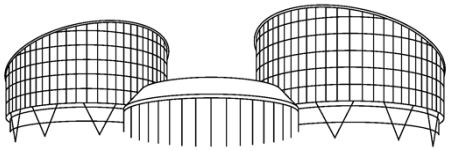

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ISRAILOV v. RUSSIA

(Applications nos. 21882/09 and 6189/10)

JUDGMENT

Art 2 (procedural) • Russian authorities' failure to comply with procedural obligation to cooperate with Austrian authorities in the investigation into the murder of the applicant's son in Austria • Jurisdiction *ratione loci* • Existence of special features establishing jurisdictional link between Russia and the applicant's complaint about the lack of an effective investigation • Austria's detailed criminal investigation aimed at clarifying circumstances surrounding the murder and identity of those responsible • Austrian authorities' legal assistance request as regards presence in Russia of important witnesses, including alleged perpetrator of the murder • Application of the principles formulated in *Güzelyurtlu and Others v. Cyprus and Turkey* [GC] concerning a Contracting State's procedural duties in respect of a murder committed outside its territory • In specific case circumstances, establishment of all relevant facts and responsibilities only possible with Russia's cooperation • Russian authorities under a duty in case at hand to render any assistance within their authority and means in respect to evidence sought located in Russia • Response to legal assistance request constituting in substance a refusal • Given context and delay in response which negatively affected the criminal proceedings in Austria, refusal devoid of any legitimacy • Failure to make minimum effort required
Art 3 (substantive and procedural) • Art 5 • Deprivation of liberty • Applicant's allegations in respect of ill-treatment and unacknowledged detention in a secret place in Chechnya sufficiently convincing and established beyond reasonable doubt • Government's failure to provide a plausible explanation to rebut presumption of responsibility on the part of the Russian authorities to account for applicant's fate and treatment • Ineffective investigation • Applicant's ill-treatment amounting to torture • Acts of violence caused severe physical and mental suffering which was inflicted intentionally • Arbitrary detention

STRASBOURG

24 October 2023

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

In the case of Israilov v. Russia,

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

Pere Pastor Vilanova*, President*,
Yonko Grozev,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 21882/09 and 6189/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Sharpuddi Elfirovich Israilov ("the applicant"), on 14 April 2009 and 20 January 2010 respectively;

the decision to give notice to the Russian Government ("the Government") of the complaints raised under Articles 2, 3, 5 and 8 of the Convention and Article 1 of Protocol no. 1 to the Convention, and to declare inadmissible the remainder of the applications;

the parties' observations;

the decision of the President of the Section to appoint one of the sitting judges of the Court to act as *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of the Court (see, for the similar situation and explanation of the background, *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 26 September 2023,

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

INTRODUCTION

1. The applications concern the manner in which the Russian authorities discharged their procedural obligations in relation to the murder of the applicant's son (Mr Umar Israilov) in Austria in 2009, which was allegedly committed with their connivance. They also concern the alleged ill-treatment and arbitrary detention of the applicant in the Chechen Republic (Chechnya) in 2004-2005 and the illegal search of his apartment and seizure of a sum of money upon his arrest, as well as the lack of an effective investigation into all these events. The applicant cited Articles 2, 3, 5, 8 and 13 of the Convention and Article 1 of Protocol no. 1 to the Convention.

THE FACTS

I. BACKGROUND INFORMATION

2. The applicant is originally from Chechnya in the Russian Federation. Prior to the events described below, he and his family lived in the village of Mesker-Yurt (in the Shali District), Chechnya. In 2006 he left Russia; he is keeping his current whereabouts secret for security reasons. On 17 October 2016 the applicant was granted leave to present his own case in the proceedings before the Court under Rule 36 § 2 in fine of the Rules of Court. After the submission of his observations, the applicant was represented by Ieva Zigure, a lawyer practising in Oslo, Norway. The Government were initially represented by Mr G. Matyushkin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.

3. The facts concerning the applicant's son, Umar (also known as "Alikhan") Israilov – particularly before the latter left Russia in 2004 – and the facts concerning the applicant's alleged detention and ill-treatment were points of dispute between the parties. In the statement of the facts of the case given below, the description of the relevant events is based essentially on the applicant's detailed submissions to the Russian authorities and to the Court and, as indicated below, on the documents that he relied upon. At the same time, due regard is given below to the Government's denial of the above-mentioned facts and (where they have been formulated) to their comments regarding the applicant's statement of the facts. While they considered overall that the applicant's factual submissions with respect to the above-mentioned events were not supported by objective evidence sufficient to establish that the applicant and Umar Israilov had been under the Russian authorities' control, they also pointed, as noted below, to a few specific doubts and "contradictions" (as they called them) in the applicant's statement of the facts.

II. EVENTS CONCERNING MR UMAR ISRAILOV'S DETENTION, SERVICE IN THE SECURITY FORCES IN CHECHNYA AND FLIGHT ABROAD

A. Umar Israilov's detention (April-July 2003) and service in the security forces (July 2003-August 2004)

4. It appears undisputed between the parties that around 2001 the applicant's son from his first marriage, Umar ("Alikhan") Israilov, joined an illegal armed group that was active in Mesker-Yurt.

5. According to the applicant, having been captured in April 2003 by servicemen from the "oil regiment" (*нефтеполк*), Umar Israilov was

detained until July 2003 (mostly in Tsentoroy in the Kurchaloy District) on the direct orders of Ramzan Kadyrov, who later became the President of the Chechen Republic (a constituent republic of the Russian Federation). Umar Israilov's detention in Tsentoroy, where Ramzan Kadyrov was born and his secret service had its base, was not officially documented.

6. After three months, during which Umar Israilov was regularly subjected to interrogations (accompanied by torture and beatings – often in the gym of the Tsentoroy base in the presence of or with the participation of Ramzan Kadyrov himself and of his close commanders) Umar Israilov was invited by Ramzan Kadyrov to join his security service. In order to avoid the likelihood of being subjected to ill-treatment that was more serious, Umar Israilov accepted. After being assigned basic security tasks, in April 2004 he was ordered by Ramzan Kadyrov to take charge of the security situation in Mesker-Yurt, his native village, where he was expected to confront and eradicate rebel activity.

7. This complex situation – as well as his involvement in a serious car accident and his subsequent convalescence – prompted Umar Israilov to decide in the summer of 2004 to secretly leave Chechnya and Russia, under a false identity, together with his wife.

8. Shortly after arriving in Poland, in November 2004, Umar Israilov received a call on his mobile telephone from a person whose voice he immediately recognised as that of Ramzan Kadyrov. The caller asked him to inform "Alikhan" (the name that Umar Israilov used in his day-to-day life) that he (that is, the caller) would kill Umar Israilov's father and several other relatives that he had captured if "Alikhan" did not return to Chechnya. Umar Israilov identified himself and replied that he would not come back. He and his family left Poland, fearing for their safety, and settled in Austria.

9. In September and October 2006, during the proceedings in respect of Umar Israilov's application for asylum in Austria, Human Rights Watch supported the credibility of his allegations by referring also to the consistency of the applicant's and his family member's statements, the similarity of their and other detainees' respective sketches of the base in Tsentoroy, and their agreement on the identity of those who had engaged in torture on that base (see also paragraphs 14-16 below).

B. The applicant's detention and subsequent events until his departure from Chechnya

1. Detention of the applicant and other family members

10. According to the applicant, on 27 November 2004 officers of the security service of the President of Chechnya (commonly known as *kadyrovtsy*), acting under the order of Ramzan Kadyrov – who at the time in question was deputy prime minister – detained him, his wife (Mrs Sh.V.) and Umar Israilov's sister-in-law (his wife's sister – Ms E.S.).

11. The applicant, who was in charge of a working team employed by company K. at a construction site near Severnyy airport, was detained at his workplace by a group of armed men driving a Lada car and headed by someone the applicant identified as S.-E.I., and who was known by the nickname "Razvedchik" (intelligence officer). Sh.V. was already in the car because they had gone to her at the applicant's apartment and forced her to leave her minor children there and to guide them to the applicant's working place. The men told the family that they were looking for Umar Israilov. According to the applicant's and Sh.V's later statements (see paragraphs 34 and 42 below), the same men searched the applicant's apartment and seized a number of items there, including his personal documents and a large amount of cash. The search-and-seizure operation was not documented in any manner. According to Sh.V., the servicemen were allowed to pass the checkpoint of the military restricted area near the airport in order to remove the applicant from his workplace. Moreover, E.S's arrest was witnessed, according to the latter, by her sister (who made a statement to that effect in July 2007) and by her neighbours.

12. The three detainees were taken to the security base in Tsentoroy. Sh.V. was allowed to return home later the same day. While she was at the security base, she saw the servicemen showing her husband the purse where they kept their cash and also witnessed him being beaten in the courtyard of the base.

13. The applicant was beaten upon arrival at the base. He was then taken to the gym and remained there for some time. In the gym he was beaten again by eight individuals – three of whom he was able to recognise. They hit him with a rifle butt and a stick, his hands having first been tied to an exercise machine and his feet tied to a billiards table. He was also subjected to electric shocks administered with a machine resembling a field telephone (which had a rotating handle). Whenever the applicant lost consciousness, he had cold water poured over him and the beatings would then continue. During the ill-treatment, the applicant was repeatedly asked where his son was and whether he could force him to return.

14. The applicant submitted that he had been held at the gym in Tsentoroy for about four days. He gave a detailed description – including a sketch – of the premises (a courtyard, gym, two cells, and so on) and of the treatment to which he was allegedly subjected. He named some of the individuals that he had recognised among both the officers and among the other detainees whose ill-treatment he had witnessed, and provided the name (J.) and photograph of the head of the Tsentoroy base who had been present in the gym. The applicant recognised individuals whose kidnappings and (in the case of at least two of them – Ramzan Kadyrov's former security officer in charge of Mesker-Yurt, Supyan Ekiyev, and a village mayor, Said-Ali Iriskhanov) torture and subsequent death were reported by an NGO, the Memorial Human Rights Centre ("Memorial") and local media at the beginning of 2005. While

he was chained bleeding in the gym, he witnessed one visit by Ramzan Kadyrov, and Mr Kadyrov's involvement in the torture of some detainees (including Supyan Ekiyev, who was subjected to electric shocks that left him with traces of burns). After Ramzan Kadyrov left, one of his guards told the applicant that he had called Umar Israilov in Poland, finding his number in the applicant's mobile telephone, which had been seized after his arrest.

15. The applicant suffered a number of injuries: several of his teeth were knocked out; deep wounds were inflicted on his legs by the wires with which they had been tied while he was being tortured with electric shocks; and his ribs were bruised (see paragraph 32 below for the forensic expert examination performed later).

16. E.S., Umar Israilov's sister-in-law, submitted a detailed statement dated 20 June 2007 confirming that during her stay at the base in Tsentorory, shortly after the applicant's arrest, she had seen the applicant being ill-treated – including in the gym.

17. According to the applicant, on 1 December 2004 all of the detainees held at the Tsentorory base were transferred to the security service headquarters located in Gudermes. The applicant's detention there lasted for more than 300 days. This base (known as the "Vega base") was located next to the local boxing club, and the applicant submitted to the domestic authorities a detailed description of the premises and of the treatment to which he had been subjected there. On the basis of information provided by the Ministry of Internal Affairs of the Chechen Republic, the Government formally contested the existence of a military base known as the "Vega base" in Gudermes.

18. According to the applicant, the detainees were allegedly kept in three cells located in the cellar of a two-storey building. While in detention there, the applicant saw more than one hundred people, some of whom were security officers who had behaved inappropriately in some way. Many had been beaten and tortured; the majority of those detained there were later released. According to the applicant, he was not beaten during the time in which he was held in Gudermes. He submitted that he had been detained there for several months together with three brothers (with the family name of Ch.) who had been reported by Memorial to have been kidnapped (allegedly by the "oil regiment"). He also witnessed the detention of a 70-year-old man (the father of a rebel leader, Doku Umarov), whose kidnapping and subsequent secret detention had been widely reported. The 70-year-old was not ill-treated during the time that they had both been held in Gudermes.

19. The applicant's cell measured less than ten square metres; at times there were as many as ten detainees in it, and the conditions were appalling. The cell was damp and cold, and the toilets were situated in the yard. The applicant was taken for a bath only twice during his stay; he was rarely allowed to wash himself under a tap or to change his clothes; the food was basic and no medical aid was available. The applicant had no official contact

with the outside world, but a few weeks into his detention he managed to pass a message to his wife. From March 2005 onwards the applicant's wife regularly went to the base and brought him clean clothes and toiletries, which were sometimes accepted by the guards. Through the assistance of guards, they also managed to have two brief meetings. E.S. spent about two months at the same base before her release. She described her stay there as "terrible". The cell was located in the cellar, so the walls were damp. The guards took the women to the toilets outside three times a day. Detainees had hardly any opportunity to wash themselves or to change their clothes. While at the base, E.S. did not see the applicant, but was informed of his presence by other detainees.

20. During the period of the applicant's detention he and his family members did not lodge any complaints with the authorities for fear of further reprisals.

2. The applicant's release and the authorities' preliminary inquiry into events before his departure from Chechnya

21. According to the applicant, he was released on 4 October 2005, on the first day of the Ramadan fast. As he was being released, one of the commanders, S.I., told him that he should not tell anyone about his stay there. He said that the applicant's detention had never officially happened and that there was no paperwork to confirm it. When he enquired about the documents and money that had been confiscated on 27 November 2004, the applicant was allegedly told by S.I. that the latter did not know anything about the money and that the applicant should return later to deal with the issue of missing documents. The applicant's release and his physical and psychological state of health (significant weight loss, missing teeth and stuttering speech) were described in statements made by the applicant's wife, Sh.V., and by his younger son, M.I., in July 2007 (see, in particular, paragraph 42 below).

