



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

FIRST SECTION

CASE OF VELKHIYEV AND OTHERS v. RUSSIA

(Application no. 34085/06)

JUDGMENT

STRASBOURG

5 July 2011

FINAL

08/03/2012

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

In the case of Velkhiyev and Others v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyeu,

George Nicolaou,

Mirjana Lazarova Trajkovska, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 14 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 34085/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Russian nationals, listed below (“the applicants”), on 15 August 2006.

2. The applicants were represented by lawyers of the Memorial Human Rights Centre (Moscow) and the European Human Rights Advocacy Centre (London). The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 11 March 2009 the Court decided to apply Rule 41 of the Rules of Court and grant priority treatment to the application, and to give notice of the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Mr Bekhan Ulanovich Velkhiyev, Ms Rima Usamovna Velkhiyeva, Mr Ali Bashirovich Velkhiyev, Ms Kheda Bashirovna Velkhiyeva, Mr Dzhokhar Bashirovich Velkhiyev, Ms Marem Bashirovna Velkhiyeva and Ms Aminat Bashirovna Velkhiyeva, are Russian nationals who were born in 1965, 1961, 1992, 1994, 1998, 2000 and 2002 respectively. The first applicant lives in Malgobek, Ingushetia; the second to seventh applicants live in the village of Barsuki, Ingushetia.

A. Detention and torture of the first applicant and Mr Bashir Velkhiyev. Death of Mr Bashir Velkhiyev.

6. The first applicant is the brother of Mr Bashir Velkhiyev, born in 1963. The second applicant is the wife of Mr Bashir Velkhiyev and the third to seventh applicants are their children.

7. The following account of the events submitted by the applicants was not contested by the Government, except for the alleged theft (see paragraph 15 below).

8. On the evening of 19 July 2004 the first applicant came to the village of Barsuki to visit Mr Bashir Velkhiyev and his family, who lived at 6 Zapadnaya Street. The first applicant stayed at their house for the night.

9. On 20 July 2004 the first applicant and Mr Bashir Velkhiyev got up at 8 a.m. while the second applicant was making breakfast and the third to seventh applicants were playing in the yard.

10. At approximately 8.30 a.m. the first and second applicants and Mr Bashir Velkhiyev heard the children screaming and ran out into the yard. There they saw servicemen in camouflage uniform armed with automatic weapons who were jumping into the yard over the fence and coming through the gates.

11. About thirty servicemen gathered in the yard. Most of them spoke Ingush, although three or four servicemen spoke Russian without an accent. Later it transpired that they were officers of the Ministry of the Interior. They had AK automatic rifles, sniper rifles and machine guns. The servicemen forced the children into a corner between two houses in the yard and held them there at gunpoint.

12. Mr Bashir Velkhiyev asked the servicemen not to scare the children. He also told them that there were no criminals in his house. He said that they could enter and that there was no reason to be alarmed. The servicemen ordered the first applicant and Mr Bashir Velkhiyev at gunpoint to face the wall and to raise their hands. Then one of the servicemen asked: "Who is

the master of the house?” Mr Bashir Velkhiyev replied that he was. At the same time he asked the servicemen to present their identity documents as well as documents authorising their entry to his house. The servicemen did not reply and took Mr Bashir Velkhiyev at gunpoint out of the yard.

13. The first applicant remained facing the wall. The servicemen who were still in the yard asked him for his passport. The first applicant gave his passport to a serviceman who must have been about thirty-five years old with short dark hair. He was dressed in camouflage uniform and spoke Russian with an accent. Having checked the first applicant’s passport the serviceman asked him where he lived and what his occupation was. Having heard the reply, the serviceman said: “You stay at home. We have no issues with you.” However, he did not return the passport to the first applicant.

