

## **La Corte EDU condanna la “sofferenza mentale” dovuta al mancato svolgimento di indagini efficaci ed adeguate**

**(CEDU, sez. III, sent. 15 giugno 2021, ric. n. 38889/17)**

La Corte EDU, adita da una cittadina russa, si è pronunciata sulla presunta violazione dell'art. 2 e dell'art. 3 CEDU, lamentata dalla ricorrente in seguito alla scomparsa del figlio. Ella riteneva il governo nazionale responsabile per non aver svolto indagini efficaci in relazione al rapimento del figlio da parte degli agenti della polizia; alla sua detenzione e, infine, alla morte, dal momento che erano trascorsi dieci anni senza avere avuto più alcuna notizia.

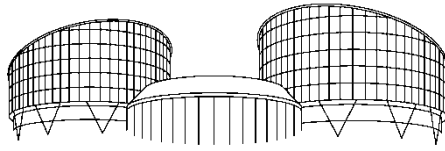
Il Governo non aveva contestato le affermazioni della ricorrente e la Corte di Strasburgo, dopo aver ritenuto ammissibile il ricorso, si è pronunciata nel merito.

In primo luogo, essa ha valutato se ricorressero o meno gli estremi per la violazione dell'art. 2 CEDU sotto il suo profilo sostanziale, ritenendo la scomparsa di una persona protrattasi per un periodo di tempo compreso fra i quattro e i dieci anni in assenza di notizie attendibili senz'altro riconducibile all'ipotesi della presunzione di morte. Nel caso di specie, la Corte EDU ha ritenuto che in base alle circostanze riferite dalla ricorrente e non confutate dal governo nazionale è plausibile addebitare la responsabilità della morte della vittima allo Stato.

In secondo luogo, la Corte di Strasburgo si è soffermata a verificare l'asserita violazione dell'art. 2 CEDU sotto il suo profilo procedurale. In proposito, la Corte non ha potuto non rilevare l'inadeguatezza nonché la carenza delle misure adottate dalle autorità nazionali per verificare le circostanze della scomparsa di XXX. Per la Corte, infatti, l'assenza di un'efficace indagine penale, il mancato svolgimento di interrogatori, di escussione di testimoni o di raccolta di informazioni ha integrato la violazione della suddetta norma convenzionale. Per di più, accanto a siffatte doglianze, la Corte EDU ha scrutinato la questione anche sotto il profilo della violazione dell'art. 3 CEDU. Già in altre occasioni i giudici di Strasburgo avevano ritenuto che in caso di sparizione forzata i parenti della vittima possono essere essi stessi vittime di trattamenti inumani e degradanti. Nella fattispecie, la circostanza per la quale la ricorrente sia rimasta senza notizie del figlio dal giorno del suo prelevamento da parte delle forze di polizia; né senza spiegazioni plausibili o attendibili circa la sua scomparsa ha provocato uno stato di “sofferenza mentale” della ricorrente e, dunque, vi è stata violazione dell'art. 3 CEDU.

Conclusivamente la Corte EDU ha condannato lo Stato al risarcimento del danno morale subito dalla ricorrente.

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

THIRD SECTION

**CASE OF XXX v. RUSSIA**

*(Application no. 38889/17)*

JUDGMENT  
STRASBOURG  
15 June 2021

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

**In the case of Xxx v. Russia,**

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

Darian Pavli, *President,*

Dmitry Dedov,

Peeter Roosma, *judges,*

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 38889/17) 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 Mariya Xxx (“the applicant”), on 22 May 2017;

the parties’ observations;

Having deliberated in private on 18 May 2021,

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

**INTRODUCTION**

1. The case concerns the alleged abduction and subsequent disappearance of the applicant’s son in Xxx in Xxx and the ineffectiveness of the ensuing investigation into the matter.

**THE FACTS**

2. The applicant was born in Xxx and lives in Xxx, in the Chechen Republic. The applicant was represented by the Committee Against Torture, a non-governmental organisation based in Nizhniy Novgorod.

