



THIRD SECTION

CASE OF KHUTIYEV AND OTHERS v. RUSSIA

(Application no. 38984/18)

JUDGMENT

STRASBOURG

5 October 2021

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

In the case of Khutiyev and Others v. Russia,

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

Peeter Roosma, *President*,

Dmitry Dedov,

Andreas Zünd, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 38984/18) 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 three Russian nationals listed below (“the applicants”), on 3 August 2018;

the parties’ observations;

Having deliberated in private on 14 September 2021,

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

INTRODUCTION

1. The case concerns allegations of the abduction of the applicants’ relative by State agents in Dagestan in 2010, his subsequent disappearance and the ineffectiveness of the ensuing investigation into the matter.

THE FACTS

2. The applicants are:

- 1) Mr Aslambek Khutiyev, who was born in 1940,
- 2) Ms Zarema Khutiyeva, who was born in 1972, and
- 3) Ms Yelizaveta Tangiyeva, who was born in 1946.

The applicants are Russian nationals and live in Nazran, Ingushetia. The first and third applicants are the father and mother of Mr Mukhamed Khutiyev (also spelled as “Mukhkhamed”, “Mukhammed” and also known as “Magomed”) and the second applicant is his wife. The applicants were represented by lawyers from Memorial Human Rights Centre, an NGO practicing in Moscow.

3. The Government were initially represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. DISAPPEARANCE OF Mr MUKHAMED KHUTIYEV

5. At the material time Mukhamed Khutiyev and his family lived in Nazran, Ingushetia. He worked in a construction company, with the head

office in the neighbouring region, in Dagestan, in the town of Makhachkala, about 250 km away. There were several checkpoints on the route between the two towns.

6. Early in the morning on 20 October 2010 Mr Khutiyev and his colleague Mr Kh. left Nazran to drive to the head office in Makhachkala in Mr Khutiev's Toyota car (steel-coloured "Corolla" model) with the registration number C999TO06. They arrived at the head office and remained there until the evening.

7. At about 6 p.m. Mr Khutiyev and Mr Kh. left the office to drive back to Ingushetia. At 6.14 p.m. the second applicant called her husband Mr Khutiyev and he told her that they were heading from Makhachkala back home to Nazran.

8. From the documents submitted it transpires that later in the evening the car with Mr Khutiyev and Mr Kh. was stopped at a checkpoint near the exit to motorway "Kavkaz" in Makhachkala. On that date a special counterterrorist operation was carried out in the nearby settlement of Semender, about 4 km away. After that the two men have gone missing and have not been heard from since.

II. OFFICIAL INVESTIGATION INTO THE DISAPPEARANCE AND THE APPLICANTS' COMPLAINTS AGAINST THE INVESTIGATORS

9. In reply to the Court's request for a copy of the entire contents of the criminal case file opened in connection with the disappearance of Mukhamed Khutiyev, the Government furnished a copy of its partial contents, running up to 175 pages. The documents submitted were not in chronological order, were illegible in parts and had a different set of page numbering inserted in addition to the already existing page numbering. The information submitted could be summarised as follows.

10. On 22 October 2010 the brother of Mr Kh. complained to the Kirovskiy district investigative department in Makhachkala (the investigators) about the disappearance of his brother Mr Kh. and his colleague Mukhamed Khutiyev on their way from Makhachkala to Nazran in the evening on 20 October 2010. On the same date colleagues of the disappeared men lodged a similar complaint with the Dagestan prosecutor.

11. On 2 November 2010 the second applicant complained to the Head of the Dagestan Department of the Federal Security Service (the FSB) stating that her husband, Mukhamed Khutiyev, and his colleague Mr Kh. had been abducted by law-enforcement officers at a mobile checkpoint which they had manned in armoured military vehicles. The checkpoint had been located at the crossroads of Akushingskogo Avenue and the Kavkaz motorway in the Kirovskiy district of Makhachkala. The second applicant stressed in her complaint that the lives of both abducted men were in danger

and that they could be subjected to non-judicial execution. She requested that the FSB assisted her in establishing the whereabouts of the missing men. No reply was given to this complaint.

