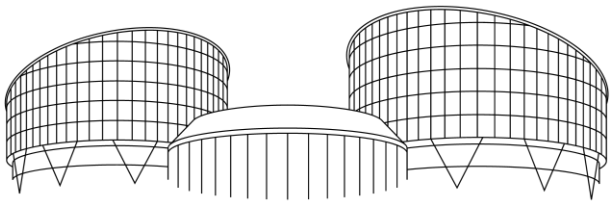

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF SASITA ISRAILOVA AND OTHERS v. RUSSIA**

*(Application no. 35079/04)*

JUDGMENT

STRASBOURG

28 October 2010

**FINAL**

*11/04/2011*

*This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.*

**In the case of Sasita Israilova and Others v. Russia,**

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 October 2010,

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

# PROCEDURE

1. The case originated in an application (no. 35079/04) 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 seven Russian nationals, Ms Sasita Alikhanovna Israilova, Mr Movldi Vakhayevich Yansuyev, Ms Laura Ilyasovna Yansuyeva, Ms Larisa Isayevna Mudarova, Mr Ismail Ilyasovich Abubakarov, Mr Islam Movldiyevich Yansuyev, and Ms Eliza Nozhiyevna Abubakarova, ("the applicants"), on 23 August 2004.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative ("SRJI"), an NGO based in the Netherlands with a representative office in Moscow, Russia. The Russian Government ("the Government") were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicants alleged, in particular, that their close relatives had disappeared following their unacknowledged detention and that there had been no adequate investigation into the matter. They further complained that they had suffered mental distress on account of these events and that there had been a lack of effective remedies in respect of those violations. They relied on Articles 2, 3, 5 and 13 of the Convention.

4. On 1 September 2005 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. By a decision of 5 March 2009, the Court declared the application partly admissible.

6. The applicants and the Government each filed further written observations (Rule 59 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1960, 1949, 2002, 1982, 2001, 1995 and 1982 respectively and live in Grozny, the Chechen Republic.

8. The first two applicants are the parents of Mr Ilyas Movldiyevich Yansuyev, born in 1978, Mr Isa Movldiyevich Yansuyev, born in 1980, and the sixth applicant. Ilyas Yansuyev was married to the seventh applicant; they are the parents of the third and fifth applicants. Isa Yansuyev was married to the fourth applicant.

### A. The facts

#### *1. Events of 13 February 2003*

##### (a) The applicants' account of events

9. It was the seventh applicant who witnessed the events of 13 February 2003, and the account below is based on her submissions.

10. In the early morning of 13 February 2003 Ilyas and Isa Yansuyev, their families and a friend, Mr D., slept in Ilyas Yansuyev's flat no. 110 at 24 Ioanisiani Street, Grozny.

11. At about 4 or 5 a.m. around fifteen armed men wearing camouflage uniforms broke the entrance door of Ilyas Yansuyev's flat and entered; some of them were masked. Although the armed men did not introduce themselves, the Yansuyevs concluded that they belonged to the Russian military because they spoke Russian without an accent.

12. The servicemen hit the seventh applicant on the head with an automatic rifle butt, tied her arms behind her back and put adhesive tape over her mouth. Then they put her on the floor and covered her body with a blanket. One of them sat on the seventh applicant's back so that she could not move for about an hour. The eight-month-old third applicant slept in her bed; the servicemen put a pillow on her face.

13. Meanwhile the servicemen searched the flat without producing any warrant but did not seize anything. They also beat Ilyas Yansuyev with automatic rifle butts. Then they forced Mr D., Ilyas and Isa Yansuyev out into the street and took them away. A few minutes later neighbours came

and untied the seventh applicant who rushed to take a pillow off her daughter's face.

14. The applicants' submitted that the neighbours had seen the abductors arrive in two armoured personnel carriers ("APCs") which they had parked in the courtyard. The applicants did not produce any witness statements to corroborate this allegation.

15. According to the fourth applicant, who had spent that night at her parents' flat in the same block of flats, she was woken by the noise. She looked out of a window and saw about twenty servicemen. After they had left, she rushed into the street and saw the tracks of APCs leading in the direction of the main federal military base in the village of Khankala.

**(b) The Government's account of events**

16. In the Government's submission, on 13 February 2003 at about 4 a.m., unidentified persons in camouflage uniforms and masks armed with automatic firearms entered flat no. 110 at 24 Ioanisiani Street in Grozny, where they beat and tied the seventh applicant, abducted Mr Ilyas Movldiyevich Yanusov, Mr Isa Movldiyevich Yanusov and Mr D. and took them away in an unknown direction.

*2. The applicants' search for their relatives*

17. According to the applicants, they started searching for their relatives on the morning of 13 February 2003. It was the first, fourth and seventh applicants who contacted various official bodies, such as the local administration, the Chechen administration, the Chechen President, the military commander's office of the Leninskiy District of Grozny ("the district military commander's office") and the prosecutors' offices at different levels. In those applications they described the events of 13 February 2003 and asked for assistance in establishing their relatives' whereabouts. In their efforts the applicants were assisted by the SRJI.

18. The applicants submitted that they had also tried to obtain information concerning their relatives' fate through unofficial channels. In particular, the first applicant had turned for help to her neighbour, Ms P., who lived with Mr M., allegedly a serviceman of an intelligence service, and agreed to question him. Mr M. told Ms P. that Ilyas and Isa Yansuyev were being kept in a "pit" at the federal military base in Khankala. He also mentioned that the person in charge of their arrest was named Ruslan Amirov. Two months later Ms P. learned that the Russian military had abducted the Yansuyev brothers because Mr M. had slandered them.

*3. Official investigation into Ilyas and Isa Yansuyev's disappearance*

19. On 13 February 2003 the first applicant complained in writing to the district military commander's office and the head of the administration of

the Leninskiy District of Grozny that her sons had been abducted on that date and asked for assistance in finding them. On an unspecified date the military commander's office asked the Grozny prosecutor's office and the department of the interior of the Leninskiy District to render the first applicant assistance in the search for Ilyas and Isa Yansuyev.

20. On 17 February 2003, upon the first applicant's complaint of 13 February 2003, the Grozny prosecutor's office instituted an investigation into the disappearances of Mr D., Ilyas and Isa Yansuyev under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was given the number 20039.

21. On 11 March 2003 the Grozny prosecutor's office granted the first applicant victim status in case no. 20039 and questioned her on the same date. She confirmed the account of events of 13 February 2003 as submitted before the Court. The first applicant also stated that, according to her information, the alleged perpetrators were servicemen of regiment no. 531 of the Russian Ministry of the Interior. According to the Government, the first applicant was further interviewed on 3 April 2003 when she stated that according to her information, the source of which she refused to disclose to the investigating authorities, the servicemen who had taken away her sons had been under the command of Mr Ruslan Amirov, an officer of an intelligence service.

22. On 8 April 2003 the Grozny prosecutor's office asked the head of detention facility IZ 20/2 based in the village of Chernokozovo to inform them whether Mr D., Ilyas and Isa Yansuyev were being or had been kept there.