22. Following his release, the applicant tried for some time to recover the documents and money seized from his house by asking the base commanders in person that they be returned, but to no avail. He also allegedly lodged complaints with various authorities, although no copies of any such complaints have been retained. With respect to the above-mentioned statement of the facts, the Government expressed their doubts that a person who had been allegedly unlawfully detained (and moreover ill-treated) would voluntarily return to the premises where those events had happened.

23. In the meantime, on 12 October 2005 Mr Rudolf Bindig, a member of the Parliamentary Assembly of the Council of Europe and Rapporteur of the Committee on Legal Affairs and Human Rights with respect to the situation in the Chechen Republic, sent a detailed letter to Mr Vladimir Ustinov, Prosecutor General of the Russian Federation ("the Russian Prosecutor General"), requesting information about a number of reported killings and

abductions, among which numbered Supyan Ekiyev's killing and the applicant's abduction on 27 November 2004 (see paragraph 91 below).

24. On 17 November 2005 the Grozny prosecutor's office was alerted by a member of the Duma (the Russian Federal Parliament) about a number of alleged murders and abductions in Chechnya – including the applicant's abduction and ill-treatment. On the same day the Shali district prosecutor's office was instructed to provide information in that regard within two days.

25. On 18 November 2005 the applicant's cousin, I.I., was questioned in that regard. He stated, *inter alia*, that towards the end of November 2004, the applicant's wife had come to see him and his family and had told them that the applicant had been detained on 27 November 2004 at his workplace. He also stated that on a date that he could not remember – "for example at the end of September 2005" – the applicant himself had visited him and his family and had told them that he had been released the previous day. The applicant had not talked any more about his detention. In their observations, the Government pointed to the inconsistency between this statement and the date of release indicated by the applicant (namely, 4 October 2005).

26. On the same day the Shali district prosecutor's office refused to open criminal proceedings in respect of the applicant's alleged abduction. The decision referred only to the introductory part of I.I.'s statement, in which he had mentioned that the applicant had moved to Grozny in 2003 and had been living there for some time.

27. On 6 December 2005, in reply to Mr Rudolf Bindig's letter (see paragraph 23 above), the Russian Prosecutor General informed Mr Bindig of, *inter alia*, the refusal to open criminal proceedings on the grounds that checks made had not confirmed the information provided in his letter concerning the applicant's abduction. The Prosecutor General's reply also briefly affirmed that the killing of Supyan Ekiyev, who had been detained since 27 November 2004, had been justified by the fact that he had put up armed resistance to the Chechen security forces.

28. On 26 January 2006, the Grozny prosecutor's office quashed the Shali district prosecutor's office decision of 18 November 2005, noting that the applicant's cousin, I.I., had reported the applicant's detention, and criticising the fact that no further evidence had been collected.

29. Summoned to the Shali district prosecutor's office on 8 February 2006, the applicant was urged by the prosecutor to state that since November 2004 he had been away from home with a lover and that he had made up the above-mentioned story about his being kidnapped from his workplace in order to keep secret the real reason for his absence. The applicant understood that if he refused to sign a statement to that effect (which had already been drawn up for him, dated 9 February 2006) he would suffer further reprisals. He therefore signed it.

30. On 9 February 2006 the Shali district prosecutor's office declared that it would not open a criminal investigation into the applicant's alleged

kidnapping in November 2004, referring to the applicant's above-mentioned statement.

31. Subsequently, the applicant decided to leave Russia. He obtained passports for himself and his family and left the country on an unspecified date not later than August 2006. E.S. also left Russia in September 2006.

32. In August 2006 a forensic medical expert in Norway examined the applicant and noted that he had sustained injuries to his teeth, legs and feet. The expert concluded that the account given by the applicant of the violence to which he had been subjected in November 2004 was consistent with his physical injuries and reported physical symptoms (namely, pain in the left part of the chest, headaches and dysuria) and psychological symptoms (sleep disturbance and anxiety).

C. The applicant's complaints to the Russian authorities

1. Preliminary inquiry until the opening of criminal investigations

33. Over the course of several months from October 2006 onwards the applicant and his son, Umar Israilov, sent several complaints to prosecutors in Russia. The applicant gave as his correspondence address a mailbox number located in the United States of America.

34. The applicant and his son gave detailed accounts of their detention and ill-treatment, indicating the dates on which (and places where) they had suffered that treatment (and the names of persons they had identified as the perpetrators), and requested the opening of a criminal investigation into their allegations. The applicant, in particular, described in detail his arrest on 27 November 2004, his subsequent ill-treatment in Tsentoroy and his detention at the "Vega base" in Gudermes; he also mentioned the search of his apartment and the seizure of a bag containing 178,000 Russian roubles (see paragraphs 10-15 and 17-18 above). The applicant further explained again that, when he had later been interrogated after his release, he had feared for his life and had not dared to refuse to sign the invented testimony about his alleged escapade with a lover (see paragraph 29 above). In some of his submissions the applicant mentioned not only his full name but also his nickname of "Ali". This nickname was also used in several official documents signed by prosecutors and investigators in the criminal case concerning the applicant's alleged detention and ill-treatment. It appears clear from those documents that the applicant was indeed also known as "Ali".

35. On 2 February 2007 the Shali district prosecutor's office, referring to a complaint that had been lodged with them by the applicant on 22 January 2007, refused to open criminal proceedings. That decision was taken following three interviews with witnesses. A security forces commander, S.-E.I., testified that he had known the applicant's son, who had worked for the security forces and had subsequently been in charge of these forces in Mesker-Yurt for a while; however, he had not known the applicant or his

other relatives, whom he had not arrested. The applicant's sister, Z.E.A., testified that she had found out from the applicant's wife, Sh.V., about his detention; moreover, the applicant himself had told her that upon his return he had been summoned by the Shali district prosecutor's office and had testified that he had been away with a lover. She did not know which story was true. The third witness was the investigator who had taken the applicant's deposition concerning his alleged escapade with a lover. The investigator reiterated the story about the alleged escapade. The decision of the Shali district prosecutor's office also noted that in December 2006 Umar Israilov had been placed on the list of wanted persons because he faced charges relating to several serious crimes. On 22 February 2007 the above-mentioned refusal of 2 February 2007 to open criminal proceedings was also quashed and further investigative steps were ordered; in particular, the questioning was ordered of E.S., the Ch. brothers and the other individuals identified as co-detainees by the applicant, as well as of staff of the company from whose worksite the applicant had allegedly been arrested.

36. Separately, on 21 February 2007, the Chechnya prosecutor's office quashed the Shali district prosecutor's office decision of 9 February 2006 (see paragraph 30 above).

2. Criminal investigation into the applicant's complaints (file no. 10021)

37. By a letter dated 12 March 2007, received by the applicant on 5 July 2007, the applicant was informed by the Leninskiy district prosecutor's office in Grozny that it had examined his claims concerning his alleged illegal detention, ill-treatment, and other actions against him and his family. It was decided to open a criminal investigation file (no. 10021) in respect of his having been illegally deprived of his liberty and his having been ill-treated (Articles 117 and 127 of the Russian Criminal Code). The applicant received no procedural documents pertaining to that investigation.

38. The aforementioned decision to open a criminal investigation was based on a report drafted the same day, 12 March 2017, by the Leninskiy district prosecutor's office which indicated that there was sufficient initial data corroborating the statement of the facts given by the applicant with respect to his detention by Chechen special forces. In that respect, Z.I., the stepmother of rebel leader Doku Umarov, gave a statement to the effect that her aged husband had been arrested at the beginning of May 2005 for five months. Two brothers (A. and K., whose surname was Ch.) gave statements asserting that they remembered a co-detainee who had been held in the basement cells in Gudermes who they had called "Ali" and who had told them that he had already been detained for about six months before they themselves had been placed in detention there at the beginning of May 2005. Ali had told them that he had been detained because his son had been a combatant and had later left the country. The witnesses stated that no detainee had ever been ill-treated (Ali included), and that one of them remembered that Ali's wife

had visited him several times during the five months and four days that they had been detained. The two brothers also mentioned that their third brother, M., had also been taken into detention with them and that during the same period the aged father of the rebel leader Doku Umarov had also been detained. They had been released a few days after Ali's release; one of the two brothers added that on the day of their release, they had an interview with the head of the detention centre, S.I.

39. During the investigation, the investigator solicited information from several institutions. Moreover, in the light of the applicant's assertion contained in his statement dated 9 February 2006 that he had been arrested at his workplace near Severnyy airport, a certain construction company stated (in response to the investigator's asking if the applicant had ever been on its payroll) that the applicant had never been its employee and that the company had never done any work at the above-mentioned airport construction site.

40. On 19 March 2007 an investigator from the Shali district prosecutor's office ruled that the applicant should be granted victim status. The applicant did not receive a copy of that decision.

41. The case was transferred to the Gudermes district prosecutor's office; subsequently, on 12 June 2007, an investigator attached to that prosecutor's office decided to terminate the investigation.

42. Apparently unaware of the above-mentioned decision of 12 June 2007, on 24 July 2007 the applicant, having just received the letter of 12 March 2007 (see paragraph 37 above), wrote to the Leninskiy district prosecutor's office in Grozny, asking it, *inter alia*, to "correct the omission" and open criminal investigations in respect of the theft of money by the security forces at the time of his arrest (in addition to investigating his complaints of ill-treatment and unlawful detention). He asked for copies of the various procedural decisions that had already been adopted in the course of the investigation and of those that would be adopted in investigation no. 10021; he also submitted copies of many documents that supported his allegations, and affirmed his and his family's availability and willingness to give statements via letters rogatory, with the help of a Norwegian law office. The applicant described in detail in a twelve-page statement the facts about which he complained (see paragraphs 10 et seq. above) and referred to the written witness statements given by the applicant's wife (Sh.V.), one of his children (M.I.), and four other relatives (including E.S.). He also submitted: photographs of his legs that showed traces of injuries allegedly inflicted by torture; sketches of the sports hall in which he had been tortured and of the building in which he had been detained; other photographs; reports issued by non-governmental organisations concerning his detention and the detention of the Ch. brothers (who had been held with him); and press cuttings. It appears from the file that, despite his lodging fresh requests (which were sent by registered mail in September 2007 and April 2008) for documents, he did not receive any more information from the authorities about the progress of

the investigation into his complaints until March 2009 (see paragraph 52 *in fine* below).

43. On 21 December 2007 the head of the Gudermes criminal investigation service noted that the decision of 12 June 2007 to terminate the investigation (and to close file no. 10021) in respect of his illegal detention and ill-treatment was unfounded for failure to undertake the prescribed investigative actions and to clarify the facts of the case. He therefore quashed that decision and reopened the investigation, instructing the investigator to question a larger circle of witnesses in order to learn more about the applicant's personality and his whereabouts, and to arrange for his questioning via letters rogatory. He also ordered that information be obtained regarding the serious criminal charges against the applicant's son, Umar Israilov, and that it be ascertained why, given the seriousness of those charges, the local administration had provided only positive views about the applicant and his son.

44. After the above-mentioned instructions had resulted in several letters being sent to various authorities, the investigation was terminated on 24 January 2008 and – after that decision had been quashed because the requested investigative actions (see paragraph 43 above) had not been carried out – again on 21 March 2008.

45. On 13 January 2009, the applicant's son, Umar Israilov, was murdered in Vienna, Austria (see paragraph 64 below). The murder and the initial findings of the ensuing investigation in Austria were widely covered in the global media. That media coverage included background information about Umar Israilov and the Chechen President, Ramzan Kadyrov, and the situation in Chechnya in general.

46. On 4 February 2009 the decision of 21 March 2008 to terminate investigation no. 10021 was quashed and the appropriate officials were instructed to send letters rogatory to Norway (where the applicant had been granted asylum). A couple of weeks later further investigative measures were ordered – in particular, instructions were issued for the interrogation of certain persons (who had been mentioned by the applicant) who worked for the security services of the President of the Chechen Republic.

47. Following (i) an order dated 24 February 2009 issued by the Russian Prosecutor General's Office for an investigation to be opened into the causes of Umar Israilov's death in Vienna and (ii) in particular, the publication of an article in the *Novaya Gazeta* newspaper, on 4 March 2009 the Deputy Prosecutor of Chechnya ordered that investigative and procedural measures in that respect be undertaken – including, if necessary, the questioning of Ramzan Kadyrov and of persons in his inner circle. However, the latter decision was cancelled as premature a few days later by the head of the Chechnya Department of the Investigative Committee of the Russian Federation ("the Chechnya investigative committee") on the grounds that such measures were not necessary, given that one of the investigators was

about to decide on the necessary investigative measures independently and, in that regard, was attempting to verify the information published in *Novaya Gazeta* (see paragraph 46 *in fine* above).

48. In the following weeks the investigator obtained a letter from the Shali district medical agency stating that the applicant had not sought its help at any time between 2004 and 2006. A medical expert was commissioned to provide an expert opinion; however, that expert concluded that it was not possible to express any opinion on the applicant's injuries on the basis of the photographs provided by the prosecutor. Several relatives of the applicant, when questioned, denied having had any knowledge about his alleged detention.

49. The applicant's sister, Z.E.A., who had already been questioned in 2007, asserted in a statement that she gave to the prosecuting authorities that the applicant had been away from home between the end of 2004 and October 2005 and that upon his return he had told her that he had been detained with the aim of forcing his son, Umar Israilov, to return to Russia. He had appeared to be in good health. Z.E.A. added that several weeks later the applicant had admitted to her in private that he had never been detained but had escaped in the company of a woman. At the end of her testimony the applicant's sister mentioned that she had learned from public sources of the murder in January 2009 of Umar Israilov in Austria.

50. In April 2009 two of the Ch. brothers – namely, A. and K., who had already been questioned (see also paragraph 38 above) – affirmed their previous assertions that they had been in detention for a period of time in 2005, when a person named "Ali" had been detained with them; however, in view of the time that had elapsed since then, they stated that they would not be able to recognise him if they saw him again. They also indicated that their third brother had not been detained. The text of the two brothers' statements of April 2009, as recorded by the investigator, was identical. The third Ch. brother was also questioned and stated that he had never been detained and knew nothing of his brothers' detention.