12. On 5 November 2010 the father of Mr Kh. lodged a similar complaint with the investigators. In his opinion, the abduction of the two men had been perpetrated by the law-enforcement officers at the mobile checkpoint which had been situated in a few kilometres from the Semender settlement on the outskirts of Makhachkala, where a special operation had been taking place.

13. On 5 November 2010, the investigators opened criminal case no. 058696 into the disappearance of Mukhamed Khutiyev and Mr Kh. under Article 105 (murder) of the Russian Criminal Code.

14. On the same date, 5 November 2010, the investigators questioned Mr Kh.'s father whose statement was similar to his complaint of the same date (see paragraph 12 above). He stressed that the abduction of his son and Mr Khutiyev had been perpetrated at the mobile checkpoint with armoured vehicles stationed at the crossroads of Akushingskogo Avenue and Kavkaz motorway in the Kirovskiy district of Makhachkala due to the special operation in the village nearby.

15. On 6 and 7 November 2010 the investigators questioned several colleagues of the disappeared men none of whom had information pertaining to the incident.

16. On 8 November 2010 the second applicant was granted victim status and questioned. Her statement concerning the circumstances of the disappearance was similar to the applicants' submission before the Court.

17. On 16 and then on 18 November 2010 respectively the investigators questioned two traffic police officers. They stated that on 20 October 2010 they had manned "Lava" checkpoint on the outskirts of Makhachkala. At about 7 p.m. an officer had stopped a silver-coloured Toyota Corolla car with the license plate number containing the digits 999 and 06; there had been two men in it. The officer had checked their documents, then the boot of the car and, given that everything had been in order, had let the car pass. The checkpoint had been equipped with the CCTV cameras to record passage of vehicles.

18. On 20 January 2011 a colleague of the investigators from same the investigative department provided them with an information statement to the effect that "on 20 October 2010 no reports had been received concerning special operations against members of illegal armed groups in the Kirovskiy district in Makhachkala". From the documents submitted it transpires that none of the local law enforcement agencies, including various police services and the FSB had been asked to provide information concerning their special operations in the area on 20 October 2010.

19. On 11 January 2011 the Dagestan Ministry of the Interior (the police) informed the second applicant that it had been established that her

husband's car had been stopped at the stationary checkpoint "Lava" for a check, and that traffic police officers had been questioned about the events. No information concerning the contents of their statements was given.

20. On 5 March 2011 the investigation of the criminal case was suspended for failure to identify the perpetrators. It was subsequently suspended and resumed on a number of occasions owing to the superiors' criticism that the suspension was unlawful and premature (see below).

21. On 25 March 2011 the Deputy Dagestan Prosecutor issued official demand concerning the elimination of the violations of the criminal procedure regulations occurring within the criminal investigation. The document criticised the investigators' failure to take the most basic steps, such as identifying and questioning of all police officers who had manned all of the checkpoints on the route of the disappeared men in the evening of 20 October 2010 and as well as the failure to inspect the checkpoints' vehicle passage logs.

22. On 4 May 2011 the second applicant requested the investigators' superiors to inform her about the progress of the investigation. On 5 August 2011 she was informed that the investigation was pending.

23. On 6 and 21 June 2011 the investigators questioned two officers who on 20 October 2010 had manned checkpoint "Sulak" on the outskirts of Makhachkala, but had not stopped the car with Mukhamed Khutiyev and Mr Kh.

24. On 27 June 2011 the third applicant wrote to a number of State officials and the Russian Prosecutor General. She stated that her son and his colleague Mr Kh. had been abducted by law-enforcement officers from Makhachkala and that they had been in detention in North Ossetia and accused of commission of "incredible and absurd" crimes. She complained of the lack of assistance from the Dagestan authorities in the search for the abducted men and requested assistance in establishing their whereabouts. No reply was given to this request.

25. On 4 July 2011 the Dagestan traffic police informed the investigators that according to their database, the car with Mukhamed Khutiyev and Mr Kh. had not passed through their permanent checkpoints. No information concerning the location of mobile checkpoints or passage of vehicles through them was provided.

26. On 5 July 2011 the Dagestan traffic police informed the investigators that the vehicle passage log at "Sulak" traffic checkpoint "was missing".

