



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

FIRST SECTION

**CASE OF YANDIYEV AND OTHERS v. RUSSIA**

*(Applications nos. 34541/06, 43811/06 and 1578/07)*

JUDGMENT

*This version was rectified on 23 October 2013  
under Rule 81 of the Rules of Court*

STRASBOURG

10 October 2013

**FINAL**

**17/02/2014**

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



**In the case of Yandiyev and Others v. Russia,**

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

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 17 September 2013,

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

**PROCEDURE**

1. The case originated in three applications (nos. 34541/06, 43811/06 and 1578/07) 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 Russian nationals (“the applicants”), whose personal details and the dates of lodging of applications are indicated in Annex I.

2. The applicants were represented by lawyers from the EHRAC/Memorial Human Rights Centre, an NGO with offices in Moscow and London, and the Stichting Russian Justice Initiative NGO (SRJI) (in partnership with the Astreya NGO). The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their relatives had disappeared in 2002 and 2004 in Ingushetia in three unrelated episodes and that no effective investigation had taken place.

4. The applications were communicated to the Government on the dates indicated in Annex I. It was also decided to grant priority to the applications (Rule 41 of the Rules of Court).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are close relatives of individuals who disappeared in the Ingush Republic (Ingushetia) after being apprehended, in 2002 and 2004, by armed men whom the applicants identified as Russian security forces. In each case a criminal investigation file was opened by the local prosecutor's office. The proceedings were suspended and resumed on several occasions thereafter.

6. When the latest rounds of observations were submitted to the Court, the investigation in each case remained pending without having produced any tangible results as to the whereabouts of the applicants' missing relatives or the identity of the perpetrators of the crimes.

7. In their observations, the Government did not challenge the essential facts as presented by the applicants, but noted that as the investigations were pending it would be premature to draw any conclusions about the exact circumstances of the cases. In addition, they argued that there was no evidence to prove beyond reasonable doubt that State agents had been involved in the abductions, or that the missing persons were dead.

8. Summaries of the relevant facts for each complaint are set out below. The personal data of the applicants and their disappeared relatives, and some other key facts, are summarised in the attached table (Annex I).

#### **A. Application no. 34541/06, *Yandiyev v. Russia***

##### *1. Abduction of Timur Yandiyev*

9. The four applicants in this case are the parents, wife and daughter of Timur Yandiyev, born in 1979. The applicants and Timur Yandiyev lived in Karabulak. In 2001-03 Timur was working as a programmer at OAO Ingushenergo, situated in Nazran. In 2003 he left and started work as an IT administrator at another private company. Timur Yandiyev maintained good relations with his former colleagues at Ingushenergo and often visited them.

10. On 16 March 2004 Timur Yandiyev took the third and fourth applicants to Malgobek to visit his parents-in-law. On the way back he stopped in Nazran at Ingushenergo. He stayed there from 3.40 p.m. to 4.30 p.m. When he came out, two white vehicles entered the courtyard, a Gazel minibus and a Niva all-terrain vehicle, without registration plates and with tinted windows. Six individuals in camouflage uniforms and masks got out of the vehicles and threw Timur Yandiyev to the ground. One of the men hit him on the head several times. Then the men threw Timur Yandiyev into the Gazel, returned to the vehicles and left along Mutaliyeva Street towards Magas, the administrative capital of Ingushetia.

11. The applicants were not eye-witnesses to the events, but they submitted written statements from employees of Ingushenergo.

12. They have had no news of Timur Yandiyev since 16 March 2004.

## *2. Search for Timur Yandiyev*

13. Fatima B., an employee of Ingushenergo, saw Timur Yandiyev being taken away. She immediately called the Nazran town department of the interior (GOVD) and informed them about the incident. She indicated that the abductors had gone towards the traffic police roadblock situated several hundred metres from their office on the road towards Magas.

14. At about 4.50 p.m. the first applicant and his son Zaurbek, alerted by another witness, went to Nazran to look for Timur Yandiyev. They found Timur Yandiyev's car in front of Ingushenergo.

15. Statements by the traffic police officers who had been manning the "Volga-20" police roadblock on the administrative border between Chechnya and Ingushetia at the relevant time indicate that at 5.10 p.m. on 16 March 2004 white Gazel and Niva vehicles with tinted windows, without registration plates, had approached the roadblock from Ingushetia. The Gazel driver had lowered his window just enough to show a special pass for the vehicles, which exempted them from police inspection of the vehicles and passengers. The police officers could not see the faces of the drivers or passengers because of the tinted windows, but they wrote down the numbers of the passes for both vehicles. The vehicles were allowed to continue to Chechnya.

16. At 5.20 p.m. the Ingushetia Traffic Police Department issued an urgent warning to their officers in connection with two white vehicles, Gazel and Niva, without registration plates, with tinted windows, which had been used to kidnap a person in Nazran. Officers at the "Volga-20" roadblock informed their headquarters that the said cars had entered Chechnya ten minutes earlier, having produced special passes.

17. On the same day, at about 6.30 p.m., the first applicant spoke to the deputy head of the Nazran GOVD, who informed him of these events.

18. Starting from the day of Timur Yandiyev's abduction, the applicants repeatedly applied in person and in writing to various public bodies, including the Ministry of the Interior, prosecutors at various levels, the military commander's office, the administrative authorities, media, and public figures. In their letters the applicants gave details of their relative's abduction and asked for assistance and details of the investigation.

19. On 17 March 2004 the first applicant complained, in writing, to the Nazran GOVD about his son's abduction. On the same day he was questioned by an investigator.

20. On 25 March 2004 the first applicant sent letters to prosecutors' offices at several levels, the Federal Security Service (FSB), the Ministry of the Interior, and other federal and regional authorities, complaining about

the detention of his son by persons who had used special passes to do so, and about the absence of any news from him. He submitted that several dozen people had been kidnapped in Ingushetia in the preceding months in a similar manner, and asked for an investigation to ascertain whether the security services were behind these incidents.

21. On 26 March 2004 a member of the State Duma informed the first applicant that he had requested the General Prosecutor's Office to send a special investigator to Ingushetia to look into the situation of the first applicant's son and other persons who had gone missing in similar circumstances.

### *3. The official investigation*

22. On 26 March 2004 (in some documents also 17 and 25 March 2004) the Nazran town prosecutor's office (the town prosecutor's office) opened criminal investigation file no. 04560028 in respect of Timur Yandiyev's abduction. The Government did not submit any copies of documents from this file, despite the Court's request. The documents presented by the applicants and the parties' submissions may be summarised as follows.

23. On 2 April 2004 the investigator in charge of the case questioned two traffic policemen who had been manning the "Volga-20" roadblock on 16 March 2004, including the senior officer of the shift. They gave detailed statements about the two vehicles which had entered Chechnya, complete with the numbers of the special passes used.

24. On 20 April 2004 the investigator questioned an Ingushenergo security guard who had witnessed Timur Yandiyev's abduction.

25. On 22 April 2004 the Ministry of the Interior of Ingushetia informed the first applicant about the two vehicles which had entered Chechnya on 16 March 2004.

26. In April and June 2004 respectively the Chechnya Ministry of the Interior and the Chechnya FSB informed the town prosecutor's office that they had no information about the special passes with known numbers.

27. On 23 December 2004 the first applicant asked the town prosecutor's office to identify the abductors. In particular, he suggested that photographs of the servicemen of the Chechnya and Ingushetia Departments of the FSB on duty at the relevant place and time be obtained, and artists' impressions of the drivers made, so that the traffic police officers could make a visual identification. He also asked for enquiries to be made of law-enforcement bodies about the special passes.

28. On 23 March 2005 the town prosecutor's office informed the first applicant that the investigation of the abduction had been adjourned since 26 July 2004 because the perpetrators could not be identified.

29. On 8 April 2005 the first applicant complained to the Nazran Town Court ("the town court") that no proper investigation had been carried out. He asked the court to oblige the investigation to identify the persons

involved and to establish the provenance of the two vehicles. He further referred to an item in *Novaya Gazeta* which cited a letter to the General Prosecutor from a man who had allegedly worked at the Ingushetia Department of the FSB and had taken part in kidnappings, beatings and murders of several dozen people, under the orders of the director of that department.

