THIRD SECTION

CASE OF IDRISOVA v. RUSSIA

(Application no. 19/16)

JUDGMENT

STRASBOURG

21 January 2020

*This judgment is final but it may be subject to editorial revision.*

In the case of Idrisova v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Alena Poláčková, *President,* Dmitry Dedov, Gilberto Felici, *judges,*  
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 10 December 2019,

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

1. PROCEDURE

1.  The case originated in an application (no. 19/16) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Markha Idrisova (“the applicant”), on 30 December 2015.

2.  The applicant was represented by Mr T. Shamsudinov, a lawyer practising in Grozny. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3.  On 16 May 2018 the Government were given notice of the application.

1. THE FACTS
   1. THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1993. She is the wife of Mr Mukhumad Magomadov, who was born in 1990.

* + 1. Abduction of Mr Mukhumad Magomadov
       1. Background

5.  Mr Mukhumad Magomadov’s brother was Mr Alik Magomadov (also referred as Alik Magomadov), a member of an illegal armed group killed in 2009.

6.  On the night of 3 to 4 December 2014 members of an illegal armed group attacked a police station in Grozny, killing several police officers. They then occupied the “Press House” building in the city centre and a nearby school. In response, the authorities carried out a large-scale counter‑terrorist operation and killed a number of the attackers.

7.  In the aftermath of the attack, on 4 December 2014, Mr Ramzan Kadyrov, the President of the Chechen Republic, gave a statement saying that the families of the members of illegal armed groups would be expelled from Chechnya and their houses demolished.

* + - 1. Events of 6 December 2014

8.  At around 10 p.m. on 6 December 2014 a group of men in a white Lada Priora car with a registration number containing the digits 646 95 arrived at Mr Alik Magomadov’s house in the Sadovoye settlement in the Grozny district of Chechnya and knocked on the door. At the time the applicant, Mr Mukhumad Magomadov, his mother (Ms Z.M.) and one of his brothers (Mr I.M.) were at home. Mr Mukhumad Magomadov, wearing only flip-flops and indoor clothing, opened the door and was immediately forced into the car and driven away to an unknown destination.

* + - 1. Subsequent events

9.  After the aforementioned events, Ms Z.M. made several calls to her son’s mobile telephone, but he did not answer. Later his telephone was turned off. On 9 December 2014 she received a text message from her mobile network stating that her son’s mobile telephone was on again. She tried to call him again, but to no avail.

* + 1. Investigation into the events of 6 December 2014

10.  On 7 December 2014 Mr I.M. asked the Grozny district police station to establish the whereabouts of Mr Mukhumad Magomadov. When questioned, he provided the police with a version of events similar to the applicant’s submissions to the Court and pointed out that his brother had been taken away in flip-flops even though it was winter.

11.  On the same date the police examined the crime scene. No evidence was collected. They also questioned the applicant, Ms Z.M. and their neighbour, Mr K.U. The statements given by the applicant and Ms Z.M. were similar to the version of events submitted to the Court. Mr K.U. submitted that on the evening of 6 December 2014 he and his acquaintance Mr I.A. had seen a white Lada Priora car with a registration number containing the digits 646 95 travelling in the direction of the applicant’s house.

12.  On 13 December 2014 Mr I.M. provided the investigators with Mr Mukhumad Magomadov’s mobile telephone number.

13.  On 17 December 2014 the investigation was transferred to the Grozny inter-district investigative committee.

14.  On 18, 19 and 22 December 2014 and 3 January 2015 respectively the investigators questioned Ms Z.M., Mr I.G., the applicant and Mr K.U. They confirmed their previous statements.

15.  On 16 January 2015 the traffic police cooperated with the investigators’ request to provide them with the names of the owners of white Lada Priora cars with registration numbers containing the digits 646 95, officer R.T. and Mr R.S.

