



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

THIRD SECTION

CASE OF S.T. AND Y.B. v. RUSSIA

(Application no. 40125/20)

JUDGMENT

Art 34 • Locus standi • Right of the second applicant to act on behalf of the first applicant as his family member given his unknown whereabouts and the existence of family life between them • Notion of “family” not confined solely to marriage-based relationships and might encompass other de facto “family” ties
Art 3 (substantive and procedural) • Inhuman and degrading treatment of the first applicant by State agents in Chechnya following his abduction • Physical pain and intense mental suffering • Lack of effective investigation • Authorities’ inability to ensure basic cooperation between law-enforcement bodies in Chechnya and other regions of the Russian Federation
Art 5 § 1 • Lawful arrest or detention • Arbitrary detention without legal basis and not officially acknowledged

STRASBOURG

19 October 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of S.T. and Y.B. v. Russia,

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

Georges Ravarani, *President*,

Dmitry Dedov,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma,

Andreas Zünd, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 40125/20) 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 two Russian nationals, Mr S.T. and Ms Y.B. (“the applicants”), on 11 September 2020;

the decision to give notice of the application to the Russian Government (“the Government”);

the decision not to have the applicants’ names disclosed;

the parties’ observations;

Having deliberated in private on 14 and 21 September 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The present application concerns an allegation of unlawful detention and ill-treatment of the first applicant by State agents in September 2020 in Chechnya and the ineffectiveness of the ensuing investigation into the matter.

THE FACTS

2. The applicants were born in 2001 and 1999 respectively and live in Grozny. They are represented before the Court by lawyers from the NGO Committee Against Torture in Nizhny Novgorod.

3. The Government were represented initially by Mr M. Galperin, the 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. ABDUCTION OF THE FIRST APPLICANT AND SUBSEQUENT EVENTS

5. The applicants married in March 2020 (see also paragraphs 46 and 51 below). The first applicant, Mr S.T. (also known as Mr M.T.), originates from Chechnya. In the summer of 2020, he moved from Chechnya to Gelendzhik in the Krasnodar Region, about 800 km away, where he worked as a waiter in a restaurant at a hotel. The second applicant stayed in Chechnya. At the material time the first applicant was also a moderator of an opposition channel in Telegram platform “1ADAT”, known for criticising the Chechen authorities. The administrators of the channel kept their identities secret.

A. Abduction of the first applicant

6. At about 3.45 p.m. on 6 September 2020 (in the documents submitted the date was also stated as 5 September 2020) the first applicant was at work at the hotel in Gelendzhik, when a group of three to five men in black uniforms of the Chechen police arrived there in black Toyota Camry cars with Chechnya registration plates. One of them waited on the other side of the street while two others went into the hotel, grabbed the first applicant and walked out arm in arm with him. When the hotel’s guards asked the men why and where they were taking the applicant, one of them used physical force against the guard, while another one showed a service identity card of the Chechen police. Then the abductors forced the applicant into one of their Toyota Camry cars and drove off. There was also a Lada Priora car which drove off along with the abductors’ vehicles. The applicant’s whereabouts have been unknown since.

7. A part of the abduction, which had taken place outside the hotel, was registered by a CCTV camera, and the footage was submitted by the applicants’ representatives to the Court.

B. The search for the first applicant

8. According to the second applicant, in the afternoon on 6 September 2020 her husband stopped answering his telephone. She then called the hotel where he worked, and his colleagues told her that he had been taken away by Chechen men. Then she tried to establish her husband’s whereabouts using a special telephone application to track his mobile telephone’s physical location. The telephone’s last signal of 4 p.m. indicated that on 6 September 2020 the first applicant had been taken from Gelendzhik to Chechnya. On 7 September 2020 the telephone’s signal was located at the premises of the post and patrol service regiment of the Chechen police named after A. Kadyrov, formerly known as post and patrol service regiment no. 2 (*Полк ППС имени Героя РФ А. Кадырова*,

бывший ПППС-2) in the Staropromyslovskiy district in Grozny (here and thereafter “the regiment”). The regiment’s premises were comprised of a number of buildings in a closed off heavily guarded compound.

9. At about 6.30 p.m. on 7 September 2020 the second applicant and the first applicant’s mother arrived at the regiment’s entrance, where they were met by a group of five officers in black uniforms who expressed their indignation at the second applicant’s successful attempt to trace her husband’s whereabouts through his telephone. The officers denied that the first applicant was detained at the regiment and, after asking the second applicant numerous questions, let both women go.