30. On 26 April 2006 the town court ordered the town prosecutor's office to reopen the investigation and to take a number of actions. The decision referred to information about kidnappings in Ingushetia and instructed the prosecutor's office to check the published information.

31. On 26 April 2005 the town prosecutor's office reopened the investigation. On 26 May 2005 the proceedings were adjourned. The decision stated that the man cited in *Novaya Gazeta* did not exist.

32. On 21 September 2005 the first applicant sought permission to acquaint himself with the file on the adjourned case. This request has not been granted, and the applicants have never obtained access to the file.

33. On 6 December 2005 the first applicant again complained to the town court that the investigation was ineffective. On 23 December 2005 the town court rejected the complaint. It concluded that certain steps, such as the establishment of the provenance of the vehicles, could be taken while the investigation remained adjourned. On 31 January 2006 the Supreme Court of Ingushetia upheld the decision of the town court.

34. On 19 January 2006 the town prosecutor's office requested the Nazran GOVD to find out which authority had issued the special passes, to check whether the numbers in question related to the vehicles' identification numbers, and thus to establish the identity of their owners.

35. On 14 March 2006 the second and third applicants complained to the law-enforcement authorities about the disappearance of their son and husband. They referred to the inability of the investigation to provide them with any meaningful information about his fate and whereabouts.

36. According to the Government's submissions of 14 September 2009, the investigation remained adjourned between 26 May 2005 and 22 June 2009. On the latter date, the acting head of the Ingushetia investigative department ruled that the proceedings should be reopened, and instructed the investigators to grant victim status to the relatives of the missing man, to question additional witnesses, and to seek information about the origin of the "special passes" used by the abductors, as well as the vehicles involved.

37. The applicants pointed out that they had had no information about any developments in the case since 14 June 2006.

**B. Application no. 43811/06, *Bersanova v. Russia***

*1. Abduction of Adam Bersanov*

38. The applicant is the mother of Adam Bersanov (sometimes spelled Birsanov), born in 1977. At the material time she lived at 24 Gagarin Street in Malgobek, with Adam Bersanov and his wife Lyudmila Ts.

39. According to the applicant, in June and September 2004 her son had been briefly detained by law-enforcement authorities and questioned about alleged involvement with the “Wahhabi” religious movement. On both occasions he was released without any documents being produced. The applicant submitted that her son had studied Arabic and that there were no other reasons for the questioning.

40. In the evening of 4 December 2004 the applicant and her son were at home. Her son was recovering from a viral infection. Adam Bersanov’s wife was away, visiting her parents in another town.

41. At about 1.20 a.m. the applicant was woken up by someone shouting in Russian: “Stand up! Turn on the lights!”. The applicant saw a tall man dressed in camouflage uniform, a mask and a helmet, pointing his automatic rifle at her. Three or four other similarly armed and dressed men had put her son face down on the floor and tied his hands behind his back. The men did not identify themselves and did not present any documents. The applicant presumed that they were military or security servicemen.

42. The applicant asked who they were and why they were taking her son away, which the intruders answered with obscene language. The applicant asked the man to let her son get dressed, because he had been ill and was being taken away wearing only a T-shirt and tracksuit trousers. He was not allowed to put shoes on. One of the men told her to keep quiet or he would shoot her. The applicant followed her son into the courtyard, where a man told her to stop and pointed his rifle at her. The applicant fainted and fell to the ground.

43. Once she came to her senses, she went into the street but did not see anyone. The light in her courtyard had been turned off. The applicant realised that her son had been taken away and ran to her neighbour, Roza V., who lived at 26 Gagarin Street. The woman told her that she had seen two white Gazel minivans and a five-door all-terrain Niva vehicle with a black line along the roof, without registration plates, being driven towards Vostochnaya Street.

44. Soon afterwards several neighbours came to the applicant’s house, including Akhmed G. and Akhmed Ts. They told the applicant that they had been woken up by a group of armed men. Akhmed G. had heard the sound of roof slates on his barn being broken. When he opened the door of his house he saw several armed people in his courtyard. They were wearing helmets with elongated metallic microphones. One of them pointed his automatic rifle at him and said: “Don’t move. We are working”. Two other



men were standing in his courtyard, facing the adjacent house. About five minutes later he heard over the radio the words “All clear, retreat”. The three men then left in silence by Vostochnaya Street. Immediately afterwards Akhmed G. heard a vehicle starting and driving off. On the following day he found the roof of his barn broken.

45. Also, at about 1.15 a.m. on 5 December 2004 Akhmed Ts., another neighbour, heard roof slates being broken. He went outside and saw three armed men in his courtyard. They pointed their rifles at him and he stopped. They did not say anything to him. Several minutes later he heard a message on the radio in Russian: “Retreat plan, all clear,” and the men left. Akhmed Ts. looked into the street and saw the men getting into a white Gazel vehicle without registration plates parked in front of Akhmed G.’s house. The vehicle then went along Vostochnaya Street towards Magas.

46. According to the neighbours, about twenty-five to thirty people were present. All were masked and wore camouflage uniforms and steel helmets, some with integral microphones. They were armed with automatic rifles.

47. The applicant submitted witness statements provided by herself and by Roza V., Akhmed G. and Akhmed Ts. and two other witnesses, Marem M. and Amnat B. She also submitted a hand-drawn plan of the village and of the nearby roads, with indications of the places to which she referred.

## *2. Search for Adam Bersanov*

48. At about 2 a.m. on the same night the applicant went to the Malgobek district department of the interior (“the ROVD”). The officer on duty advised her to wait until morning with her complaint. The applicant returned home but her relatives advised her to insist on the submission of her complaint. She went back to the ROVD, but the police suggested that she should apply to the prosecutor’s office.

49. At about 4 a.m. the applicant met the investigator on duty at the Malgobek district prosecutor’s office (“the district prosecutor’s office”). He questioned her and made calls to several law-enforcement agencies, but could not get any relevant information.

50. In the morning of 5 December 2004 the applicant’s relatives gathered at her house. They supported the applicant in her efforts, fearing that Adam Bersanov could “disappear”, as had been happening in Ingushetia. During that day the applicant went back to the district prosecutor’s office, where the same investigator on duty (it was a Sunday) told her that he had no news of her son, that the vehicles had gone to the Ingushetia department of the FSB, and that her son was most probably being questioned there.

51. The applicant and her relatives also met the Secretary of the Security Council of Ingushetia, Mr Bashir Aushev. He promised to keep them updated.

52. In the days which followed the applicant and her daughter-in law made enquiries and representations in person and in writing to various bodies, including the Ministry of the Interior, prosecutors, the military commander's office, media and public figures. In more than a dozen similar letters the applicant stated that the vehicles that had transported the abductors had entered the compound of the Ingushetia FSB. The applicant cited the district prosecutor's office as the source of that information; she also claimed that according to information from the Ministry of the Interior the same vehicles had been stopped on the night of 5 December by traffic police. The police officers had noted the number of the "special pass" used by the vehicles; these details were known to the prosecutor's office. The applicant was supported in her efforts by the Memorial NGO. These enquiries were mostly forwarded to the district prosecutor's office.

53. On 9 and 17 December 2004 the Ingushetia department of the FSB informed the applicant that they were not holding Adam Bersanov and that they had no information about his whereabouts.

54. On 20 January 2005 the national daily newspaper *Kommersant* published an article titled 'Detained and Missing'. It reported a press conference given by two of the Prosecutor General's deputies, Mr Kolesnikov and Mr Shepel, in Vladikavkaz, North Ossetia. The press conference was devoted to the investigation of the Beslan school siege that had taken place in September 2004. The article contained the following passages:

"The General Prosecutor's Office have arrested two accomplices of the terrorists who had seized hostages in school No. 1 in Beslan ... It turns out that one of the detainees is being looked for in Ingushetia as a victim of kidnapping.