14. At the same time several servicemen searched the house. They had neither produced a search warrant nor called for witnesses. The second applicant tried to enter the house to take some money that was kept in a wardrobe. The servicemen did not let her enter the house. Then she told the first applicant that she was not being let into the house to take the money. The first applicant rushed into the house having pushed away one of the servicemen. There were five or six servicemen in the house. They asked the first applicant what was in several bags placed in the bedroom. He replied: “See for yourselves, there is nothing illegal there.” He also asked them whether they had a search warrant and why they did not draw up a report on the search and Mr Bashir Velkhiyev’s arrest. One of the servicemen, thirty-five or forty years old and of heavy build with light-grey hair, replied to him in Ingush: “Get ready, everything will be explained to you there”. As the first applicant realised that they were going to detain him too, he approached the dark-haired serviceman and asked: “Why are you taking me, you said you had no issues with me?” The serviceman replied: “That Ingush took your passport from me. Sort it out with him.” The serviceman pointed at the officer who had ordered the first applicant to get ready.

15. According to the applicants, after the servicemen left together with the first applicant and Mr Bashir Velkhiyev, the second applicant discovered that they had taken money in the amount of 12,000 United States dollars (USD) and 40,000 roubles (RUB) that was kept in the wardrobe. The servicemen also took Mr Bashir Velkhiyev’s mobile phone, twenty videotapes, fifteen audiotapes, Mr Bashir Velkhiyev’s wallet with USD 600 and RUB 20,000 and the first applicant’s wallet with USD 400 and RUB 1,000. The Government contested the applicants’ account in this part.

16. When he was taken out of the yard into the street, the first applicant saw a large number of servicemen, two khaki UAZ-452 vehicles (“Tabletka”) with no registration numbers, and a VAZ-2109 car. The first applicant was ordered to get into one of the UAZ vehicles, where he saw Mr Bashir Velkhiyev sitting handcuffed with his shirt pulled over his head. One of the servicemen said to the others: “Let them sit together for the last

time”. Then they handcuffed the first applicant and put a sports hat over his head which covered his eyes. Since the hat was transparent the first applicant could see the people in the vehicle. There were about eight or ten men and they spoke Ingush.

17. When the UAZ vehicle moved, one of the servicemen said to the serviceman who was sitting opposite the first applicant and Mr Bashir Velkhiyev: “Check if he has a strong head.” The serviceman then took a metal helmet, hit Mr Bashir Velkhiyev twice over the head with it and said that he did have a strong head. The other serviceman replied: “We shall see when we arrive.”

18. In approximately ten minutes they arrived at the Organised Crime Unit (*YBOIT*) at the Ministry of the Interior of Ingushetia in Nazran. The first applicant could see the building through the hat pulled over his eyes. He and Mr Bashir Velkhiyev were taken to an office on the second floor of the building to the left of the entrance. They remained handcuffed.

19. There, officers of the Ministry of the Interior asked the first applicant and Mr Bashir Velkhiyev their names, dates and places of birth. Then Mr Bashir Velkhiyev was asked where such a large amount of money, USD 12,000, had come from. He slowly replied that he and the second applicant had saved it to buy a house. The officer hit him over the head and told him to reply faster. Mr Bashir Velkhiyev said that he would reply only in accordance with the legal procedure. Then officers hit him several times and said: “Let us start again”. They put the same questions again. Mr Bashir Velkhiyev did not reply. One of the officers then grabbed him and hit his head against the wall saying: “Are you deaf?” Mr Bashir Velkhiyev repeated that he would reply only in accordance with the legal procedure. The reply made the officers angry. One of them said that Mr Bashir Velkhiyev had not been beaten yet and that he should be worked over “in full”, whereas the first applicant should be worked over “upwards”.

20. Then Mr Bashir Velkhiyev was taken out of the office. The first applicant heard the order: “To the left.” Then officers put a band over the hat pulled over the first applicant’s eyes so that he could no longer see anything. They took off his handcuffs and instead placed on his hands a device which, according to the officers, did not leave bruises. They said, laughing, that it had been made especially for him.