C. The video of the first applicant’s ill-treatment and relevant information

10. On 7 September 2020 a video recording of the first applicant completely naked on his knees next to a glass bottle was published on "1ADAT" channel. On the video, posted from the account of a participant named “Hunter”, the applicant confirmed that he was one of the administrators of the channel and that he repented for the “shameful things” which had been published by the “dirty group” of the channel administrators. At the end of the video the applicant said that he would punish himself “for behaviour inappropriate for a Chechen and would pass the baton on to other 1ADAT administrators”. Then he took the bottle and tried to sit on its neck and insert it in his rectum; his face became distorted with pain and then the recording was interrupted.

11. On an unspecified date between 8 and 30 September 2020 the father of the first applicant gave a statement broadcasted by a Chechen TV station saying that he had disowned his son, the first applicant, and that his son’s “humiliation” depicted on the video was a “family matter”.

12. On 14 September 2020 the second applicant lodged a request for interim measure under Rule 39 of Rules of Court asking the Court to indicate to the Russian Government to take urgent and effective steps to protect the first applicant from the risk of ill-treatment and unlawful detention by State agents in Chechnya. On the same date the Court requested information on the matter from that the Government. On 22 October 2020, upon receipt of the information, the Court refused to apply the interim measure.

II. INVESTIGATION INTO THE ALLEGATIONS

13. In reply to the Court’s request for copies of the documents reflecting steps taken by the domestic investigation, the Government furnished 639 pages of copies of documents from the preliminary (pre-investigation) inquiries and the criminal case opened into the first applicant’s ill-treatment, which can be summarised as follows.

A. Steps taken by the investigators in Chechnya and relevant information

14. On 9 September 2020 the NGO Memorial Human Rights Centre lodged a complaint concerning the first applicant's ill-treatment with the Chechnya Investigative Committee (the investigators) having enclosed the link to the video of his ill-treatment.

15. On 15 September 2020 the applicants' representatives also lodged a complaint with the law-enforcement authorities in Chechnya, alleging that the ill-treatment of the first applicant had been perpetrated by police officers from the regiment. They requested that this theory be verified by the investigation.

16. On the same date the investigators questioned the father of the first applicant who stated that he did not know who had ill-treated his son and put the video online. Two other relatives of the first applicant, Mr T. I. and Ms Ya. S., gave similar statements.

17. On the following day, 16 September 2020, the investigators initiated the preliminary inquiry into the first applicant's ill-treatment.

18. On 18 September 2020 the second applicant gave a detailed statement to the investigators and requested that the involvement of the regiment's police officers be verified and that the regiment's premises in Grozny be examined.

19. On 21 September 2020 the investigators asked for assistance from the investigators from the Gelendzhik investigative committee (the Gelendzhik investigators) in the Krasnodar Region, asking them to interview the employees at the hotel, examine the crime scene and obtain the hotel's CCTV footage for the relevant period. On 23 September 2020 the crime scene at the hotel was examined. No evidence was collected.

20. Between 23 and 25 September 2020 three employees of the hotel were interviewed. The hotel's administrator Ms D.K. stated that in the afternoon on 6 September 2020 several men had arrived at the hotel and introduced themselves as Chechen police officers. Then they had taken the first applicant outside, forced him into a car and driven off. The hotel's director Mr A.L. and the administrator's assistant Ms O.G. gave similar statements.

21. On 24 or 25 September 2020 the applicants' representatives requested that the investigators examine premises of the regiment in Grozny, which was carried out on 15 October 2020 (see paragraph 27 below). The representatives also requested that the drivers and owners of the cars involved in the abduction be questioned and enclosed detailed information on the vehicles depicted on the footage. The investigators took that step on 4 December 2020 (see paragraph 44 below).

22. On 29 September 2020 the investigators examined a video on YouTube in which the first applicant had stated, without referring to a date, that his life was not under any threat, asked that he and his family be left

alone and that he had subjected himself to “the punishment” depicted on the video published on 7 September 2020.