... The General Prosecutor's deputy Mr Kolesnikov did not give the names of the two detained men who had abetted the fighters ... and did not disclose any details about their roles in the events of 1-3 September. He said only that they had been detained in nearby Ingushetia and were currently actively collaborating with the investigation, broadening the leads for the search and identifying new persons involved ...

As the [newspaper] found out from the Ministry of the Interior in Ingushetia, the search for those who had assisted the Beslan terrorists had been conducted along the following lines: having found out that the camp where Shamil Basayev had trained the fighters for the school siege was located in the forest near the villages of Gaybekyurt and Batakayurt in Malgobek district in Ingushetia, the investigators started looking for those who had assisted them with food, transport, clothes, and medicines, and for those who had given them the plan of the Beslan school and checked the route ...

It is known for certain that one Adam Birsanov, 30, from Malgobek, was detained for aiding the Beslan terrorists. At the same time, the Ingushetia prosecutor's office opened a criminal investigation of Adam Birsanov's kidnapping.

Adam Birsanov was detained before the New Year by some masked men who had arrived in a black Volga car without registration plates with tinted windows, one of Birsanov's relatives told [our correspondent]. Since then there has been no news of him.

The local police informed [the newspaper] that there have been several incidents in Malgobek district in which people have been detained by men wearing camouflage who were using a Volga of this type, as well as a brown UAZ and a white Gazel. Police detectives called these cars black, brown and white pie wagons” [voronok – a jargon term for a vehicle used for transportation of detainees].

On a couple of occasions we stopped these cars but could not check them, complained a Malgobek police officer. Their drivers show special passes issued by the Headquarters of the Russian Traffic Police (*специпропуска-предписания, выданные ГУ ГИБДД России*), which prohibit the police from inspecting cars, cargo or the people who are inside.

It appears that the Volga which took Adam Birsanov away was also stopped and then continued towards Grozny. However, that was all that the local police could tell the relatives of the young man who came to inquire about him. Even the investigators of the prosecutor’s office were unable to clarify the situation.

When we received a statement from Birsanov’s relatives we opened a criminal investigation in connection with the kidnapping, one of the investigators told us. During the investigation we found out that he had no rich relatives and so could not have been kidnapped for ransom. Nor did he have any outstanding debts or blood feuds. Thus, all possibilities related to criminal motives were discarded. The only lead remained the number of the special pass of the Volga which the transport police had noted. However, this was a dead end too. We sent requests for information to the competent bodies and received an answer with reference to the Criminal Procedure Code Section 96 part 4, which said ‘Where it is necessary for the progress of the investigation to keep the arrest of a suspect secret, [with the prosecutor’s agreement] his relatives are not to be notified’.

As a result, Birsanov, who had been detained for abetting the Beslan terrorists, is still being looked for in Ingushetia as a kidnapped person ...”

55. On 20 December 2005 the *Severnaya Ossetia* newspaper published an article, ‘Beslan. Who is to Blame?’ which contained a list of names, allegedly produced by the General Prosecutor’s Office, of the terrorists who had taken part in the attack on the school. At no. 32 appeared the name “Adam Birsanov, Ingush”, without any additional information. The article mentioned that his whereabouts and fate were unknown.

56. Adam Bersanov’s arrest and disappearance were described by the Memorial NGO in their report of September 2005 “Conveyor of Violence. Violations of Human Rights in the Course of Anti-Terrorist Operations in the Republic of Ingushetia”.

57. The applicant submitted that her health had deteriorated since the events of 5 December 2004. She also submitted that her daughter-in-law, Adam Bersanov’s wife, had given birth to a baby girl a week after his arrest, on 12 December 2004, and that the baby was suffering from a number of health problems resulting from the stress and anxiety endured by her mother. She submitted a birth certificate.

*3. The official investigation*

58. On 15 December 2004 the district prosecutor's office opened a criminal investigation file in connection with the abduction of Adam Bersanov. The file was assigned the number 04540072. On the same day the applicant was granted the status of a victim. On 28 July 2009 the Government submitted over 400 pages from that file. The most significant developments may be summarised as follows.

59. In December 2004 investigators questioned several witnesses to the detention, as well as traffic police officers who had been manning the roadblocks around Malgobek. Thus, Akhmed G. stated on 8 December 2004 that he had seen about twelve armed men wearing camouflage uniforms and armed with automatic rifles, wearing spherical helmets covering the head and face, which he associated with the special services (the witness emphasised that he had served in the army and could distinguish special equipment). He had heard the men exchanging commands in Russian over the radio; one of the intruders had told him to go back into the house because they were "working". The witness saw two white Gazel vehicles, a Niva and a UAZ, without registration plates and with tinted windows. Akhmed Ts. on 17 December 2004 described the men he had seen in his courtyard on the night of Adam Bersanov's detention as servicemen of the FSB or of the Department of the Fight Against Organised Crime, because they had been wearing special helmets covering part of the face, with integral radios. He had also heard them exchanging orders in Russian over the radio, and had noticed a white Gazel, a Niva and a UAZ in the street.

60. On 13 December 2004 the investigator took statements from two traffic police officers who on the night of 5 December had been manning the "Volga-12" roadblock, which was situated at the crossroads of the Malgobek-Grozny and Voznesenskaya-Nazran roads. A convoy of three white Gazels and one Niva had passed from Nazran to Malgobek at about 12.40 a.m. Both inspectors stated that they had clearly seen the driver and passengers of the Gazel vehicles through the windscreen, and that they had been armed and were wearing camouflage uniforms. The drivers, without stopping, produced papers resembling "special passes". Both police officers had perceived the group as FSB servicemen, as only they could have moved around in Gazel, Niva and UAZ vehicles without registration plates. The traffic police informed the officer on duty that the drivers of the four vehicles had refused to stop at the roadblock. About an hour later the same four vehicles had passed through the roadblock again, towards Nazran, but the convoy had ignored the order to stop. This incident was communicated to the officer on duty, and at the next roadblock, "Volga-14", the traffic police closed the road and thus forced the vehicles to stop. The driver showed a special pass, after which the vehicles were allowed to continue towards Nazran. At the end of their shift all the traffic police officers

involved had submitted written reports about the events of that night, complete with the number of the special pass.

61. A traffic police officer who had been on duty at the “Volga-14” roadblock on 5 December stated on 15 December 2004 that he had seen the passenger and driver of the lead Gazel vehicle who had produced the special pass, and that they both had Slavic features and spoke to him in unaccented Russian.

62. The officer on duty of the Malgobek ROVD stated that soon after 1 a.m. he had received a complaint about the abduction of Adam Bersanov from his home, with an allegation that he had been abducted by officers of the security services. As he had not been aware of any special operations, he called the officer on duty of the Ingushetia Ministry of the Interior. Sometime later the officer on duty of the Ministry of the Interior called him back and said that he had called the officer on duty of the Ingushetia FSB, who had confirmed that their department had been carrying out an operation in Malgobek district. The witness understood this as an indication that they had carried out the arrest.

63. On 15 December 2004 the Ingushetia FSB informed the district prosecutor’s office that they had not detained Adam Bersanov and had no information about his whereabouts.

64. On 7 January 2005 the Ministry of the Interior of Ingushetia informed the applicant as follows:

“Our department has taken steps to investigate the allegation that your son Adam Birsanov had been kidnapped by unidentified servicemen of one of the detachments of the special forces based in the Northern Caucasus.

It was established that on 5 December 2004 at fifteen minutes past midnight a convoy of three Gazel vehicles and a Niva had passed through the Volga-15 traffic police roadblock towards the Volga-14 roadblock by a side road. At about 1 a.m. the same convoy passed the Volga-12 roadblock towards Malgobek, and when the traffic police inspectors manning the roadblock ordered the vehicles to stop, a passenger in the leading Gazel vehicle showed through the window while driving past a special pass for the vehicle which belonged to the Department of the FSB.