23. On 9 April 2003 the seventh applicant was granted victim status in case no. 20039 and questioned in connection with the events of 13 February 2003. She submitted that at about 4 a.m. the entrance door of her flat had been broken, and around fifteen armed men in camouflage uniforms and masks had entered the room in which she and her husband had been sleeping. One of the men had hit her on the head with an automatic rifle butt and another one had started kicking her husband. She had not seen what had been going on in another room where her brother-in-law and Mr D. had been sleeping. The men had then put adhesive tape across her mouth, had tied the hands of the Yansuyev brothers and Mr D. and taken them away. She had not seen what had been going on in the street. She had not applied to any medical institutions in connection with her injuries.

24. On 17 April 2003 the investigation was suspended for failure to identify the alleged perpetrators.

25. On 25 November 2003 the SRJI submitted a request to the prosecutor's office of the Leninskiy District of Grozny (“the district prosecutor's office”) for information on the progress in the investigation.

26. On 19 December 2003 the district prosecutor's office informed the first applicant and the SRJI that the investigation into the kidnapping of Mr D., Ilyas and Isa Yansuyev had been opened and was underway.

27. On 20 April 2004 the district prosecutor's office resumed the investigation in case no. 20039.

28. On 29 April 2004 the military prosecutor's office of the United Group Alignment forwarded the applicants' complaint to the military prosecutor's office of military unit no. 20102.

29. According to the Government, on 10 May 2004 the investigating authorities questioned Ms P., the applicants' neighbour, who stated that in March 2003 she had been working as a yard-cleaner in the federal military base in Khankala and upon the first applicant's request had attempted to obtain information regarding the fate of the Yansuyev brothers. Ms P. had received information from a serviceman named Vladimir that the applicants' relatives were alive and being held in a "pit". During that period she had been cohabiting with Mr M., who, according to him, had been an officer of the Federal Security Service ("the FSB"). At some point Mr M. had had a quarrel with the Yansuyev brothers and threatened that they would "rot in a pit".

30. The Government submitted that on 29 April 2004 the investigating authorities had again interviewed the first applicant who had confirmed that Mr M. and her sons had had a quarrel. She had also referred to Ms P.'s words to the effect that Mr M. had told her that the Yansuyev brothers were not being kept in Khankala, and that he had searched for the intelligence officer Mr Ruslan Amirov so as to obtain information concerning their abduction.

31. On 27 May 2004 the district prosecutor's office stayed the investigation in case no. 20039 for failure to identify those responsible.

32. On 7 June 2004 the military prosecutor's office of military unit no. 20102 informed the prosecutor's office of the Chechen Republic ("the republican prosecutor's office") that they had carried out an inquiry which had not established any trace of military personnel having been involved in the abduction of Ilyas and Isa Yansuyev. They had forwarded the case materials to the republican prosecutor's office pursuant to subject-matter jurisdiction rules.

33. On 2 February 2005 the SRJI asked the district prosecutor's office to update them on the state of proceedings in case no. 20039 and to inform them whether the first applicant had been granted victim status. On 25 February 2005 the district prosecutor's office replied that the first applicant had been granted victim status and that the investigation had been stayed on 27 May 2004.

34. On 8 April 2005 the district prosecutor's office informed the first applicant that the investigation in case no. 20039 instituted on 17 February

2003 had been resumed on 20 April 2004 and that the search for her sons, as yet fruitless, was underway.

35. On 11 April 2005 the republican prosecutor's office informed the first applicant that investigative measures were being taken in case no. 20039 and invited her to send further queries to the district prosecutor's office.

36. On 20 June 2005 the SRJI asked the district prosecutor's office to update them on the progress of case no. 20039 and to resume the investigation if it had been suspended.

37. On 28 April 2006 the decision of 27 May 2004 to suspend the investigation into the disappearance of the Yansuyev brothers was set aside and the proceedings were resumed. The first and sevenths applicants were informed accordingly.

38. The Government submitted that on 10 May 2006 the investigating authorities had questioned Mr B., the applicants' neighbour, who had submitted that on 13 February 2003 at about 4 a.m. his wife had woken him up and said that she had heard voices speaking Russian. He had looked through a peephole of his flat door and had seen on the staircase around fifteen men armed with automatic firearms who had broken the door of the Yansuyevs' flat and shortly after had taken the Yansuyev brothers and another man out of the flat with them. The applicants' two other neighbours interviewed on 12 and 15 May 2006 had made similar submissions. One of them had also stated that she had seen the men who had taken the applicants' relatives leaving in the direction of the Kirov Avenue.

39. According to the Government, on 6 June 2006 the criminal proceedings were stayed for failure to establish the identity of the alleged perpetrators. The first and seventh applicants were duly informed.

40. On 3 August 2007 a supervising prosecutor ordered the investigation to be resumed. The relevant decision stated that the investigating authorities had not taken the measures necessary for establishing the whereabouts of those missing and had not taken steps which could have been carried out in the absence of those responsible. In particular, the investigating authorities had not checked the information provided by the first applicant which claimed that servicemen of regiment no. 531 of the Russian Ministry of the Interior and a certain Mr Amirov Ruslan had been involved in her sons' abduction. They had furthermore not checked the information concerning the involvement in the said offence of Mr M. despite witness statements to that end, nor had they verified the information of the possible participation of the Yansuyev brothers in illegal armed groups, nor the information to the effect that the first applicant had attempted to establish her sons' whereabouts with the assistance of a certain Mr R.

41. On the same date the supervising prosecutor ordered a number of investigative measures to be taken during further investigation. In particular, he instructed the investigating authorities to verify whether Mr M. had been

implicated in the abduction of the Yansuyev brothers, whether servicemen of regiment no. 531 of the Russian Ministry of the Interior and Mr Amirov Ruslan had been involved in that offence, whether those missing had been involved in the activities of illegal armed groups, to establish whether a curfew had been in place in Grozny in February 2003, to establish the identity of Mr R. and to obtain documentary evidence confirming his death, and to take other necessary steps.

42. The first and seventh applicants were informed of the decision of 3 August 2007 in a letter of 8 August 2007.

43. On an unspecified date in August 2007 the republican prosecutor's office forwarded the materials of case no. 20039, along with the prosecutor's instructions of 3 August 2007, to the district prosecutor's office for further investigation.

44. On 8 August 2007 the district prosecutor's office instructed the Office of the Interior of the Leninskiy District of Grozny ("the district office of the interior") to carry out investigative measures as was indicated in the instructions of 3 August 2007.

45. On 16 August 2007 the district prosecutor's office sent another request to the district office of the interior similar to that of 8 August 2007.

46. During a witness interview of 18 August 2007, Mr B. made statements similar to those of 10 May 2006. He added that at the time of the incident he had heard the noise of engines and suggested that those had been military vehicles. According to him, he had learnt from his neighbours the next day that there had been APCs in the courtyard of their block of flats.