51. On 18 May 2009 the criminal investigation was terminated again. The decision referred essentially to the testimony of the applicant's sister, Z.E.A. (see paragraph 49 above) and of the investigator before whom the applicant had signed a statement in February 2006 that he had never been detained but had escaped in the company of a woman. The testimony of the third Ch. brother (see the preceding paragraph) was mentioned but not that of the other two brothers. The decision further stated that it was not possible to establish the applicant's whereabouts abroad and that no letters rogatory could therefore be sent.

52. After another decision to restart investigative measures (consisting mainly of sending letters requesting information, adding to file no. 10021 documents from the terrorism-related criminal file relating to Umar Israilov's activities, and questioning again two witnesses who had first been questioned

in 2007), on 19 June 2009 an investigator from the Gudermes investigation service quashed the decision concerning the applicant's victim status (see paragraph 40 above). He repeated the reasons given in the decision of 18 May 2009 and considered that there was sufficient information to establish that no crime had been committed against the applicant. On 25 June 2009, the investigator refused a request lodged by the applicant (who had been informed of the decisions dated 6 March and 19 June 2009 to terminate criminal investigation no. 10021) for copies of documents from the investigation file on the grounds that he had lost his victim status.

53. On 29 June 2009, upon re-examining the applicant's complaints and the witness statements sent by the applicant to the prosecution authorities (see paragraphs 33-34 and 42 above), a junior investigator from the Gudermes investigation service submitted to his supervisor a proposal to sever the material concerning allegations that were not related to the crimes under examination by investigation no. 10021 – including the material concerning the illegal search and seizure of money on 27 November 2004 – and to open a separate investigation into those allegations in order to gather sufficient information as to be able to adopt a decision regarding those separate allegations. Later on the same day, a senior investigator from Gudermes retracted that proposal and confirmed the termination of the criminal investigation into all allegations concerning possible criminal acts, owing to a lack of credibility on the part of the applicant (and of his family in general) in view of the statements given by the other witnesses (see paragraphs 49-50 above).

54. It appears that the applicant did not receive a copy of the senior investigator's decision of 29 June 2009 and that, more generally, he was not informed of most of the domestic authorities' decisions, despite his having lodged renewed queries (in January and July 2010 respectively) regarding the progress of the investigation into the distinct events in which his son, Umar Israilov, and he himself had been involved.

55. Separately, in July 2010 the applicant lodged a complaint with the Shali District Court concerning the alleged inactivity of the prosecution service in respect of his case. A decision of that court dated 27 October 2010 confirming the refusal to open a criminal investigation into the applicant's alleged detention and ill-treatment was partially quashed on 25 May 2011 by the Supreme Court of Chechnya, which referred the matter to the Zavodskoy District Court of Grozny. The latter court decided on 21 June 2011 to partially terminate the proceedings.

56. In February 2015, the authorities informed the applicant that he or his representative could come to the investigators' office in order to acquaint himself with criminal file no. 10021.

D. Umar Israilov's murder and the investigation and trial in Austria

1. Threats to Mr Umar Israilov, and the Austrian police's actions

57. In February 2007 Ramzan Kadyrov became the President of Chechnya.

58. In early June 2008 a man of Chechen origin (A.K.) approached Umar Israilov in Austria and said that he had been sent by Ramzan Kadyrov. A.K. tried to persuade Umar Israilov to return to Chechnya, arguing – according to the applicant – that he could seek a pardon from Ramzan Kadyrov if he withdrew his allegations against him. The man indicated that he knew somebody in Bratislava, Slovakia who would be happy to take revenge if Umar Israilov persisted in his determination to remain in Austria. A.K. tried to persuade Umar Israilov to accept the offer by informing him that an extradition request had been lodged by Russia with Austria and that he would undoubtedly be handed over to Russia. It later transpired that Russia had indeed sought the applicant's extradition in July 2007 on the basis of an arrest warrant dated April 2007 with respect to a terrorism-related crime that Umar Israilov had allegedly committed in September 2004 (namely, assisting a rebel group in an attack against security forces), but that the request had been refused.

59. Umar Israilov reported the encounter to the Austrian police. A.K. was remanded in custody briefly, and in a statement that he gave to the police on 10 June 2008 he stated that he worked for Ramzan Kadyrov as a member of a special department within the administration of the President of Chechnya that was responsible for repatriating Chechen exiles. He named his immediate superior. That department concerned itself with individuals who had been in trouble with the law in Chechnya. In spring 2008 Ramzan Kadyrov had given A.K. the assignment of finding Umar Israilov and bringing him home. In order to carry out the assignment A.K. had travelled first to Slovakia, where he had hired two Chechen men who could help to forcibly remove Umar Israilov from Austria to Chechnya, if necessary; he had then travelled on to Austria, where he had met Umar Israilov about five times. At first the latter had not wanted to go back to Chechnya; he had later agreed, provided that his security and that of his family would be guaranteed. However, on 9 June 2008 A.K. had received a telephone call from Ramzan Kadyrov himself, who had told him that the situation had changed and that Umar Israilov was no longer needed in Chechnya. Ramzan Kadyrov had told A.K. that he "should do what he wanted, no matter what" and "resolve the problems [by] himself before coming back to Chechnya". A.K. stated to the police that he was in trouble as he did not know what to do. He was a teacher of German and English by profession, not a killer, and he was worried that if "he did not sort this out properly", his family in Chechnya would be at risk. A.K. further alleged that he had seen a list containing several thousand names compiled personally by Ramzan Kadyrov, of whom 300 were marked as persons who should be

killed, because Kadyrov perceived them as real enemies. Several dozen such individuals lived in Austria and, A.K. asserted, they were in great danger. He therefore asked the police to (i) assist him to enable Umar Israilov to disappear by providing him with a new identity and location (possibly even abroad), and (ii) make it appear as though he (that is, A.K.) had fulfilled his assignment.

60. Umar Israilov was also questioned by the Austrian police on 10 June 2008. He confirmed that he had met A.K. several times in June 2008 through an individual whom both knew. While the initial pretext for their meeting had been A.K.'s assertion that Umar Israilov owed money to someone, the real purpose of A.K. engaging in conversation with Umar Israilov had been to ascertain whether the latter would agree to return to Chechnya if his problems with President Kadyrov were resolved and whether he would agree to withdraw the complaint that he had lodged with the European Court of Human Rights. (It appears that it was not known at the time that – in the absence of any follow-up in respect of essential information and documents requested by the Court but not provided by the applicant and his son and prior to the lodging of the present applications – the preliminary complaint lodged by Umar Israilov with the Court in 2007 had not led to a fully-fledged registration of their complaint for examination by the Court.) A.K.'s insistence (regarding Umar Israilov's return to Chechnya and, in particular, his withdrawing of the application with the Court) grew over the course of his meetings with Umar Israilov.

61. Because of those threats, Umar Israilov and his family temporarily left their place of residence in Vienna and travelled to another part of Austria.

62. It appears that on 10 June 2008 A.K. returned to Bratislava, where he had previously applied for asylum.

2. The murder

63. In December 2008 Umar Israilov started noticing a Chechen man following him in the streets near his apartment in Vienna. According to the applicant, Umar Israilov had informed the Austrian security police (via a human-rights NGO) of this fact, but they had failed to take any action.

64. On 13 January 2009 Umar Israilov was shot dead in the street near his apartment in Vienna while he was returning home with his grocery shopping. The ambush involved at least four men and two cars. At least three people were arrested by the Austrian police in the aftermath of the killing.

65. Reports published by the *New York Times* in January and February 2009 revealed that the applicant and his son had been collaborating with the *New York Times* during the months preceding his murder. The newspaper had been preparing a lengthy article based on Umar Israilov's allegations regarding events in Chechnya. In the course of undertaking research for that article, in early January 2009 the *New York Times* had sought interviews with various persons and had notified Russian officials of Umar Israilov's

allegations. The newspaper had not received any detailed comments in response.

3. The investigation and trial in Austria

66. The applicant did not provide the Court with information regarding developments during the pre-trial investigation conducted by the Austrian authorities; instead, he referred to articles published in that respect in major newspapers in Europe and the United States. The criminal proceedings were widely covered by the international press and by human-rights organisations. A coalition of seven human-rights groups from Austria, Russia, Norway and the Czech Republic – including the International Federation for Human Rights and two national Helsinki Committees for Human Rights – monitored the proceedings and regularly reported on their progress. It appears from their reports (as well as from a request for legal assistance lodged with the Russian Prosecutor General by the Austrian authorities on 24 January 2011 – see paragraph 73 below) that following the completion of a more than 200-page criminal investigation report prepared by the Vienna counterterrorism department of the Vienna public prosecutor's office, on 16 August 2010, the latter issued an indictment with respect to three men of Chechen origin who had been placed in pre-trial detention.

67. Mr O.K., Mr S.D. (alias "M.D.") and Mr T.-A.Y. were charged with having participated in a criminal organisation that had committed the murder of Umar Israilov (which had followed an aborted attempt to kidnap the latter in order to "hand him over to a foreign power" – more precisely, the leadership of the Chechen Republic). On the basis of various items of evidence – including telephone sim cards, the results of the monitoring of the suspects' movements, witness statements, and photographs of the suspects taken by bystanders or images by CCTV cameras – it appeared that O.K.'s role had been that of assuming overall responsibility for the execution of the crime, for logistical preparation and coordination, and for maintaining contact with the Chechen leadership. S.D. – together with O.K – had been responsible for making preparations for the commission of the crime; Mr L.B. had been in charge of monitoring Umar Israilov's daily routine and of ensuring the transportation by car (of those in charge of committing the planned crimes – including himself) from the crime scene to a safe harbour immediately after the execution of the crime. T.-A.Y.'s contribution had consisted of assisting in the execution of the crime; this had led to him engaging in the pursuit of Umar Israilov and – together with L.B. – to him engaging in the use of firearms, resulting in the victim's death.

68. In November 2010 the trial of the three accused individuals began in the Regional Criminal Court in Vienna ("Vienna Criminal Court"). The court heard testimony from dozens of witnesses, including from three international experts: Mr Dick Marty, Rapporteur for the Parliamentary Assembly of the Council of Europe; Lord Judd, Rapporteur for the British Parliament; and

Dr Aude Merlin, Professor of Political Science at Brussels Free University. Those expert witnesses recounted their personal impressions of recent visits to Chechnya and spoke of the climate of fear and repression there, and of the sense of impunity in respect of perpetrators of serious human rights abuses.

69. A witness stated that the alleged direct perpetrator of Umar Israilov's murder, L.B., had returned to Chechnya and had been promoted within the ranks of the local police. In January 2011 a police officer with the same name as that of the suspected murderer, L.B., was reported injured during an attempt on the life of a senior police commander in Chechnya.

70. The applicant – who (together with Umar Israilov's pregnant wife and the victim's three children) received protection from the Austrian police – was present throughout the entire trial of the three accused individuals.

71. On 1 June 2011 the jury unanimously found the three accused guilty: O.K. was sentenced to life imprisonment, and his co-accused to sixteen and nineteen years in prison, respectively.

E. The request for legal assistance sent by the Austrian authorities to the Russian authorities in relation to the trial concerning Umar Israilov's murder

72. It is unclear whether the Austrian authorities sought the cooperation of their Russian counterpart on any issue during the pre-trial investigation into Umar Israilov's murder.

73. During the trial, on 24 January 2011, an official request was lodged by the President of the Jury of the Vienna Criminal Court with the Russian authorities for legal assistance, "in accordance with existing legal agreements" between the two countries, with a view to questioning five witnesses who were reportedly in Russia – either in person in court or via video-conference link. Those five witnesses were: A.K., who had in the meantime returned to Chechnya and was detained pending trial in detention centre FBU IZ 50/10 in Mozhaysky District, Moscow Region; L.B. and S.T. (the latter being a Chechen official and a confident of Ramzan Kadyrov); S.B.S., who had spent the evening of 12 January 2009 (the evening before the murder) with O.K., L.B. and others; and Ramzan Kadyrov himself. It appears that all witnesses to be questioned were Russian nationals of Chechen origin.

74. The ten-page request gave details regarding the criminal proceedings in respect of which the witnesses' testimony was being sought (see paragraph 67 above) and the circumstances on which those witnesses' testimony might shed light. As regards Ramzan Kadyrov, his testimony was needed to clarify: the reasons for his meeting with O.K. at the end of 2008; whether information about Chechens present in Austria had been collected and handed over by O.K.; and whether the latter had been given any tasks by Ramzan Kadyrov in respect of Mr Umar Israilov. S.T. needed to be questioned regarding whether he had organised a meeting between O.K. and

Ramzan Kadyrov and whether he had urged O.K. to either "bring Umar Israilov back to the Chechen Republic or murder him". As regards L.B. (in respect of whom separate criminal proceedings had been opened in Austria), he had to be asked about the meetings that he had had with the three accused individuals in the days immediately preceding 13 January 2009 (the date on which the crime had been committed) and about events on that day. Similarly, S.B.S. needed to be questioned about his exchanges with O.K. and the others on the evening before the murder had been committed and about his relations with Ramzan Kadyrov. For his part, A.K. was to be questioned about: the events of June 2008 (including his communication with Ramzan Kadyrov); any exchanges that he may have had since the summer of 2008 with the accused S.D. (whom he had allegedly asked to contact or monitor the victim) – including about the possibility of S.D. joining the special forces; and A.K.'s role in the planned operation against Umar Israilov.

75. The request further mentioned the domestic-law provisions stipulating the above-mentioned individuals' right not to testify if so they wished – for instance, for fear that their statements might expose them to the risk of criminal prosecution. The authorities emphasised the urgency of the request in the light of the nature of the case and the timetable of the ongoing trial, and asked for at least a preliminary reply before 20 March 2011.