21. First the officers asked the first applicant where he had been on the night of 21 to 22 June 2004 when rebel fighters had attacked Ingushetia. He replied that he had been ill at home that night, as could be confirmed by his relatives. Then they asked him about a certain paper which they alleged he had written. The first applicant said that he had never written such a paper and that this could easily be checked by comparing handwriting if they untied his hands and provided him with a pen and paper. Then the officers hit the first applicant’s head against the wall, kicked him in the groin and hit him over the ears. They said: “This is to bring you back to your senses.

Don't try to be smart with us, we are just kidding to make you cooperate with us. For information on those who participated in the attack you'll get a car, money and [the right to] move freely in the whole of Russia." They also asked him which "Wahhabis" he knew in Ingushetia. He replied that he was not a "Wahhabi" but an entrepreneur.

22. The officers again suggested that he cooperate with them and threatened him with "beating his genitals so that he could not have children" and "impaling him while video recording it". They asked him to tell them about his relatives. The first applicant replied that he had nothing to tell. Then one of them said: "So you don't want it in a good way?" and, addressing the other servicemen, ordered: "Bring him 'upwards'." The officers then started to beat him again. According to the first applicant, he was mainly beaten by officers commissioned from Russia.

23. In a while the first applicant was taken to a different office where the beating continued. The officers beat him with rubber truncheons and said that it was just the beginning. They also threatened him with five years' imprisonment.

24. After the beating the first applicant was picked up from the floor and led to yet another office. There the officers said that he was aggravating his situation and that he now risked ten to fifteen years' imprisonment. They also said that if he offended them he would leave with a first-degree disability, but if they were nice to him, only with a second-degree disability. The officers then placed the first applicant on his stomach, raised his legs and, while holding him in this position, kicked him on the spine and applied an electric current. They spilled water on his groin and then placed electric wires there. Because of the electric shock the first applicant fainted.

25. According to the first applicant, the officers were laughing while torturing him. At the same time, he could hear awful screams from other offices where, apparently, people were also being tortured.

26. When the first applicant recovered consciousness, an officer who spoke Russian without an accent asked him whether he was going to work in the law-enforcement agencies. The first applicant replied that he had wanted to work in the law-enforcement agencies, but after what they had done to him and having heard what they did to others he no longer wanted to.

27. Then the officer took the first applicant into the corridor and removed the device placed on his hands. However, he left the hat over his eyes. Then a different officer led the first applicant to the first floor and brought him to a cell. He said: "Do not remove the hat until I leave." As soon as he left, the first applicant took off the hat and saw another officer of small stature, who told him to enter the cell. In the cell there was another detainee of approximately fifty years of age. In a while a third detainee was placed in the cell. He said that he was from the village of Troitskaya.

28. Later in the day the officer of small stature put a sports hat and black plastic bag on the first applicant's head and took him out of the cell. He was then taken out of the building and put in a car. In the car he fainted because of the injuries sustained earlier. When he recovered consciousness, he heard one of the officers, who was talking on the phone, saying: "We have arrived". Then another officer said to the first applicant: "If you take off the bag in less than ten minutes, your brain will be blown up." Then he added: "I have almost forgotten, your brother Bashir is in Vladikavkaz. He must have quite a reputation to be there." The officer then closed the door of the car. The first applicant also heard the doors of another car closing and the car moving away. He realised that the officers had left him and that he was alone in the car.

29. The first applicant removed the hat and the plastic bag from his head and fainted again. When he recovered consciousness he heard some people talking in Ingush. A few men approached the car, opened the door and told him to get out of the car with his hands raised. The men appeared to be officers of the Nazran Department of the Interior (*ГОВД*). Although the first applicant told them that he could not walk and needed medical assistance, they refused to either call an ambulance or inform his relatives about his whereabouts. They took him to the Department of the Interior and placed him in a cell, having said that they would "sort it out" the next morning.