47. In a letter of 26 August 2007 the district office of the interior informed the district prosecutor's office that the version of the alleged involvement of federal servicemen in the Yansuyevs' abduction was being checked and that any relevant information obtained during that inquiry would be communicated to the district prosecutor's office.

48. On 6 September 2007 the criminal proceedings were stayed. The relevant decision stated that, despite the measures taken, it had not been possible to establish the alleged perpetrators.

49. By a decision of 11 January 2008 the supervising prosecutor ordered the criminal proceedings to be resumed. The decision stated that until that time the investigating authorities had not taken the measures necessary for establishing the whereabouts of those missing and had not taken steps which could have been carried out in the absence of those responsible.

50. In written instructions of 25 January 2008 the investigator in charge was ordered to carry out investigative measures similar to those indicated in the instructions of 3 August 2007.

51. In letters of 4, 6 and 8 February 2008 the investigator in charge asked the district office of the interior to verify information concerning the involvement of Mr M. in Ilyas and Isa Yansuyev's abduction, to take measures with a view to establishing their whereabouts and those

responsible, and to obtain more details about the identity of those missing. In a letter of 7 February 2008 the investigator in charge enquired of the Grozny military commander whether a curfew had been in place at the time of the abduction of the Yansuyev brothers.

52. According to the Government, information was, at some point, obtained that Mr M. had worked at the federal base in Khankala until he had been murdered in 2003.

53. On 4 March 2008 the investigation was suspended owing to the failure to establish those responsible. This decision was quashed as unlawful and unfounded and the proceedings were resumed on 14 April 2008. The relevant decision prescribed the investigator in charge to comply in full with the instructions of 25 January 2008.

54. On 8 March 2008 the district office of the interior reported in writing that the involvement of Mr M. in the abduction of the applicants' two relatives had not been established.

55. In a letter of 7 May 2008 the investigator in charge sent requests to the district office of the interior and to the military commander of the Chechen Republic similar to those sent in February 2008. The district office of the interior replied in a letter of 26 May 2008 that on 19 May 2008 they had already sent the materials obtained in reply to the investigator's earlier requests.

56. On 14 May 2008 the investigator in charge stayed the proceedings stating that it was impossible to establish the alleged perpetrators despite the measures taken. This decision was quashed as unlawful and unfounded and the proceedings were resumed on 25 June 2008. The relevant decisions ordered the investigator in charge to comply in full with the instructions of 25 January 2008.

57. On 25 July 2008 the investigator in charge sent a request to the Military Investigation Committee at the prosecutor's office of the United Group Alignment. The request described the incident of 13 February 2003 when the applicants' two relatives had been taken away and stated that “in the course of the preliminary investigation it has become necessary to obtain access to archive documents concerning the special operation on Ioanisiani Street in the Leninskiy District of Grozny of the Chechen Republic during which [the Yansuyev brothers] ... were abducted.” The request then listed the documents to which access was needed from the central archive of the Russian Ministry of Defence. It is unclear whether any reply was received to that request.

58. On the same date the investigation in case no. 20039 was adjourned. The first and seventh applicants were informed of that decision in a letter of the same date.

59. On 1 October 2008 the Federal Service of Execution of Punishments informed the investigating authorities that the Yansuyev brothers had not

been delivered and were not listed among the detainees kept in the facilities of the said Service.

60. By a decision of 24 November 2008 the supervising prosecutor ordered the investigation to be reopened. The relevant decision stated that a number of essential steps had not been taken during the investigation and, in particular, that a number of witnesses had not been interviewed, the identity of two servicemen who might have been involved in the abduction had not been established and no replies had been received to the requests sent earlier. The first and seventh applicants were informed of that decision in a letter of 25 November 2008.

61. In written instructions of 24 November 2008 the investigator in charge was ordered to carry out a number of measures and, in particular, to check whether Mr M., servicemen of regiment no. 531 of the Russian Ministry of the Interior, serviceman named Vladimir or Mr Amirov Ruslan had been involved in the abduction of the applicants' relatives; to establish the identity of those responsible and to question them; to interview once again the first and seventh applicants and Ms P.; to take measures to eliminate conflicts in their accounts of events by organising confrontations; if necessary, to establish the identity of Mr R. and to obtain documentary evidence confirming his death; to send queries to various State agencies; and to take other necessary steps.

62. In the period between 27 November and 15 December 2008 the investigating authorities sent a number of queries and requests to various civilian and military authorities in an attempt to establish the Yansuyev brothers' whereabouts and to obtain information concerning the identity of Messrs M. and R. and servicemen of regiment no. 531, including serviceman named Vladimir and Mr Amirov Ruslan.

63. In a letter of 1 December 2008 the office of the interior of the Shali District replied to the investigator in charge that the power structures located in the Shali District had not carried out any special operations in the Leninskiy District of Grozny on 13 February 2003 and that their officers had not instituted criminal or administrative proceedings against, and had not detained, the Yansuyev brothers.

64. On 11 December 2008 the FSB Division of military unit no. 3036 replied that an officer with the surname M. had never served in that division. On an unspecified date a similar reply was sent by the FSB Division of military unit no. 54844.

65. On 25 December 2008 the investigation was stayed owing to the failure to establish those responsible. The first and seventh applicants were informed of that decision in a letter of the same date.

66. A decision of 26 December 2008 set aside the decision of 25 December 2008 as being unlawful, pointing out that a number of essential steps had not been taken during the investigation. It stated that the proceedings should be resumed and listed the investigative measures that

should be carried out during further investigation. The decision indicated, in particular, that the instructions of 24 November 2008 should be complied with in full.

67. On 14 January 2009 the investigator in charge once again asked the district office of the interior to take a number of measures which had been listed in a similar request previously sent to that office.

68. On 21 January 2009 the supervising prosecutor of the republican prosecutor's office sent a letter to the prosecutor of the Leninskiy District of Grozny, stating that, during the investigation of various criminal cases opened in connection with serious and particularly serious criminal offences, considerable shortcomings in the work of the bodies performing the operational search had been detected. The letter further stated:

> "In particular, in criminal case no. 20039 opened on 17 February 2003 ... into the abduction on 13 February 2003 of the Yansuyev brothers in the Leninskiy District of Grozny ... the necessary operational search measures aimed at establishing the circumstances of that offence and those responsible have not been taken.
>
> Requests sent in respect of this criminal case ... on 27 November 2008, ... 15 December 2008 and ... 14 January 2009 concerning "the carrying out of an operational search and the questioning of witnesses and eyewitnesses of this offence" have not been complied with until the present and no replies to them have been received. A report on the operational measures taken in the case has not been submitted either.
>
> The failure to carry out the necessary operational search in the criminal case resulted in the failure to establish those responsible ..."

The letter then invited the district prosecutor to check the actions of the relevant agencies and to report on any detected shortcomings.