76. None of those witnesses was questioned in response to the above-mentioned request for legal assistance. It appears from the international press and human rights organisations' reports of the criminal proceedings that during the hearing on 25 March 2011, the Vienna Criminal Court noted that no answer has been received from the Russian Prosecutor General's Office regarding the request for legal assistance lodged by the Austrian authorities on 24 January 2011 and that an "urgency letter" was to be sent to the Russian Prosecutor General's Office in the sense that, if no answer was received by the end of May, it would have to be assumed that no positive response would ever be given.

77. On 12 March 2012 the Russian authorities sent a reply to the Austrian authorities stating that according to the available information, the trial in the context of which legal assistance had been requested had in the meantime been concluded and that the three accused had been found guilty and sentenced to periods of imprisonment. Given those circumstances, under the 1959 European Convention on Mutual Assistance in Criminal Matters ("the 1959 Convention") and under the applicable Russian law, the requested legal assistance could not be afforded.

F. The applicant's requests to the Russian authorities in relation to his son's murder and the Russian authorities' other procedural steps

78. In August 2009 the applicant wrote to the Russian Prosecutor General requesting him to open a criminal investigation into Umar Israilov's murder. He submitted that three Russian citizens had been detained in Austria on murder charges but that the person who had, in all probability, committed the murder (who was also a Russian) had escaped to Russia. He also asked the Prosecutor General to cooperate with the Austrian authorities, to find and question A.K. and to investigate whether his son's murder had been connected to the previous threats made against him and to A.K.'s previous statements that referred to the leadership of the Chechen Republic (see paragraph 59 above). In that respect, the applicant reminded the Russian authorities of their obligation to investigate and punish under the procedural limb of Article 2 of the Convention.

79. On 21 December 2009 the Chechnya investigative committee deemed that the applicant's request concerned factual information that could only be given by the Austrian authorities about the murder of Umar Israilov and informed him that they had prepared (but not sent) a request for legal assistance to Austria in order to obtain legal assistance in that respect.

80. On 25 May 2010 the Ministry of Justice of the Russian Federation lodged with the Austrian authorities a request for legal assistance pursuant to the 1959 Convention and within the context of an investigation opened in 2007 in Russia in respect of Umar Israilov's suspected involvement in terrorist acts committed in 2004 (see paragraph 58 *in fine* above). It was stated in the request that according to information disseminated by the mass media, Umar Israilov had been murdered on 13 January 2009 in Vienna and that the Russian authorities needed documents and photographs proving the identity of the person who had been murdered; they also needed witness statements in that regard from those members of Umar Israilov's family who were living in Austria, and a copy of the sentence handed down by the Vienna Criminal Court at the conclusion of the trial of Umar Israilov's murderers. Another such request appears to have been sent on 6 May 2011. The request for legal assistance submitted on 25 May 2010 was reiterated in a new requesting letter dated 19 September 2011 that was sent by the Ministry of Justice of the Russian Federation to the Austrian authorities.

81. It is unclear when the Austrian authorities replied to the request for legal assistance lodged by the Russian authorities. It appears, however, that they did at least provide an initial response (see paragraph 82 below); subsequently, on 30 August 2011, the Austrian authorities sent other relevant material to the Russian authorities in reply to the request dated 6 May 2011.

82. Following the adoption of the judgment of the Vienna Criminal Court of 1 June 2011 convicting three persons of Umar Israilov's murder (see

paragraph 71 above), the applicant wrote again to the Russian Prosecutor General's Office, arguing, *inter alia*, that that the judgment supported the version of events that a person holding an official position in Chechnya had been involved in his son's murder. The applicant stressed that he had no information about the investigative steps taken by the prosecutors in Chechnya. On 6 September 2011 the Chechnya Prosecutor's Office replied to the applicant as follows:

> "Please be informed that in order to check the information that you submitted earlier..., the Chechnya investigative committee sought legal assistance from the relevant Austrian authorities, asking them to produce a number of documents – including those establishing the identity of Mr Umar Israilov, and of certain others.
>
> The requested documents have reached the Chechnya investigative committee. However, they contain only a copy of the forensic expert report, which is not sufficient to conclusively identify the person killed as Mr Umar Israilov, whose name had been placed on the international wanted list by the Russian Federation.
>
> The Austrian side has not submitted any documents that would suggest that the crime was organised by persons currently residing in Russia.
>
> Thus, the request for legal assistance was [complied with] only partially by the Austrian side, and the documents submitted cannot justify the criminal prosecution of Russian citizens or persons permanently residing in the Russian Federation. Copies of the documents submitted by you do not constitute such grounds either. In such circumstances, the Russian law-enforcement authorities did not open a criminal investigation in respect of Mr Umar Israilov's murder.
>
> On 9 August 2011 the Chechnya investigative committee sent a second request for legal assistance to Austria, asking for additional documents. This request has not been [complied with] to date."

83. The applicant complained to a court of the inaction on the part of the Chechnya Prosecutor's Office. On 16 December 2011 the Zavodskoy District Court of Grozny examined the above-mentioned complaint (see paragraph 78 above) regarding the failure to investigate Umar Israilov's murder. It took note of the actions of the Chechnya investigative committee (as described above) and ordered the investigative committee to reply to the applicant's queries. The request to open a criminal investigation was refused.

84. In April 2014 the applicant wrote to the Zavodskoy District Court, seeking to obtain access to the preliminary material that had served as the basis for the decision not to open a criminal investigation into his son's murder. It does not appear from the file that he received a reply to his request.

RELEVANT LEGAL FRAMEWORK

I. INTERNATIONAL LAW AND PRACTICE

A. United Nations

85. The United Nations (UN) Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, referred to Economic and Social Council Resolution 1989/65 of 24 May 1989, read:

> "Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed." (Principle 18)

B. Council of Europe

1. The 1959 Convention

86. The European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, entered into force in respect of Austria in 1968 and in respect of the Russian Federation in 2000. Two Additional Protocols came into force in respect of the two Contracting States concerned after the occurrence of the events at issue in the present case – in 2018 in respect of Austria and in 2020 in respect of the Russian Federation.

87. The relevant provisions of the 1959 Convention read as follows:

Article 1

> "1. The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party ..."

Article 2

> "Assistance may be refused:
>
> (a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;
>
> (b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country."

Article 3

> "1. The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of

the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

2. If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.

(...)."

Article 19

"Reasons shall be given for any refusal of mutual assistance."

88. The Russian Federation made a number of reservations in respect of the instrument of ratification of the 1959 Convention deposited on 10 December 1999. As regards Article 3 of this Convention, the Russian Federation reserved the right to refuse to execute letters rogatory for the purpose of procuring evidence in the event that the persons concerned exercised their right (under the law of the Russian Federation) not to give any evidence.

2. Committee of Ministers

89. The Guidelines entitled "Eradicating impunity for serious human rights violations" adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies provided under its Preamble: "...International co-operation plays a significant role in combating impunity. In order to prevent and eradicate impunity, states must fulfil their obligations, particularly with regard to mutual legal assistance, prosecutions and extraditions, in a manner consistent with respect for human rights, including the principle of "non-refoulement", and in good faith. To that end, states are encouraged to intensify their co-operation beyond their existing obligations."

II. REPORTS OF VISITS AND RESEARCH BY INTERNATIONAL BODIES AND NON-GOVERNMENTAL ORGANISATIONS

A. Mr Rudolf Bindig's report for the Parliamentary Assembly of the Council of Europe

90. On 25 January 2006 the Parliamentary Assembly of the Council of Europe adopted Resolution 1479 (2006) entitled "Human rights violations in the Chechen Republic: the Committee of Ministers' responsibility *vis-à-vis* the Assembly's concerns". The Resolution was based on an eponymous report prepared by Mr Rudolf Bindig, rapporteur for the Committee on Legal Affairs and Human Rights (Doc. 10774, 21 December 2005). The report contained, *inter alia*, the following passages:

"*The evolution of the human rights situation in the Chechen Republic since 2004*

2.1. Still no end to human rights violations and *de facto* impunity of their perpetrators

...

The human rights situation in the Chechen Republic has unfortunately not improved significantly since the adoption of my last report in October 2004. The conclusions made by the Assembly one year ago remain valid. There is no end to gross human rights abuses in Chechnya, in the form of murder, enforced disappearance, torture, hostage-taking, and arbitrary detention. ...

It can be difficult to attribute responsibility for these abductions. ... In the cases in which the prosecution opens criminal investigations, these almost always fail to identify the individuals responsible, or the crimes are simply attributed to armed opposition groups. Nevertheless, circumstances indicate in many cases that Federal or Chechen security forces were responsible for what was in fact a "disappearance". As mentioned in my previous report, a growing number of abductions and other abuses are attributed to the so-called "kadyrovtsy", the Chechen security force that is effectively under the command of Ramzan Kadyrov, the First Deputy Prime Minister of Chechnya. The so-called "oil regiment", another Chechen security force, formerly part of the Security Service of the President of the Chechen Republic, and headed by Adam Delimkhanov, has also reportedly been implicated in such "disappearances". ...

2.2.2. Hostage-taking

22. Another frightening trend in Chechnya is that of hostage-taking of relatives of suspected rebel fighters in order to force them to give themselves up by threatening their relatives with murder and torture. Since the end of 2004, a growing number of arbitrary detentions, 'disappearances' and abductions of family members of suspected rebel fighters has been reported by NGOs. ...

26. Such methods are totally unacceptable criminal acts which must be stamped out by the Federal and Chechen authorities. ... The taking of hostages by any person, terrorist or serviceman cannot be tolerated under any circumstances."

91. Appended to the report was a letter of 12 October 2005 from Mr Bindig to Mr Vladimir Ustinov, the Russian Prosecutor General. The letter informed the Prosecutor General of the preparation of the report and asked him to provide the rapporteur with information on the state of investigations in respect of a number of individual cases. The letter included the following information:

"On 27 November 2004, in the village of Mesker-Yurt, the personnel of an unidentified power agency kidnapped Mr Sherpuddi Israilov (b. 1956) [the applicant]. Reportedly, [he] was taken in order to force his son to surrender. (From the Conflict Zone, Memorial, 17.03.2005)."

B. Report adopted by European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT)

92. The relevant extracts from a report entitled "Report to the Government of the Russian Federation on the visits to the North Caucasian region carried out by the CPT from 25 April to 4 May and 4 to 10 September 2006" adopted on 10 November 2006 ("the CPT Report") read:

"...

17. The information gathered by the delegation concerns a range of law enforcement agencies throughout the Chechen Republic. In addition, a considerable number of persons alleged that they had been held for some time, and in most cases ill-treated, in places which did not appear to be official detention facilities, before being transferred to a recognised law enforcement structure or released.

...

As for places where persons may be unlawfully detained, a number of consistent allegations were received in respect of one or more places in the village of Tsentoroy, and of the "Vega base" located in the outskirts of Gudermes.

...

c. unlawful detention

...

28. In the course of the 2006 visits, the CPT's delegation again spoke with a number of persons who gave detailed and credible accounts of being unlawfully held – on occasion for prolonged periods – in places in the Chechen Republic. Frequent reference was made to *facilities located in the village of Tsentoroy* in the Kurchaloy district, run by armed formations allegedly operating under the command of Ramzan Kadyrov, the present Prime Minister of the Chechen Republic. In certain cases, formal complaints had been lodged with the prosecution services relating to unlawful detention and ill-treatment at Tsentoroy.

The CPT's delegation gained access to Tsentoroy on 2 May 2006, where it visited a compound which was under the control of a company of the 2nd Regiment of the Internal Affairs Patrol-Sentry Service. The territory of the compound was surrounded by a high wall and comprised, *inter alia*, barracks, a gymnasium, and a large courtyard. The delegation discovered in particular two secure rooms half-full of wooden boxes of ammunition. Each of the rooms had concrete flooring and a small barred window with no glass pane.

The layout of the compound and, more specifically, the location and internal features of the secure rooms and adjacent ante-room, corresponded closely to descriptions which the delegation had received from persons who alleged that they had been held there (and subjected to various forms of ill-treatment).

29. At the end of the April/May 2006 visit, the delegation commented that there could be little doubt that persons had been detained in the above facilities in the past and called upon the Russian authorities to take all necessary steps to ensure that there was no repetition of such unlawful detentions. The delegation also emphasised the need for thorough and expeditious investigations by the prosecution services into the complaints of which they had been seized involving allegations of unlawful detention and ill-treatment in facilities at Tsentoroy.

...

30. As already indicated (see paragraph 17), there have been a number of reports of persons being unlawfully detained at a *military facility (the "Vega base") located in the outskirts of Gudermes* (currently used by a company of the 2nd Regiment of the Internal Affairs Patrol-Sentry Service) and some formal complaints have been lodged about such detentions.

The CPT's delegation went to this base during the September 2006 visit, and discovered a closed facility clearly resembling a detention area. As one entered through the main gate, the facility was located to the right of the principal courtyard, close to a

kitchen and premises used for food storage. A metal door with a small grilled window gave access to a short corridor leading to two small and windowless cell-type rooms. The facility was apparently being used at present for storage purposes. However, the walls of the rooms bore numerous inscriptions (names; dates, the most recent being 02.03.2006; improvised calendars and references to periods of time, e.g. 22 days, 31 days, 41 days; messages) which were highly suggestive of a context of detention. It should also be noted that the facility matched precisely the description given to the delegation by a person who claimed that he had been held in a detention facility at the "Vega base" some time ago."

93. Extract from the Russian Federation authorities' comments on the CPT Report, which were issued on 19 February 2006:

"Response from the [Russian] Prosecutor General's Office [in respect of] paragraphs 30-39 and ... of the CPT Report:

According to the Prosecutor's Office [of the Chechen Republic], the town of Gudermes used to be home to the "Vega base" of the Security Service of the President of the Chechen Republic. In 2004-2005, the unit stationed at the base was disbanded. The Prosecutor General's Office has no further information on this subject."