16.  On 18 January 2015 officer R.T. was questioned by the investigators. In a short statement, he submitted in general terms that he was an officer of the security service of the Chechen Ministry of the Interior and that he did own a white Lada Priora car with the registration number noted by the investigators. When asked by the investigators if he had an alibi for the time of the abduction, he replied:

“Because of the events of 4 December 2014, that is to say the attack [by members of an illegal armed group] on the Press House, I had been on twenty-four-hour duty at my workplace with my colleagues. I had not left.”

The investigators did not ask any further questions regarding that night. Officer R.T. also stated that he had not lent his car to anybody that day.

17.  That same day, the investigators refused to open a criminal case into the incident for lack of evidence of a crime. The applicant challenged that decision in court (see paragraphs 50 and 51 below).

18.  On 10 August 2015 the applicant asked the investigators to allow her access to the case file. Her request was granted the next day.

19.  On 17 November 2015 the decision not to open a criminal case was overruled by the deputy head of the Grozny inter-district investigative committee because the investigators had failed to question Mr I.A. and Mr R.S. and obtain information related to Mr Mukhumad Magomadov’s mobile telephone.

20.  On 24 November 2015 the investigators questioned Mr I.A., who gave evidence similar to that given by Mr K.U. (see paragraph 11 above).

21.  On 27 November 2015 the investigators again refused to open a criminal case.

22.  On 25 March 2016 the deputy head of the Chechnya investigative committee overruled the above decision as unlawful and ill-founded. It ordered the investigators to take a number of steps, including a thorough examination of the crime scene (using a camera and GPS), collecting a DNA sample from Ms Z.M. and ordering a DNA test, questioning Mr  Magomadov’s neighbours and Mr R.S., searching the two Lada Priora cars, and checking if Mr Mukhumad Magomadov was suspected of any criminal activity.

23.  On 6 April 2016 the investigators re-examined the crime scene and took photographs, which were joined to the case file.

24.  Between 6 and 8 April 2016 the investigators sent a number of requests to various law-enforcement authorities to establish Mr Mukhumad Magomadov’s whereabouts. No new information was received.

25.  On 14 April 2016 Ms Z.M. gave a blood sample to the investigators, who ordered a DNA test the same day.

26.  On the same date the investigators refused to open a criminal case for a third time.

27.  On 15 April 2017 the deputy Chechen prosecutor overruled that decision, criticising the investigators’ failure to verify the accuracy of officer R.T.’s statement and question Mr R.S.

28.  On 21 April 2017 the investigators’ superiors ordered that the investigators take a number of steps, including a re-examination of the crime scene, obtaining a photograph of Mr Mukhumad Magomadov and information about his telephone calls, granting Ms Z.M. victim status in the proceedings, questioning Mr Mukhumad Magomadov’s neighbours, friends and colleagues, as well as Mr R.S., and obtaining information about Mr Mukhumad Magomadov’s personality.

29.  On 24 April 2017 the investigators granted the applicant victim status in the proceedings and questioned her and Ms Z.M. They both confirmed their previous statements. Ms Z.M. pointed out that her son had had no intention of leaving the house. He had opened the door in flip-flops. His passport was still at home. The applicant added that her husband followed a traditional form of Islam.

30.  On the same date the investigators examined the crime scene for a third time and also obtained a photograph of Mr Mukhumad Magomadov.

31.  In May 2017 several of his neighbours were interviewed. None of them had seen the incident on 6 December 2014.

32.  On 18 April 2017 the Grozny district police informed the investigators that Mr Mukhumad Magomadov had visited foreign countries, including Turkey in 2013, and “had a tendency to follow non-traditional forms of Islam”. Regard being had to the circumstances of his disappearance, and the above information, the Grozny district police suggested to the investigators that he might have joined an illegal armed group in Syria.

33.  On 20 April 2017 the Grozny inter-district investigative committee opened a criminal case into the disappearance of Mr Mukhumad Magomadov under Article 126 § 2 of the Russian Criminal Code (aggravated abduction) under case no. 11702960008000021.

34.  On 21 April 2017 the investigators drew up a plan of steps to be taken to verify several theories concerning the abduction – either that Mr Mukhumad Magomadov had been arrested by law-enforcement agencies, or had been abducted by private individuals (including members of an illegal armed group) on account of personal hostility, a blood feud, or an unpaid debt.