69. In a decision of 26 January 2009 the investigator in charge sought authorisation from a competent court for access to classified documents from a military archive. The decision referred to the investigation in case no. 20039 and stated that there were sufficient grounds to believe that representatives of the federal forces of Russia (servicemen, officers of security agencies or those of offices of the interior) had been involved in the Yansuyev brothers' abduction and their subsequent disappearance and that information about that special operation could be kept in one of the archives of the power structures. It went on to say that since the officers in command of the power structures, with reference to relevant regulations, had refused to submit information of a military nature stating that it was classified, it was necessary to formally order that the relevant documents containing information on the special operation of 13 February 2003 in Ioanisiani Street of the Leninskiy District of Grozny be made available.

70. According to the Government, a competent court granted that request and authorised the access to the documents.

71. On 29 January 2009 the investigation was suspended owing to the failure to establish the alleged perpetrators. The first and seventh applicants were informed of this decision in a letter of the same date.

72. On 2 February 2009 the decision of 29 January 2009 was quashed as unlawful and the proceedings were resumed. The investigating authorities were ordered to carry out a number of investigative measures and, in particular, to comply in full with the instructions of 24 November 2008. The decision of 2 February 2009 was signed by the investigator in charge and the first and seventh applicants were apprised of it on 3 February 2009.

73. On an unspecified date the supervising prosecutor of the republican prosecutor's office issued written instructions for the investigator in charge. They were similar to those of 24 November 2008. The prosecutor also drew to the attention of the investigator in charge that the latter and all the other investigators previously involved in the case had taken practically no measures to investigate it, and that the queries and requests sent by them showed that they had not studied the case file. The prosecutor thus ordered the investigator in charge to comply with his instructions fully, in time and displaying due diligence.

74. On 17 February 2009 the investigator in charge sent a repeated request, similar to that of 14 January 2009, to the district office of the interior.

75. In a witness interview of 18 February 2009, the seventh applicant confirmed her statements made on 9 April 2003.

76. On the same date the mother of Mr D. was granted victim status in case no. 20039 and questioned. She submitted, in particular, that she had heard rumours that her son and the Yansuyev brothers had been detained by officers from the Organised Crime Unit and kept in Khankala.

77. On 3 March 2009 the criminal proceedings were suspended for failure to establish those responsible. The first and seventh applicants were informed of that decision in a letter of the same date.

78. The Government submitted that the investigation had then been resumed on 14 April 2009 and, on the date of the submission of their post-admissibility memorial, was underway.

### B. Documents submitted by the Government

79. In June 2007, when the application was communicated to them, the Government were invited to produce a copy of the investigation file for criminal case no. 20039 opened in connection with the abduction of the applicants' relatives. The Government produced several documents but refused to submit the entire file stating that, under Article 161 of the Russian Code of Criminal Procedure, disclosure of the documents was contrary to the interests of the investigation and could entail a breach of the rights of the participants in the criminal proceedings. They also submitted

that they had taken into account the possibility of requesting confidentiality under Rule 33 of the Rules of Court, but noted that the Court provided no guarantees that once in receipt of the investigation file, the applicants or their representatives would not disclose these materials to the public. According to the Government, in the absence of any sanctions in respect of applicants in the event that they disclosed confidential information and materials, there were no guarantees of the applicants' compliance with the Convention and the Rules of Court. At the same time, the Government suggested that a Court delegation could be given access to the file in Russia, with the exception of those documents containing military and State secrets, and without the right to make copies of the case file.

80. The documents submitted by the Government included:

(a) a decision of 17 February 2003 to institute criminal proceedings in connection with the abduction on 13 February 2003 of Ilyas Yansuyev, Isa Yansuyev and Mr D. by a group of men in camouflage uniforms and masks, armed with automatic firearms;

(b) a prosecutor's decision of 3 April 2003 to transfer case no. 20039 from one investigator to another;

(c) investigators' decisions of 3 April 2003, 27 April 2004 and 6 August 2007 to take up case no. 20039;

(d) transcripts of witness interviews of the first and seventh applicants dated 11 March and 9 April 2003 respectively;

(e) decisions of 17 April 2003, 27 May 2004 and 6 June 2006 suspending the investigation of case no. 20039 and a decision of 20 April 2004;

(f) letters of 17 April 2003, 27 April and 27 May 2004, 6 May and 6 June 2006, and 6 August 2007 informing the first and seventh applicants of the suspension and resumption of the investigation of case no. 20039.

81. In September 2007 the Court reiterated its request. In reply, the Government refused to produce any documents other than those submitted earlier for the aforementioned reasons.

82. On 5 March 2009 the application was declared partly admissible. At that stage the Court once again invited the Government to submit the investigation file and to provide information concerning the progress of the investigation after August 2007.

83. In May 2009 the Government produced a number of documents running to 172 pages. These documents, in so far as relevant, are summarised in paragraphs 40-51, 53-69 and 71-77 above. The Government refused to produce any other materials, referring to Article 161 of the Russian Code of Criminal Procedure.

## II. RELEVANT DOMESTIC LAW

84. For a summary of the relevant domestic law see *Kukayev v. Russia*, no. 29361/02, §§ 67-69, 15 November 2007.

# THE LAW

## I. THE GOVERNMENT'S OBJECTION REGARDING ABUSE OF THE RIGHT OF PETITION

85. The Government submitted that the application had not been lodged in order to restore the allegedly violated rights of the applicants. The actual object and purpose of the application was clearly political as the applicants were willing to accuse the Russian Federation of being a State which allegedly had a policy of violating human rights in the Chechen Republic. The Government concluded that there had therefore been an abuse of the right of petition on the part of the applicants.

86. The Court observes that the complaints the applicants brought to its attention concerned their genuine grievances. Nothing in the case file reveals any appearance of an abuse of their right of individual petition. Accordingly, the Government's objection must be dismissed.

## II. THE GOVERNMENT'S OBJECTION REGARDING THE EXHAUSTION OF DOMESTIC REMEDIES

87. The Government argued that the investigation into the abduction of the applicants' two relatives had not been completed, and that therefore the domestic remedies had not been exhausted in respect of the applicants' complaints.

88. The applicants called into question the effectiveness of the investigation, stating that it had been ongoing for several years but had not produced any meaningful results.

89. The Court considers that the Government's objection as to the exhaustion of domestic remedies raises issues which are closely linked to the question of the effectiveness of the investigation. It therefore decides to examine this objection together with the applicants' complaint under the procedural limb of Article 2 of the Convention.

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

90. The applicants complained of a violation of the right to life in respect of their close relatives, Ilyas and Isa Yansuyev. The applicants submitted that the circumstances of their disappearance and the long period during which it had not been possible to establish their whereabouts indicated that Ilyas and Isa Yansuyev had been killed by representatives of the federal forces. The applicants also complained that no effective investigation had been conducted into their relatives' disappearance. They relied on 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. Alleged failure to protect the right to life

#### *1. Submissions by the parties*

##### (a) The applicants

91. The applicants maintained their complaint. They insisted that Ilyas and Isa Yansuyev had been taken by representatives of the State in life-threatening circumstances, and the fact that they remained missing for several years proved that they had been killed. They pointed out, in particular, that the federal forces had regained control over the city of Grozny long before 13 February 2003, the date of the incident.