C. Background Memorandum of the International Helsinki Federation for Human Rights (IHF)

94. The International Helsinki Federation for Human Rights (IHF), an international, non-governmental organisation with consultative status in respect of the United Nations and the Council of Europe (COE), published on 12 May 2006 a document entitled "Background Information Memorandum to Dick Marty, rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly on alleged secret detention centres in COE member states" ("the Background Memorandum"). In the section of the Background Memorandum concerning such places of detention in military-run premises (and, in particular, those of the "Vostok" battalion in Gudermes), a footnote (no. 37) described where it was located, and added:

"Previously, the so-called Vega battalion, which no longer exists, was located at this place. When the "Kadyrovtsi" were formed, the different division were given symbolic, menacing, self-confirming names. When someone nowadays states that a person was taken to the Vega base, the "anti-terror centre" (ATC) in Gudermes is meant."

THE LAW

I. JOINDER OF THE APPLICATIONS

95. In view of the common factual background and linked complaints that are the subject of the two applications, it is appropriate to examine them jointly, pursuant to Rule 42 § 1 of the Rules of Court.

II. JURISDICTION

96. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present applications (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023).

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION IN RELATION TO THE INVESTIGATION INTO THE APPLICANT'S SON'S MURDER

97. The applicant complained that the Russian authorities had failed to discharge their procedural obligations arising from Article 2 of the Convention in relation to the investigation into his son's murder. The respondent Government invited the Court to reject this complaint.

98. Article 2 of the Convention, insofar as relevant, reads as follows:

> "1. Everyone's right to life shall be protected by law..."

A. Admissibility

1. The parties' submissions

99. The Government considered that the complaint was incompatible *ratione loci* with the provisions of the Convention, given the fact that the applicant's son had been murdered in Austria. It was therefore incumbent on the Austrian authorities to conduct an effective investigation satisfying the requirements of Article 2, and there were no grounds for ascribing such a duty to the Russian authorities, who had no reason to conclude that the Austrian authorities had not properly fulfilled their procedural obligations. Investigating in Russia a murder committed in Austria and "duplicating" investigations into the same set of circumstances would be not only impractical and inefficient but would also violate the law and the *non bis in idem* principle.

100. The applicant replied that the Russian authorities were under an obligation arising from Article 2 of the Convention to provide full assistance to the Austrian authorities with regard to witnesses and items of evidence located in Russia. He maintained that there were "special features" pertaining to the case that triggered Russia's obligation under Article 2 to conduct an effective investigation into his son's murder, despite the fact that it had been committed in Austria. That was so since evidence gathered by the Austrian investigation had connected Umar Israilov's murder to people within the inner circle of Mr Ramzan Kadyrov, President of the Chechen Republic, and had prompted the lodging of the request that he and other individuals be

interviewed as witnesses. It was practically impossible for the Austrian government to accomplish the extremely important task of holding accountable those who ordered and organised the extra-judicial murder of Umar Israilov. Despite the requests lodged by the Austrian authorities with the Russian authorities for assistance and the requests lodged by the applicant himself for the opening of a criminal investigation in Russia, the Russian authorities had done nothing in that respect.

2. The Court's assessment

(a) Preliminary issue

101. The Court observes at the outset that, in the request for legal assistance that they lodged with the Austrian authorities and in their letter to the applicant of 6 September 2011 (see paragraphs 80 and 82 above), the Russian authorities seemed to suggest that there was no conclusive proof that the person murdered in Vienna on 13 January 2009 had been Umar Israilov.

102. However, no such allegation has been made by the respondent Government in their submissions to the Court, and no reasons for doubting the identity of the murder's victim can be found in the documents submitted to the Court. It follows that there was no question that the victim's identity had been open to question at the time of the murder or later.

103. The Court considers that the material available to it is sufficient to conclude that the applicant's son had indeed been murdered in Vienna on 13 January 2009.

(b) The Government's objection concerning the Court's competence *ratione loci*

104. In its recent judgment in the case of *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, §§ 188-90, 29 January 2019, the Court summarised the relevant principles as follows:

> "[I]f the investigative or judicial authorities of a Contracting State institute their own criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, by virtue of their domestic law (e.g. under provisions on universal jurisdiction or on the basis of the active or passive personality principle), the institution of that investigation or those proceedings is sufficient to establish a jurisdictional link for the purposes of Article 1 between that State and the victim's relatives who later bring proceedings before the Court (see, *mutatis mutandis*, *Markovic and Others* [*v. Italy* [GC], no. 1398/03, §§ 54-55, ECHR 2006-XIV]).
>
> The Court would emphasise that this approach is also in line with the nature of the procedural obligation to carry out an effective investigation under Article 2, which has evolved into a separate and autonomous obligation, albeit triggered by acts in relation to the substantive aspects of that provision (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009, and *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 132, ECHR 2013). In this sense it can be considered to be a detachable obligation arising out of Article 2 and capable of binding the State even when the death occurred outside its jurisdiction (see, *mutatis mutandis*, *Šilih*, § 159, in relation to the compatibility *ratione temporis*).

> Where no investigation or proceedings have been instituted in a Contracting State, according to its domestic law, in respect of a death which has occurred outside its jurisdiction, the Court will have to determine whether a jurisdictional link can, in any event, be established for the procedural obligation imposed by Article 2 to come into effect in respect of that State. Although the procedural obligation under Article 2 will in principle only be triggered for the Contracting State under whose jurisdiction the deceased was to be found at the time of death, "special features" in a given case will justify departure from this approach, according to the principles developed in *Rantsev*, §§ 243-44. However, the Court does not consider that it has to define *in abstracto* which "special features" trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under Article 2, since these features will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other."

105. Applying the above-mentioned principles, the Court must assess whether there exists at least one of the two above-mentioned grounds (namely, the institution by the Russian authorities of a criminal investigation or proceedings, and the presence of "special features") necessary to trigger the existence of a jurisdictional link between the victim's relatives lodging the application with the Court and the procedural obligation of the Russian Federation, under Article 2, to investigate Umar Israilov's death.

106. The Court notes, first, that, in response to his complaints, the applicant was informed that, according to the Russian prosecutors, there were no documents "that would suggest that the crime [Umar Israilov's murder] [had been] organised by persons currently residing in Russia". The applicant was also told that the material could "not justify the criminal prosecution of Russian citizens or persons permanently residing in the Russian Federation" and that, accordingly, "the Russian law-enforcement authorities [had not opened] a criminal investigation in respect of Mr Umar Israilov's murder" (see paragraph 82 above).

107. It therefore appears that the Russian authorities undertook preliminary checks with a view to ascertaining whether it was justified to open criminal proceedings in Russia in respect of criminal acts connected to Umar Israilov's murder in Vienna (see also paragraph 47 above). Having regard to the documents cited in the preceding paragraph, it appears that these preliminary checks included consideration of the factual question of whether persons residing in Russia had been implicated and the legal question of whether there were grounds to open criminal proceedings as a first step towards a possible criminal investigation. Despite the Court's explicit request, the respondent Government have provided neither any answer to that question nor any details regarding the nature of the checks that were made and the exact legal and factual basis for the decision not to open a criminal case – notwithstanding information submitted to them to the effect that persons residing in Russia might have been implicated in ordering the murder and taking part in its execution.

108. On the basis of the limited information submitted to it in respect of these preliminary checks, the Court cannot determine whether these

proceedings were conducted with a view to establishing Russia's extra-territorial criminal jurisdiction or otherwise sufficient to establish a jurisdictional link for the purposes of Article 1 (compare with *Toledo Polo v. Spain* (dec.), no. 39691/18, §§ 185-86, 22 March 2022; *Malhotra v. Germany* (dec.), no. 20680/20, §§ 22-23, 4 April 2023; and contrast *Carter v. Russia*, no. 20914/07, § 133, 21 September 2021). This question may be ultimately left open, as in the Court's view a jurisdictional link exists on the basis of the second ground – namely, the existence of special features.

109. The complaint under examination also concerns the alleged failure of the Russian authorities to assist the Austrian authorities by undertaking certain investigative measures in Russia, having regard to clear indications about the presence there of key witnesses and, potentially, suspects – including the alleged physical perpetrator of the murder (see paragraph 78 above). The applicant also alleged that the Russian authorities had been under a duty to conduct their own investigation in Russia because of that presence. It must also be noted that the Austrian authorities' assertions (later reiterated by the applicant) that those witnesses were present in Russia were not frivolous or obviously groundless but referred to particular names and circumstances (see paragraphs 73, 74 and 78 above). The Court notes that such specific allegations – which stemmed essentially from the detailed criminal investigation led by Austrian prosecuting authorities (see paragraph 66 *in fine* above), whose capacity to properly fulfil their procedural obligations was not contested by the Russian Government (see paragraph 99 above) – were aimed at clarifying the circumstances surrounding Umar Israilov's murder and the identity of those responsible for it. The Court considers that such specific elements constituted special features establishing the jurisdictional link between Russia and the applicant's complaint under the procedural limb of Article 2 (see, *mutatis mutandis*, *Güzelyurtlu and Others*, § 194, and *Carter*, § 134 *in fine*, both cited above).

110. It follows that the complaints under Article 2 of the Convention in the present case – as in *Rantsev v. Cyprus and Russia* (no. 25965/04, § 207, ECHR 2010 (extracts)) – are not predicated on an assertion that Russia had jurisdiction over events that had happened outside its territory. The Court considers that it is not outside its jurisdiction *ratione loci* to examine whether Russia, acting on its own territory, complied with any Convention obligation that it may have had to undertake investigative measures within the limits of its own jurisdiction.

111. The Court therefore has jurisdiction to deal with the applicant's complaint; accordingly, the Government's objection must be dismissed.

112. The above-noted conclusion is without prejudice to questions concerning the existence, scope and extent of any procedural obligation on the part of the Russian authorities under Article 2, given the circumstances of the case and Russia's compliance with any such obligation. These questions

are to be determined by the Court in its examination of the merits of the applicant's Article 2 complaint.

(c) Other admissibility issues and conclusion on admissibility

113. It is undisputed that the applicant has standing to complain under Article 2 of the Convention in respect of his son's death (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 92, ECHR 1999 IV, and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 98, ECHR 2014). The Government did not raise any other admissibility objection.

114. The Court further considers that the applicant's complaint under Article 2 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) thereof, or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

115. The Government, whose comments were limited to the Court's alleged lack of jurisdiction *ratione loci*, also stated that the Russian authorities had acted on the assumption that the Austrian authorities would discharge their duties under Article 2 of the Convention in respect of the murder. The respondent Government did not comment on the complaint that the Russian authorities had failed to cooperate with the Austrian authorities.

116. The applicant pointed out that, unlike in the *Rantsev* case, the Austrian authorities had sought help from Russia during their investigation into his son's murder in their efforts to establish the whereabouts of three witnesses and to question a total of five witnesses via videoconference; the Austrian authorities had set a time-limit for Russia to provide them with a preliminary answer, but the Russian authorities had not responded to this request until March 2012, when they had simply stated that their assistance was no longer required, as the trial in Vienna had ended. In the meantime, the Russian authorities had made several requests of their own for legal assistance; the Austrian authorities had responded to those requests. The applicant submitted that the inaction on the part of the Russian authorities in respect of the Austrian request for legal assistance and their refusal of his repeated motions that they open an investigation into Umar Israilov's murder constituted a violation of their procedural obligation under Article 2.

2. The Court's assessment

117. The Court has to examine, in the first place, whether – given the circumstances of the case – the Russian authorities were under a procedural obligation under Article 2 of the Convention to assist the Austrian authorities

or to conduct their own domestic investigation into alleged criminal acts in relation to Mr Umar Israilov's murder in Vienna. If the Court finds that such an obligation existed, it must clarify its scope and proceed with an assessment as to whether the authorities of the respondent State complied therewith.

(a) Relevant principles regarding procedural duties under Article 2 in respect of a murder committed abroad

118. In its judgment in *Güzelyurtlu and Others*, cited above, the Court reviewed its case-law regarding procedural duties that may arise under Article 2 for a Contracting State in respect of a murder committed outside its territory; it then formulated the relevant principles. Regarding the circumstances giving rise to such duties, it stated, *inter alia*:

> "225. In *Rantsev* ... the Court observed that the procedural obligation under Article 2 required Contracting States to take such steps as were necessary and available in order to secure relevant evidence, whether or not it was located in the territory of the investigating State. It found that the Cypriot authorities should have sought legal assistance from Russia in investigating the circumstances of the victim's death in Cyprus, by making a request to obtain the testimony of two witnesses who were present in Russia. It took account of the fact that both Cyprus and Russia were parties to the 1959 European Convention on Mutual Assistance in Criminal Matters and had, in addition, concluded a bilateral legal assistance treaty. Having regard, *inter alia*, to its failure to seek cooperation from Russia, the Court found that there had been a procedural violation of Article 2 by Cyprus (ibid., §§ 241-42). It went on to say that the corollary of the obligation on an investigating State to secure evidence located in other jurisdictions was a duty on the State where evidence was located to render any assistance within its competence and means sought under a legal assistance request. However, the Court considered that in the absence of any request from Cyprus, Russia had no obligation to interview the two witnesses present on its territory, as requested by the applicants. It further observed that the Russian authorities had made extensive use of the opportunities presented by mutual legal assistance agreements to press for action by the Cypriot authorities, including by making a specific request to institute criminal proceedings. The Court therefore found that there had been no procedural violation of Article 2 by Russia (ibid., §§ 245-47) ...
>
> 230. The Court would observe that in a case such as *Rantsev* where a Contracting State has no free-standing obligation to investigate under Article 2, the obligation to cooperate of that State can only be triggered by a cooperation request made by the investigating State, which would be required to seek such cooperation of its own motion if relevant evidence or the suspects are located within the jurisdiction of the other State ...
>
> 232. ... In cases where an effective investigation into an unlawful killing which occurred within the jurisdiction of one Contracting State requires the involvement of more than one Contracting State, the Court finds that the Convention's special character as a collective enforcement treaty entails in principle an obligation on the part of the States concerned to cooperate effectively with each other in order to elucidate the circumstances of the killing and to bring the perpetrators to justice.
>
> 233. The Court accordingly takes the view that Article 2 may require from both States a two-way obligation to cooperate with each other, implying at the same time an obligation to seek assistance and an obligation to afford assistance. The nature and

scope of these obligations will inevitably depend on the circumstances of each particular case, for instance whether the main items of evidence are located on the territory of the Contracting State concerned or whether the suspects have fled there.