30. At approximately 8.10 a.m. the next day investigator A. of the Nazran Prosecutor's Office took the first applicant out of the cell. Investigator A. introduced himself and told the first applicant that Mr Bashir Velkhiyev had died. He had not survived the torture by officers of the Ministry of the Interior commissioned from Russia. According to investigator A., as soon as the relatives of the first applicant and Mr Bashir Velkhiyev had informed him of the men's detention, he had tried to find them as he was concerned for their lives, since officers commissioned from Russia treated detainees very cruelly. However, officers of the Ministry of the Interior of Ingushetia, giving various excuses, had refused to let him meet the first applicant and Mr Bashir Velkhiyev. When he had learned from his colleagues that Mr Bashir Velkhiyev was indeed being held on the premises of the Organised Crime Unit, he had immediately gone there. However, Mr Bashir Velkhiyev was already dead. Having questioned officers of the Organised Crime Unit, he had obtained information about the first applicant's detention. However, he had not found him that night. In the morning, having learned of the first applicant's whereabouts from police reports, investigator A. had come to see him at the Nazran Department of the Interior.

31. Investigator A. told the first applicant that he had been to the morgue and had seen Mr Bashir Velkhiyev's body. He then took the first applicant to the Nazran Prosecutor's Office, where he told him that Mr Bashir Velkhiyev had died in office no. 17 of the Organised Crime Unit at the

Ministry of the Interior of Ingushetia because of the torture inflicted by officers of the Ministry. Having obtained the necessary documents from the prosecutor's office, the first applicant went to the morgue. He took Mr Bashir Velkhiyev's body to the village of Barsuki.

32. On 21 July 2004 the first applicant and two other relatives of Mr Bashir Velkhiyev took his body to Vladikavkaz for a second forensic examination. His body was first examined by forensic experts shortly after his death (see paragraph 42 below).

33. According to forensic report no. 464 of 21 July 2004, the following injuries were found on Mr Bashir Velkhiyev's body: (i) multiple bruises to the outer corner of the right eye, the nose, the forehead, the back of the head extending to the right ear, the right side of the thorax, the left shoulder, the left forearm, the left wrist joint, the back of the left hand, the index finger of the left hand, the right shoulder, the right elbow joint, the right forearm, the right wrist joint, the shoulder blades, the hips, the lower legs and the tops of the feet; (ii) a single abrasion to each wrist joint; (iii) a single haemorrhage on the upper and the lower lip; (iv) a contused wound to the upper lip and (v) a puncture wound to the thorax. The bruises, the haemorrhages and the contused wound had been caused by multiple blows with hard, cylindrical blunt objects such as rubber truncheons. The abrasions to the wrist joints were most likely caused by handcuffs. The puncture wound must have been caused by a syringe. The injuries had been caused within the twenty-four hours preceding death. According to the report, the most probable cause of death was cardiovascular collapse.

34. On the evening of 21 July 2004, having returned from Vladikavkaz, Mr Bashir Velkhiyev's relatives buried him in the family cemetery in the village of Sredniye Achaluki.

B. Search for the first applicant and Mr Bashir Velkhiyev and applications to the State authorities.

35. According to the applicants, at 11.30 a.m. on 20 July 2004, approximately two hours after the detention of the first applicant and Mr Bashir Velkhiyev, the second applicant went to the Ministry of the Interior of Ingushetia in Nazran. Officers on duty at the reception desk refused to accept her application. They sent her to the security desk at the entrance and ordered her to get a pass there to enter the building.

36. At the security desk the second applicant explained that she needed a pass in order to submit an application concerning the unlawful detention of her relatives. The officer on duty at the security desk told her that "the bosses had forbidden staff to issue passes" and advised her to apply to the Nazran Department of the Interior.

37. At 12.30 p.m. the second applicant applied in person to the Nazran Department of the Interior. However, the officers in charge refused to

accept her application. They said that neither the first applicant nor Mr Bashir Velkhiyev had been brought to the Department of the Interior. Having insulted the second applicant, they ordered her to leave the premises immediately.

38. The second applicant returned to the Ministry of the Interior of Ingushetia. The same officers again refused to accept her application. However, one of them sent her to the Organised Crime Unit. He showed her the entrance to the Unit, which was within fifteen to twenty metres of the main entrance to the Ministry of the Interior, and said that the first applicant and Mr Bashir Velkhiyev were there. He also told the second applicant that they were being held by Russians who had been specially commissioned to Ingushetia and added: "God help them".