27. On 23 November 2011 the criminal case was suspended for the failure to identify perpetrators. The first applicant appealed the suspension to Kirovskiy District Court (the District Court) in Makhachkala, which on 28 February 2012 found that the appeal was unsubstantiated.

28. On 10 June 2012 the investigators again questioned Mr Kh.'s father who reaffirmed the information he had previously given to the investigators (see paragraphs 12 and 14 above). In addition, he stated that he had learnt

about the abduction of his son and Mr Khutiyev by the law-enforcement agents at the mobile checkpoint from residents of the nearby block of flats who had witnessed the events.

29. On 14 June 2012 the investigators questioned the third applicant who stated that her son Mukhamed Khutiyev did not have any unpaid debts and was not involved in blood feud. The investigators did not ask her about her complaint of 27 June 2011 (see paragraph 24 above).

30. On 17 August 2012 the investigators' superiors criticised the investigators for failure to take basic steps, including questioning of the third applicant about the information which she had provided in her complaint of 27 July 2011 concerning the possible detention of the two abducted men in North Ossetia. The investigators were ordered to verify that information. From the documents submitted it transpires that those compulsory instructions were not complied with.

31. On 19 December 2012 the first applicant requested that the investigators took steps to verify the following information. On 9 December 2012 an unknown law enforcement officer in plain clothe had approached him on the market in Nazran. The officer told him that Mukhamed Khutiyev had been abducted by officers from the Ingushetia Counter Extremism Centre and the FSB for his alleged participation in an unauthorised demonstration on the motorway on 18 October 2010. The applicant requested that the investigators, among other things, took steps to identify the Ingushetia law-enforcement officers who had been on mission in Dagestan on 20 October 2010. No reply was given to this request.

32. On 25 December 2012 the investigators refused to grant the first applicant victim status in the criminal case stating that it was "unnecessary" since the second applicant had already been granted that status. The first applicant appealed the refusal to the District Court in Makhachkala, which dismissed his complaint on 12 March 2013.

33. On 25 March 2013 the second applicant wrote to the investigators reiterating the first applicant's request of 19 December 2012 to take steps to verify the information concerning the abductors' identities (see paragraph 31 above). No reply was given to this request. On 13 May 2013 the second applicant appealed to the District Court against the investigators' failure to examine her request of 25 March 2013. Her request was dismissed on 24 May 2013 on procedural grounds.

34. Meanwhile, on 17 April 2013 the criminal case was suspended for the failure to identify perpetrators. The applicants were not informed thereof. Then the investigation was subsequently resumed on 1 July 2017, even though a few steps, possible only within the active phase of the investigation were taken during the suspension period (see paragraph 36 below).

35. On 12 August 2013 the second applicant reiterated her request of 25 March 2013 for the identification and questioning of the Ingushetia

law-enforcement officers (see paragraph 33 above). No reply followed. On 23 October 2013 she complained to the District Court about the investigators' failure to take steps to have the crime resolved. No reply was given to this complaint. Then she complained to the President of the District Court and the Dagestan Supreme Court. On 22 July 2014 the latter dismissed the complaint finding that on 1 September 2013 the investigators had requested information from the Ingushetia Ministry of the Interior and the Ingushetia FSB whether any of their officers had been sent on mission to Dagestan. Similar requests had been made to the Dagestan law-enforcement bodies. In November 2013 the investigators had resubmitted the requests, but to no avail.

36. On 10 January 2014 the investigators again questioned the first applicant concerning his request of 19 December 2012 (see paragraph 31 above). He reaffirmed the facts as stated in the request and described the physical appearance of the officer who had given him the information. From the documents submitted it transpires that no steps were taken to identify that officer.

37. On 24 February 2015 the investigators allowed the second applicant's request for information on the progress of the investigation, having provided her with copies of a few documents from the case file.

38. On 2 November 2015 the second applicant again requested information about progress in the investigation. No reply was given to her. On 1 April 2016 she appealed the lack of information to the District Court, which on 26 May 2016 refused to examine the complaint on procedural grounds.