23. On 7 October 2020 the applicants’ representatives requested that the investigators question the owners of the two vehicles used by the abductors. In particular, based on the CCTV footage, the representatives had already established the registration numbers and the owners of the vehicles, as well as the history of their traffic violations, and provided this information, along with relevant photographs, to the investigators. They also enclosed photographs of the vehicles’ owners from the latter’s social media accounts. In addition, they stated that, based on the CCTV footage, two of the abductors had been identified as the regiment’s police officers I.T. and Dzh.Yu. and provided the investigators with the suspects’ photographs and detailed personal information obtained from the latter’s social media accounts. Finally, the representatives requested that the investigators take a number of steps, including the questioning of thirteen identified individuals who could have witnessed or could have been involved in the abduction, as well as obtaining the traffic information showing the movement of the abductors’ cars from the hotel in Gelendzhik to the regiment’s compound in Grozny.

24. On or before 7 October 2020 the applicants’ representatives submitted to the investigators the second applicant’s statement of 29 September 2020 (see paragraph 9 above), with the detailed description of the officers with whom she had spoken at the regiment. The applicant also enclosed a photo of one of those officers, which she had found on the official website of a Chechen law-enforcement agency.

25. On 9 October 2020 the head of the Chechen investigators forwarded a request to the Chechen Minister of the Interior asking that eight police officers from the regiment, including I.T. (the commander of the 3rd battalion of the regiment), and Dzh.Yu. (the deputy commander of the 3rd battalion of the regiment) (see paragraph 23 above) provide their statements to the investigators. On 15 October 2020 the Minister of the Interior replied that four of the officers, including I.T. and Dzh.Yu., were unavailable for the interview.

26. Between 12 and 15 October 2020 the investigators questioned four other officers from the regiment, A.D., I.Z., A.S. and Ya.Sh., who gave short, almost verbatim, statements to the effect that none of them could recall the events of 7 September 2020, but confirmed that the second applicant had arrived at the regiment’s gate with another woman searching for her husband. All of them denied having any information concerning the first applicant’s whereabouts.

27. On 15 October 2020 the investigators carried out a brief examination of the regiment’s premises by taking photographs of hallways in the buildings where the officers’ classes and exercises were held, as well as of the outdoor walking paths between the buildings. No other places or buildings were photographed, and no evidence was collected.

28. On the same date, 15 October 2020, the investigators refused to open a criminal case into the first applicant's abduction and ill-treatment for the lack of the event of a crime. Neither the second applicant nor the applicants' representatives were provided with a copy of that decision. As a consequence, on 6 and then on 17 November 2020 the applicants' representatives complained about it to the Staropromyslovskiy District Court in Grozny (the District Court), which left the complaint without examination.

29. On 21 October 2020 the investigators' superior overruled the above-mentioned refusal as unsubstantiated and premature and ordered that a number of steps be taken, including the questioning of the four other officers from the regiment and the first applicant's mother (see paragraphs 25 and 9 above).

30. On 29 October 2020 the applicants' representatives were informed by the investigators that a refusal to open a criminal case had been taken earlier that day, and that the file had been transferred for further inquiry to the Krasnodar Region as the abduction had taken place there. No copy of either the refusal or the decision on the transfer were enclosed (see also paragraph 32 below).

31. On 16 November 2020 the investigators interviewed the deputy commander of the 3rd battalion of the regiment officer Dzh. Yu. whose brief statement contained his denial of ever having seen the first applicant. He could not recall the events of 6 or 7 September 2020 but remembered that the second applicant and the mother of the first applicant had arrived at the regiment looking for the first applicant, but to no avail as the latter had not been detained there. The officer stated that the premises of the regiment were under live online video surveillance; however, no recordings were made. He refused to undergo a polygraph examination to confirm his statement.

32. On 19 November 2020 the investigators refused to open a criminal case on the same grounds for the third time. The text of the decision was similar to that of 15 October 2020 (see paragraph 28 above). On the same date they forwarded again the inquiry file to the Krasnodar Region (see also paragraph 30 above). On 30 November 2020 the applicants' representatives appealed against the refusal to the District Court, which on 15 December 2020 left the appeal without examination stating that the inquiry had been resumed on 3 December 2020 (see below).

33. On 3 December 2020 the investigators' superior overruled the refusal of 19 November 2020 as unsubstantiated and premature and stressed that the steps ordered on 21 October 2020 be taken (see paragraph 29 above).

34. On 11 January 2021 the investigators refused to open a criminal case for the fourth time. The text of the decision was almost verbatim to the ones issued on 15 October and 19 November 2020 (see paragraphs 28 and 32 above). The second applicant and her representatives were not provided

with a copy of that decision. Consequently, on 18 January 2021 the applicants' representatives complained about it to the District Court. No reply was given to their complaint. However, on 25 February 2021 the investigators sent the applicants' representatives a copy of the refusal of 11 January 2021.