At about 2.10 a.m. on 5 December 2004 the same convoy of vehicles again passed through the Volga-12 roadblock from Malgobek to Nazran, disobeying the orders of the traffic policemen. At about 2.30 a.m. this convoy was forcibly stopped at the Volga-14 traffic police roadblock; inside [the vehicles] were officers of the Ingushetia department of the FSB, who produced the appropriate documents, after which the vehicles continued towards Magas.”

The letter went on to say that on 16 December 2004 their office had asked the head of the Ingushetia FSB whether their servicemen had detained Adam Bersanov, but no reply had been received. The letter concluded that the applicant would be informed of any further developments in the case.

65. On 20 January 2005 the investigators questioned Magomed M., who on the night of the abduction had been the Ingushetia Ministry of the Interior officer on duty. He stated the following:

“On the night of 4 to 5 December 2004 I was on duty, together with my assistant Belan [D.] Between midnight and 3 a.m. on 5 December Belan was on duty, and I was resting. Soon after midnight on 5 December the traffic police officer on duty called and said that a convoy of three Gazel vehicles had ignored the traffic police orders at the Volga-12 roadblock and had gone on towards Malgobek. [D.] ordered the traffic police to stop and check the convoy. When I took over at 3 a.m., [D.] told me that soon after 1 a.m. on 5 December 2004 the Malgobek District officer on duty, [G.], had told him that unknown persons in camouflage uniforms, driving three Gazel vehicles, had burst into the house at 24 Gagarin Street and taken away Adam Bersanov, born in 1975. He provisionally recorded this in the duty roster. [D.] also told me that he had called the Ingushetia FSB officer on duty. That officer had told him that their servicemen had gone to the Malgobek district to carry out a special operation ... Despite that, I personally decided to check whether a special operation had been carried out by the FSB to detain Bersanov. Using my office phone, I called the service number of the FSB officer on duty. The officer on duty called himself Ali [Zh.] and told me that servicemen of the UFSB, using several vehicles, had travelled to Malgobek for a special operation. He could not say exactly what operation it was. When I tried to find out whether they had detained A. Bersanov, he said that such information could only be disclosed with the permission of the head of the UFSB, who was not in the office ...”

66. On 26 and 31 January 2005 the applicant wrote to the Prosecutor General and his two deputies, Mr Shepel and Mr Kolesnikov, and asked them to check whether the article in *Kommersant* of 20 January 2005 (see above) was correct and if so to inform her where and on what charges her son was detained. She sent similar letters to other authorities.

67. On 11 February 2005 the Ingushetia Ministry of the Interior informed the applicant that the FSB had replied that that office had not detained her son.

68. On 17 February 2005 the General Prosecutor’s Office informed the applicant that they had checked the *Kommersant* article of 20 January 2005. Adam Birsanov had not been detained, suspected or questioned as a witness in the criminal case concerning the terrorist act in Beslan.

69. On 15 March 2005 the investigator in charge of the case ordered an adjournment of the proceedings. Summing up the facts established so far, he concluded that “from the answers received from the [Ingushetia Ministry of the Interior], the Malgobek ROVD and other documents, it appears that Bersanov was detained by servicemen of the Ingushetia FSB. However, [the latter office] reported that they had not detained Bersanov and that his whereabouts were unknown to them”. The decision further stated that it was impossible to establish which agency had used the pass for the vehicle with the recorded number.

70. On 25 March 2005 the Ingushetia prosecutor signed a note to the effect that on 24 March 2005 he had read, at the Ingushetia Prosecutor’s Office, a classified document containing information about the attribution of the vehicle pass with the number recorded on the night of Bersanov’s abduction. No further information was contained in that note.

71. On 30 March 2005 the district prosecutor's office informed the applicant that her son had no connection with the criminal investigation into the Beslan events. The investigation of his abduction had been adjourned on 15 March 2005.

72. On 5 April 2005 the General Prosecutor's Office informed the applicant that a criminal investigation of the abduction of Adam Bersanov had been pending with the district prosecutor's office since 15 December 2004. The letter enumerated the steps undertaken by the investigation: examination of the scene of crime, questioning of witnesses, and granting of victim status to the applicant. It stated that the investigation had taken all necessary steps to solve the crime, even though it had been adjourned since 15 March 2005. Finally, the letter dismissed the applicant's allegation that there had been a delay in the opening of the criminal investigation. It explained that between 5 and 15 December 2004 the investigator had been carrying out a preliminary examination of the applicant's complaint and that he had then opened the investigation within the time-limit authorised by law.

73. The applicant lodged a complaint with the Malgobek Town Court ("the town court"), in which she sought to oblige the district prosecutor's office to investigate the abduction properly. The town court rejected the applicant's complaint on 14 June 2005. On 19 July 2005 the Ingushetia Supreme Court upheld that decision.

74. On 2 August 2006 the Ingushetia Prosecutor's Office sent the following letter to the applicant:

"Please be informed that the criminal case [in connection with your son's abduction] was sent by the [Ingushetia] Prosecutor's Office to the military prosecutor of military unit no. 04062, as falling within their jurisdiction. Nevertheless, on 25 July 2006 the file was returned to the Ingushetia Prosecutor's Office, for reasons which are unclear.

In connection with the above, on 2 August 2006 criminal case file no. 04540072 was forwarded to the South Federal Circuit Department of the Prosecutor General's Office to be further transferred to the military prosecutor of the UGA [United Group Alignment] with directions for the subsequent course of the investigation".

It appears that soon afterwards the file was returned to the district prosecutor's office.

75. In August 2006 the district prosecutor's office questioned three traffic police officers who had been manning the Volga-15 roadblock on the night of Adam Bersanov's abduction. They gave similar statements about the passage of vehicles and recording of traffic. For example, traffic police inspector Eduard Ye. stated:

"The traffic on the road is very busy ... Among other vehicles, the FSB transport has to go through our post. FSB servicemen show us a pass ("*talon*"), which permits them to travel through without any hindrance and without being registered. The pass displays only the vehicle descriptor VIN [vehicle identification number] and the pass number. Whenever such a pass is produced, we do not have the right to ask for ID documents from the driver and passengers, or to inspect the vehicle. The FSB usually

use VAZ-Niva, UAZ and Gazel vehicles. The vehicles usually don't have registration plates, or they have plates from other regions. The windows of all vehicles are tinted. During the night the FSB servicemen pass by our post several times, both towards Magas and back. They usually travel in convoys of three, five, or more vehicles. Their passage is not logged, unless we receive a clear instruction to do so."

76. Traffic inspector Bagaudin F. specified that this practice was common at other police roadblocks where he had served, and added that the FSB usually travelled in convoys of UAZ, Niva and Gazel vehicles.

77. On 28 August 2006 the investigator questioned Oleg (also known as Ali) Dzh., the officer on duty of the Ingushetia Department of the FSB. He stated that he had no information about any FSB special operations on 5 December 2004, since such information was top secret. While on duty he had received no calls about Adam Bersanov's abduction.

78. On 4 September 2006 the town prosecutor's office carried out a confrontation between Magomed M., inspector on duty of the Ministry of the Interior, and Oleg Dzh., officer on duty of the UFSB on the night of 4 to 5 December. Magomed M. confirmed his statement of January 2005 (see paragraph 65 above) that he had talked to Oleg (Ali) Dzh. on that night and that the latter had confirmed to him that the UFSB had carried out a special operation in the Malgobek District at that time, but could not explain the nature of the operation and could not give any information about the detained person. Oleg Dzh. reiterated his previous statements, that while on duty during that night he had received no calls from officers of the Ministry of the Interior, that he had had no information about any special operations because such data were top secret, and that he had received no calls about the abduction of Adam Bersanov.

79. On 20 September 2006 the proceedings were adjourned by the town prosecutor's office.

80. On 5 December 2008 the deputy head of the Ingushetia Investigative Committee quashed the decision of 20 September 2006. He ordered Adam Bersanov's wife and servicemen of the Ministry of the Interior, including the former head of the Malgobek ROVD, to be questioned. The decision further stated that the investigation had collected information that Bersanov was a follower of the extremist Wahhabi movement, that he had called upon young people to join illegal armed groups, that he had been brought on several occasions to the Malgobek ROVD, and that he regularly had visitors from Chechnya. This line of inquiry should also be pursued.