39. On 25 May 2017 the investigators' superiors criticised the investigators for failure to question the third applicant about the information she had provided in her complaint of 27 July 2011 and then to verify that information (see also paragraphs 24 and 30 above) and ordered that the investigators took the necessary steps to rectify the situation. From the documents submitted it transpires that these compulsory instructions were not complied with.

40. From the documents submitted it follows that between November 2017 and April 2018 at least two of the applicants' complaints of the lack of information from the investigators and the investigators' failure to take basic steps were dismissed by local courts as unsubstantiated.

41. The documents submitted show that the investigation in the criminal case is still pending. Neither the whereabouts of Mukhamed Khutiyev nor the identities of the perpetrators of his abduction have been established.

RELEVANT LEGAL FRAMEWORK

42. For a summary of the relevant domestic law and international materials, see *Turluyeva v. Russia* (no. 63638/09, §§ 56-74, 20 June 2013).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

43. The applicants complained that State agents had abducted their relative Mukhamed Khutiyev and that the ensuing investigation was ineffective, in violations of Article 2 of the Convention, which 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.

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. Admissibility

1. *The parties’ submissions*

44. The Government submitted that the applicants failed to show due diligence and lodged their complaint belatedly, in almost eight years after the alleged abduction and disappearance. The Government referred to the lull in the investigation between 17 April 2013 and 1 June 2017 when the investigation had been suspended, and the applicants had failed to contact the investigators. In the Government’s opinion, it showed the applicants’ lack of initiative in obtaining any information about the proceedings as they must have realised that the investigation was ineffective.

45. The applicants contested the Government’s submission stating that they complied with the admissibility criteria. Referring to *Khadzhimuradov and Others v. Russia*, nos. 21194/09 and 16 others, §§ 61-63, 10 October 2017, they argued that they showed the necessary diligence and active stance in the proceedings and that they lodged their application as soon as they realised that the pending investigation would not bring about any tangible results.

2. *The Court’s assessment*

46. 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).

47. The documents submitted show that the domestic investigation in the criminal case concerning the disappearance of Mukhamed Khutiyev has been ongoing for about seven years and nine months prior to the lodging of the application with the Court. The applicants complained to the authorities shortly after the disappearance, provided detailed statements to the investigators and took other steps, such as making complaints to the investigators' superiors and domestic courts in attempts to expedite the proceedings, in spite of the lack of information on the progress in the investigation (see paragraphs 11, 12, 16, 19, 32 and 36 above).

48. The Court notes that from the documents submitted it transpires that contrary to the Government's submission, during the lull in the investigation between April 2013 and June 2017, the applicants maintained contact with the authorities and took steps to assist the investigation (see paragraphs 35-38 above).

49. Considering the overall time frame of lodging the application with the Court (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 165, ECHR 2009), along with the applicants' active stance in the proceedings, the Court does not find that the lack of progress in the investigation of their relative's disappearance should be held against the applicants or interpreted as either a failure on their part to demonstrate due diligence or comply with the six-month requirement (see, by contrast, *Doshuyeva and Yusupov v. Russia* (dec.), no. 58055/10, 31 May 2016).

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

51. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Alleged violation of the substantive aspect of Article 2 of the Convention

52. The applicants submitted that Mukhamed Khutiyev had been abducted by State agents and then deprived of his life. They pointed out that the Government had failed to provide any alternative explanation to the events in question.

53. The Government did not comment on the merits of the complaint.

54. The Court notes that it has adjudicated a series of cases concerning allegations of disappearances in the Russian North Caucasus. It has concluded that it would be sufficient for the applicants to make a prima facie case for the abduction of the missing persons by State agents, thus falling within the control of the authorities, 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, for example, *Aslakhanova and Others v. Russia*, nos. 2944/06 and 4 others, §§ 95-99, 18 December 2012; *Aliyev and Gadzhiyeva v. Russia*, no. 11059/12, 12 July 2016; and *Alikhanov v. Russia*, no. 17054/06, 28 August 2018). If the Government failed to rebut this presumption, this would entail a violation of Article 2 of the Convention in its substantive part. Conversely, if the applicants failed to make a prima facie case, the burden of proof could not be reversed (see, for example, *Shafiyeva v. Russia*, no. 49379/09, § 71, 3 May 2012).