35.  On 27 April 2017 the Grozny District Court granted the investigators’ request for access to Mr Mukhumad Magomadov’s mobile telephone data.

36.  On 15 May 2017 the investigators questioned Mr I.M. again. He dismissed the theory that Mr Mukhumad Magomadov had joined an illegal armed group. He explained that Mr Magomadov had visited Turkey in 2013 to study Islam, however, owing to the civil unrest there, he had been unable to do so and had returned home.

37.  On 18 May 2017 the investigators re-questioned Mr K.U. and Mr I.A., who confirmed their previous statements.

38.  On various dates in May to June 2017 the investigators questioned residents of Sadovoye, who learned of the events of 6 December 2014 from Mukhumad Magomadov’s family.

39.  On 22 May 2017 the investigators again questioned officer R.T. and invited him to undergo a psychophysiological examination (lie-detector test). He confirmed his previous statement (see paragraph 16 above) and refused to undergo the lie-detector test as he feared it would have a negative impact on his health. On 6 June 2017 the investigators requested the Chechen Minister of the Interior to launch an internal inquiry into the incident, noting that officer R.T.’s refusal to undergo the examination had breached professional ethics. The outcome of that inquiry is unknown.

40.  On 23 May 2017 the investigators questioned Mr R.S., who confirmed that he had a Lada Priora car with a licence plate containing the digits 646 95, but that it was not white as it had a black roof and bonnet. He showed photographs of the vehicle to the investigators. He further stated that on the night of 6 to 7 December 2014 he had been at home. He did not know Mukhumad Magomadov and had never heard about his disappearance.

41.  On 24 May 2017 the deputy head of the Grozny inter-district investigative committee ordered the investigators to question the head of the Grozny district police station, inspect the premises and check whether there were any CCTV cameras. The investigators were also instructed to examine the station’s detainee log books.

42.  On 3 June 2017 the police informed the investigators that there was no one on their database of unidentified bodies matching Ms Z.M.’s DNA.

43.  On 20 June 2017 the investigation was suspended for failure to identify the perpetrators.

44.  On 30 June 2017 the investigation was resumed.

45.  On 3 July 2017 the investigators received a list of the incoming and outgoing calls made to and from Mr Magomadov’s mobile telephone.

46.  On 24 July 2017 the investigators questioned Mr R.S. for a second time, who confirmed his statement of 23 May 2017 (see paragraph 40 above).

47.  On 26 and 28 July 2017 the investigators questioned officials from the local administration concerning Mukhumad Magomadov’s character. They stated that he was not a suspected member of any illegal armed groups.

48.  In the meantime, the investigators sent several requests to establish whether travel tickets had been bought in Mr Magomadov’s name. The replies received did not confirm this.

49.  On 30 July 2017 the investigation was suspended. It appears that it is still ongoing.

* + 1. Proceedings against the investigators

50.  On 17 August 2015 the applicant lodged a complaint with the Grozny District Court challenging the investigators’ refusal to institute criminal proceedings on 18 January 2015. On the same date the court dismissed it on the grounds that she had failed to comply with the formal procedural requirements.

51.  On 16 November 2015 the applicant lodged another complaint. On 20 November 2015 the court rejected it as the refusal of 18 January 2015 had already been overruled by the investigators’ superiors (see paragraph 19 above). On 15 December 2015 the Supreme Court of Chechnya upheld that decision on appeal.

* 1. RELEVANT DOMESTIC LAW and international material

52.  For a summary of the relevant domestic law and international materials, see *Dalakov v. Russia* (no. 35152/09, §§ 51-53, 16 February 2016), and *Turluyeva v. Russia* (no. 63638/09, §§ 56-74, 20 June 2013).