39. The second applicant was not let into the Organised Crime Unit. Officers ordered her to return home and said that neither the first applicant nor Mr Bashir Velkhiyev was being held there. She then went to the village of Sredniye Achaluki to see Mr Bashir Velkhiyev's relatives and tell them about the events.

40. On 21 July 2004, after the first applicant had been released and it had become known that Mr Bashir Velkhiyev had died, their relatives applied to the Nazran Prosecutor's Office seeking the institution of criminal proceedings against officers of the Organised Crime Unit for torture and for Mr Bashir Velkhiyev's murder. The applicants did not retain copies of their first applications. They re-submitted the applications a number of times later.

C. Official investigation

41. On 20 July 2004 the Nazran Prosecutor's Office issued a notice for entry in the Crime Register (*Книга учета сообщений о преступлениях*) stating that, according to a telephone call received at approximately 4.35 p.m. on that date, the body of Mr Bashir Velkhiyev had been found in office no. 17 of the Organised Crime Unit at the Ministry of the Interior of Ingushetia, after Mr Velkhiyev had been brought there in order to give certain explanations. The notice also stated that an inquiry was being conducted into the events.

42. On the same date the Nazran Prosecutor's Office ordered a forensic examination of Mr Bashir Velkhiyev's body. According to forensic report no. 91 of 20 July 2004, there were numerous bruises on the body; death had occurred two to four hours before the examination and was caused by traumatic shock as a result of the injuries.

43. On 21 July 2004 the Nazran Prosecutor's Office ordered an investigation into the death of Mr Bashir Velkhiyev.

44. On 23 July 2004 the Nazran Prosecutor's Office ordered a medical examination of the first applicant. According to forensic report no. 397 of

the same date, the first applicant had the following injuries: large bruises measuring 19 x 22 cm and 18 x 17 cm on the back at the level of the thorax and on the shoulder blades; a bruise measuring 13 x 2 cm below the right shoulder blade; numerous subcutaneous wounds, abrasions ranging from 0.5 cm to 1.5 cm in length and bruises near the seventh cervical vertebra, and seven similar areas in the interscapular and lumbar regions (traces of surface notches with subsequent application of cupping glasses for bloodletting); multiple small haemorrhages on the back of the left hand; a partially healed abrasion on the back of the right hand; haematomas on the buttocks extending to the hips measuring 21 x 18 cm and 17 x 10 cm; four similar haematomas on both hips and the back of the knees ranging in size from 10 x 8 cm to 12 x 7 cm; similar multiple haematomas on the lower right leg measuring around 20 x 11 cm; a haematoma measuring 12 x 8 cm and swelling to the sole of the right foot. It was also stated that the mobility of the ankle was limited and that the first applicant complained of pain in his back and scrotum. The expert recommended consulting a urologist, a neuropathologist and a traumatologist.

45. On the same date the first applicant was examined by two other doctors. It appears that they were a traumatologist and a neuropathologist. According to the relevant entries in his medical file, the first applicant had large haematomas on the buttocks, hips and shoulder blades; eight traces of application of an electric current on the shoulder blades and some on the hands; traces of blows on his hands and the soles of his feet and bruising to the forehead. The doctors stated that the injuries had been caused by beating and by the application of an electric current. They also stated that the first applicant had brain concussion and limited mobility of all his joints.

46. On 30 July 2004 the Nazran Prosecutor's Office decided to institute an investigation (no. 04560079) into the death of Mr Bashir Velkhiyev. It is not clear how this decision related to the previous decision of 21 July 2004 on the institution of an investigation.

47. On 4 and 6 August 2004 the first applicant was again examined by a medical expert. Having regard to the previous examination on 23 July 2004 and to the entries in the applicant's medical file the expert concluded that the abrasions and subcutaneous wounds had been caused by notches made for bloodletting five to seven days before the first applicant's detention. All the other injuries had been caused by multiple blows by a hard object or objects two to three days before the examination on 23 July 2004.