35. On 25 February 2021 the investigators once again forwarded the inquiry file to the Krasnodar Region for further investigation (see also paragraphs 30 and 32 above).

B. Steps taken by the investigators in the Krasnodar Region and the relevant information

1. Preliminary inquiry

36. On 19 and then on 29 September 2020 the investigators opened two inquiry files into the complaint lodged on 12 September 2020 by the applicants' representatives concerning the first applicant's abduction from the hotel in Gelendzhik and his subsequent ill-treatment. On 29 September 2020 the files were merged under the number 636-pp20 (also referred to as 63-pp20).

37. On 1 October 2020 the investigators examined the CCTV footage of the abduction submitted by the applicants' representatives.

38. On 10 October 2020 the investigators interviewed the first applicant's father whose statement was similar to the one given to the investigators in Chechnya (see paragraph 18 above). Then, on various dates in October 2020, they interviewed a few local residents whose cars, according to the footage of the abduction, had been seen in the vicinity of the incident. None of them had witnessed the incident.

39. On 15 October 2020 the investigators briefly examined the premises of the hotel and its vicinity. No evidence was collected.

40. On 20 October 2020 the investigators forwarded their inquiry file to the Chechen investigators as it had been established that the abductors' cars had gone from the hotel directly to the Chechen Republic. However, on 29 October 2020 the investigators' superior overruled that decision and ordered that the inquiry be continued to be carried out by the investigators in the Krasnodar Region where the abduction had taken place.

2. Investigation within the framework of the criminal case

41. On 27 November 2020 the Gelendzhik investigators opened criminal case no. 12002030008000087 under Article 126 § 2 of the Criminal Code (aggravated abduction). The applicants' representatives were informed thereof.

42. On 1 December 2020 the investigators requested that the head of the Chechen police inform them about all missions of their officers to Gelendzhik in the Krasnodar Region between August and October 2020.

They also requested that their colleagues in Chechnya examine the premises of the regiment to establish whether the first applicant had been detained there as well as provide them with a list of the regiment's officers. No reply was given to this request.

43. On 2 December 2020 the investigators received the court authorisation for the list of connections made to and from the first applicant's mobile telephones between 1 September and 1 December 2020.

44. On 4 December 2020 the investigators questioned the owner of the Toyota car used by the abductors, Mr A.A., concerning his car's whereabouts on the date of the abduction. According to him, from 1 to 10 September 2020 he had lent the car to his relative, the commander of the 3rd battalion of the regiment, officer I.T.

45. On 9 and 10 December 2020 the investigators questioned the hotel's administrators Ms D.K. and Ms O.G. who reaffirmed their previously given statements (see paragraph 20 above). In addition, Ms D.K. identified by photographs the regiment officers Dzh.Yu. and I.T. as the men who had taken the first applicant out from the hotel.

46. On 10 December 2020 the investigators questioned the second applicant who reaffirmed her previously given statements (see paragraph 18 above). She also stated that she and the first applicant had married in a Muslim ceremony in March 2020 in Dagestan, a region neighbouring Chechnya, as the official civil ceremony had been unavailable due to the COVID-19 lockdown in the Chechen Republic at the material time. Her husband was critical of the Chechen authorities and in mid-August 2020 he had become the administrator of the opposition channel in the Telegram. In the afternoon on 6 September 2020 she had exchanged mobile messages with him in which he had expressed his concern that the Chechen authorities must have found him in Gelendzhik and then the communication had stopped. Her husband's whereabouts remained unknown since that time. The applicant requested that she be granted victim status in the criminal case.

47. On the same date the investigators refused the above request stating that even though the second applicant cohabited with the first applicant, she was not officially married to him and therefore, could not be recognised as his relative or a "close person" entitled to have the procedural status. The applicants' representatives appealed against that refusal to the Gelendzhik Town Court arguing that given that the investigators had established that the second applicant had in fact cohabited with the first applicant, she was to be considered as a person close to him and therefore could be granted the victim status. The outcome of this complaint is unknown (see also paragraph 50 below).