3. The Government were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

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

## THE CIRCUMSTANCES OF THE CASE

### A. Abduction and subsequent disappearance of Xxx

#### *1. Abduction on 3 August 2009*

5. The applicant is the mother of Mr Xxx (also spelt "Aslambek") who was born in Xxx.

6. On 3 August 2009 the applicant was at home with her son in a block of flats in Grozny.

7. At around 7 p.m. two men in civilian clothes knocked on their door, asked for Aslanbek in Chechen and requested his identity documents. After he had shown them his passport, they carried out a search on him and told him to go with them to the police station of the Leninskiy district department of the interior in Grozny. They said that the applicant could follow them. By the time the applicant went down to the courtyard, both men and her son had gone. The neighbours said that they had left in a black civilian car VAZ-21174 ("Priora" model) with registration number plates B522ME95. Another car, VAZ-21099 (dark green), followed the black Priora. The applicant also learned from the neighbours that two other men, in camouflage uniforms, had arrived with the two abductors and waited for them outside.

8. Between 10 p.m. and 11 p.m. on 3 August 2009 the applicant went to the police station, but no information was available about her son's detention. The police officers refused to register her complaint about the abduction; they told her to return in three days' time, when they would register her complaint.

9. On 6 August 2009 the applicant complained to the Leninskiy district prosecutor about the abduction, stating that the behaviour of the abductors suggested that they were from the police and that the police officers at the police station had refused to register her complaint to that effect.

10. On 22 September 2009 at around 11 a.m., approximately twenty armed servicemen in green camouflage uniforms bearing the insignia of the Special Police Task Force Unit ("OMON") searched the applicant's flat. They told her that her son, whom they had been holding in custody, had absconded. The applicant's sister, Ms Kh., and the latter's son, Mr M.Kh., were present during the search.

11. On 23 September 2009 a group of fifteen armed men, allegedly from the OMON, entered the house of the applicant's mother and abducted Mr M.Kh., the applicant's nephew. He was released after a few hours. According to Mr M.Kh., the abductors had asked him about Xxx's whereabouts.

12. In November 2009 the applicant learned from her other sister, Ms K., that Xxx was in Astrakhan and that he had made his way to his aunt's house, turning up in a taxi at the beginning of October 2009. He had lost a lot of weight but had no visible injuries. Xxx had told Ms K. that he had escaped on 21 September 2009 from the OMON headquarters in Grozny, where he had been held since his abduction on 3 August 2009. While in detention, he had been beaten up and questioned about individuals who were members of illegal armed groups. Ms K. rented a flat for him in Astrakhan and regularly checked on him.

13. According to the applicant, Xxx stopped answering his telephone after 25 December 2009.

14. On an unspecified date between October and December 2009 the applicant learned from her neighbour, Ms T., that the latter's relative, Mr M., an officer in the OMON, had been arrested after Xxx absconded from the OMON headquarters in September 2009. According to Ms T., the abductors believed that Mr M. had helped Xxx to escape. The abductors had kept Mr M. detained on the

OMON premises until Xxx was found in Astrakhan at the end of December 2009 and returned to Grozny by OMON officers.

*2. Disappearance on 5 January 2010*

15. On an unspecified date in January 2010 the applicant went to the Leninskiy Inter-District Investigations Department in Grozny. The investigators informed her that on 5 January 2010 her son had been brought to them by OMON officers for questioning and that he had then been released afterwards. However, Xxx never returned home and had gone missing.

*B. Official investigation into the alleged abduction and disappearance*

16. In reply to the Court's request for a copy of the entire contents of the criminal case files opened in respect of the disappearance of Xxx, the Government submitted copies of the contents of files nos. 66063 and 27007, amounting to approximately 2,000 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.

*1. Criminal case opened into the abduction of 3 August 2009*

17. On 4 August 2009 the investigators of the Leninskiy Inter-District Investigation Department in Grozny ("the investigators") interviewed the applicant, whose statement concerning Xxx's abduction was similar in content to her submission before the Court. The applicant's sister, Ms Kh., who was interviewed on the same date, corroborated the applicant's statement.

18. On 14 August 2009 the investigators opened criminal case no. 66063 into the abduction of Xxx under Article 126 of the Criminal Code (abduction).

19. On 31 August 2009 the applicant was granted victim status in the criminal case and questioned again. In addition to her previously given statements, she submitted that on 27 August 2009 she had seen one of the two abductors driving through the gates of the Zavodskoy district police station in Grozny. The applicant provided a detailed description of the individual in question and stated that she would be able to identify him.

20. On 18 December 2009 the Ministry of the Interior in Xxx ("the police") informed the investigators that Mr Saidakhmadov had been tracked down in Astrakhan and that, according to their operative information, he was intending to leave Russia.