81. On 18 March 2009 the investigator ruled once again that proceedings should be adjourned. The applicants were informed accordingly. The Government informed the Court that the case file had been studied further by the Investigative Committee of the Russian Federation.



### **C. Application no. 1578/07, *Arsamikova v. Russia***

#### *1. Disappearance of the applicant's husband*

82. After the beginning of hostilities in Chechnya in the autumn of 1999 the applicant's family moved from Grozny to Ingushetia. They stayed in a camp in Karabulak, which was located in a garage area. The applicant's husband, Mr Adam Arsamikov, born in 1959, was the leader ("commandant") of the camp.

83. At 8.30 p.m. on 29 October 2002 armed men in camouflage uniforms and masks broke into the garages, shouting "Where is the commandant?" They spoke unaccented Russian. Four or five men broke into the first room of the garage where the Arsamikov family lived, while five or six others remained in the corridor. The applicant's neighbours who tried to look out of their rooms were forced back.

84. At the time the applicant was in the kitchen and her husband was sleeping in his room. The uniformed men broke into the premises; they did not identify themselves, but demanded to know whether the commandant lived there. The applicant replied that he did, and asked them what they wanted. One of the men pushed her rudely in reply. By this time the applicant's husband had got up and dressed.

85. Then the men began to search the room. They said they were looking for weapons and drugs. They produced no documents authorising the search, and brought in no witnesses. They made a very thorough search but did not find anything illegal. After the search the men demanded the keys to the applicant's family car, which was parked in the yard. They searched the car but did not find anything there either.

86. Then the men asked for the documents for the car and the applicant's husband's passport. They took those documents and the applicant's husband outside. The applicant tried to follow them, but they did not let her leave the garage. In the street the men forced the applicant's husband into a car and left. The applicant and her neighbours witnessed two white cars, VAZ-2121 (Niva) and VAZ-2106, leaving. Their registration numbers were covered with mud, but the applicant and her neighbours could make out the regional code 95, which was that of Chechnya.

87. The applicant collected corroborating statements from Ms B., Ms G., Ms D. and Ms Kh., her neighbours in the migrant camp.

#### *2. The search for the applicant's husband and the official investigation*

88. After the uniformed men had left, the applicant went to the Karabulak Town Department of the Interior (GOVD) and reported her husband's abduction. The GOVD officers tried to pursue the abductors. However, they did not succeed in catching them since, as the officers told

the applicant upon their return, the abductors had gone to Chechnya, driving through checkpoints without being stopped.

89. Later on 29 October 2002 the applicant lodged a written representation with the Karabulak Prosecutor's Office ("the district prosecutor's office"). In the days which followed the applicant made representation in person to the Karabulak GOVD, the prosecutor's office and other law-enforcement agencies. She was told that her husband had been taken to Chechnya and that measures were being taken to establish his whereabouts.

90. At the same time the applicant continued to search for her husband. She applied to the Society for Russian-Chechen Friendship NGO and together with its head, Mr E., went to the Ingushetia Ministry of the Interior. Mr E. was told that the applicant's husband was not being held there. On the following day a prosecutor in Grozny, an acquaintance of Mr E., informed them that the applicant's husband was being held at the "operational-search bureau", commonly known as ORB-2. At ORB-2 she was told that her husband was not being held there.

91. On 24 December 2002 the district prosecutor's office instituted criminal investigation file no. 22520011 in connection with the abduction of Adam Arsamikov. In September 2009 the Government submitted forty-nine pages from that file. The most important developments may be summarised as follows.

92. On 1 January 2003 an investigator questioned officer G. of the Karabulak GOVD. G. stated that at 9 a.m. on 29 October 2002 he had been informed that Mr Adam Arsamikov had been abducted from the garage where he lived by officers of the Chechnya FSB. The abductors had used white VAZ-2106 and VAZ-2121 (Niva) vehicles with registration plates covered with mud. Officer G. together with officers G-v and Ts. pursued the abductors. At the checkpoint near the village of Ordzhonikidzevskaya they were told that no such vehicles had been that way. Then the officers went to checkpoint no. 20 at the entry point for the Rostov-Baku motorway. Traffic police there confirmed that two white vehicles VAZ-2106 and Niva with registration plates covered with mud had passed by fifteen to twenty minutes previously. They had not stopped them because they had papers on their windscreens authorising unhindered passage. It was usually FSB officers who had such badges. At the "Kavkaz" roadblock situated at the administrative border between Chechnya and Ingushetia the witness asked the officer in charge to transmit the information about the pursued cars to the traffic police ahead, so that they could stop the abductors. However, the three servicemen travelled as far as Urus-Martan, and at every checkpoint on their way they received similar information. They lost track of the two cars in Urus-Martan. They then travelled on and inquired about the abducted man at a number of law-enforcement agencies: the Oktyabrskiy and Staropromyslovskiy VOVDs in Grozny, and the Sixth Intelligence

Directorate (*Шестое управление*). All the agencies denied that they had conducted any operations. The deputy head of the Sixth Intelligence Directorate said that Mr Arsamikov might have been apprehended by the Urus-Martan district office of the FSB. Officers G., G-r. and Ts. then returned to Karabulak.

93. Officers G., G-v and Ts. submitted to the Karabulak prosecutor written statements corroborating officer G.'s submissions made in the course of questioning on 1 January 2003. They all stated that, according to information received at various checkpoints, Mr Arsamikov's abductors had shown FSB badges and so had passed through the checkpoints unhindered.

94. In February 2003 the Karabulak GOVD reported to the district prosecutor's office that all checkpoints on the border with Chechnya had been checked for the passage of the suspect vehicles VAZ-2106 and Niva. However, those vehicles had not been logged, and had passed through checkpoints with special badges. The report further noted that there was no information about any illegal activities on Mr Arsamikov's part, that no criminal proceedings had been instituted against him, and that during his stay in Ingushetia he had had no conflicts or quarrels.

95. On 12 March 2003 the Chechnya FSB informed the Chechnya Prosecutor's Office that no criminal proceedings had been instituted against Adam Arsamikov, and that the FSB had carried out no operations in respect of him.

96. A number of law-enforcement authorities in the Northern Caucasus informed the district prosecutor's office, responding to their enquiries, that no criminal proceedings had been instituted against Adam Arsamikov.

97. On 9 April 2003 the applicant was granted victim status in criminal case no. 22520011.

98. On 24 June 2003 the investigation was adjourned, and on 1 September 2003 it was resumed. On 1 October 2003 the investigation of the abduction was again adjourned.

99. On 31 November 2003 the Ingushetia FSB informed the military prosecutor of military unit no. 04062 that their officers had not detained Mr Arsamikov and had no information as to his whereabouts.

100. On 5 December 2003, in response to the applicant's request, the district prosecutor's office provided her with copies of replies from various State authorities obtained in the course of the investigation.

101. On 29 July 2005 the Staropromyslovskiy District Court of Grozny declared Adam Arsamikov a missing person following his abduction by unknown armed men in camouflage uniforms.

102. On 17 July 2006 the applicant sought leave from the Karabulak Prosecutor's Office to study the case file. An investigator allegedly told her that her husband had been abducted by FSB officers, who had taken him to Chechnya. He also said that although their office had instituted the investigation, they could not do much more since the FSB officers "were

not subject to any laws". The investigator allowed the applicant to make copies of the documents referred to above.

103. On 11 August 2009 the deputy head of the Karabulak Town investigative department quashed the decision of 1 October 2003, and the investigation was resumed. The decision ordered the investigators to question other members of the applicant's family, police officers of the Karabulak GOVD, and the traffic police who had been manning the roadblocks at the relevant time. The applicant was informed accordingly.

## II. RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL MATERIALS

104. For a summary of the relevant domestic law and practice and for international and domestic reports on disappearances in Chechnya and Ingushetia (see *Aslakhanova and Others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, §§ 43-59 and §§ 69-84, 18 December 2012).