1. THE LAW
   1. compliance with the six-month rule
      1. The parties’ submissions

53.  The Government submitted that the application should be declared inadmissible because the applicant had failed to comply with the six-month time-limit. She had failed to lodge her application with the Court between 18 January and 17 November 2015, when no investigation into the abduction had been taking place. According to the Government, the applicant should have realised that there was no realistic prospect of identifying those responsible or having any tangible progress in the investigation and therefore should have applied to the Court before 30 December 2015.

54.  The applicant contested that argument, submitting that she had complied with the six‑month rule. The authorities had been notified of the abduction immediately, and her family had maintained reasonable contact with the authorities on account of the ongoing investigation. She had hoped that the investigators would identify the perpetrators and establish her husband’s whereabouts. She had applied to the Court as soon as she had realised that the domestic investigations were ineffective.

* + - 1. General principles

55.  A summary of the principles concerning compliance with the six‑month rule in disappearance cases may be found in *Sultygov and Others v. Russia* (nos. 42575/07 and 11 others, §§ 369‑74, 9 October 2014).

* + - 1. Application of the principles to the present case

56.  Turning to the circumstances of the present case, the Court notes that the applicant lodged her application with the Court within one year and one month of the incident. Considering the time frame in which the application was lodged (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 165, ECHR 2009), along with the applicant’s active attempts to have the disappearance of her husband investigated (see paragraphs 50 and 51 above), the Court does not consider that the lack of a criminal investigation into the incident between 18 January and 17 November 2015 should be held against her or interpreted as a failure on her part either to demonstrate due diligence or to comply with the six-month requirement (contrast *Doshuyeva and Yusupov v. Russia*, no. 58055/10, 31 May 2016).

57.  In the light of the foregoing, the Court finds that the applicant complied with the six-month time limit.

* 1. ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS
     1. The parties’ submissions

58.  The applicant alleged that State agents had taken away her husband, and that he should be presumed dead following his unacknowledged detention. The applicant based her allegations on him having been the focus of attention of law-enforcement agencies on account of his brother’s involvement in an illegal armed group, and the Lada Priora car used by the perpetrators having belonged to officer R.T. In the applicant’s view, those facts constituted to a prima facie case and the Government had failed to discharge their burden of proof by submitting a plausible explanation or alternative version of events. The applicant considered that, given the circumstances of her husband’s abduction and the lack of any news from him for several years, he should be presumed dead.

59.  The Government did not contest the applicant’s allegations.

* + 1. The Court’s assessment of the facts
       1. General principles

60.  For a summary of general principles, see *Khava Aziyeva and Others* (no. 30237/10, §§ 62-65, 23 April 2015, with further references).

* + - 1. Application of the principles to the present case

61.  The Court observes that in its extensive case-law it has developed a number of general principles relating to the establishment of facts, in particular when faced with allegations of violations of fundamental rights (for a summary of these principles, see *El Masri v. “the former Yugoslav Republic of Macedonia”* [GC], no. 39630/09, §§ 151-53, 13 December 2012).

62.  The Court has concluded that it would be sufficient for the applicants to make a prima facie case of abduction by State agents, and that it would then be for the Government to discharge their burden of proof, either by disclosing documents in their exclusive possession or by providing a satisfactory and convincing explanation of how the events in question occurred (see *Toğcu v. Turkey*, no., 27601/95 § 95, 31 May 2005; *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts); and *Turluyeva*, cited above, § 85). If the Government failed to rebut this presumption, it would entail a violation of Article 2 of the Convention in its substantive part. Conversely, where the applicants failed to make a prima facie case, the burden of proof could not be reversed (see, for example, *Kagirov v. Russia*, no. 36367/09, § 92, 23 April 2015).

63.  In the present case, the applicant’s claim was based on the fact that the only car similar to that was used in her husband’s abduction belonged to officer R.T. (see paragraphs 15, 16 and 40 above). The surrounding circumstances, including the counter-terrorist operation in Chechnya, the involvement of Mukhumad Magomadov’s brother in an illegal armed group and Mukhumad Magomadov’s “tendency to follow non-traditional forms of Islam” reported by the police (see paragraphs 5, 6 and 32 above) add weight to that allegation. In the Court’s opinion, those circumstances taken together constitute a prima facie case of abduction by State agents, which shifts the burden of proof to the Government.