234. Such a duty is in keeping with the effective protection of the right to life as guaranteed by Article 2. Indeed, to find otherwise would sit ill with the State's obligation under Article 2 to protect the right to life, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", since it would hamper investigations into unlawful killings and necessarily lead to impunity for those responsible. Such a result could frustrate the purpose of the protection under Article 2 and render illusory the guarantees in respect of an individual's right to life. The object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective ..."

119. As regards, more specifically, the content of the procedural obligation to cooperate, the Court stated the following in the same judgment:

"235. ... [T]he obligation to cooperate, which is incumbent on States under the procedural limb of Article 2, can only be an obligation of means, not one of result, in line with what the Court has established in respect of the obligation to investigate ... This means that the States concerned must take whatever reasonable steps they can to cooperate with each other, exhausting in good faith the possibilities available to them under the applicable international instruments on mutual legal assistance and cooperation in criminal matters. In this connection, the Court is aware that Contracting States cannot cooperate with each other in a legal vacuum; specific formalised modalities of cooperation between States have developed in international criminal law ... Although the Court is not competent to supervise respect for international treaties or obligations other than the Convention ..., it normally verifies in this context whether the respondent State has used the possibilities available under these instruments ...

236. In determining whether the State concerned has used all the legal possibilities available to it under the international instruments on cooperation in criminal matters, the Court cannot lose sight of the fact that these treaties do not tend to impose absolute obligations upon States, since they afford some discretion to the requested State and foresee a number of exceptions in the form of mandatory and/or discretionary grounds of refusal of the cooperation requested. Therefore, the procedural obligation to cooperate under Article 2 should be interpreted in the light of international treaties or agreements applicable between the Contracting States concerned, following as far as possible a combined and harmonious application of the Convention and those instruments, which should not result in conflict or opposition between them ... In this context, the procedural obligation to cooperate will only be breached in respect of a State required to seek cooperation if it has failed to trigger the proper mechanisms for cooperation under the relevant international treaties; and in respect of the requested State, if it has failed to respond properly or has not been able to invoke a legitimate ground for refusing the cooperation requested under those instruments."

120. Moreover, in order to make the Convention safeguards practical and effective and to avoid the risk of impunity on the part of those responsible for actions falling under Article 2, the Court did not hesitate to assess whether, within a cross-border criminal context, a negative response from the requested State based on legitimate grounds reflected a sufficiently thorough

examination of the request that relied on a sufficient factual basis (see *Romeo Castaño v. Belgium*, no. 8351/17, § 90, 9 July 2019).

(b) Application of these principles and conclusion on the scope and the content of the Article 2 procedural duties of the Russian Federation given the circumstances of the case

121. The Court observes that, according to the information provided by the parties regarding the criminal proceedings in Austria, the persons accused and later convicted there of participation in the applicant's son's murder had all been Russia's nationals and that the Austrian authorities had clear information that the physical perpetrator, L.B., had fled to Russia after committing the murder. Moreover, as can be seen from the request for legal assistance lodged by the Austrian authorities, they had reasons to consider that Ramzan Kadyrov, President of the Chechen Republic, may also have been involved; they were further convinced of the presence of other important witnesses on the territory of the Russian Federation (see paragraphs 73 and74 above).

122. It is not the Court's task to determine, within the context of the case before it, whether the above-mentioned suspicions of the Austrian authorities were well founded or not. It is sufficient to observe that there are no reasons to doubt the Austrian authorities' affirmation that such evidence about the murder was important and could only be collected through investigative actions conducted on the territory of the Russian Federation, as they had reached that stage of their investigation only after assembling and assessing vast amount of information concerning the threats to the life of Umar Israilov, which were followed by his murder (see paragraphs 58 et seq. above); that information was later summarised in the above-mentioned ten-page request for legal assistance (see paragraph 74 above). In particular, as mentioned above, important witnesses were considered to reside in Russia, and at least one of the individuals (L.B.) directly related to the commission of the murder was believed to have fled there.

123. The Court finds, therefore, that given the circumstances of the present case the Russian Federation was under a procedural obligation stemming from Article 2 of the Convention to cooperate with the Austrian authorities in the investigation of Umar Israilov's murder.

124. As to the content of this obligation, account must be taken of the fact that both Austria and Russia were at the relevant time (and still are) parties to the European Convention on Mutual Assistance in Criminal Matters (see the 1959 Convention, paragraph 86 above) and that this instrument has been ratified by all member States of the Council of Europe –thus indicating that there is a clear measure of common ground among them in the area of cooperation in criminal matters. While the Court does not have authority to review whether the respondent State complied with their obligations under this convention, its text can provide the Court with guidance for the purposes

of interpreting the obligation to cooperate under the procedural limb of Article 2 (see *Güzelyurtlu and Others*, cited above, § 240). The relevance of the 1959 Convention in the present case is further reinforced by the fact that, in their exchanges concerning the legal assistance concerning the proceedings in respect of Umar Israilov's murder, the Austrian and the Russian authorities themselves referred to the applicable international agreements, with the respondent State expressly quoting this international instrument (see paragraphs 73 et 77 above).

125. Furthermore, noting that the Austrian authorities' request for legal assistance pointed to the possible involvement of high-ranking State agents in Chechnya, the Court cannot exclude the possibility that it might have been feasible for the Russian authorities to perform their own effective and thorough investigation, provided that it was possible under Russian law to prosecute, for example, the alleged act of ordering the victim's abduction and/or murder – even in the event that that order had been issued in Russia but the murder itself carried out abroad. It is not for the Court to take a stand on the interpretation of Russian law on this point and it does not find it necessary to further explore this avenue in the present case.

126. In the Court's view, at this juncture, it is sufficient to observe that under the specific circumstances the establishment of all relevant facts and criminal responsibilities (including the bringing to justice of all perpetrators, but also of those who ordered or otherwise participated in the organisation of the crime) was only possible with the participation of the Russian authorities – specifically in the form of cooperation with the Austrian authorities.

(c) Whether the Russian authorities have complied with their procedural duties under Article 2 of the Convention

127. The Court notes that the States that ratified the 1959 Convention (among which Russia numbered) undertook to afford each other the widest measure of mutual assistance in criminal proceedings (Article 1), in accordance with the terms of that Convention. They also undertook to execute in the manner provided by their domestic law any letters rogatory addressed to them by the judicial authorities of the requesting Party relating to the procuring of evidence in criminal matters, subject to grounds listed in Article 2 of that Convention for refusing such assistance; such a refusal should be reasoned (Articles 2, 3 and 19 of the 1959 Convention – see paragraph 87 above).

128. In the present case, the Court observes that on 24 January 2011, during the trial concerning Umar Israilov's murder, the Austrian authorities lodged a formal request for legal assistance with the Russian authorities, "in accordance with existing legal agreements" between the two countries, with a view to questioning five witnesses who were reportedly in Russia. This ten-page request provided details concerning the pending criminal proceedings, the identity of those witnesses and the reasons and circumstances for which

their testimony was sought. Moreover, it emphasised its urgency, asking for at least a preliminary reply by 20 March 2011. The request also addressed Russia's reservation to Article 3 of the 1959 Convention (see paragraph 88 above) by expressly indicating the possibility for those witnesses to refuse to testify (see paragraphs 73-75 above). Unlike in the case of *Rantsev*, cited above, in which no such request had been sent by the requesting State, the Russian authorities were in the present case under a duty to render any assistance within their authority and means with respect to the evidence sought located in Russia.

129. Having noted the Austrian authorities' request for legal assistance, which triggered the aforementioned cooperation mechanism, the Court reiterates that the procedural obligation to cooperate, under Article 2 of the Convention, will only be breached in respect of the requested State if it has failed to respond properly or has not been able to invoke a legitimate ground for refusing cooperation requested under those international instruments (see *Güzelyurtlu and Others*, cited above, § 236).

130. It has not been contested by the parties that the Russian authorities did not respond to the request of 24 January 2011 for legal assistance until more than a year later, on 12 March 2012, when they replied that they could not grant the request on the ground that the criminal proceedings had already ended (see paragraphs 73 and 77 above).

131. Having regard to the Russian authorities' response, the Court needs to first decide whether their reply, which in substance represented a refusal, constituted a proper response and whether it was justified on legitimate grounds (see, *mutatis mutandis*, *Romeo Castaño*, cited above, § 82). It observes, first, that the Austrian authorities emphasised the urgency of that request, given the nature of the criminal case and the timetable of the ongoing trial, and expressly indicated a specific time-limit (20 March 2011) by which at least a preliminary response should be provided. The Court observes that the Russian authorities did not make any observations on the merits of the complaint, did not request any extension of the initial time-limit; nor did they inform the Austrian authorities by that date of any measures taken to comply with their duty of assistance.

132. The Court further observes that, as soon as the deadline of 20 March 2011 passed, the Austrian authorities appear to have sent a final urgent reminder to their Russian counterpart (see paragraph 76 above). Be that as it may, the Court considers that the lack of any reaction from the Russian authorities to the request sent on 24 January 2011 may have reasonably appeared as amounting to a refusal to assist the Austrian authorities long before Russia eventually replied on 12 March 2012. It is worthwhile noticing in that respect that in the Russian authorities' own request of 6 May 2011 for legal assistance with regard to criminal proceedings opened in Russia against Umar Israilov, these authorities asked for, *inter alia*, a copy of the criminal sentence adopted by the Vienna Criminal Court in Umar Israilov's murder

case (see paragraph 80 above). The Russian authorities failed to clarify, in due time, the circumstances that the Vienna Criminal Court had sought to establish precisely prior to it adopting its sentence. In the absence of other comment sent by the Russian requesting party in that respect, the Court does not find unreasonable that the Austrian authorities proceeded with the trial without waiting for such cooperation. The Vienna Criminal Court adopted its sentence shortly afterwards, on 1 June 2011 (see paragraph 71 above).

133. Although the trial before the Vienna Criminal Court managed to examine and eventually to sentence the three accused, O.K., S.D. and T.-A.Y., the Court reiterates that in the context of cross-border legal assistance, the requested State has the duty to cooperate effectively with the requesting State in order to elucidate the circumstances of a killing and to bring the perpetrators to justice, since lack of cooperation hampers investigations into unlawful killings and necessarily lead to impunity for those responsible (see *Güzelyurtlu and Others*, cited above, §§ 233-36). In the present case, as previously mentioned, the Austrian request for legal assistance was aimed at establishing all criminal responsibilities and in particular, through their respective testimony, the roles of L.B. (seen as the physical perpetrator of the murder) and of Ramzan Kadyrov, as President of the Chechen Republic, to whom the victim had to be "handed". For the Court, the fact that the Russian authorities' response was delayed to the point that it ceased to be of any use undoubtedly had a negative effect on the possibility that the criminal proceedings in Austria would fully clarify the circumstances of Umar Israilov's murder and bring the perpetrators to justice.

134. Lastly, the Court observes that given the above-noted considerations concerning the context and timing of the Russian authorities' delayed response to the Austrian request for legal assistance, what may have appeared as a *prima facie* legitimate ground for refusing to provide the legal assistance sought (namely, the ending of the criminal proceedings the assistance was meant for) loses any legitimacy.

135. These considerations suffice for the Court to conclude that Russia did not make the minimum effort required in the circumstances of the case and did not comply with its obligation, under the procedural limb of Article 2 of the Convention, to cooperate with Austria for the purposes of an effective investigation into the murder of the applicant's son Umar Israilov (see, *mutatis mutandis*, *Güzelyurtlu and Others*, cited above, § 265).

136. There has accordingly been a violation of Article 2 of the Convention on account of the failure to cooperate in respect of the investigation into Umar Israilov's murder.

IV. ALLEGED VIOLATIONS OF ARTICLES 3 AND 5 OF THE CONVENTION IN RELATION TO THE APPLICANT'S ALLEGED DETENTION, TORTURE AND INHUMAN AND DEGRADING TREATMENT IN 2004-2005

137. The applicant complained that, in violation of Article 5 of the Convention, he had been detained unlawfully and arbitrarily between 27 November 2004 and 4 October 2005 in Tsentoroy and Gudermes (at "the Vega base") by the Chechen security service and upon order of Ramzan Kadyrov, then deputy prime minister of Chechnya.

138. Relying on Article 3 of the Convention, he also complained that he had been tortured while detained in Tsentoroy and that the conditions of his detention in Gudermes ("the Vega base") had amounted to inhuman and degrading treatment. The applicant further alleged that the Russian authorities had failed to conduct an effective investigation into his credible allegations of torture and ill-treatment and, relying on Article 13 of the Convention, that he had been deprived of his right to an effective remedy with respect to all his above-mentioned allegations.

139. Being the master of the characterisation to be given in law to the facts of the case and not bound by the characterisation given by the applicant or the Government (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), the Court considers that the applicant's above-mentioned complaints should be examined from the standpoint of Article 3 (substantive and procedural aspects) and of Article 5. The relevant part of these provisions read as follows:

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..."

A. Admissibility

140. The respondent Government considered that these complaints must be rejected under Article 35 § 1 of the Convention as having been submitted outside of the six months' time-limit, deeming that the applicant should have

lodged his application with the Court much earlier. In their view, as the relevant facts had allegedly taken place at the end of 2004, he should not have waited until April 2009 or until the completion of the domestic investigation before lodging an application with the Court. Moreover, this was so also because, by not lodging complaints while still in Chechnya, the applicant had manifested his lack of confidence in any domestic investigation – a position reinforced by the allegedly pre-prepared statement that he had to sign in 2006 before he had left Chechnya. Within such a context, the applicant ought to have become aware of circumstances that rendered ineffective the criminal complaint that he had lodged, without waiting for the completion of the domestic investigations.