21. The documents submitted contain a transcript of an interview with the applicant's son on 5 January 2010 at the investigators' office in Grozny. According to the document, on 3 August 2009 Xxx had left home following an argument with the applicant. On 4 August 2009 he had arrived in Astrakhan, where he had rented a flat and had tried to find a job. As he had not informed the applicant about his departure, she had mistaken his absence for an abduction.

22. Although Xxx had given a statement on 5 January 2010 about his voluntary departure from home on 3 August 2009, the investigation into his abduction continued.

23. On 4 March 2010 the investigators asked Major D., the head of operational search unit no. 2 of the police, to provide a statement concerning the circumstances in which Mr Saidakhmadov was questioned on 5 January 2010 and, in particular, to clarify how the applicant's son left the police station that day.

24. On 4 March 2010 the investigators also forwarded a request to Lieutenant Colonel A.Ts., the head of the Chechen OMON, requesting him to instruct his subordinate officers to give statements to the investigators and to clarify whether any of them had arrested the applicant's son in September

2009. No reply was given to this request. On 15 March 2010, the investigators reiterated their request, but to no avail.

25. On 23 March 2010 the investigators' superiors criticised the investigation and issued various instructions. These stated that the investigators were to take, *inter alia*, the following steps: questioning of the officers from police operational search unit no. 2 who had taken A. Saidakhmadov to the investigator for questioning on 5 January 2010 and to establish where and by whom he had been taken on 3 August 2009.

26. On 23 March 2010 the investigators questioned the operational search officer R.I. ("Kuzya") from operational search unit no. 2, who stated that in September 2009 he had received information from an informant, whose identity he could not disclose, that Mr Saidakhmadov had been involved in activities related to illegal armed groups. He had subsequently learnt that after Mr Saidakhmadov's alleged abduction, he had been seen in Astrakhan, from where he had apparently intended to leave the country. R.I. had been instructed to go to Astrakhan and return Mr Saidakhmadov to Grozny for questioning. On 2 January 2010 he had driven to Astrakhan with other officers. On 4 January 2010 they had detained Mr Saidakhmadov in Astrakhan and brought him back to Grozny on 5 January 2010. On the same date, he and two OMON officers had taken Mr Saidakhmadov to D.M., an investigator, who had obtained a statement from him. Mr Saidakhmadov had left the premises on completion of that interview.

27. On 30 December 2010 the investigators terminated the investigation in the criminal case on the grounds that no crime had occurred. In its decision the investigators referred to the letter of 18 December 2009 (see paragraph 20 above), which explained that the applicant's son had not been abducted but had left home of his own accord on 3 August 2009; following his questioning on 5 January 2010 he had left the building unimpeded.

28. On 4 March 2011 the investigators' superior ordered that the investigation be reopened. He stated, among other things, that the fact of an abduction had been confirmed by statements from five witnesses and that Xxx had not been questioned about the circumstances in which he had left the police premises on 5 January 2010. Following the orders, on 20 March 2011 the investigation in the criminal case was reopened.

29. The submitted documents show that the investigation into the disappearance of the applicant's son continued, albeit subject to regular suspensions and resumptions of the proceedings owing to the investigators' failure to take basic steps, until 23 April 2014, when the criminal case file was merged with that in criminal case no. 20007 (see paragraph 46 below).

#### *2. Opening of criminal case in relation to the disappearance on 5 January 2010*

30. On 9 and 19 January 2010 the applicant lodged complaints about her son's disappearance on 5 January 2010. She stated that her son had been detained on the premises of OMON in the Ippodromniy district in Grozny. No response was received to either of those complaints.

31. On 10 February 2010 the applicant lodged another complaint concerning her son's disappearance on 5 January 2010, which this time was forwarded to the investigators.

#### *(a) Main steps taken by the investigation*

32. On 13 February 2010 the applicant provided a statement to the investigators concerning the circumstances of her son's disappearance on 5 January 2010. She stressed that her son had been unlawfully detained on the premises of the OMON and requested assistance with his release.

33. On 14 February 2010 the investigators interviewed D.M., an investigator, who stated that on 23 December 2009 he had instructed Officer R.I. ("Kuzya") to bring Mr Saidakhmadov in for questioning. On 5 January 2010 he had questioned Mr Saidakhmadov, who had explained that he had not been abducted but had left of his own free will. After the questioning Mr Saidakhmadov had left with the police officers who had brought him in. He had no idea where they had all gone afterwards.