64.  The Court notes that the Government have provided no explanation or alternative version of the events in question. The domestic investigation has not yielded any tangible results in elucidating the circumstances of the abduction. From the case material it appears that, along with the arrest of Mr  Magomadov by State agents, the investigators also wanted to verify the theory that he had been abducted by private individuals (see paragraph 34 above), or had joined an illegal armed group in Syria, leaving home of his own volition (see paragraph 32 above). However, none of those theories appear convincing. There is no evidence in the case file suggesting that Mukhumad Magomadov had any enemies, unpaid debts or could have fallen victim to a blood feud. The allegation that he had left for Syria was rebutted by witness statements showing that he had left home on a winter’s day wearing flip-flops and indoor clothing, leaving his passport at home (see paragraphs 10 and 29 above). Moreover, he did not buy any travel tickets, which he would have needed for the trip (see paragraph 48 above).

65.  Given the lack of any plausible explanation for the events in question, the Court finds that the applicants’ husband, Mr Mukhumad Magomadov, was arrested by State servicemen.

66.  There has been no news of him since his disappearance and the Government have not put forward any explanation as to what happened to him afterwards.

67.  The Court finds that, in a situation where a person is detained by unidentified police officers without any subsequent acknowledgment of the detention and is then missing for several years, that situation can be regarded as life-threatening. The absence of the applicant’s husband or of any news of him for several years supports this assumption.

68.  Accordingly, the Court finds that the evidence available permits it to establish that Mr Mukhumad Magomadov must be presumed dead following his unacknowledged detention by State agents.

* 1. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

69.  The applicant complained under Article 2 of the Convention that State agents had been responsible for her husband’s abduction, and that the authorities had failed to carry out an effective investigation into the matter. The relevant part of that provision reads as follows:

“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 ...”

* + 1. The parties’ submissions

70.  The Government did not comment on the merits of the case.

71.  The applicant argued her husband had been abducted by State agents and subsequently killed, and that the ensuing investigations had been ineffective. She listed a number of shortcomings in the investigation, including the belated opening of the criminal case and the investigators’ failure to test the veracity of officer R.S.’s statement or establish the location of Mukhumad Magomadov’s mobile telephone. According to her, a major part of the investigators’ activity had been limited to sending requests to various authorities, which had replied in a formalistic and undetailed manner.

* + 1. The Court’s assessment
       1. Admissibility

72.  The Court notes that the applicant’s complaints are not manifestly ill‑founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

* + - 1. Merits
         1. Alleged violation of the substantive limb of Article 2 of the Convention

73.  The Court has already found that the applicant’s husband must be presumed dead following his unacknowledged detention by State servicemen (see paragraph 68 above). In the absence of any plausible explanation by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of the substantive aspect of Article 2 in respect of Mr Mukhumad Magomadov.

* + - * 1. Alleged violation of the procedural limb of Article 2 of the Convention

74.  The obligation to protect the right to life under Article 2 of the Convention requires that there should be some form of effective official investigation. A summary of the principles relating to the requirements of such investigation can be found in *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 169-82, 14 April 2015), and *Armani Da Silva v. the United Kingdom* ([GC], no. 5878/08, §§ 229-39, ECHR 2016).

75.  Turning to the case at hand, the Court observes that the investigators refused to launch a criminal investigation into the events of 6 December 2014 three times (see paragraphs 17, 21 and 26 above). Each time their refusal was overruled as unlawful and premature (see paragraphs 19, 22 and 27 above). A criminal case was eventually opened on 20 April 2017, that is to say more than two years and four months after the incident (see paragraphs 8 and 33 above). No explanation has been provided to the Court for the investigators’ reluctance in opening the criminal case. Regard being had to the seriousness of the alleged offence and the importance of taking prompt investigative steps, such a delay seems unacceptable (see, for a similar situation, *Luluyev and Others v. Russia*, no. 69480/01, § 96, ECHR 2006‑XIII (extracts), and *Alikhanovy v. Russia*, no. 17054/06, § 81, 28 August 2018).