141. The applicant replied that he had indeed feared the authorities' reprisals and that, after leaving Russia, he had lodged a complaint in October 2006 demanding an investigation in his unlawful detention and torture in 2004 and 2005. Pursuing this complaint had offered a potentially effective remedy, which the applicant had been bound to pursue until such time as it became evident that it was ineffective. That had not been so from the outset, having regard, in particular, to the facts that the initial refusals to open criminal proceedings had been repeatedly quashed by higher prosecutors and that in some of these procedural decisions the language used had appeared to acknowledge the existence of evidence in support of the applicant's allegations.

142. According to the Court's case-law, when applicants attempt to afford themselves of an apparently already existing remedy that turns out to be ineffective, the time-limit runs from the point at which they became or ought to have become aware of that (see, among other authorities, *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 136, ECHR 2012).

143. The Court has found in a number of cases that the ineffective investigation of disappearances that occurred in Chechnya and Ingushetia between 1999 and 2006 constituted a systemic problem and that criminal investigations did not constitute an effective remedy in this regard (see *Aslakhanova and Others v. Russia*, nos. 2944/06 and 4 others, § 217, 18 December 2012). These findings concerned above all situations where a person had never again been seen alive after falling into the hands of the authorities. The applicant's situation was entirely different: he reappeared after his alleged detention and, once he had left Russia, pursued, with vigour and persistence, criminal complaints against those who had allegedly tortured him and detained him. In any event, the Court's above-mentioned findings regarding the systemic problem with similar investigations concerned the question of the exhaustion of domestic remedies and post-dated the developments in the investigation in the applicant's case.

144. In the Court's view, in the present case there is no basis to conclude, as the Government appear to suggest, that the applicant should have foregone any effort to seek that the perpetrators be held to account in Russia and that he should have complained to the Court right away. Such an approach would have been unjustifiable in view of the fact that, in particular, the applicant became aware that very soon after his release an investigation had been opened into his unlawful detention and ill-treatment as a result of statements and demands made by certain political figures (see paragraphs 24-29 above). Subsequently – a year after the end of his alleged illegal detention, and very soon after having left Russia with his close family because of fears for his life – the applicant lodged his own complaints in October 2006, and in more detail in July 2007, and offered a clear and detailed account of the events complained of (essentially that he had been tortured and of being held in arbitrary detention in improper conditions, supported by descriptions, sketches and the written statements of witnesses – see paragraphs 33-34 and 42 above). Having initially been informed of the opening on 12 March 2007 of a criminal investigation into the above-mentioned allegations, the applicant lodged his application with the Court in April 2009, shortly after he had been first informed of the termination of that investigation and following many unsuccessful attempts to be kept informed of its progress and of relevant decisions (see paragraphs 37 and 42 *in fine* above). While it appears that the investigation into his aforementioned complaints was several times reopened and terminated again after April 2009, with few tangible results, the applicant cannot be said, in this context, to have waited for an unreasonably long time before coming to the conclusion that the domestic remedy that he had chosen to use was unlikely to lead to the alleged perpetrators being brought to justice (contrast with *Utsmiyeva and Others v. Russia* (dec.), no. 31179/11, § 40, 26 August 2014).

145. It follows that the Government's objection regarding the six-month time-limit with respect to these complaints must be rejected.

146. The Court further considers that the complaints under Articles 3 and 5 of the Convention concerning the applicant's alleged unlawful and arbitrary detention, inhuman and degrading treatment, are not manifestly ill-founded within the meaning of its Article 35 § 3 (a) or inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

147. With respect to his complaints under Article 3 of the Convention, the applicant argued that as he had – following his detention and ill-treatment in Tsentoroy– been arbitrarily detained for eleven months in the "Vega base" in Gudermes, most traces of the torture that he had endured during the first days of detention had disappeared. However, his son, M.I., and especially his wife,

Sh.V. gave statements during the domestic investigation in which they referred to the long-lasting marks and effects that they had noticed upon his release (such as loss of teeth, and injuries to his legs and feet); those remarks were later affirmed by the forensic medical examination conducted in Norway (paragraphs 21 *in fine* and 32 above). Therefore, the burden of proof fell on the Government in respect of demonstrating that the injuries had not occurred as a result of torture or ill-treatment; they had not supplied such proof. As regards his unacknowledged detention at the "Vega base", the applicant referred to evidence confirming it: witness statements, including statements given by the Ch. brothers and Z.I., on which the prosecutor's report of 12 March 2007 had been based (see paragraphs 37-38 above); detailed plans of the premises where he had been detained; the CPT Report and the Background Memorandum confirming the existence of the "Vega base" in Gudermes (see paragraphs 92-94 above).

148. Moreover, the applicant pointed to the authorities' ineffective investigation into his complaints (see paragraph 147 *in fine* above). The investigation had several times been suspended and resumed. The authorities had not interviewed him, his wife or any other witnesses that he had indicated as being of interest, had denied him practical access to the investigation file, and had terminated the investigation on the basis of witness statements that had been virtually identical to each other.

149. The Government considered there was no objective evidence confirming the applicant's allegations concerning Articles 3 and 5 of the Convention. They referred in that regard to official 2016 data provided by the Chechen authorities that indicated that there had never been a military base known as the "Vega base" in Gudermes. They also pointed to the doubts raised by (i) the applicant's unlikely behaviour relating to his voluntary return to his alleged place of detention after his release, (ii) the contradictions between the applicant's and his cousin I.I.'s respective witness statements as regards the date of his release from detention, and (iii) the absence in the statements of the latter of any reference to any marks of violence on the applicant's face or body (see paragraph 25 above). In the Government' view, such doubts were reinforced by the fact that the belated forensic medical examination performed in Norway on the applicant had produced no unambiguous confirmation of the time or manner in which the injuries had been caused. The applicant could have benefited from a medical examination sooner, while he had still been in Russia; that would have led to the discovery of any signs of violence being reported to the relevant authorities. In the Government's view, the applicant was responsible for his delay in complaining of the alleged violation of his rights; that had meant that the ensuing investigation had been less likely to establish all the circumstances surrounding the case, despite the measures taken by the authorities (which had eventually relied on those statements that had seemed to them to be the most trustworthy; see paragraph 49 above).

2. The Court's assessment

(a) The Court's assessment of evidence and the establishment of facts

150. The Court refers to the general principles concerning situations when it is faced with the task of establishing the facts of events on which the parties disagree, within a context that allegedly calls for the application of Articles 2, 3 or 5 § 1 of the Convention; these principles are summarised in *El-Masri* (cited above, §§ 151-53 and 155).

151. The Court observes firstly that the applicant's description of the circumstances regarding his alleged unacknowledged detention and ill-treatment was very detailed, specific and consistent throughout the whole period during which he lodged complaints with the Russian investigative authorities and, later, with the Court. In addition, there are other aspects of the case that enhance the applicant's credibility, as his account was supported by a large amount of direct (in the form of eyewitnesses statements) and indirect evidence; moreover, each piece of evidence covers at least some of the alleged facts and (despite emanating from different sources) the evidence as a whole provides an overall coherent picture of the events in question:

a) the witness statements given spontaneously by the applicant's wife and his family, on the one hand, and those given by the Ch. brothers and Z.I., on the other hand to the investigating authorities – which concord in detail with respect to the period of detention spent in the "Vega base" with "Ali" (the applicant's nickname) (see paragraphs 34, 38 and 42 above); similarly, the witness statement given early in the domestic investigation by I.I., which indirectly confirmed the applicant's placement in detention at the end of November 2004 (see paragraph 25 above); moreover, the similarity between the events described by the applicant as regards his detention in Tsentoroy and the largely concurring information, emanating from various sources, concerning the applicant's fellow detainees Supyan Ekiyev and Said-Ali Iriskhanov (see paragraphs 14, 23 and 27 *in fine* above);

b) international material, such as the official letter sent by Mr Rudolf Bindig, special rapporteur for Chechnya for the Committee on Legal Affairs and Human Rights which – before any complaint had even been made by the applicant – raised the matter of the latter's reported abduction and detention (see paragraph 91 above); and the CPT Report describing, after the CPT's visit in September 2006, what appeared to be secret places of detention in Tsentoroy and at the "Vega base" in Gudermes in locations otherwise inaccessible to ordinary individuals such as the applicant – descriptions that matched that provided by the applicant (see paragraphs 14, 17-18 and 92 above);

c) the forensic medical examination which, although performed in Norway more than eighteen months after the alleged events, concluded that the applicant's account was consistent with the above-mentioned physical symptoms and injuries to his teeth, legs and feet (see paragraph 32 above).

152. In view of the above, the Court is satisfied that, on the basis of the above-noted elements, there is prima facie evidence supporting the applicant's version of events and indicating that the burden of proof should shift to the Government.

153. The Court observes that the Government's main argument against the applicant's account of events was to rely on official information stating that there had never been in Gudermes a military base known as the "Vega base". However, the existence there of a military base bearing this name was confirmed not only by the above-mentioned international material, but by the Russian authorities themselves when, in their reply to the CPT Report, they expressly acknowledged the existence of the "Vega base", which had been used by the security service of the President of the Chechen Republic in 2004-2005 (see paragraph 93 above). Such a clear rebuttal of the Government's main factual thesis, combined with the above-noted prima facie evidence of the applicant's detention during that period of time, cannot but serve to corroborate his version of facts and, as a result, give credit to his consistent position that the alternative thesis, also supported by Z.E.A., that his absence had been due to an alleged love affair had been prefabricated by the authorities.

154. The Government's doubts and explanations with respect to the treatment that the applicant had allegedly been subjected to while in Tsentoroy – which were similar to those presented by the domestic authorities when explaining the reasoning for terminating the investigation – also rely on the absence of any reference to traces of violence in the statements given by I.I. or the applicant's sister (Z.E.A.) concerning the applicant's physical appearance at the time of his release. In that respect, the Court finds it reasonable that the limited signs of such treatment that persisted so long in time and were later noted by the forensic expert were not normally visible during such exchanges with members of the extended family. Moreover, the Court cannot fail to note that in Z.E.A.'s second statement (in which she stated, unlike in her previous testimony, that the applicant had appeared "in good health" upon his release – see paragraphs 35 and 49 above), she also mentioned the extensive media coverage given to the murder of Umar Israilov. This was undoubtedly a recent, troubling development that may well have influenced the testimony given by witnesses called to testify about serious complaints brought by the applicant against Chechen special security forces, given that their highest commanders' alleged involvement in the murder had become public knowledge (see paragraph 47 above). The Court's previous comments regarding the authorities' thesis of a love affair – a thesis supported by Z.E.A. – further reinforce the likelihood of such a risk (see the preceding paragraph *in fine*). The Court has no indication that, as a result, the investigating authorities subjected all the evidence presented to them to a particularly thorough scrutiny before ascribing particular importance to those

few elements that could confirm a version of events exonerating those of the alleged perpetrators who had ties to the highest authorities.

155. Moreover, the Government also expressed reservations regarding, as they call it, the belated and ambiguous forensic report produced in Norway. The Court notes firstly that prompt forensic examination is indeed crucial, as signs of injury may often disappear rather quickly and certain injuries may heal within weeks or even a few days (see, among others, *Rizvanov v. Azerbaijan*, no. 31805/06, § 59, 17 April 2012). However, having found credible the applicant's statement of the facts in respect of his having been continuously deprived of his liberty by State agents (see paragraph 152 above), the Court observes that the Government have not argued that he had prompt access to a proper medical examination after his alleged ill-treatment at the end of November 2004. Neither have they explained why the forensic examination that they have suggested as having been sufficient – namely an examination carried out in Chechnya after the applicant's release (that is, eleven months after the alleged ill-treatment) – would have recorded more specific traces of violence than the one the applicant was subjected to in Norway, several months after his release.

156. The Court therefore considers that the medical forensic report produced in Norway constitutes, to the extent of its findings, reliable medical evidence which, taken together with the other pieces of evidence submitted by the applicant to the authorities (see paragraph 151 above and also 161 below), amounts to a credible factual basis; moreover, it appears to accord with the general findings of the CPT Report, which called for an investigation into consistent complaints made by several parties of ill-treatment in Tsentoroy (see paragraph 92 above; see, *mutatis mutandis*, *Khadisov and Tsechoyev v. Russia*, no. 21519/02, §§ 128 and 130, 5 February 2009).

157. In view of the above, the Court observes, summarising the above-noted considerations, that the Government have failed to demonstrate conclusively why the above-mentioned evidence, which emanated from various sources, cannot serve to corroborate his allegations. They have not provided a satisfactory and convincing explanation of how the events in question played out between the end of November 2004 and the beginning of October 2005. No credible and substantiated explanation has been presented by the Government to rebut the presumption of responsibility on the part of the Russian authorities to account for the applicant's fate and treatment during the period in question. Finally, the Court's case-law concerning similar allegations of unacknowledged detention and ill-treatment in Chechnya at around the same time as the events at issue in the present case contained descriptions analogous to those produced by the applicant, lending further credibility to his statements and calling for particular scrutiny to the explanations provided by the Government (see, among others, *Abdulkadyrov and Dakhtayev v. Russia*, no. 35061/04, § 61, 10 July 2018; *Mukayev v. Russia*, no. 22495/08, § 69, 14 March 2017; *Gisayev v. Russia*,

no. 14811/04, § 137, 20 January 2011; and, *mutatis mutandis*, *Adzhigitova and Others v. Russia*, nos. 40165/07 and 2593/08, § 166, 22 June 2021).

158. Given the circumstances surrounding the events in question, the Court finds the applicant's allegations made with respect to his complaints under Articles 3 and 5 of the Convention sufficiently convincing and established beyond reasonable doubt.

(b) Alleged violation of Article 3

159. The Court refers to the general principles summarised in *El-Masri* (cited above, §§ 182-85), and *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90 and 114-23, ECHR 2015).