48. On 10 December 2020 the Gelendzhik police replied to the investigators' request for information on the progress in their efforts to establish the whereabouts of the first applicant and identify the owners of

the vehicles used by the abductors. The document stated, amongst other things the following:

- the Toyota car belonging to Mr A.A. had committed a minor traffic violation at about 2.45 pm. on 6 September 2020 in Gelendzhik (see also paragraph 44 above);
- the two abductors of the first applicant depicted on the footage from the hotel were the regiment's police officers I.T. and Dzh.U.;
- on 6 and 7 September 2020 the abductors' cars had been tracked down moving from Gelendzhik to Grozny. In the afternoon on 7 September 2020 one of the abductors' Toyota cars had been geopositioned at the regiment;
- the Chechen police refused, categorically and without any explanations, the request of the Gelendzhik policemen for any information on the owners of the cars used by the abductors;
- on 8 and 10 September 2020 two short videos with the first applicant had been posted on his account in Instagram and on 9 September 2020 on the public account "ЧП-Чечня" in which he had stated that the administration of 1ADAT channel had sold his personal information to the Chechen law enforcement, whose agents had tracked him down. They had made him "choose" between getting a bullet in the head or self-inflicting "punishment" and then they had recorded the latter on video. Under the threat to his life, he had been forced to make the choice to "sit down" on the bottle;
- the Gelendzhik police officers who had gone to Chechnya to obtain evidence for the investigation of the criminal case, had faced constant reluctance from the local police, who had subjected them to constant "control". The officers could not obtain any information as the Chechen police officers had refused to speak Russian.

49. On the same date, 10 December 2020 the investigators instructed the Gelendzhik police to establish the whereabouts of the officers I.T. and Dzh.U. whose involvement in the abduction had been registered on the CCTV footage and to ensure that both officers arrive at the investigators' office in Gelendzhik to give their statements concerning the incident. Those instructions were not complied with.

50. On 15 January 2021 the applicants' representatives reiterated their appeal before the Gelendzhik Town Court against the refusal to grant the second applicant victim status in the criminal case (see paragraph 47 above), having enclosed videos and photographs of the applicants' family life together. On 27 January 2021 the court returned the complaint for failure to comply with procedural regulations. On 15 February 2021 the applicants' representatives appealed against that decision to the Krasnodar Regional Court, which on 15 April 2021 upheld the lower court's decision.

51. On 26 January 2021 the investigators questioned again the second applicant who reaffirmed her earlier statements (see paragraph 46 above) and added that the ceremony of the marriage in March 2020 had been carried out by a mullah in the presence of Mr Kh. as the witness. Prior to

that she had converted to Islam in the mosque in Grozny, in a ritual witnessed by Ms S. On the same date Mr Kh. confirmed her statement to the investigators.

52. On 26 January 2021 the second applicant reiterated her request for victim status in the criminal case. The outcome of this request is unknown.

53. The documents submitted show that the investigation into the abduction and ill-treatment of the first applicant is currently pending. His whereabouts remain unknown.

RELEVANT LEGAL FRAMEWORK

54. For a summary of the relevant provisions of domestic law, see *Suleymanov v. Russia*, no. 32501/11, §§ 103-10, 22 January 2013.

THE LAW

I. PRELIMINARY ISSUE CONCERNING *LOCUS STANDI*

55. The Government submitted that the second applicant was not authorised to lodge the application on behalf of the first applicant as she was neither officially married to him, nor submitted the authority form signed by him. Therefore, she had no standing in the proceedings and the application was incompatible *ratione personae*.

56. The second applicant submitted that she had the standing as the first applicant's *de facto* wife. She had family life with him and lodged the application on his behalf as his family member.

57. According to the Court, the notion of the "family" is not confined solely to marriage-based relationships and may encompass other *de facto* "family" ties (see *Al-Nashif v. Bulgaria*, no. 50963/99, § 112, 20 June 2002, and *Şerife Yiğit v. Turkey* [GC], no. 3976/05, §§ 96-98, 2 November 2010). A family member could lodge an application under Articles 2 and 3 of the Convention on behalf of a relative, when the latter was not in a position to pursue the application himself (see *İlhan v. Turkey* [GC], no. 22277/93, § 53, ECHR 2000-VII).

58. Given the documents submitted by the parties, the Court is satisfied that there existed family life between the applicants. Considering that the Government do not dispute that the whereabouts of the first applicant have not been established to date, the Court finds that the second applicant could bring the application on his behalf as his family member. In such circumstances, there is a sufficient link between the applicants for the purposes of Article 35 of the Convention.