76.  The Court acknowledges that the investigators did not remain idle. They examined the crime scene, identified and questioned several witnesses and carried out some other investigative measures. However, in the Court’s opinion, the thoroughness of their activity fell short of the requirements of Article 2 of the Convention for the following reasons.

77.  Firstly, the Court notes the investigators’ striking failure to properly examine the crime scene. They had to repeat that basic investigative action three times in order to meet the relevant standards and remedy the shortcomings identified by the supervising authority (see paragraphs 11, 23, 30 above).

78.  Secondly, the Court notes that the investigators questioned officer R.T., the individual who could have been involved in the abduction, in a perfunctory manner (see paragraphs 16 and 39 above). They neither asked more detailed questions about his acitivities on the date of the abduction nor attempted to identify colleagues who would have been able to give him an alibi. The Court also notes the investigators’ failure to follow up the internal inquiry carried out in respect of the officer, despite the fact that it had been initiated at their request (see paragraph 39 above).

79.  Thirdly, the Court notes that the investigation was repeatedly criticised by the supervising authority, which listed various steps to be taken by the investigators (see paragraphs 19, 22, 27, 28 and 41 above). Despite repeated orders, the latter questioned Mr Mukhumad Magomadov’s neighbours and Mr R.S. with an inexplicable delay. The invesitgators disregarded the orders to test the veracity of officer R.T.’s statements, search his Lada Priora car and check the CCTV recordings from the Grozny district police station and examine its detainee logbooks. From the material in the Court’s possession, it also appears that they never examined the data obtained from Mr Magomadov’s mobile network (see paragraph 45 above).

80.  Lastly, the Court cannot overlook the fact that despite only being initiated on 20 April 2017, the investigation had already been suspended on 20 June 2017 and then on 20 July 2017 (see paragraphs 43 and 49 above). Such premature suspensions in a situation in which the vital steps indicated by the superior authority had not been taken undermined the investigators’ ability to identify and prosecute the perpetrators (see *Ögur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999‑III, and *Khava Aziyeva and Others,* cited above, § 85).

81.  In the light of the seriousness of the above shortcomings, which prevented the investigation from being carried out with the required thoroughness, and taking into account the absence of any tangible results, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the abduction of Mr Mukhumad Magomadov, in breach of Article 2 of the Convention in its procedural aspect.

* 1. ALLEGED VIOLATIONS OF ARTICLES 3, 5 AND 13 OF THE CONVENTION

82.  The applicant complained of a violation of Article 3 of the Convention on account of the mental suffering that she had experienced as a result of the disappearance of her husband. She also complained of a violation of Article 5 of the Convention on account of the unlawfulness of his detention. Lastly, she argued that she had had no effective domestic remedies in respect of her complaints under Articles 2 and 3 of the Convention. The relevant parts of those provisions read as follows:

Article 3

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

Article 5

“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.”

Article 13

“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.”

* + 1. The parties’ submissions

83.  The Government did not contest the applicant’s claims.

84.  The applicant maintained her complaints.

* + 1. The Court’s assessment
       1. Admissibility

85.  The Court notes that those complaints are not manifestly ill‑founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

* + - 1. Merits

86.  The Court has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 of the Convention in respect of the close relatives of the victim. The essence of such a violation lies not so much in the fact of the “disappearance” of the family member, but rather in the authorities’ reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva v. Russia*, no. 7615/02, § 164, ECHR 2006‑XIII (extracts)).

87.  The Court reiterates its findings regarding the State’s responsibility for the abduction of Mr Mukhumad Magomadov and the authorities’ failure to carry out a meaningful investigation into the incident (see paragraphs 73 and 81 above). It finds that the applicant, his wife, must be considered a victim of a violation of Article 3 of the Convention on account of the distress and anguish she has suffered, and continues to suffer, as a result of her inability to ascertain the fate of her missing spouse and of the manner in which her complaints have been dealt with. The Court therefore finds a violation of Article 3 of the Convention in respect of the applicant.