## THE LAW

### I. JOINDER OF THE APPLICATIONS

105. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their similar factual and legal background.

### II. THE GOVERNMENT'S PRELIMINARY OBJECTION

#### **A. The parties' submissions**

106. The Government argued that the applications should be dismissed for failure to exhaust domestic remedies. They stressed that the applicants had had, and currently had, various remedies at their disposal to which they could have recourse with respect to the ongoing investigation. They further noted that the applicants had failed to appeal against the investigators' decisions by way of judicial review. They also stated that the investigations were still pending and that it was premature to conclude that the applicants had exhausted domestic remedies and that the remedies had not been effective. Lastly, they pointed out that the applicants could have claimed damages in civil proceedings.

107. The applicants argued that the investigations had been pending for a long time without producing any tangible results. The remedy of judicial review had proved ineffective, and their complaints, as well as all other potential remedies, had proved futile.

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

108. In a recent judgment the Court concluded that the non-investigation of disappearances which had occurred principally in Chechnya and Ingushetia between 1999 and 2006, constituted a systemic problem and that criminal investigations were not an effective remedy in this respect (see *Aslakhanova and Others*, cited above, §§ 217 and 219).

109. In such circumstances, and noting the absence of tangible progress in any of the criminal investigations over the years, the Court concludes that the objection in relation to the pending criminal investigations should be dismissed, since the remedies relied on by the Government were ineffective in the circumstances.

110. As regards a civil action to obtain redress for damage sustained as a result of illegal acts or unlawful conduct on the part of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). Accordingly, the Court confirms that the applicants were not obliged to pursue civil remedies. The preliminary objection in this regard is also dismissed.

## **III. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS**

### **A. The parties' submissions**

#### *1. The applicants*

111. All the applicants maintained that it was beyond reasonable doubt that the men who had taken their relatives away were agents of the State. In support of this assertion they referred to the evidence contained in their submissions and the criminal investigation files. They submitted that they had each made a *prima facie* case that their relatives had been abducted by agents of the State, and that the essential facts underlying their complaints had not been challenged by the Government. In view of the absence of any news of their missing relatives for a long time, and the life-threatening

nature of unacknowledged detention in the region at the relevant time, they asked the Court to consider their relatives dead.

## 2. *The Government*

112. The Government did not contest the essential facts of each case as presented by the applicants. At the same time, they claimed that during the investigations no information had been obtained proving beyond reasonable doubt that agents of the State had been involved in the abductions. The mere fact that the abductors had been armed and had been wearing camouflage uniforms which did not distinguish between them was not enough to make that assumption. Nor could the deaths of the applicants' relatives be established with certainty.

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

### 1. *General principles*

113. A number of principles have been developed in the Court when it has been faced with the task of establishing the facts of events on which the parties disagree (see *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, §§ 151-53, 13 December 2012).

114. More specifically, the Court has adjudicated a series of cases concerning allegations of disappearances in the Russian Northern Caucasus. Applying the above-mentioned principles, it has concluded that it would be sufficient for the applicants to make a *prima facie* case of abduction of the missing persons by servicemen, thus falling within the control of the authorities, and it would then be for the Government to discharge their burden of proof, either by disclosing the documents in their exclusive possession or by providing a satisfactory and convincing explanation of how the events in question occurred (see, among many examples, *Aziyevy v. Russia*, no. 7626/01, § 74, 20 March 2008; *Utsayeva and Others v. Russia*, no. 29133/03, § 160, 29 May 2008; and *Khutsayev and Others v. Russia*, no. 16622/05, § 104, 27 May 2010). If the Government failed to rebut this presumption, that would entail a violation of Article 2 in its substantive part. Conversely, where the applicants failed to make a *prima facie* case, the burden of proof could not be reversed (see, for example, *Tovsultanova v. Russia*, no. 26974/06, §§ 77-81, 17 June 2010; *Movsayevy v. Russia*, no. 20303/07, § 76, 14 June 2011; and *Shafiyeva v. Russia*, no. 49379/09, § 71, 3 May 2012).

115. The Court has also made findings of fact to the effect that a missing person may be presumed dead. Having regard to the previous cases concerning disappearances in Chechnya and Ingushetia, the Court has found that in the particular context of the conflict, when a person has been detained by unidentified agents of the State without any subsequent

acknowledgment of the detention, this could be regarded as life-threatening (see, among many others, *Bazorkina v. Russia*, no. 69481/01, 27 July 2006; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-XIII (extracts); *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, 10 May 2007; and *Velkhiyev and Others v. Russia*, no. 34085/06, 5 July 2011).

116. Turning to the case at hand, the Court finds the following.

2. *Application no. 34541/06, Yandiyev v. Russia*

117. The Court notes that the parties do not dispute that on 16 March 2004 a group of armed and masked men, using Gazel and Niva vehicles without registration plates, had detained Timur Yandiyev in Nazran, in broad daylight and in full view of numerous witnesses. The two vehicles passed several police roadblocks; at the “Volga-20” roadblock situated at the administrative border with Ingushetia the drivers of the vehicles had presented papers which exempted them from inspection by the police, and had entered Chechnya. The police officers manning the roadblock noted the details of the “passes”, presumably issued by the security services in the region, although subsequent enquiries about their provenance appear inconclusive (see paragraphs 10, 15, 23 and 34 above).

118. In view of the above, the Court is satisfied that a *prima facie* case of abduction by agents of the State has been made.

119. The Government referred to the unfinished nature of the criminal investigation and to the lack of evidence that the applicants’ relative was dead. They alluded to the possibility that the perpetrators were members of illegal armed groups. Without indicating any dates, they referred to criminal cases where the prosecutor’s office in Chechnya had brought charges of terrorism, murder, and attacks on law-enforcement personnel against four persons. These presumed members of the illegal armed groups had used false ID cards of law-enforcement authorities to facilitate their criminal acts. In view of this, the fact that the perpetrators had used security services “passes” which the police had perceived as valid, could not serve as proof that they were State servicemen.

120. The Court notes that when unidentified armed men act in a manner resembling a security operation, openly detain individuals and then enjoy unhindered passage through police roadblocks producing seemingly valid documents in support of the lawfulness of their actions, the most obvious conclusion is that these men are indeed security personnel. It appears too that this line of inquiry was pursued by the domestic criminal investigation. As could be seen from many previous judgments involving allegations of disappearances, such security operations in the region had taken place without prior or subsequent acknowledgment, and were routinely denied by the authorities (see for example, *Alikhadzhiyeva v. Russia*, no. 68007/01, § 59, 5 July 2007; *Vakhayeva and Others v. Russia*, no. 1758/04, § 134, 29 October 2009; *Mutsolgova and Others v. Russia*, no. 2952/06, § 100,

1 April 2010; and *Malika Alikhadzhiyeva v. Russia*, no. 37193/08, § 88, 24 May 2011). Bearing this in mind, the Court finds that the possibility that the crime could have been committed by members of illegal armed groups is at variance with the established facts in this case. Consequently, the Court rejects it. Accordingly, the Government's arguments are insufficient to discharge their burden of proof in a case where there is *prima facie* evidence that missing persons had been last seen in State hands.

121. Bearing in mind the general principles outlined above, the Court finds it sufficiently established that on 16 March 2004 Timur Yandiyev was taken into custody by agents of the State. In the absence of any reliable news of him since that date, and given the life-threatening nature of such detention, the Court finds that he may be presumed dead.

