her that the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

99. In view of the above, the Court finds that the applicant suffered distress and anguish as a result of the disappearance of Luiza Mutayeva and her inability to find out what had happened to her. The manner in which her complaints were dealt with by the authorities must be considered to constitute inhuman and degrading treatment contrary to Article 3.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

101. The applicant further stated that Luiza Mutayeva 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

102. The Government asserted that no evidence had been obtained by the investigation to confirm that Luiza Mutayeva had been deprived of liberty by State agents in breach of Article 5.

103. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

104. 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

105. 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 and Others*, cited above, § 122).

106. The Court has found that Luiza Mutayeva was apprehended by State servicemen on 19 January 2004 and has not been seen since. Her detention was not acknowledged, was not logged in any custody records and there exists no official trace of her 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).

107. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicant's complaints that her 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.

108. In view of the foregoing, the Court finds that Luiza Mutayeva 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

109. The applicant complained that she 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

110. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The applicant had had an opportunity to challenge the acts or omissions of the investigating authorities in court. They added that participants in criminal proceedings could also claim damages in civil proceedings and referred to cases where victims in criminal proceedings had been awarded damages from state bodies and, in one instance, the prosecutor's office. In sum, the Government submitted that there had been no violation of Article 13.

111. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

112. 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

113. 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, 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).

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

115. As regards the applicant's 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

116. 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

117. The applicant did not submit any claims for pecuniary damage. As regards non-pecuniary damage, she claimed 50,000 euros (EUR) for the suffering she had endured as a result of the disappearance of her daughter, the indifference shown by the authorities towards her and the latter's failure to provide any information about her fate.

118. The Government regarded these claims as excessive and unfounded.

119. 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 applicant's daughter. The applicant herself has been found to have been victim of a violation of Article 3 of the Convention. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicant EUR 50,000, plus any tax that may be chargeable thereon.

B. Costs and expenses

120. The applicant was represented by the SRJI. She submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff, as well as administrative expenses, translation and courier delivery fees. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 5,697.65, to be paid to the applicant's representatives' account in the Netherlands.

121. The Government pointed out that the applicant should be entitled to the reimbursement of her costs and expenses only in so far as it has been shown that they were actually incurred and are reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They doubted that the amounts claimed by the applicant under this head were reasonable.

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

123. 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.

124. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes, however, that the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. Furthermore, due to the application of Article 29 § 3 in the present case, the applicant's representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that the case involved the amount of research claimed by the applicants' representatives.

125. Lastly, the Court notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicant's representatives' accounts (see, for example, *Nachova and Others*

v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII, and *Imakayeva*, cited above).

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

C. Default interest

127. 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 Luiza Mutayeva;
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 Luiza Mutayeva disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Luiza Mutayeva;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2;
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 of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement, save in the case of the payment in respect of costs and expenses:

(i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;

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

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

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

Done in English, and notified in writing on 22 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President