59. Accordingly, the Court dismisses the Government's preliminary objection.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

60. The applicants complained that the first applicant had been subjected to inhuman and degrading treatment by State agents and that the ensuing investigation into the incident was ineffective, contrary 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

61. The Government stated that the application should be rejected for failure to exhaust domestic remedies as the criminal investigation has been pending for only several months (see paragraphs 41 and 53 above). Given that all steps possible were being taken to establish the first applicant’s whereabouts and the perpetrators of his ill-treatment, it was premature to assess its effectiveness.

62. The applicants reiterated their complaint.

63. The Court considers that the Government’s objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicants’ complaint. Thus, these matters fall to be joined to the merits and examined below under the procedural limb of Article 3 of the Convention. The Court further considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

64. The applicants maintained their complaint.

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

1. *Alleged violation of the procedural limb of Article 3*

66. The Court finds that the applicants’ allegations – as set out in the complaints lodged with the domestic authorities – that the first applicant was subjected to treatment breaching Article 3 of the Convention were arguable and therefore, requiring an effective investigation by the authorities.

67. The Court reiterates that whether treatment contrary to Article 3 has been inflicted through the involvement of either State agents or private individuals, the requirements as to an official investigation are similar (see *Sabalić v. Croatia*, no. 50231/13, § 96, 14 January 2021). A summary of the relevant principles on the procedural obligation under Article 3 can be found, respectively, in *Amadayev v. Russia*, no. 18114/06, §§ 68-72, 3 July

2014, and *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 114-23, ECHR 2015). The Court reiterates that an “effective investigation” should be “capable of leading to” the identification and – if appropriate- punishment of those responsible (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV, and *Jeronovičs v. Latvia* [GC], no. 44898/10, § 103, 5 July 2016). When assessing whether the investigation was expeditious, the Court examines how promptly the authorities reacted to the complaints, the delays in taking statements and the length of time taken during the initial investigation (see *Makhashevy v. Russia*, no. 20546/07, § 136, 31 July 2012, with further references). Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation’s ability to establish the circumstances of the case and the identity of those responsible. The institutions and persons responsible for carrying out the investigation out must be independent from those targeted by it. This means not only a lack of any hierarchical or institutional connection but also practical independence (see *Bouyid*, cited above, §§ 118 and 120).

68. The Court observes that the authorities were made aware of the abduction and ill-treatment on 9 September 2020 (see paragraph 14 above) and on 15 September 2020 they received a detailed allegation of the involvement of the State agents in the incident (see paragraph 15 above). The initial inquiry by the Chechen investigators, despite repeated complaints, was opened only on 16 September 2020 and only after the second applicant’s request for the interim measure before the Court (see paragraph 12 above). Shortly thereafter, on 19 September 2020, the Gelendzhik investigators initiated another inquiry into the matter (see paragraph 36 above). Therefore, the inquiry was carried out by the investigators in two different regions simultaneously (see paragraphs 17 and 36 above). As a result, the inquiry in Chechnya, where the first applicant had allegedly been taken from Gelendzhik and ill-treated, established that no crime had been committed, and the investigators issued repeated refusals to open a criminal case (see paragraphs 28, 30, 32 and 34 above), whereas the inquiry in the Krasnodar Region, from where the first applicant had allegedly been taken to Grozny, resulted in the opening of the criminal case (see paragraph 41 above).

69. From the very beginning of the investigation and even before its inception, the investigators in Chechnya were provided with information about the identities of the police officers involved in the incident, detailing their positions at the regiment and the vehicles they had used in Gelendzhik for the abduction of the first applicant and taking him from there to Grozny (see paragraphs 15, 18, 23 and 24 above). Despite the crucial importance of that information in clarifying the circumstances surrounding the incident, the investigators in Chechnya failed to pursue this obvious line of inquiry and took no meaningful steps to verify it. For instance, the examination of the regiment’s premises as the alleged place of the first applicant’s unlawful detention and ill-treatment was carried out only three weeks after the receipt

of the relevant information, and, when it was finally carried out, it was done in an inexplicably superficial way (see paragraphs 21 and 27 above).

70. One of the two regiment officers who had been identified from the CCTV footage and by the eyewitness as the perpetrators (see paragraphs 23, 25 and 45 above), and who, most probably used his relative's car for the abduction (see paragraphs 44 and 48 above), the commander of the 3rd battalion of the regiment I.T., was never interviewed by the inquiry. The interview of the other person identified by eyewitness, officer Dzh.Yu., was carried out in a shallow manner, with an incomprehensible delay of almost two months after the receipt of the crucial information identifying him as one of the suspects, and it was done only after the direct orders of the investigators' superior to this end (see paragraphs 29 and 31 above). Considering that this interview had taken place within the framework of the inquiry, it did not compel officer Dzh.Yu. to provide a more detailed statement under the liability of prosecution for perjury, as would have been the case if it were to be done within a framework of a fully-fledged investigation of criminal case (see *Lyapin v. Russia*, no. 46956/09, §§ 133-40, 24 July 2014).

