



## Chechen man, called for questioning, disappeared inside secure government compound

In today's Chamber judgment in the case **Matayeva and Dadayeva v. Russia** (application no. 49076/06), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**Violation of Articles 2 (right to life and lack of effective investigation), 3 (inhuman and degrading treatment), 5 (right to liberty and security) and 13 (lack of an effective remedy) of the European Convention on Human Rights.**

### Principal facts

The applicants, Satsita Matayeva and Batu Dadayeva, are Russian nationals who live in the village, Duba-Yurt (Shalinskiy district, Chechen Republic). They are the wife and mother of Khamzat Tushayev, born in 1959, who has not been seen since 8 June 2006 when he went to the Prosecutor's Office in Grozny where he had been summoned for questioning.

Criminal proceedings pending against him, Khamzat Tushayev had been summoned for questioning by the prosecuting authorities on numerous previous occasions. He was suspected of participating in illegal armed groups.

On 7 June 2006 Mr Tushayev's wife received a call on her mobile phone from a prosecution official summoning her husband again for questioning. The next day in the morning they went together to the Prosecutor's Office in Grozny, situated in a government compound of buildings, guarded by a number of check points. The officer on duty called the prosecutor's office to see if Mr Tushayev had an appointment and, given permission to let him through, recorded his passport details and let him pass through. Two hours later, not seeing her husband return, Ms Matayeva asked the officer on duty where her husband was. After a telephone call, the officer told her that her husband had not entered the premises of the Prosecutor's office. She waited for him outside the checkpoint until the end of the day until she was eventually told to leave.

Ms Matayeva immediately notified the authorities of her husband's disappearance. A number of investigative steps were taken: the scene of the crime was inspected the next day, the mobile number from which Ms Matayeva had received the call summoning her husband was identified within the month, the compound visitors' logbook was seized in July 2006, and a number of witnesses were interviewed, including Ms Matayeva and various servicemen on duty at the various checkpoints at the time of the disappearance. In particular, in July 2006 the on-duty officers at the first checkpoint – at the entry to the compound – stated that they did not remember seeing Khamzat Tushayev; and, the

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

officer on duty at the Prosecutor's Office checkpoint submitted that, having received a phonecall from the entry checkpoint telling her of his arrival, she had had his entry authorised by the Prosecutor but that there were no subsequent entries in the logbook of his having been let through. In February 2007 R.Ya., the investigator in charge of the criminal case against Khamzat Tushayev, was interviewed. He stated that he had not instructed anyone to have Mr Tushayev interviewed again, the case having been closed just before his disappearance.

The investigation, officially launched on 26 June 2006, has been suspended and reopened on numerous occasions and still remains pending. Each time the investigation has been resumed, high-ranking prosecutors have ordered the investigators to compile an updated plan of investigative steps, and in particular to find the owner of the mobile number identified, on one occasion further indicating that the number had been in use by the Russian security services based in the Chechen Republic.

In the meantime, the applicants have contacted, both in person and in writing, various official bodies, requesting information about the investigation's progress and their relative's whereabouts. They allege that they have barely been informed of the investigation's developments or even given access to the case file. Despite specific requests by the Court, the Government did not disclose the full contents of the criminal investigation file.

The Russian Government denied the applicants' allegations, claiming that the investigation carried out had been satisfactory and the authorities could not be blamed if the investigative steps they had taken had not been successful. There being no evidence to prove that Khamzat Tushayev had been abducted by agents of the State, their conclusion was that he must have been kidnapped by unidentified individuals in the government compound.

## Complaints, procedure and composition of the Court

The applicants alleged that Khamzat Tushayev had disappeared inside a secure government compound and had then been killed and that the authorities' ensuing investigation into the disappearance had been ineffective. They relied in particular on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy) of the Convention.

The application was lodged with the European Court of Human Rights on 8 December 2006.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,  
 Anatoly **Kovler** (Russia),  
 Christos **Rozakis** (Greece),  
 Peer **Lorenzen** (Denmark),  
 Elisabeth **Steiner** (Austria),  
 Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),  
 Julia **Laffranque** (Estonia), *Judges*,

and also André **Wampach**, *Deputy Section Registrar*.

## Decision of the Court

### Article 2 (Khamzat Tushayev's right to life and lack of effective investigation into his disappearance)

The Court considered that the applicants' submissions concerning the circumstances in which their relative entered the government compound grounds had been consistent both throughout the proceedings before it as well as before the Russian authorities. The Government's claim that Khamzat Tushayev must have been abducted by unknown kidnappers, from guarded territory with limited access in which only law-enforcement offices were located, was not convincing.

The Court has already found in a number of similar cases concerning the Chechen Republic, where people disappeared from premises under the Russian authorities' full control, that the situation could be regarded as life-threatening. The lack of news of Khamzat Tushayev for more than four and a half years corroborated that assumption.

Bearing in mind the Government's refusal to provide all the documents requested from them or provide any plausible explanation for the disappearance, the Court held that Khamzat Tushayev had been detained on the secure grounds of a government compound and had to be presumed dead following his unacknowledged detention by Russian agents of the State. Russia was therefore responsible for his death, in violation of Article 2.

The investigation has been plagued by delays and shortcomings. Although promptly informed – on 9 June 2006 – of Khamzat Tushayev's disappearance, the investigation had only been launched on 26 June 2006 and certain people, R.Ya., only interviewed seven months later. The Court was notably struck by the fact that, although the mobile number had been identified within a month of the disappearance, its owner had never been located, and, even more disturbingly, despite the fact that high-ranking prosecutors had given the investigators an important lead (ie that the number had been used by the Russian security services). In the Court's view, such omissions demonstrated that the investigating authorities lacked genuine determination in solving the crime and holding those responsible to account. The investigation, repeatedly suspended and resumed, is still pending with the applicants not being kept informed of its progress or even given access to the case file. The Court therefore found that there had been a further violation of Article 2 on account of the Russian authorities' failure to carry out an effective criminal investigation into the circumstances in which Khamzat Tushayev had disappeared.

### Article 3 (applicants' mental suffering)

The applicants, the wife and mother of Khamzat Tushayev, had suffered distress and anguish as a result of his disappearance and their inability – despite their repeated enquiries – to find out what had happened to him. The manner in which the applicants' complaints had been dealt with by the authorities had to be considered to constitute inhuman treatment, in violation of Article 3.

### Article 5 (unacknowledged detention)

The Court held that Khamzat Tushayev had been held in unacknowledged detention without any of the safeguards contained in Article 5, which constituted a particularly grave violation of the right to liberty and security.

### Article 13 (lack of effective remedy)

The criminal investigation into the disappearance of Khamzat Tushayev had been ineffective and the effectiveness of any other remedy that might have existed had consequently been undermined. Consequently there had been a violation of Article 13 in conjunction with Article 2.

### Article 41 (just satisfaction)

The Court held that Russia was to pay Khamzat Tushayev's wife 35,000 euros (EUR) and his mother EUR 25,000 in respect of non-pecuniary damage. EUR 1,215 was awarded for costs and expenses.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.