88.  The Court further confirms that since it has been established that Mr  Magomadov was detained by State agents, apparently without any legal grounds or acknowledgment of such detention (see paragraph 68 above), this constituted a particularly serious violation of the right to liberty and security of person enshrined in Article 5 of the Convention (see, for example, *Imakayeva*, cited above, § 178; *Aslakhanova and Others*, cited above, § 134; and *Ireziyevy v. Russia*, no. 21135/09, § 80, 2 April 2015). The Court accordingly finds a violation of this provision in respect of the applicant’s husband on account of his unlawful detention.

89.  The Court observes that the applicant’s complaint under Article 13 in conjunction with Article 2 of the Convention concerns the same issues as those examined above under the procedural limb of Article 2. Having regard to its conclusion above under Article 2 (see paragraphs 73 and 81 above), the Court considers it unnecessary to examine those issues separately under Article 13 (see *Gaysanova v. Russia*, no. 62235/09, § 142, 12 May 2016; *Fanziyeva v. Russia*, no. 41675/08, § 85, 18 June 2015; *Perevedentsevy v. Russia*, no. 39583/05, § 126, 24 April 2014; and *Shumkova v. Russia*, no. 9296/06, § 123, 14 February 2012).

90.  The Court considers that the applicant did not have at her disposal an effective domestic remedy for her grievances under Article 3, in breach of Article 13.

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91.  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.”

* + 1. Damage
       1. Pecuniary damage

92.  The applicant claimed 5,418 euros (EUR) in compensation for pecuniary damage caused by the loss of financial support from her husband, who had been the breadwinner in the family. Her calculation was based on the cost of living in Chechnya.

93.  The Government stated that the applicant had not proved that her husband had been the breadwinner, and that even if that had been the case, it remained open to her to apply for welfare benefits for the loss of the breadwinner. They therefore argued that her claim should be rejected.

94.  The Court reiterates that there must be a clear causal connection between the damage claimed by applicants and the violation of the Convention, and that this may, where appropriate, include compensation in respect of loss of earnings. The Court further finds that loss of earnings applies to close relatives of disappeared persons, including spouses, elderly parents and minor children (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 213, ECHR 2006‑ XIII (extracts)).

95.  Having regard to its conclusions in the present case, the principle set out above, as well as the parties’ submissions, the Court awards the applicant EUR 3,000 in respect of pecuniary damage, plus any tax that may be chargeable to her on that amount.

* + - 1. Non-pecuniary damage

96.  The applicant claimed EUR 100,000 in respect of non-pecuniary damage.

97.  The Government did not comment on the claim.

98.  The Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and makes a financial award.

99.  In the light of the above principle, and bearing in mind the sums awarded in similar cases (see for a recent example *Abubakarova and Others v. Russia* [CTE], no. 867/12 and 9 others, 4 June 2019), the Court awards the applicant EUR 80,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her on that amount.

* + 1. Costs and expenses

100.  The applicant also claimed EUR 3,140 for the costs and expenses incurred before the Court. She requested that the award be paid into the bank account of her representative.

101.  The Government argued that the claim was excessive given the simplicity of the case and the experience of the applicant’s representative in dealing with similar cases.

102.  Regard being had to the documents in its possession and to its case‑law, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads, plus any tax that may be chargeable on that amount, to be paid into the applicant’s representative’s bank account, as indicated by the applicant.

* + 1. Default interest

103.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Declares* the application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Mr Mukhumad Magomadov;
4. *Holds* that there has been a procedural violation of Article 2 of the Convention on account of the failure to conduct an effective investigation into the abduction of Mr Mukhumad Magomadov;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant on account of her mental suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Mr Mukhumad Magomadov;
7. *Holds* that it is not necessary to examine separately the complaint under Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 3 of the Convention;
9. *Holds*
   1. that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      1. EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      2. EUR 80,000 (eighty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      3. EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant’s representative, as indicated by the applicant;
   2. 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 21 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Alena Poláčková  
 Registrar President