92. The applicants also submitted a handwritten map of the area around the block of flats at 24 Ioanisiani Street, indicating that at the time their relatives were taken away there had been four federal check-points in that area. The applicants argued that the perpetrators could not have passed through any of those check-points without the authorisation of the servicemen on duty at those check-points.

93. The applicants further maintained that at the relevant time there had been a restriction on the movement of vehicles in Grozny, and reiterated

their submission that on the night of the incident the fourth applicant had seen the tracks of APCs leading in the direction of the main federal military base in Khankala.

**(b) The Government**

94. The Government argued that there were no grounds to hold the State responsible for the alleged violations of Article 2 of the Convention in the present case. They contended that there was no conclusive evidence that the applicants' relatives were dead and that the investigation had obtained no evidence that representatives of the State had been involved in the abduction of the Yansuyev brothers. They referred, in particular, to the replies of various State bodies obtained by the investigating authorities stating that none of those bodies had detained the Yansuyev brothers or brought criminal proceedings against them, and that they had not been detained in any detention centres.

95. The Government further argued that the applicants had not given any reliable evidence to corroborate their allegations concerning the involvement of State agents in the abduction. In the Government's submission, groups of Ukrainian or ethnic Russian mercenaries had participated in the armed conflict together with Chechen rebel fighters and committed crimes in the territory of the Chechen Republic; thus, the fact that the perpetrators had Slavic features and spoke Russian did not prove their attachment to the Russian military. The Government also alleged that a considerable number of weapons had been stolen by illegal armed groups from Russian arsenals in the 1990s and that anyone could purchase masks, camouflage uniforms and firearms.

96. The Government submitted that the area where the Yansuyev brothers were abducted had been under the formal control of the federal forces. They referred, however, to "official data" stating that in almost every settlement there had been illegal rebel fighters who had committed serious criminal offences under the disguise of civilians usually during the night and that some groups of illegal rebel fighters had been particularly active in their raids across the territory of the Chechen Republic resulting in occasional assaults on civilians and State officials and whole settlements being captured.

97. They further stated that the file of the investigation into the Yansuyev brothers' disappearance had contained no information about whether the area where the abduction had taken place had been secured by federal check-points and whether a curfew was in place during the night of the incident. According to the Government, the investigating authorities had been instructed to take additional measures to establish those circumstances.

98. The Government also pointed to contradictions between the applicants' account of the events of 13 February 2003 submitted to the Court and the statements concerning the incident made to the domestic authorities.

In particular, while the applicants claimed in their submissions to the Court that the alleged perpetrators had arrived in two APCs and, having abducted the Yansuyev brothers, had then left in the direction of Khankala, the seventh applicant had stated in her witness interview given to the domestic authorities that she had not seen what had happened in the street, whilst the fourth applicant had allegedly seen only the tracks of the APCs leading in the direction of Khankala. The first applicant had not witnessed the incident of 13 February 2003 at all and had based her account on the statements of others. Moreover, she had refused to disclose the source of her information concerning the alleged implication of the federal forces in her sons' abduction, which had obstructed the investigation.

*2. The Court's assessment*

99. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. It has held on many occasions that, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. The obligation on the authorities to account for the treatment of an individual within their control is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

100. In the present case, the Court observes that although the Government denied the State's responsibility for the abduction and disappearance of the applicants' relatives, they acknowledged the specific facts underlying the applicants' version of events. In particular, it is common ground between the parties that Ilyas and Isa Yansuyev were abducted from home by men in masks and camouflage uniforms armed with automatic firearms in the early morning of 13 February 2003. It has therefore first to be established whether the armed men belonged to the federal forces.

101. The Court notes that despite its repeated requests for a copy of the investigation file concerning the abduction of the applicants' relatives, the Government refused to produce it, except for several documents, referring to Article 161 of the Russian Code of Criminal Procedure. The Court

observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by it (see, for example, *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)). In view of the foregoing and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect.

102. It further considers that the applicants presented a coherent and consistent picture of their relatives' detention on 13 February 2003. The applicants, who based their account on the submission of the seventh applicant – an eyewitness to the incident in question – stated that the perpetrators had acted in a manner similar to that of a security operation. In particular, they had arrived in a group during the early morning and had searched the flat. Also, the intruders had spoken Russian without an accent. The Court further notes the applicants' arguments, none of them being disputed by the Government, that at the material time the area where the Yansuyev brothers were abducted had been under the formal control of the State, that the perpetrators could not have passed unnoticed through four federal checkpoints situated in that area, and that at that period a restriction was in place on the movement of vehicles during the night. In respect of the latter, the Court takes account of the fourth applicant's submission that she had seen the tracks of APCs after the incident (see paragraph 15 above) and a statement of Mr B., the applicants' neighbour, that he had heard the noise of engines on the night of the incident (see paragraph 46 above). In the Court's opinion, the fact that a group of men in camouflage uniforms, equipped with automatic firearms and, most probably, vehicles and able to move freely and take a person from his home in a city area presumably under the control of the federal forces and secured by federal check-points strongly supports the applicants' allegation that they were State agents. The Court also takes into account that at least for some time the domestic investigation considered that there were sufficient grounds to believe that State agents had been involved in the abduction and disappearance of the Yansuyev brothers (see paragraph 69 above).

103. The Court observes that where the applicant makes out a prima facie case and the Court is prevented from reaching factual conclusions owing to the lack of crucial documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

104. Taking into account the above elements, the Court is satisfied that the applicants have made a prima facie case that their two relatives were

detained by State agents. The Government's statement that the investigation did not find any evidence to support the involvement of special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof. The Court is also sceptical about the Government's assertion of the possible involvement of some private individuals in the abduction of Ilyas and Isa Yansuyev, given that this allegation was not specific and was not supported by any materials. Drawing inferences from the Government's failure to submit any documents from the criminal investigation file which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court finds it established that Ilyas and Isa Yansuyev were detained on 13 February 2003 by State agents.

105. The Court further notes that there has been no reliable news of the applicants' two relatives since that date. Their names have not been found in the official records of any detention facilities. The domestic investigation into the Yansuyev brothers' disappearance, dragging on for over seven years, has not made any meaningful findings regarding their fate. Lastly, the Government did not submit any explanation as to what had happened to the applicants' relatives after they had been detained.

106. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, among other cases, *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Imakayeva*, cited above; and *Baysayeva v. Russia*, no. 74237/01, 5 April 2007), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Ilyas and Isa Yansuyev or any news of them for over seven years by now corroborates this assumption. In the light of these considerations and having regard to the particular circumstances of the case, and more specifically the considerable lapse of time since the applicants' two relatives went missing, the Court finds that they must be presumed dead following unacknowledged detention by State agents.

107. In the absence of any plausible explanation on the part of the Government as to the circumstances of the deaths of Ilyas and Isa Yansuyev, the Court further finds that the Government have not accounted for the deaths of the applicants' two relatives during their detention and that the respondent State's responsibility for these deaths is therefore engaged.