34. On 15 February 2010 the investigators interviewed a certain Mr I.A., who stated in very general terms that although he and Xxx had not been friends, he had known about him through acquaintances. He had seen Mr Saidakhmadov walking on the evening of 5 January 2010 at the crossroads of Malgobekskaya Street and Guchina Street in Grozny. They had merely passed each other without speaking.

35. On 24 February 2010 the investigators opened criminal case no. 20007 in relation to the events of 5 January 2010 under Article 105 of the Criminal Code (murder). The relevant decision stated that at around 6.40 p.m. on 5 January 2010 Mr Saidakhmadov had left the building of the investigations department in Grozny. At around 8 p.m. he was apparently last seen at the crossroads of Malgobekskaya Street and Guchina Street in Grozny.

36. On 5 and 9 March and 30 April 2010 the investigators questioned Officer R.I. ("Kuzya") and two other officers. They confirmed, in almost verbatim statements, that they had travelled on mission to Astrakhan to return Mr Saidakhmadov to Grozny. On 5 January 2010 they and other officers had taken back Mr Saidakhmadov to Grozny, where he had been questioned by the investigators, following which Xxx had left the premises of his own free will.

37. The applicant's sister, Ms K., who was questioned on 30 March 2010, stated that her nephew had been taken from Astrakhan to Grozny at the end of December 2009 by law-enforcement officers. While in Astrakhan, he had told her that he was abducted in August 2009 and had been detained on the premises of the Chechen OMON, where he had been subjected to beatings while handcuffed to a radiator. He had managed to abscond and had spent about three weeks in hiding before arriving in Astrakhan. According to Ms K., one of the OMON officers had been suspected of assisting her nephew in his escape.

38. On 5 May 2010 the investigators asked that the head of the Chechen OMON, Lieutenant Colonel A.Ts., present himself for questioning. He complied with the request nearly three years later (see paragraph 44 below).

39. On 27 September 2011 the investigators' superiors criticised the investigators for failing to take a number of steps and ordered that various measures be taken. In particular, the investigators were to question again Mr I.A., the witness who had seen Mr Saidakhmadov on the evening of 5 January 2010 in Grozny, and D.M., the investigator who had questioned Mr Saidakhmadov on 5 January 2010.

40. On 4 November 2011 the investigators received a police report on the mission to Astrakhan undertaken by police officers. According to the report, on 4 January 2010 they stopped Mr Saidakhmadov near the house where he was staying in Astrakhan. Mr Saidakhmadov had gone with them of his own free will and told the officers that he had left Grozny because of an argument with his family. On 5 January 2010 they took Mr Saidakhmadov to the investigators' office in Grozny, where he was questioned before leaving of his own free will.

41. On 24 December 2012 the applicant's representatives provided the investigators with a statement from Mr I.U., who indicated that he had been detained with Xxx on the OMON premises in the beginning of January 2010. The applicant's representatives requested that Mr I.U. be questioned as a witness by the investigation (see paragraph 49 below).

42. On 24 January 2013 the applicant's representatives requested that the investigators take a number of steps to establish the whereabouts of Xxx. In particular, they referred to the information obtained in the investigation on the connections made to and from his mobile telephone between 25 December 2009 and 13 January 2010; this information implied that Mr Saidakhmadov had been brought from Astrakhan to Grozny as early as on 25 December 2009, since the phone signal had connected to the mobile phone masts there. Referring to the discrepancies between the data obtained and the statements given by the police officers, the applicant's representatives requested that those officers be questioned again about the circumstances in which they had allegedly returned Mr Saidakhmadov from Astrakhan to Grozny. On 7 March 2013 the above request was rejected. No reasons for the rejection were given.

43. On 7 March 2013 the investigators were criticised by their superiors for having failed to comply with orders to take certain investigative steps, issued to them previously, and for failing to inform the applicant about how the proceedings were progressing. The investigators were instructed to resume the investigation and to comply with the above orders.

44. On 25 March 2013, the investigators questioned Lieutenant Colonel A.Ts., the head of the Chechen OMON. He stated in general terms that he had no information about the mission his officers had undertaken to Astrakhan; he also denied that Mr Saidakhmadov had been detained on the premises of his unit.

45. On 17 October 2013 the investigators' superiors requested that the Leninskiy district prosecutor carry out an internal inquiry to assess the work of the police officers from police station no. 1 in Grozny, who were supposed to assist the investigators in the criminal case. The investigators stressed that the officers had failed to cooperate with them in the criminal case, that their compulsory orders given to the officers had either been "ignored or carried out in a perfunctory and inappropriate manner".