55. The facts of the case as highlighted by the applicants suggest that State agents were the perpetrators of the abduction of Mukhamed Khutiyev. The documents submitted do not contain any indication that he could have disappeared for other reasons or became victim of a crime perpetrated by third parties. On the contrary, the documents from the criminal case file show that he had been last seen stopped at the checkpoint stationed not far away from the place of the special operation and had gone missing since (see paragraphs 17, 19 and 28 above). The local residents, who had witnessed the incident, had told the applicants and their relatives about it, but the investigators took no steps to verify that information (see paragraphs 31 above) or the applicants' and their relatives' consistent submissions of Mr Khutiyev's arrest by law-enforcement officers (see paragraphs 11, 12, 14, 24, 28, 31, 33 and 35 above).

56. Despite the evidence confirming the applicants' allegations concerning the circumstances of the abduction, the documents submitted show the reluctance of the authorities to actively investigate the matter (see paragraphs 21, 30 and 39 above). This is enough for the Court to conclude that the applicants have made out a prima facie case of Mr Khutiyev's abduction by State agents.

57. Drawing inferences from the Government's failure to provide a plausible explanation as to what happened to Mukhamed Khutiyev after his detention at the checkpoint, the Court finds that it has been proven beyond reasonable doubt that he was abducted by State agents in the circumstances alleged by the applicants.

58. There has been no reliable news of Mr Khutiyev since his arrest in October 2010. In a situation where a person is detained by State agents 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 Mr Khutiyev or of any news of him for more than ten years supports this assumption.

59. Accordingly, the Court finds that Mr Khutiyev must be presumed dead following his unacknowledged detention by State agents.

60. In the absence of any submission to the contrary or any explanation put forward 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 of the Convention.

2. *Alleged violation of the procedural aspect of Article 2 of the Convention*

61. For a summary of general principles reflecting the Court's approach to the examination of allegations of a violation of the procedural aspect of Article 2 of the Convention see *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 169-82, 14 April 2015, and *Mazepa and Others v. Russia*, no. 15086/07, §§ 69-70 and 74, 17 July 2018).

62. The Court notes that from the very beginning of the investigation the applicants consistently alleged that Mukhamed Khutiyev had been abducted at the checkpoint by State agents (see paragraphs 11, 12, 14 and 16 above). However, the investigators took no steps to question the officers from each of the checkpoints located on the route between Makhachkala and Nazran or to take any steps to verify whether he could have been detained at the mobile checkpoint as alleged by the applicants or even how many mobile checkpoints had been operating that day in the area and in which locations. Moreover, despite the applicants' information concerning the witnesses to the abduction, the investigators took no steps to identify those witnesses and obtain their statements (see paragraph 28 above). It is noteworthy that the officers who had manned the checkpoints in one of the locations on the route were questioned only in eight months after the events in question (see paragraph 23 above) and no steps were taken to obtain the CCTV footage from the checkpoint where Mr Khutiyev had gone through (see paragraph 17 above). It is also noteworthy that the investigators took no steps to identify the possible location of his Toyota car which he had driven on the day of the disappearance, especially in the view of the missing log of passage of vehicles from the checkpoint (see paragraph 26 above). Such significant delays in taking the most basic steps to verify the information received and follow the most obvious lines of inquiry show the investigators' failure to take timely and effective steps to have the crime resolved, which is confirmed by the investigators' superiors' criticism who had pointed out those deficiencies (see paragraphs 21, 30 and 39 above). The documents submitted also show that the investigators consistently failed to provide the applicants with information on the progress in the investigation (see paragraphs 19 and 32- 35 above).

63. Given the shortcomings of the investigation as indicated above, and the Government's lack of comment on the matter, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearances of Mr Mukhamed Khutiyev.

64. Therefore, there has been a violation of the procedural limb of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

65. The applicants complained under Article 3 of the Convention of mental suffering caused to them by the disappearance of their family member Mukhamed Khutiyev. The applicants also alleged that they had no domestic remedies in respect of their complaint under Article 2 of the Convention. The relevant provisions read as follows:

Article 3

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

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.”