71. It is noteworthy that after the opening of the criminal case (see paragraph 41 above), the attempts of the Gelendzhik investigators to have the two identified officers and their colleagues questioned, were to no avail. The Chechen authorities openly ignored the investigation's efforts to verify the involvement of the suspected officers in the incident (see paragraphs 25, 42, 48 and 49 above). Therefore, considering the seriousness of the crime committed, the protracted investigation into its circumstances which, nonetheless, failed to take any tangible steps to verify the most important information on the perpetrators' identities, could not be deemed effective and in compliance with the Convention standards.

72. The Court cannot help but notice that in spite of the investigators' superiors' repeated direct orders overruling the refusals to open a criminal case by the Chechen investigators, the latter clearly ignored these mandatory instructions by continually failing to question such key witnesses to the incident as the first applicant's mother and the other police officers who had allegedly been involved in the commission of the crime (see paragraphs 29 and 33 above). Considering that the suspects were themselves the police officers, it is not surprising that given the practical dependence of the investigators from Gelendzhik on the assistance of their counterparts in Chechnya, the latter failed to provide assistance in the investigation of the criminal case. Moreover, when the investigators from Gelendzhik attempted to take investigative steps in Chechnya, they had been met there with open reluctance by the local police, who not only ignored compulsory requests for assistance, but eloquently manifested their attitude towards attempts by their colleagues from another region to investigate the crime by deliberately refusing to speak Russian, the only State language of the Russian Federation (see paragraph 48 above).

73. This striking behaviour of law-enforcement officers in Chechnya in the investigation of the crime committed against the first applicant could be interpreted as an attempt to cover-up their involvement in the incident. Their behaviour is also indicative of the authorities' inability to ensure basic cooperation between the law-enforcement bodies in Chechnya and other regions of the Russian Federation.

74. Turning to the Government's non-exhaustion plea which has been joined to the merits, the Court notes, in particular, the investigative authorities' failure to take urgent steps to clarify the circumstances of the incident along with the conspicuous inability of the investigators from Gelendzhik to obtain co-operation from their Chechen colleagues on the matter. In view of the clearly inadequate response by the domestic authorities to a prima facie serious breach of Article 3 of the Convention, bearing in mind the general obligation to investigate similar allegations (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII), and considering that time is of the essence in the investigation of such serious crimes, the Court finds that the Government have not shown that the remedy invoked was adequate and effective for the purpose of Article 35 § 1 in respect of the applicants' complaint (see also *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports* 1996-IV).

75. Therefore, the Government's preliminary objection as to non-exhaustion in respect of a criminal investigation should be dismissed.

76. There has thus been a violation of Article 3 of the Convention under its procedural limb in respect of the first applicant.

2. *Alleged violation of the substantive limb of Article 3*

77. The Court observes that the Government did not dispute that the first applicant was abducted from the hotel in Gelendzhik on 6 September 2020 and that on 7 September 2020 the video of his ill-treatment, in the circumstances as alleged by the applicants, was posted on the internet.

78. The Court further observes that the applicants alleged that the first applicant's abductors had been State agents who then subjected him to ill-treatment proscribed by Article 3 of the Convention. The Government did not comment on whether the perpetrators had been State agents. In such circumstances, the Court has to first establish whether the first applicant was subjected to ill-treatment falling within the scope of Article 3 of the Convention as alleged by the applicants and if so, whether the individuals responsible for the alleged ill-treatment were the State agents as alleged.

(a) **Whether the first applicant was subjected to treatment proscribed by Article 3 of the Convention**

79. A summary of relevant principles can be found in *Bouyid*, cited above, §§ 86-90 and §§ 100-01.

80. The Government did not dispute that the first applicant was subjected to ill-treatment on the video published after his disappearance from the hotel on 7 September 2020 (see paragraphs 10, 22 and 48 above). Therefore, the Court finds it established that the ill-treatment had taken place as alleged by the applicants.