108. Accordingly, there has been a violation of Article 2 of the Convention in this connection.

## B. Alleged inadequacy of the investigation

### *1. Submissions by the parties*

109. The applicants submitted that the investigation in the present case had fallen short of the requirements of Convention standards. They pointed out that the Government had withheld information regarding the investigation by refusing to provide the file of the criminal investigation. The applicants further argued that the investigation had been pending for several years, being repeatedly suspended and reopened but with no tangible results. In their submission, the authorities had failed to inform them of the progress in the investigation and to take a number of essential steps, for example to question any military personnel, and in particular Mr Ruslan Amirov who had allegedly participated in detaining the applicants' relatives.

110. The Government argued that the investigation into the disappearance of the applicants' relatives met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify those responsible. They submitted that the investigation was being carried out in full compliance with the domestic law and that a large number of investigative measures had been taken, including sending numerous enquiries to the federal military and security agencies to verify the possible involvement of federal servicemen in the imputed offence, or to check whether the applicants' relatives were being kept in any detention centres. The Government also argued that the first and seventh applicants who had been acknowledged as victims in the case had received explanations concerning their procedural rights. The Government thus insisted that they had fulfilled their procedural obligation under Article 2 of the Convention.

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

111. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force, in particular by agents of the State. The investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III). In particular, there is an implicit requirement of promptness and reasonable expedition (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-04, *Reports of Judgments and Decisions* 1998-VI, and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation.

However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Shanaghan v. the United Kingdom*, no. 37715/97, §§ 91-92, 4 May 2001).

112. The Court observes that some degree of investigation was carried out into the disappearance of the applicants' relatives. It must assess whether that investigation met the requirements of Article 2 of the Convention.

113. The Court notes that although the first applicant lodged her written complaint concerning her sons' abduction on 13 February 2003, the criminal proceedings in this connection were not instituted until five days later, on 17 February 2003. While this delay in itself was not very long, the Court, having regard to the absence of any explanation by the Government in this respect, cannot accept that it was justified in a situation where prompt action was vital.

114. Furthermore, it does not appear that the authorities made any genuine effort to investigate the matter. The investigation has been pending for over seven years, during which period it has been suspended and reopened on at least eighteen occasions and has been plagued with inexplicable periods of inactivity.

115. For a period of over a year after the beginning of the investigation the authorities did no more than interview the first and seventh applicants and send a query to the Chernokozovo detention centre (see paragraphs 21-23 above). It does not appear that the scene of the incident was inspected at any time, or that any other essential steps were taken. Indeed, as indicated by the Government, for a period of over six years, which elapsed between the beginning of the investigation and the submission by the Government of their post-admissibility memorial, the investigation failed to establish even such basic facts surrounding the incident as whether the curfew was in place at the time of the incident, or whether the area where Ilyas and Isa Yansuyev were abducted was secured by federal check-points (see paragraph 97 above).

116. Despite the statements of the first applicant and those of her neighbour, Ms P., implicating representatives of the federal forces (see paragraphs 21 and 29 above), no meaningful attempts were made to investigate the possible involvement of federal servicemen or officers of security agencies in the disappearance of the Yansuyev brothers. Several years after the beginning of the investigation, the information concerning

the possible involvement of representatives of the federal forces in the disappearance of the Yansuyev brothers had still not been checked (see paragraph 40 above). Superior prosecutors' instructions issued in that respect (see paragraphs 41, 50, 61 and 73 above) were repeatedly ignored by the investigating authorities (see paragraphs 53, 56, 66 and 72 above). The ineffectiveness of the investigation, the incompetence and manifest failure of the investigators and other law-enforcement bodies to take practical measures aimed at resolving the crime were acknowledged by superior prosecutors on several occasions (see paragraphs 40, 49, 60, 68 and 73 above).

117. In the light of the foregoing, the Court concludes that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the disappearance of Ilyas and Isa Yansuyev. It accordingly dismisses the Government's objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal proceedings, and holds that there has been a violation of Article 2 of the Convention on that account.

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

118. The applicants complained that they had suffered severe mental distress and anguish in connection with their relatives' disappearance and that there had been a lack of an adequate response from the authorities. They referred to Article 3 of the Convention, which reads as follows:

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

119. The applicants stated that they were close relatives of the two abducted men. They insisted that they had suffered severe mental distress owing to the disappearance of their family members and the indifferent attitude of the State towards their situation.

120. The Government, whilst not denying that the abduction of the applicants' relatives must have caused considerable emotional distress to the applicants, submitted that there was no causal link between the authorities' actions and this distress, in the absence of any findings by the domestic investigation confirming the involvement of State agents in the aforementioned offences. According to them, the investigation obtained no evidence that the applicants had been subjected to treatment prohibited by Article 3 of the Convention.

121. The Court reiterates that the question whether a member of the family of a "disappeared person" is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives

of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim to be a direct victim of the authorities' conduct (see, among other authorities, *Orhan*, cited above, § 358).

122. In the present case, the Court observes that the two missing persons were sons of the first two applicants and brothers of the sixth applicant. The fourth applicant was Isa Yansuyev's wife, and the seventh, third and fifth applicants were respectively the wife and children of Ilyas Yansuyev. For more than seven years the applicants have not had any news of Ilyas and Isa Yansuyev, during which period the first, fourth and seventh applicants, on behalf of the other applicants, have applied to various official bodies with enquiries about the Yansuyev brothers, both in writing and in person. Despite their attempts, the applicants have never received any plausible explanation or information as to what became of their family members following their abduction. The responses received by the applicants mostly denied that the State was responsible for their arrest or simply informed them that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

123. In view of the above, the Court finds that the applicants suffered distress and anguish as a result of the disappearance of their family members and their inability to find out what had happened to them. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

124. The Court therefore concludes that there has been a violation of Article 3 of the Convention on that account.

## V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

125. The applicants complained that the provisions of Article 5 of the Convention as a whole, related to the lawfulness of detention and guarantees against arbitrary detention, had been violated in respect of Ilyas and Isa Yansuyev. Article 5, in its relevant parts, provides 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:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

126. The applicants maintained their complaint. They insisted that their relatives' detention had not satisfied any of the conditions set out in Article 5 of the Convention, that it had had no basis in national law and had not been in accordance with a procedure established by law or been formally registered.

127. In the Government's submission, the investigation had obtained no evidence to confirm that the applicants' relatives had been detained by State agents in breach of the guarantees set out in Article 5 of the Convention.

128. The Court has frequently emphasised the fundamental importance of the guarantees contained in Article 5 for securing the rights of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. In that context, it has repeatedly stressed that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrary detention. To minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure. The unacknowledged detention of an individual is a complete negation of these guarantees and discloses a most grave violation of Article 5 (see, among other authorities, *Çakıcı*, cited above, § 104).