66. The Government did not comment on either admissibility or merits of these complaints.

67. The applicants reiterated their submissions.

A. Admissibility

68. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

69. 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)).

70. The Court reiterates its findings regarding the State’s responsibility for the abduction of Mukhamed Khutiyev, as well as the authorities’ failure to carry out a meaningful investigation into the incident. It finds that the applicants, who are close family members of the disappeared man, must be considered victims of a violation of Article 3 of the Convention on account of the distress and anguish they have suffered, and continue to suffer, as a result of their inability to ascertain the fate of Mr Khutiyev and of the

manner in which their complaints have been dealt with. The Court therefore finds a violation of Article 3 of the Convention on this account.

71. The Court observes that the applicants' complaint under Article 13 in connection with Article 2 of the Convention concerns the same issues as those examined above under the procedural limb of Article 2 of the Convention (see paragraph 64 above). Therefore, the Court considers it unnecessary to examine this issue separately under Article 13 (see *Fanzyeva v. Russia*, no. 41675/08, § 85, 18 June 2015, and *Gaysanova v. Russia*, no. 62235/09, § 142, 12 May 2016).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicants claimed the following amounts in respect of pecuniary damage caused by the loss of financial support from Mr Khutiyev, who had been the breadwinner for them. The second applicant, as the wife of Mr Khutiyev, claimed 33,282 euros (EUR) and the first and third applicants, as his parents, claimed jointly EUR 20,475. The applicants based their calculations on Mr Khutiyev's monthly wage of about EUR 325 per month and the average life expectancy in Ingushetia. The applicants also claimed EUR 13,993 for the car, which Mr Khutiyev had driven at the time of his disappearance. No documents substantiating the amounts claimed were enclosed.

74. The Government stated that there was no evidence that Mr Khutiyev was employed or had any other source of income or that even if he had one, he would have shared it with the applicants. The Government also pointed out that there was a domestic machinery for the compensation for loss of the breadwinner.

75. The Court notes that the applicants did not submit any documents substantiating either the title on the car which Mr Khutiyev had driven at the time of his disappearance, or his income at the material time. Therefore, the Court rejects the applicants' claim under this head.

76. As non-pecuniary damage, the applicants left the determination of its amount to the Court. The Government did not comment on that part of the claim.

77. The Court awards EUR 60,000 to the applicants jointly in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and Expenses

78. The applicants claimed EUR 2,000 for 20 hours of work of their representatives before the Court at the rate of EUR 100 per hour. They provided a general schedule of the legal work on the case.

79. The Government stated that the claim should be rejected as the costs could not be said to have been actually incurred, as neither the legal services agreement nor billing documents were enclosed to justify the amount claimed.

80. Given that the applicants did not submit documents showing that they had paid or were under a legal obligation to pay the fees billed by their representatives or the expenses incurred by them (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 327, 28 November 2017), the Court is not in a position to assess the claim. It therefore finds no basis on which to accept that the costs and expenses claimed by the applicants have actually been incurred by them.

81. It follows therefore that the claim must be rejected.

C. The applicants' request for an investigation

82. The applicants also requested that an independent investigation which complied with the requirements of the Convention be conducted into Mr Khutiyev's disappearance.

83. The Court notes that in other cases in comparable circumstances (see, among others, *Medova v. Russia*, no. 25385/04, §§ 142-43, ECHR 2009 (extracts), and *Velkhiyev and Others v. Russia*, no. 34085/06, § 176, 5 July 2011), it has decided that it was most appropriate to leave it to the respondent State to choose the means to be used in the domestic legal order in order to discharge its legal obligation under Article 46 of the Convention. The Court does not discern any exceptional circumstances which would lead it to reach a different conclusion in the present case.

D. Default interest

84. 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.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of the substantive aspect of Article 2 of the Convention on account of the disappearance of Mukhamed Khutiyev;
3. *Holds* that there has been a violation of the procedural aspect of Article 2 of the Convention on account of the authorities' failure to investigate the disappearance of Mukhamed Khutiyev;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicants' mental suffering;
5. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention in conjunction with Article 2 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months, EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage. That amount is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President