81. As for the classification of that ill-treatment, the Court finds that given that it was aimed at humiliating and debasing the applicant by inflicting physical pain on him and violating his physical and sexual integrity under duress, while being filmed on video for subsequent public dissemination of that extremely embarrassing ordeal, such treatment resulted in physical pain and intense mental suffering amounting to inhuman and degrading treatment.

(b) Whether the ill-treatment was inflicted by State agents

82. The applicants alleged that the perpetrators of the first applicant's ill-treatment were police officers from the regiment. The Government did not dispute that assertion by putting forward an alternative explanation to the events in question or submitting other information capable of rebutting the applicants' allegation.

83. The Court reiterates that allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess such evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among other authorities, *Bouyid*, cited above, § 82).

84. The Court notes that the only version concerning the identities of the perpetrators of the crime pursued by the investigators was that they had been the officers from the regiment in Grozny. No other concrete theories concerning the perpetrators' identities were explored. Despite having this tangible lead substantiated by the evidence, the pending investigation has not attained any results as the most urgent steps to have the crime resolved were never taken. In such circumstances, given the lack of any other plausible explanation for the events in question advanced by the Government, the indicative failures of the investigating authorities in a situation when the perpetrators of the abduction had been identified (see paragraph 71 above) (see, by contrast, *Suleymanov*, cited above, § 133), as well as the evidence obtained by the investigation in the criminal case describing how the ill-treatment had been inflicted (see paragraph 48 above), no other conclusion could be made than the involvement of the State agents in the incident, as alleged by the applicants.

(c) Conclusion

85. Therefore, there has been a violation of the substantive limb of Article 3 in respect of the first applicant.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

86. The applicants complained that the first applicant was unlawfully detained by the State agents on 6 September 2020 in violation of Article 5 of the Convention, the relevant part of which reads as follows:

“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 ...”

A. Admissibility

87. The Government submitted that the complaint was premature as the pending investigation had not established that the first applicant was unlawfully detained by State agents.

88. The applicants reiterated the complaint.

89. The Court notes that this complaint relates to the same issues as those examined above under Article 3 of the Convention. Therefore, the complaint should be declared admissible.

B. Merits

90. The Court has found on several occasions that unacknowledged detention is a complete negation of the guarantees contained in Article 5 of the Convention and discloses a particularly grave violation of its provisions (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001).

91. It has been established that the perpetrators of the first applicant's ill-treatment had been the State agents who had taken him away from the hotel in Gelendzhik and in whose hands he remained at least for the duration of the transfer from the Krasnodar Region to Chechnya and then during the ill-treatment (see paragraph 84 above). That arbitrary detention of the first applicant by the State agents had neither legal grounds nor was officially acknowledged.

92. There has accordingly been a violation of Article 5 of the Convention in respect of the first applicant.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

93. Following the Court's communication of the complaints examined above, the second applicant introduced separate complaints: under Article 2 about the first applicant's enforced disappearance and lack of an effective

investigation in that respect and under Article 3 as regards the mental suffering she had endured on account of the first applicant's disappearance.

94. Having regard to the particular circumstances of the present case, the Court considers that these complaints are premature and thus inadmissible within the meaning of Article 35 §§ 1 and 4 of the Convention. It would be open to the second applicant to re-submit those complaints in the future.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicants did not claim either pecuniary damage or costs and expenses. They left the determination of the amount of the award for non-pecuniary damage to the Court's discretion.

97. The Government submitted that the award should be in line with the case-law on the matter.

98. The Court awards the first applicant 26,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable. The amount awarded is to be paid to the second applicant (see paragraph 58 above).

B. Default interest

99. 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 complaint under Article 3 of the Convention concerning the first applicant's ill-treatment and the lack of an effective investigation in that respect, as well as the complaint under Article 5 of the Convention admissible and the remainder of the application inadmissible;
2. *Joins* to the merits of the complaint under the procedural limb of Article 3 of the Convention the Government's objection concerning the exhaustion of domestic remedies and *rejects* it;

3. *Holds* that there has been a violation of the procedural limb of Article 3 of the Convention in respect of the first applicant;
4. *Holds* that there has been a violation of the substantive limb of Article 3 of the Convention in respect of the first applicant;
5. *Holds* that there has been a violation of Article 5 of the Convention in respect of the first applicant;
6. *Holds*
 - (a) that the respondent State is to pay the first applicant EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement; that amount is to be paid to the second applicant within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, 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 19 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško
Registrar

Georges Ravarani
President