129. It has been established above that Ilyas and Isa Yansuyev were detained on 13 February 2003 by State agents and have not been seen since. Their detention was not acknowledged, was not logged in any custody records and there exists no official trace of their subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

130. The Court further considers that the authorities should have been alert to the need to investigate more thoroughly and promptly the applicants' complaints that their relatives had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard Ilyas and Isa Yansuyev against the risk of disappearance.

131. Consequently, the Court finds that Ilyas and Isa Yansuyev were held in unacknowledged detention in complete disregard of the safeguards enshrined in Article 5, and that this constitutes a particularly grave violation of their right to liberty and security enshrined in Article 5 of the Convention.

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

132. The applicants alleged that there had been no effective remedies in respect of the above violations of their rights, contrary to Article 13 of the Convention, which provides as follows:

> "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."

133. The applicants insisted that they had no effective remedies at their disposal as the investigation into the killing of their relatives had been pending for several years without producing any tangible result and, in the absence of any findings of the domestic investigation, the effectiveness of any other remedy had been undermined.

134. The Government argued that the applicants had had effective domestic remedies, as required by Article 13 of the Convention, but had been unwilling to make use of them. They submitted that the first and seventh applicants had been granted victim status and therefore had been

afforded procedural rights in the criminal proceedings and, in particular, the right to give oral and other evidence, to submit requests, to receive copies of procedural decisions, and to access the case file and make copies of the materials of the file on completion of the investigation. The Government further argued that the applicants could have appealed in court against actions or omissions of the investigation authorities in accordance with Article 125 of the Russian Code of Criminal Procedure, but had failed to do so. Also, in the Government's view, if the applicants had considered that any action or omission on the part of public officials had caused them damage, they could have sought compensation for that damage in court by virtue of the relevant provisions of the Russian Civil Code, but they had never attempted to avail themselves of that opportunity. In support of this argument, the Government referred to a letter of the Supreme Court of Russia dated 3 August 2007 which stated that the applicants had not complained to the courts in the Chechen Republic of the unlawful detention of their relatives, about the actions of any law-enforcement officials, or of any shortcomings in the investigation into the disappearance of Ilyas and Isa Yansuyev. The Government did not submit the letter to which they referred.

135. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions by the authorities of the respondent State (see *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports* 1996-VI).

136. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV; *Assenov and Others v. Bulgaria*, 28 October 1998, § 117, *Reports* 1998-VIII; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Orhan*, cited above, § 384).

137. As regards the applicants' complaint under Article 13 in conjunction with Article 2 of the Convention, the Court has held in a number of similar cases that in circumstances where, as in the present case, the criminal investigation into the death was ineffective and the effectiveness of any other remedy that may have existed, including the civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention (see, among other authorities, *Musayeva and Others v. Russia*, no. 74239/01, § 118, 26 July 2007, or *Kukayev*, cited above, § 117). It therefore rejects the Government's argument that the applicants had effective remedies afforded to them by criminal or civil law and finds that there has been a violation of Article 13 of the Convention in connection with Article 2 of the Convention.

138. As regards the complaint under Article 13 in conjunction with Article 3 of the Convention, the Court notes that it has found above that they endured severe mental suffering on account of, *inter alia*, the authorities' inadequate investigation into their relatives' disappearance (see paragraphs 123-124 above). It has also found a violation of Article 13 of the Convention in connection with Article 2 of the Convention on account of the lack of effective remedies in a situation, such as the applicants' one, where the investigation was ineffective. Having regard to these findings, the Court is of the opinion that the complaint under Article 13 in conjunction with Article 3 is subsumed by those under Article 13 in conjunction with Article 2 of the Convention. It therefore does not consider it necessary to examine the complaint under Article 13 in connection with Article 3 of the Convention.

139. Lastly, as regards the applicants' reference to Article 5 of the Convention, the Court refers to its findings of a violation of this provision set out above. It considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention, which itself contains a number of procedural guarantees related to the lawfulness of detention.

## VII. COMPLIANCE WITH ARTICLE 38 OF THE CONVENTION

140. The applicants stated that the State's failure to submit the criminal investigation file was in violation of their obligation under Article 38 § 1 (a) of the Convention, which in its relevant part provided as follows:

> "1. If the Court declares the application admissible, it shall
>
> (a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
>
> ..."

141. The Court notes that as from 1 June 2010, following the entry into force of Protocol No. 14 to the Convention, Article 38 of the Convention reads as follows:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

142. The Government argued that under Article 161 of the Russian Code of Criminal Procedure disclosure of the documents, other than those they had already submitted to the Court, was contrary to the interests of the investigation and could entail a breach of the rights of the participants in the criminal proceedings. They also submitted that they had taken into account the possibility of requesting confidentiality under Rule 33 of the Rules of Court, but noted that the Court provided no guarantees that once in receipt of the investigation file, the applicants or their representatives, some of them not being Russian nationals and residing outside Russia's territory, would not disclose these materials to the public. According to the Government, in the absence of any sanctions against the applicants for the disclosure of confidential information and materials, there were no guarantees concerning their compliance with the Convention and the Rules of Court.

143. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. Failure on a Government's part to submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention (see *Timurtaş v. Turkey*, no. 3531/94, § 66, ECHR 2000-VI). In a case where the application raises issues of the effectiveness of an investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility stage and at the merits stage (see *Tanrıkulu*, cited above, § 70).

144. The Court observes that it has on several occasions asked the Government to submit a copy of the file on the investigation opened in connection with the disappearance of the applicants' relatives. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the present case. In reply, the Government

submitted several documents, mostly copies of procedural decisions instituting, suspending or reopening criminal proceedings, copies of an investigator's decision to resume the criminal case, investigators' requests to various law-enforcement bodies and letters informing the applicants of the suspension and reopening of the criminal proceedings in the case. However, the Government refused to produce the entire file, referring to Article 161 of the Russian Code of Criminal Procedure.

145. The Court further notes that the Government did not request the application of Rule 33 § 2 of the Rules of Court, which permits a restriction on the principle of the public character of the documents deposited with the Court for legitimate purposes, such as the protection of national security, the private life of the parties, and the interests of justice. The Court further notes that the provisions of Article 161 of the Code of Criminal Procedure, to which the Government referred, do not preclude disclosure of the documents from the file of an ongoing investigation, but rather set out the procedure for and restrictions on such disclosure. The Government failed to specify the nature of the documents and the grounds on which they could not be disclosed (see, for similar conclusions, *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006). The Court also notes that in a number of comparable cases that have been reviewed by the Court, the Government submitted documents from the investigation files without reference to Article 161 (see, for example, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 46, 24 February 2005, or *Magomadov and Magomadov v. Russia*, no. 68004/01, §§ 36 and 82, 12 July 2007), or agreed to produce documents from the investigation files even though they had initially invoked Article 161 (see *Khatsiyeva and Others v. Russia*, no. 5108/02, §§ 62-63, 17 January 2008). For these reasons, the Court considers the Government's explanations concerning the disclosure of the case file insufficient to justify withholding the key information requested by the Court.