*3. Application no. 43811/06, Bersanov v. Russia*

122. The Court finds that this case contains clear, convincing and concordant evidence that Adam Bersanov was detained in the early hours of 5 December 2005 by agents of the State. The Court notes, in particular, the eye-witnesses' descriptions of the armed men wearing special protection gear such as spherical helmets with integral microphones and relying on radio communications, in Russian, to transmit orders, and to the fact that the group had cordoned off the area, searched the applicant's house and detained her son. Traffic police officers have described the group, which travelled to Malgobek on the night in question and which, the evidence indicates, detained Adam Bersanov, as officers of the FSB, reporting that their conduct and equipment were typical of that agency. They also noted the details of the special pass issued, in all probability, to a vehicle used by the FSB (see paragraphs 41-46, 59-62, 75 and 76 above). The officer of the Ingushetia Ministry of the Interior on duty at the time testified, and confirmed during a confrontation, that on the night in question he had contacted his counterpart at the Ingushetia FSB, who had told him that a special operation had been carried out by them (see paragraphs 65 and 78 above). Bersanov's arrest in relation to the investigation of the terrorist act in Beslan has been reported by the media, with reference to the prosecutor's office (see paragraphs 54-55 above).

123. In contrast to this convincing mass of evidence stand the laconic negative answers provided by the FSB in December 2004, and the testimony of the officer on duty at the time, who denied that he had received information about Adam Bersanov's detention or queries from the Ministry of the Interior (see paragraphs 63 and 78 above). Such outright denial of cooperation appeared to bring to an end the genuine attempts by the district prosecutor's office to establish the identities of the abductors and the fate of the missing man.

124. The Government referred to the unfinished criminal investigation, and again alluded to the possibility that the perpetrators were members of



illegal armed groups. They cited the same references as in the case concerning Timur Yandiyev's abduction (see paragraph 119 above). The Court finds it almost self-evident to dismiss this argument in a case where numerous civil and police witnesses have unanimously pointed to the security services, and more specifically the FSB, as the perpetrators of the abduction. The Court finds that the Government is relying on an argument devoid of factual grounds, while ignoring the substantial weight of the evidence produced. For the same reasons as enumerated above in respect of Timur Yandiyev's detention, the Court finds that the Government have failed to discharge the burden of proof in relation to Adam Bersanov's disappearance.

125. The Court therefore finds it established that Adam Bersanov was taken into custody by agents of the State on 5 December 2004 and subsequently disappeared. In the absence of any news of him since that date and given the life-threatening nature of such detention, he may be presumed dead.

*4. Application no. 34541/07, Arsamikova v. Russia*

126. The Court finds that the documents and evidence collected by the applicant and the domestic investigation convincingly establish that on 29 October 2002 her husband was detained by a group of security officers in Karabulak and taken by them to Chechnya (see paragraphs 83-87, 92 and 93 above). For the same reasons as enumerated above in respect of the two other cases, the Court finds that the Government have failed to discharge their burden of proof, and have not provided a convincing explanation of what had happened to Mr Arsamikov after his detention by State agents. He too may be presumed dead in the absence of any news of him after 29 October 2002 and in view of the life-threatening nature of such detention.

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

127. The applicants complained under Article 2 of the Convention that their relatives had disappeared after being detained by agents of the State, and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 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. The parties’ submissions**

128. The Government contended that the domestic investigations had obtained no evidence that the detainees had been held under State control or that the missing persons were dead. They further noted that the mere fact that the investigative measures had not produced any specific results, or had produced only limited ones, did not mean that there had been any omissions on the part of the investigative authorities. They claimed that all necessary measures were being taken to comply with the obligation to conduct an effective investigation.

129. The applicants reiterated their complaints.

### **B. The Court’s assessment**

#### *1. Admissibility*

130. The Court considers, in the light of the parties’ submissions, that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The complaint under Article 2 of the Convention must therefore be declared admissible.

#### *2. Merits*

##### **(a) Alleged violation of the right to life of the applicants’ relatives**

131. The Court has already found it established that the applicants’ family members may be presumed dead following their unacknowledged detention by agents of the State. Responsibility for their deaths rests with the respondent State. Noting that the Government do not rely on any grounds for justification of the deaths, the Court finds that there has been a violation of the right to life in respect of Timur Yandiyev, Adam Bersanov and Adam Arsamikov, as guaranteed by the substantive aspect of Article 2 of the Convention.

##### **(b) Alleged inadequacy of the investigation of the abductions**

132. The Court has already found that a criminal investigation does not constitute an effective remedy in respect of disappearances, in particular those which occurred in Chechnya and Ingushetia between 1999 and 2006, and that such a situation constitutes a systemic problem under the Convention (see *Aslakhanova and Others*, cited above, §§ 217 and 219). In

the cases at hand, as in many previous similar cases reviewed by the Court, the investigations have been pending for many years without bringing about any significant developments as to the identities of the perpetrators or the fate of the applicants' missing relatives. While the obligation to investigate effectively is one of means and not of results, the Court notes that the proceedings in each of the criminal files have been plagued by a combination of the same defects as enumerated in the *Aslakhanova and Others* judgment (cited above, §§ 123-25).

133. Noting the similarity of the three cases and the impressive amount of evidence collected by the investigators, the Court finds it regrettable that no steps have been taken to find out about the nature and provenance of the special passes used by the abductors. This information could have led to the establishment of the identities of the perpetrators and the discovery of the fate of the missing men. It reiterates that what is at stake here is nothing less than public confidence in the State's monopoly on the use of force (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-VI, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 300, ECHR 2011 (extracts)). The State must therefore ensure, by all means at its disposal, an adequate response, judicial or otherwise, so that the legislative and administrative framework set up to protect the right to life is properly implemented, and any breaches of that right are halted and punished (see *Zavoloka v. Latvia*, no. 58447/00, § 34, 7 July 2009). It appears that in the present case the respondent State has failed to ensure such an adequate response.

134. In the light of the foregoing, the Court finds that the authorities failed to carry out effective criminal investigations of the circumstances of the disappearance of the applicants' relatives. Accordingly, there has been a violation of Article 2 in its procedural aspect.

## V. ALLEGED VIOLATIONS OF ARTICLES 3, 5 AND 13 OF THE CONVENTION

135. The applicants complained of violations of Articles 3 and 5 of the Convention on account of the mental suffering caused to them by the disappearance of their relatives and the unlawfulness of their detention. They also argued that, contrary to Article 13 of the Convention, they had no available domestic remedies against the violations claimed, in particular those under Articles 2 and 3. These Articles read, in so far as relevant:

### Article 3

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

### Article 5

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ...

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

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

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

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

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

### Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority, notwithstanding that the violation has been committed by persons acting in an official capacity.”

136. The Government contested those arguments.

#### A. Admissibility

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

#### B. Merits

138. The Court has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of the close relatives of the victim. The essence of such a violation does not lie mainly 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 (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

139. Equally, the Court has found on many occasions that unacknowledged detention is a complete negation of the guarantees contained in Article 5, and discloses a particularly grave violation of its provisions (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001; *Luluyev and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII (extracts); *El Masri*, cited above, § 239; and *Aslakhanova*, cited above, § 132).

140. The Court reiterates its findings regarding the State's responsibility for the abductions and the failure to carry out a meaningful investigation of the fates of the disappeared persons. It finds that the applicants, who are their close relatives, must be considered victims of a violation of Article 3 of the Convention on account of the distress and anguish which they suffered, and continue to suffer, as a result of their inability to discover the fate of their family members and also of the manner in which their complaints have been dealt with.

141. The Court furthermore confirms that since it has been established that the applicants' relatives were detained by agents of the State, apparently without any legal grounds or acknowledgement of that detention, this constitutes a particularly grave violation of the right to liberty and security of persons enshrined in Article 5 of the Convention.

142. The Court reiterates its findings that criminal investigations in cases such as those under examination are generally ineffective. In the absence of any results from the investigation, any other possible remedy becomes inaccessible in practice. The Court thus finds that the applicants in these cases did not have an effective domestic remedy for their grievances under Articles 2 and 3 of the Convention, in breach of Article 13.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143. 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. The applicants' demand for further investigation

144. The applicants in applications nos. 34541/06 and 43811/06 asked the Court, in addition, to order the Government to carry out a fresh investigation of the disappearance.

145. The Court reiterates that in the above-cited *Aslakhanova* judgment it has found that the problem of non-investigation of disappearances which had occurred, in particular in Chechnya and Ingushetia, between 1999 and 2006, was of a systemic nature. It left it to the Committee of Ministers,

acting under Article 46 of the Convention, to address the issue of what in practical terms may be required of the respondent State by way of compliance, and when (*ibid.*, §§ 219-20).