(i) Procedural aspect of Article 3: lack of an effective investigation

160. The Court observes that the applicant presented the authorities with convincing and amply-supported allegations of his unacknowledged detention from 27 November 2004 until 4 October 2005 (see paragraphs 151-154 above). Despite the fact that the applicant gave a detailed description of conditions which – particularly during the first period of the applicant's detention, until Sh.V. managed to informally re-establish contact with the applicant – were to a large extent similar to those that the Court categorised as life-threatening (see, *inter alia*, *Turluyeva v. Russia*, no. 63638/09, § 85, 20 June 2013), the investigating authorities almost completely discounted the applicant's complaints of having been ill-treated while he had been in Tsentoroy. They focused essentially on the complaint concerning his subsequent illegal detention in Gudermes and did not explore any element that could clarify the applicant's particularly serious allegations of ill-treatment.

161. In that sense, the Court observes that the investigating authorities ignored altogether the following elements: the identification by the applicant in his detailed complaint of some of the individuals that he had recognised both among the officers (for instance, J.) and the other detainees whose ill-treatment he had witnessed while in Tsentoroy; the witness statements given by his close family members, who had noticed upon his release in October 2005 a number of signs that he had been subjected to violence (and in particular by E.S., who had stated that she had personally witnessed the applicant being ill-treated in the gym at Tsentoroy); and the forensic medical examination carried out in Norway (see paragraphs 13-15, 32 and 42 above).

162. The Court considers that the authorities did not make genuine attempts to thoroughly verify the allegations by questioning the applicant and the witnesses, including the eyewitness E.S., who lived abroad and who provided the contact details of a Norwegian law office that could assist with the procedure (see paragraphs 42 and 51 *in fine* above). Moreover, despite the lodging of a plausible complaint about the involvement of members of the

security forces serving under the direct order of Ramzan Kadyrov, whose notorious secret service had its base in Tsentoroy, nothing in the file presented by the Government suggests that special steps were taken in order to ensure the investigation's independence and objectivity in all circumstances and regardless of whether those involved were public figures (see, *mutatis mutandis*, *Kolevi v. Bulgaria*, no. 1108/02, § 208, 5 November 2009). Thus, it does not appear that those conducting the investigation took into account at least the potential ability of those figures, directly or indirectly, to put pressure upon the witnesses, victim or even the investigator (see paragraph 154 above). Given the high rank and influence of the head of the Tsentoroy base, J., and of Ramzan Kadyrov himself (whose presence in the gym was indicated by the applicant and whose command over the individuals who allegedly ill-treated the latter appears obvious), the requirements of an independent investigation in respect of the present case required that the investigating authorities go beyond merely relying upon the mutual institutional independence of the Ministry of the Interior and the investigative committee. It called for measures designed to remove the persons potentially implicated in the crime from a position of even indirect power over the other actors in the investigation (see, *mutatis mutandis*, *Turluyeva*, cited above, § 109). The Court reiterates in this respect that the requirement of an independent investigation includes not only a lack of hierarchical or institutional connection but also practical independence, as a solid basis allowing to maintain public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts (see, *mutatis mutandis*, *Najafli v. Azerbaijan*, no. 2594/07, §§ 46 and 48, 2 October 2012).

163. These aspects suffice to lead the Court to conclude that the investigation into the applicant's complaints has been ineffective.

(ii) Substantive aspects of Article 3 of the Convention

164. The Court has already found above that the applicant's allegations with respect to the acts of violence to which he was subjected while detained in Tsentoroy were sufficiently convincing as to be considered established beyond reasonable doubt and, moreover, that the authorities did not provide a plausible explanation, nor did they conduct a proper criminal investigation into these allegations (see paragraphs 157-158 and 160-163 above).

165. As regards the categorisation of the treatment, the Court finds that, during the days spent in Tsentoroy, the applicant was kept in a permanent state of physical pain and anxiety owing to his uncertainty about his fate and to the level of violence to which he was subjected (see *Gisayev*, § 144, and *Khadisov and Tsechoyev*, § 132, both cited above). In view of the fact that the acts of violence that were inflicted on him clearly caused severe physical and mental suffering and that the sequence of events also demonstrates that that pain and suffering was inflicted on him intentionally (namely with the

aim of extracting information about the whereabouts of his son, Umar Israilov, and of persuading the latter to return to Chechnya), the Court concludes that the ill-treatment in issue amounted to torture (see, *mutatis mutandis*, *Kutayev*, cited above, § 102).

(iii) Conclusion

166. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 3 of the Convention in respect of the applicant under its substantive and procedural limbs.

167. Having regard to the above-noted findings, the Court considers that there is no need to examine separately the merits of the applicant's complaint concerning the conditions of his detention (see, *mutatis mutandis*, *Adzhigitova and Others*, cited above, § 195).

(c) Alleged violation of Article 5

168. The Court refers to the general principles summarized in *El-Masri* (cited above, §§ 230-33).

169. The Court refers to its conclusions that the deprivation of the applicant's liberty by State agents (the Chechen security forces) from 27 November 2004 until 4 October 2005 has been established beyond reasonable doubt (see paragraphs 151, 157-158 above).

170. The applicant's detention was not acknowledged and was not logged in any records – the authorities contesting even the very existence of places of detention in Tsentoroy (the premises used by Ramzan Kadyrov's service forces) and Gudermes (the "Vega base") – and there exists no official trace of his whereabouts during the period in question. The mere fact that the applicant's wife, Sh.V., learned of his fate after a few weeks from unofficial sources and managed to briefly interact with him a couple of times during this lengthy period (see paragraph 19 above) is irrelevant given the characteristics of an unacknowledged detention (see *El-Masri*, § 236, and, in respect of a similar situation, *Gisayev*, §§ 44 and 151, both cited above). It is wholly unacceptable that in a State subject to the rule of law a person could be deprived of his or her liberty in an extraordinary place of detention outside any judicial framework. The Court notes that the respondent State authorities continued to deny the existence of these detention place even after they allowed the CPT visit which determined that the allegations were credible and which prompted the CPT to call for certain measures (see paragraph 92 above). The Court considers that the applicant's detention in such unusual, secret locations adds to the arbitrariness of the deprivation of liberty (see, *mutatis mutandis*, *El-Masri*, cited above, and *Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, § 118, 21 June 2007).

171. The applicant's unacknowledged detention from 27 November 2004 until 4 October 2005 means that he was left completely at the mercy of those

holding him. It was arbitrary and must be seen as incompatible with the very purpose of Article 5 of the Convention.

172. The Court therefore finds that there has been also a violation by the respondent State of Article 5 of the Convention.

V. ALLEGED VIOLATIONS OF ARTICLES 8 AND 1 OF PROTOCOL No. 1 TO THE CONVENTION, TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13 OF THE CONVENTION

173. The applicant complained that the search carried out at his house on 27 November 2004, the day of his imprisonment, had been illegal and constituted a violation of his right to respect for his home under Article 8 of the Convention. He also referred to the unlawful seizure of documents and money during the search and relied on Article 1 of Protocol No. 1 to the Convention. Relying on Article 13 of the Convention, he moreover complained that he had been deprived of his right to an effective remedy with respect to these allegations. These Articles provide as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

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."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

174. The Government denied that any search or seizure took place in the applicant's apartment, pointing out that no witnesses had supported such allegations other than the applicant's wife, Sh.V., who was an interested party in the matter. In any event, they referred to the common preliminary objection that they had raised with respect to Articles 3, 5, 8 and with respect to

Article 1 of Protocol No. 1 – namely, that the applicant ought to have become aware much earlier than April 2009 of circumstances that had rendered ineffective the criminal complaint that he had used, and that he should not have waited for the completion of the domestic investigations.

175. With respect to the common preliminary objection, and without referring specifically to those complaints related to the search and seizure, the applicant submitted that he had been bound to pursue the remedy that he had used until such time as it became evident from the prosecutor's office's responses that it was ineffective – which is what he in fact did. He also drew attention to the fact that he had not had victim status, which would have enabled him to have access to the file at any time except the period from March 2017 until June 2019, and that, in any event, being abroad, he had had limited information about the progress of the domestic investigation into his allegations.

176. The Court reiterates at the outset that under Article 35 § 1 of the Convention, it may only start to deal with a matter within a period of six months from the final decision in the process of exhaustion. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), nos. 62566/00 et seq., 10 January 2002). Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances that render that remedy ineffective. In such a situation, the six-month period may be calculated from the time when the applicant becomes aware, or should have become aware, of those circumstances (see *El-Masri*, cited above, § 136, and *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002).

177. In the present case, the Court observes that, following the alleged search of their apartment and seizure of documents and money that had apparently been witnessed only by the applicant's wife, Sh.V., on 27 November 2004, no complaint was lodged with the domestic authorities until October 2006 – that is to say after the applicant and Sh.V. had left Chechnya for fear of reprisals (see paragraphs 11-12 and 33-34 above; contrast *Karimov and Others v. Russia*, no. 29851/05, § 139, 16 July 2009, and *Babusheva and Others v. Russia*, no. 33944/05, § 125, 24 September 2009). It next observes that the applicant, who also raised a complaint under Article 13 of the Convention, does not deny that he was obliged to initiate the criminal complaint that he lodged and that appeared to him as a prima facie effective remedy. Even assuming that with regard to the applicant's particular allegations a similar line of reasoning could initially justify (as the Court acknowledged in respect of the complaints raised under Articles 3 and 5 – see paragraph 144 above) a later starting point for the six-month time-limit, the Court nevertheless has to verify whether the same applies to the period after

October 2006 in view of the authorities' response to the applicant's complaints.

178. In that respect, by comparison with the authorities' reaction to the applicant's complaints raised under Article 3 and 5 (see paragraph 144 above), the Court considers that no investigative act or procedural decision adopted after October 2006 could have led the applicant to believe that those investigations could amount to an effective remedy with respect to the alleged search and seizure. On the contrary, the applicant acknowledged that he had been informed of the decision dated 12 March 2007 of the Leninskiy district prosecutor's office, which, after examining his claims dating from October 2006, opened a criminal investigation (file no. 10021) into only the complaints of illegal deprivation of liberty and ill-treatment (see paragraphs 37 and 42 above; contrast *Kerimova and Others v. Russia*, nos. 17170/04 and 5 others, § 200, 3 May 2011). The investigative authorities did not reply to his request, lodged in July 2007, for an investigation to be also opened into his complaint concerning the seizure of a certain amount of money, nor even to his more general subsequent requests for information sent by registered mail (for instance in September 2007 – see paragraph 42 *in fine* above). Moreover, the subsequent decisions adopted by the investigating authorities referred to the complaints of illegal deprivation of liberty and ill-treatment (see, for example, paragraph 43 above). The fact that the applicant has not had the right of access to file no. 10021 (except between March 2007 and June 2009, when he had victim status) and that the fact that he lived abroad hampered communication with the authorities were not circumstances that prevented the applicant from becoming aware of the ineffective character of those proceedings as regards those of his specific allegations that were disregarded by the investigative authorities.

179. In the light of the prosecutor's office's decision of 12 March 2007 refusing to open criminal investigation into the applicant's allegations concerning the search and the seizure of documents and money, the Court concludes that the applicant should have become aware on the date when he was informed of that decision (July 2007) of the circumstances that rendered ineffective the remedy used with respect to these allegations, and should have known that he should not wait for as long as until 14 April 2009 to lodge an application with the Court in that respect (see, *mutatis mutandis*, *Bulut and Yavuz* (dec.), cited above; contrast *El-Masri*, cited above, § 147).

180. It follows that the Government's preliminary objection must be upheld and that the complaints raised with respect to Article 8 of the Convention and Article 1 of Protocol No. 1, taken alone and in conjunction with Article 13 of the Convention, concerning the search of the applicant's apartment, the seizure of documents and money, and the lack of an effective remedy must be declared inadmissible under Article 35 § 4 of the Convention as having been lodged after the expiry of the six-month time-limit under its Article 35 § 1.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

181. 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

182. The applicant sought 220,000 Russian roubles in respect of pecuniary damage, on account of his loss of earnings during the eleven months of his arbitrary detention – this representing the amount that he would have been paid by the construction company that had employed him at the time. He was unable to present any documents as regards the basis for the calculation of that claim, alleging that all evidence had been stolen from his apartment on 27 November 2004. Moreover, referring to the immense emotional anguish and trauma that he had suffered (as well as to his feelings of injustice) as a result of the violation by the Russian authorities of several of the most fundamental rights of the Convention, he asked the Court to make an award in respect of non-pecuniary damage, at its discretion.

183. The Government contested the claims as unsubstantiated and lacking any causal link with the alleged violations of the Convention. They also added, with respect to the applicant's claim for pecuniary damage, that there was no obstacle to his lodging a request in Russia for evidence to be secured in respect of his previous monthly salary.

184. As to the part of the claim concerning his loss of earnings, while being aware of the applicant's impractical situation, the Court notes that it is completely unsubstantiated (compare *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 193, 17 March 2016, and *Feilazoo v. Malta*, no. 6865/19, § 139, 11 March 2021) and therefore rejects it. Regard being had to the seriousness of the violations of the Convention of which the applicant was the victim, and ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards him 104,000 euros in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

185. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Holds* that it has jurisdiction to deal with the applicant's complaints in so far as they relate to facts that took place before 16 September 2022;

3. *Declares* the complaints concerning Articles 2, 3 and 5 of the Convention admissible and the remainder of the applications inadmissible;

4. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb, on account of the failure to cooperate with respect to Umar Israilov's murder;

5. *Holds* that there has been a violation of both the substantive and the procedural aspects of Article 3 of the Convention, respectively, as regards torture to which the applicant has been subjected, and the lack of an effective investigation in respect thereof;

6. *Holds* that there is no need to examine the merits of the complaint under Article 3 concerning the applicant's conditions of detention;

7. *Holds* that there has been a violation of Article 5 of the Convention because of the applicant's arbitrary detention;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 104,000 (one hundred and four thousand euros) in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 24 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Pere Pastor Vilanova President