46. On 23 April 2014 the investigations in criminal case no. 20007 were joined to case no. 66063 (see paragraph 29 above).

47. The documents submitted show that on numerous occasions the investigation of the criminal case was suspended and subsequently resumed. Each suspension of the proceedings was criticised by the investigators' superiors as unlawful and premature and the investigators were ordered to resume the proceedings in order to take at least some basic steps. The proceedings resumed on 16 September 2016.

(b) The applicant's complaints against the investigators

48. From the documents submitted, it appears that between June 2012 and September 2016 the applicant lodged at least five complaints with the Leninskiy District Court (the local court) about the decisions to suspend the investigation and the investigators' failure to take necessary steps. These complaints were either left unexamined, as the investigation had already been resumed, or allowed in part.

49. On an unspecified date in September 2016 the applicant complained to the local court about yet another suspension, dated 11 January 2016. She contended, in particular, that neither Mr M., the OMON officer, nor Mr I.U., who had allegedly been also detained in the OMON headquarters at the same time as her son Xxx, had been questioned by the investigators. On 19 September 2016 the court discontinued the proceedings into the applicant's complaint as the investigation had resumed on 16 September 2016.

#### RELEVANT LEGAL FRAMEWORK

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

### THE LAW

#### I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

51. The applicant complained that State agents had abducted and killed her son and that the investigation into the matter was ineffective, contrary to the requirements 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

52. The Government submitted that the applicant had lodged her application with the Court with unjustified delay and had therefore failed to comply with the six-month time-limit.

53. The applicant contested the Government's submissions and submitted that she had complied with the admissibility requirement. She had lodged her application with the Court only after realising that there would be no progress in the criminal investigation.

##### 2. The Court's assessment

54. 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).

55. The documents submitted show that the domestic investigation in the criminal case concerning Mr Saidakhmadov's disappearance had been ongoing for about seven years and nine months prior to the lodging of the application with the Court. The applicant complained to the authorities shortly after her son's 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 about progress in the investigation (see paragraphs 8, 9, 15, 17, 19, 42, 48 and 49 above).



56. Considering the overall time frame for 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 applicant's active role in the proceedings, the Court does not find that the lack of progress in the investigation of her son's disappearance should be held against the applicant or interpreted as either a failure on her part to demonstrate due diligence or to comply with the six-month requirement (contrast *Doshuyeva and Yusupov v. Russia* (dec.), 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.

58. 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. *The parties' submissions*

59. The applicant pointed out that the Government had neither contested the facts of the case as presented by her, nor advanced any alternative theory concerning the abductors' identities. She submitted that her son, Xxx, had been abducted on 3 August 2009 by police officers and then detained on the premises of the OMON in Grozny, from where he had escaped to Astrakhan. There he had been found by his abductors, who had brought him back to Grozny on 25 December 2009. Subsequently, on 5 January 2010 the abductors had taken him for questioning by the investigator of the criminal case opened into his abduction, after which he had been deprived of his life by the police officers as there had been no news of him for more than ten years.

60. The applicant further submitted that the Government had not contested her allegation that the investigation into her son's abduction had been ineffective.

61. The Government did not submit any comment on the merits of the complaint.

### 2. *The Court's assessment*

#### (a) Alleged violation of the substantive limb of Article 2 of the Convention

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

63. The Court notes that the Government have not submitted an alternative version of the events. In particular, they did not deny that the applicant's son had been detained by the police on 3 August 2009, returned to Grozny by the police officers after he had absconded, and taken in for questioning on 5 January 2010, after which he had disappeared. The copies of the criminal case files substantiate the applicant's submission concerning the factual circumstances of the case (see paragraphs 19, 20, 23, 24, 26, 33, 36, 41 and 49 above). The Court also notes the statement concerning the alleged sighting of Mr Saidakhmadov in the evening of 5 January 2010 (see paragraph 34 above). However, this statement, given before the opening of the criminal case, was vague and was not subsequently confirmed by the investigation of the criminal case. The Court therefore finds that the applicant has made out a prima facie case that her son was abducted by State agents.

64. The Court finds that in a situation where a person is detained by State agents and then remains missing for more than ten years, that situation can be regarded as life-threatening. To this end, the Court notes that it has made findings of the presumption of death in the absence of any reliable news about missing persons for periods ranging from four years (see, for example, *Askhabova v. Russia*, no. 54765/09, § 137, 18 April 2013) to more than ten years.

65. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Xxx must be presumed dead following his questioning on 5 January 2010 and subsequent disappearance.

66. In the absence of any submission to the contrary or any explanation put forward by the Government, the Court finds that the death of Xxx can be attributed to the State and that there has been a violation of the substantive aspect of Article 2 of the Convention.

(b) Alleged violation of the procedural limb of Article 2 of the Convention

67. For a summary of the general principles governing 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).

68. The Court notes that from the very beginning of the investigation, the police interviewed a number of witnesses, including the applicant, her neighbours and relatives. The latter affirmed the applicant's allegations that the abductors had been police officers (see paragraphs 15, 17, 19, 30-32, 37 and 42 above). However, despite those consistent statements, no tangible steps were taken to follow up on this information such as identifying the officer whom the applicant had seen entering the premises of the Zavodskoy police station and identified as one of the abductors, or inspecting the premises of that police unit in the Ippodromniy district in Grozny to verify whether Xxx had been detained there (see paragraphs 19 and 30 above). No steps were taken to question Mr I.U., the witness who had been detained with Xxx on the premises of the OMON, despite the requests of the applicant's representatives in that respect (see paragraphs 41 and 49 above). Moreover, after inexplicable delays lasting several weeks the investigators questioned the police officers who, according to their own statements, had brought Xxx back for questioning and had left the building at about the same time as him (see paragraph 36 above). No tangible steps were taken to verify their statements to the effect that Mr Saidakhmadov had left on his own after the questioning, for example by examining the CCTV recording of the premises or questioning other officers who had been there at the time.

69. Finally, the Court cannot but notice that the disappearance of the applicant's son was investigated within two sets of parallel criminal proceedings, carried out concurrently for more than four years, with the result that steps were duplicated (see paragraphs 18, 35 and 46 above). It further observes that, prior to their joinder in April 2014, both sets of proceedings were plagued with similar shortcomings. Such shortcomings – which included the police's persistent failure to take basic steps and their unwillingness to cooperate with investigative committee, and the investigators' persistent failure to comply with the orders issued – were regularly criticised by the supervising bodies (see paragraphs 25, 28, 43 and 45 above). No steps were taken by the superiors to ensure their compliance, other than again reiterating the unexecuted orders.

70. Given the shortcomings of the above-mentioned investigation 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 Xxx, in breach of Article 2 under its procedural limb.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

71. The applicant relied on Article 3 of the Convention, submitting that as a result of her son's disappearance and the State's failure to investigate it properly, she had endured mental suffering in breach of Article 3 of the Convention, which reads as follows:

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

#### A. Admissibility

72. The Government did not comment on the complaint.

73. The applicant reiterated her complaint.

74. The Court notes that the complaint 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

75. The Court has found on many occasions that in a situation of enforced disappearance, the close relatives of the victim may themselves be victims of treatment in violation of Article 3 of the Convention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva v. Russia*, no. 7615/02, § 164, 9 November 2006).

76. The Court furthermore notes that, for a number of years, the applicant had neither any news of her missing son Xxx nor any plausible explanation or reliable information about what had become of him following his abduction by State agents on 3 August 2009. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here (see paragraph 70 above).

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

### III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

78. The applicant complained under Article 13 that she had been deprived of effective remedies in respect of her complaints under Article 2 of the Convention. Article 13 reads:

"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."

79. 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 of the Convention and, therefore, should be declared admissible. However, having regard to its conclusion under Article 2 (see paragraph 70 above), the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention (see *Gaysanova v. Russia*, no. 62235/09, § 142, 12 May 2016, and *Fanziyeva v. Russia*, no. 41675/08, § 85, 18 June 2015).

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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."

81. The applicant claimed neither compensation in respect of pecuniary damage nor costs and expenses.

82. As to compensation in respect of non-pecuniary damage, both parties left the determination of the award to the Court's discretion.

83. The Court awards the applicant 60,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

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 Article 2 of the Convention under its substantive limb in respect of Xxx;
3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb on account of the failure to effectively investigate the disappearance of Xxx;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant on account of her mental suffering caused by her son's disappearance and the authorities' response to her suffering;
5. *Holds* that there is no need to examine Article 13 in conjunction with Article 2 of the Convention;
6. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months, EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage. The 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 15 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar

Darian Pavli President