146. At the same time, the Court provided some guidance on the measures to be taken, as a matter of urgency, by the Russian authorities to address the issue of the systemic failure to investigate disappearances in the northern Caucasus. Such steps should be taken with the aim of putting an end to the continued suffering of the relatives of the disappeared persons, conducting effective investigations of allegations of abduction, unlawful detention and disappearance by servicemen, and ensuring that the families of the victims are awarded adequate redress (*ibid.*, § 221).

147. In view of the above, the Court does not find it necessary to indicate any individual measures in this respect.

## **B. The applicants' claims for damages and for compensation for costs and expenses**

### *1. Application no. 34541/06, Yandiyev v. Russia*

148. The applicants submitted that they depended financially on Timur Yandiyev's income, which at the time of his arrest was about 1,000 United States dollars (USD) monthly on average. They could not provide any evidence in this respect other than their own statements. Applying calculation principles set out in the Ogden Actuarial Tables, and assuming that they could continue to rely on his financial contributions, the four applicants in this case claimed jointly 10,525,635 Russian roubles (RUB).

149. In respect of non-pecuniary damage the applicants asked the Court to award them 100,000 euros (EUR) jointly.

150. In respect of costs and expenses, the applicants sought 2,788 pounds sterling (GBP), which included the costs of drafting legal documents submitted to the Court, translation services, and administrative and postal expenses. They submitted a breakdown of the costs incurred, with invoices.

### *2. Application no. 43811/06, Bersanova v. Russia*

151. The applicant asked the Court to award her a total of GBP 91,484 in pecuniary damages to cover the loss of the financial support of her son, but also of the financial support he would have given to his wife and daughter. The applicant stated that before his abduction her son had earned about USD 400-500 per month, and relied on the Ogden Actuarial Tables to come up with the above calculations.

152. The applicant claimed EUR 100,000 in compensation for non-pecuniary damage.

153. The applicant was represented by the NGO EHRAC/Memorial. The aggregate claim in respect of costs and expenses relating to legal representation amounted to GBP 4,471, which included the drafting of legal documents, translation services, and administrative and postal costs incurred in the United Kingdom only. She submitted a breakdown of the costs incurred, with invoices.

*3. Application no. 1578/07, Arsamikova v. Russia*

154. The applicant asked the Court to award her RUB 333,497 in pecuniary damages. She estimated that she could rely on 30% of her husband's earnings, which she calculated on the basis of the official subsistence levels and applying the Ogden Actuarial Tables method.

155. In respect of non-pecuniary damage the applicant asked the Court to award her EUR 45,000, which she considered appropriate to the level of pain and suffering inflicted on her.

156. In respect of costs and expenses, the applicant sought EUR 6,513, which included the drafting of legal documents submitted to the Court, translation services, and administrative and postal costs. She submitted a copy of her legal representation contract with the SRJI, as well as a breakdown of the costs incurred and copies of invoices.

*4. The Government's position*

157. The Government, in each case, questioned the reasonableness of the applicants' claims. In respect of non-pecuniary damages, they were of the opinion that finding violations would constitute sufficient compensation.

**C. The Court's assessment**

158. The Court reiterates that there must be a clear causal connection between the damages claimed by the applicants and the violation of the Convention, and that this may, where appropriate, include compensation for loss of earnings. The loss of earnings applies to close relatives of disappeared persons, including spouses, elderly parents and minor children (see, among other authorities, *Imakayeva*, cited above, § 213).

159. The Court would then reiterate that wherever it finds a violation of the Convention it may accept that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations, and make a financial award.

160. As regards costs and expenses, the Court has to establish first whether the costs and expenses indicated by the applicant's representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220,

Series A no. 324, and *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005–IV).

161. Having regard to its conclusions, the principles enumerated above and the parties' submissions, the Court awards the applicants the amounts set out in Annex II, plus any tax that may be chargeable to them on those amounts. The awards in respect of costs and expenses are to be paid into the representatives' bank accounts, as identified by the applicants.

#### **D. Default interest**

162. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of the applicants' relatives Timur Yandiyev, Adam Bersanov and Adam Arsamikov;
4. *Holds* that there has been a procedural violation of Article 2 of the Convention in respect of the failure to investigate effectively the disappearance of the applicants' relatives;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants, on account of their relatives' disappearance and the authorities' response to their suffering;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of the applicants' relatives, on account of their unlawful detention;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Articles 2 and 3 of the Convention;
8. *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 amounts indicated in Annex II, plus any tax that may be chargeable to the applicants, to be converted into Russian roubles at the rate applicable at the date of settlement, save in respect of costs and expenses; and the awards in respect of the costs and expenses are to be paid into the representatives' bank accounts, as identified by the applicants;

(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;

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

Done in English, and notified in writing on 10 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach  
Deputy Registrar

Isabelle Berro-Lefèvre  
President

## ANNEX I

Details of the applications

	<b>Application no., dates of lodging and communication</b>	<b>Represented by</b>	<b>Applicants' name, year of birth, relationship to the missing person, place of residence</b>	<b>Missing person's name, year of birth; date and place of abduction</b>	<b>Investigation details</b>
1.	34541/06, <i>Yandiyev v. Russia</i> lodged on 31 July 2006, communicated on 14 April 2009	EHRAC/ Memorial	1. Mr Mukhamed Yandiyev, born in 1941, father; 2. Mrs Zina Vedzizheva, born in 1952, mother; 3. Mrs Tanzila Muzhakhoyeva, born in 1980, wife; and 4. Ms Leyla Yandiyeva, born in 2003, daughter. Karabulak, Ingushetia	Timur Yandiyev, born in 1979. 16 March 2004, Nazran, Ingushetia	The investigation of the abduction was opened by the district prosecutor's office on 25 March 2004 (case file no. 04560028). The investigation is at present pending.
2.	43811/06, <i>Bersanova v. Russia</i> , lodged on 31 October 2006, communicated on 11 April 2009	EHRAC/ Memorial	Mrs Kazban Bersanova, born in 1945, mother. Malgobek, Ingushetia	Adam Bersanov, born in 1977. 5 December 2004, Malgobek, Ingushetia	The investigation of the abduction was opened by the Malgobek district prosecutor's office on 15 December 2004 (case file no. 04540072). It is at present pending.
3.	1578/07, <i>Arsamikova v. Russia</i> , lodged on 20 December 2006, communicated on 12 May 2009	SRJI	Mrs Eyza Arsamikova, born in 1963, wife. Grozny, Chechnya	Adam Arsamikov, born in 1959. 29 October 2002, Karabulak, Ingushetia	The investigation into the abduction was opened on 24 December 2002 by the Karabulak District Prosecutor's Office (file no. 22520011). The Government submitted forty-nine pages from the pending file.

## ANNEX II

Awards made by the Court under Article 41

<b>Application</b>	<b>Applicants</b>	<b>Pecuniary damage</b>	<b>Non-pecuniary damage</b>	<b>Costs and expenses</b>
34541/06, <i>Yandiyev v. Russia</i>	1. Mukhamed Yandiyev; 2. Zina Vedzizheva; 3. Tanzila Muzhakhoyeva; and 4. Leyla Yandiyeva.	EUR 23,000 (twenty-three thousand euros) to the four applicants, jointly	EUR 60,000 (sixty thousand euros), jointly	EUR 2,500 (two thousand five hundred euros)
43811/06, <i>Bersanova v. Russia</i>	Kazban Bersanova	EUR 8,000 (eight thousand euros)	EUR 60,000 (sixty thousand euros)	EUR 2,500 (two thousand five hundred euros)
1578/07 <i>Arsamikova v. Russia</i>	Eyza Arsamikova	EUR 7,800 (seven thousand eight hundred euros) <sup>1</sup>	EUR 45,000 (forty-five thousand euros)	EUR 2,500 (two thousand five hundred euros)

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<sup>1</sup> Rectified on 23 October 2013: the text was “ten thousand euros”.