146. Having regard to the importance of cooperation by the respondent Government in Convention proceedings and the difficulties associated with the establishment of the facts in cases such as the present one, the Court finds that the Russian Government fell short of their obligations under Article 38 of the Convention on account of their failure to submit copies of the documents requested in respect of the disappearance of the applicants' relatives.

## VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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

#### *1. Pecuniary damage*

148. The applicants claimed compensation in respect of the loss of the financial support which their deceased relatives would have provided. They submitted that, although Ilyas and Isa Yansuyev were not officially employed, their earnings at the material time had been no less than the allowance of an unemployed person having the same qualifications. The applicants based their method of calculation on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2004 ("the Ogden tables"), with reference to the absence of any equivalent methods of calculation in Russia. The applicants claimed the following amounts under this head:

(i) 417,888.01 Russian roubles (RUB), approximately 11,000 euros (EUR), for the first applicant,

(ii) RUB 352,907.66 (approximately EUR 9,000) for the second applicant,

(iii) RUB 185,991.27 (approximately EUR 4,800) for the third applicant,

(iv) RUB 645,032.68 (approximately EUR 16,800) for the fourth applicant, and

(v) RUB 171,578.57 (approximately EUR 4,500) for the fifth applicant.

The seventh applicant did not submit any claim under this head.

149. The Government submitted that the applicants could obtain compensation for the loss of their breadwinners at the domestic level.

150. The Court reiterates that there must be a clear causal connection between the damage claimed by applicants and the violation of the Convention, and that this may, in appropriate cases, include compensation in respect of loss of earnings (see, among other authorities, *Çakıcı*, cited above, § 127). It finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relatives and their loss of the financial support which their relatives could have provided. The Court further finds that the loss of earnings applies to dependants and considers it reasonable to assume that the two men who went missing would have had some earnings and that the applicants would have benefited from these.

151. Having regard to the applicants' submissions, the Court considers it reasonable to award EUR 6,000 to the first applicant, EUR 6,000 to the second applicant, EUR 4,500 to the third applicant, EUR 6,000 to the fourth applicant and EUR 4,500 to the fifth applicant under this head, plus any tax that may be chargeable on these amounts.

*2. Non-pecuniary damage*

152. As regards non-pecuniary damage, the applicants claimed that they had suffered severe emotional distress, anxiety and trauma as a result of the disappearance of their two close relatives and on account of the indifference demonstrated by the Russian authorities during the investigation into these events. The applicants sought the overall amount of EUR 150,000 which comprised the following claims:

(i) the first two applicants each claimed EUR 40,000;

(ii) the third and fifth applicants each claimed EUR 15,000 ;

(iii) the fourth applicant claimed EUR 30,000;

(iv) the sixth applicant claimed EUR 10,000.

The seventh applicant did not submit any claim under this head.

153. The Government considered the applicants' claims to be unsubstantiated and excessive and submitted that, should the Court find a violation of the applicants' rights, the finding of a violation would suffice.

154. The Court observes that it has found a violation of Articles 2, 3, 5 and 13 of the Convention on account of the unlawful detention and disappearance of the applicants' relatives, the ineffective investigation into the matter, their mental suffering and the absence of effective remedies to secure domestic redress for those violations. The applicants must have suffered anguish and distress as a result of all these circumstances, which cannot be compensated by a mere finding of a violation. Having regard to these considerations, the Court awards, on an equitable basis, EUR 25,000 to the first applicant, EUR 25,000 to the second applicant, EUR 15,000 to the third applicant, EUR 30,000 to the fourth applicant, EUR 15,000 to the fifth applicant and EUR 10,000 to the sixth applicant, plus any tax that may be chargeable on these amounts.

**B. Costs and expenses**

155. The applicants were represented by lawyers from the SRJI. They submitted a detailed invoice of costs and expenses that included research, interviews and the costs involved in obtaining documentary evidence in Ingushetia and Moscow, at a rate of EUR 50 per hour; the drafting of legal documents submitted to the domestic authorities, at a rate of EUR 50 per hour for the SRJI lawyers and EUR 150 per hour for the SRJI experts; and the drafting of legal documents submitted to the Court, at a rate of EUR 150 per hour. The aggregate claim in respect of the costs and expenses related to

the applicants' legal representation amounted to EUR 8,790.31, comprising EUR 8,100 for fifty-three hours spent by the SRJI staff on preparing and representing the applicants' case, EUR 51.06 for translation, EUR 72.25 for international courier post to the Court and EUR 567 for administrative costs (7% of legal fees).

156. The Government pointed out that the applicants were only entitled to reimbursement of costs and expenses that had actually been incurred and were reasonable. They further argued that two of the SRJI's lawyers who had signed the applicants' observations on the merits had not been named in the powers of attorney.

157. The Court notes that the applicants issued a power of attorney in respect of the SRJI. It is satisfied that the lawyers indicated in their claim formed part of the SRJI staff. Accordingly, the objection must be dismissed.

158. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and are also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). The Court, having regard to the documents submitted by the applicants, is satisfied that their claim was substantiated. It further notes that this case has been relatively complex and has required a certain amount of research work. On the other hand, once the preparation of the initial submissions had been completed, the work did not involve a large number of documents and the Court therefore doubts whether at its later stages the case required the amount of research and preparation claimed by the applicants' representatives.

159. In these circumstances, having regard to the details of the claims submitted by the applicants, the Court awards them the reduced amount of EUR 8,000, together with any tax that may be chargeable to the applicants. The amount awarded shall be payable to the representative organisation directly.

### C. Default interest

160. The Court considers it appropriate that the default interest 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. *Dismisses* the Government's preliminary objections;

2. *Holds* that there has been a violation of Article 2 of the Convention as regards the disappearance of Ilyas and Isa Yansuyev;

3. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the disappearance of Ilyas and Isa Yansuyev;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the mental suffering endured by the applicants because of their relatives' disappearance and the lack of an effective investigation into the matter;

5. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ilyas and Isa Yansuyev;

6. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;

7. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Articles 3 and 5 of the Convention;

8. *Holds* that there has been a failure to comply with Article 38 of the Convention;

9. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, all of which, save for those payable into the bank in the Netherlands, are to be converted into Russian roubles at the rate applicable on the date of settlement:

(i) EUR 6,000 (six thousand euros) to each of the first, second and fourth applicants and EUR 4,500 (four thousand five hundred euros) to each of the third and fifth applicants in respect of pecuniary damage;

(ii) EUR 25,000 (twenty-five thousand euros) to each of the first and second applicants, EUR 15,000 (fifteen thousand euros) to each of the third and fifth applicants, EUR 30,000 (thirty thousand euros) to the fourth applicant and EUR 10,000 (ten thousand euros) to the sixth applicant in respect of non-pecuniary damage;

(iii) EUR 8,000 (eight thousand euros) in respect of costs and expenses, to be paid in euros into the bank account in the Netherlands indicated by the applicants' representative;

(iv) any tax that may be chargeable to the applicants on the above amounts;

(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;

10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President