48. On 18 August 2004 the first applicant was questioned and granted victim status in case no. 04560079. He confirmed his account of the events of 20-21 July 2004 as set out in the preceding paragraphs.

49. On the same date investigator A. of the Nazran Prosecutor's Office examined the Organised Crime Unit's register. It contained no entries concerning the first applicant or Mr Bashir Velkhiyev.

50. On 24 August 2004 investigator A. of the Nazran Prosecutor's Office questioned the second applicant. She made a statement in line with the account of the events set out in the preceding paragraphs. She also stated that she knew her husband had been beaten to death by police officers although she did not know the names of those responsible.

51. On 25 August 2004 investigator A. of the Nazran Prosecutor's Office questioned Ms A.Ts., Mr Bashir Velkhiyev's neighbour. Ms A.Ts. stated that at approximately 8.30 a.m. on 20 July 2004 she had seen the first applicant and Mr Bashir Velkhiyev being taken away from the latter's house by officers in camouflage uniform, put in a car and driven away. On the following day she had learnt that Mr Bashir Velkhiyev had been murdered.

52. On the same date investigator A. of the Nazran Prosecutor's Office questioned Ms L.Ts., Mr Bashir Velkhiyev's neighbour, who stated that at approximately 8.30 a.m. on 20 July 2004 her daughter-in-law had told her that police officers had stormed Bashir's house. She had then tried to go into the yard, but officers in camouflage uniforms and masks had been standing near the gates and had not let her pass. She had then taken the children out through the garden and had come back. Through a hole in the gates Ms L.Ts. could see Mr Bashir Velkhiyev being put into a car. Then the officers had left and the second applicant had told her that they had taken Mr Bashir Velkhiyev and the first applicant, who had come for a visit, after promising to bring them back in two hours. Ms L.Ts. did not know who the officers were and she could not see their faces since they were wearing masks. On the following day she had learned that Mr Bashir Velkhiyev had been murdered.

53. Also on 25 August 2004 officer M. of the Organised Crime Unit was questioned. He submitted that he had been working at the Unit since 2000. Since 2001 he had been responsible for the provision of arms, receipt of information and organisation of field missions. Usually he remained on duty for twenty-four hours, after which he stayed at home for forty-eight hours. On 20 July 2004 officer M. had taken up duty at 8.30 a.m. On that date officer G., officer T. and officer Tut. had also been on duty. At 9 a.m. officers of the federal units of the Ministry of the Interior deployed in Ingushetia brought two detainees with black bags on their heads to the Organised Crime Unit. The officers were wearing masks and gave no information about the detainees, promising to provide it later. Officer M. made no entries in the register at that time. After waiting until 10 a.m., he asked the officers to provide him with the information concerning the detainees. They replied that they would obtain explanations from the latter and forward them to officer M. later. He did not know who the officers were, they were wearing camouflaged uniform. Officer M. also submitted that after the events of 21-22 June 2004 officers of the federal units were regularly stationed at the Organised Crime Unit. They would bring people there and question them. At approximately 1.40 p.m. on 20 July 2004

officer M. heard a loud noise on the staircase. After leaving his post, he saw two officers of the federal units lifting a man in dark clothes with a bag on his head. He asked them what was going on. They replied that the man had slipped on the stairs and fallen down. Having lifted him, they took the man upstairs. At approximately 2.50 p.m. the officers of the federal units left for a field mission, having informed officer M. that they had to fetch one more person who was an accomplice of those already brought to the Organised Crime Unit. At around 3 p.m. the officers returned. At 3.20 p.m. B., the Deputy Head of the Organised Crime Unit, called officer M. and told him to call an ambulance, which he did immediately. At 3.40 p.m. the ambulance arrived and, together with the doctors, officer M. went to the second floor and entered office no. 17. In the office medical assistant Kh. and Deputy Head B. were providing first aid to a man lying on the floor. The man, Mr Bashir Velkhiyev as officer M. learned later, died before the arrival of the doctors, who pronounced him dead of heart failure. Then the doctors left and an investigative unit from the Nazran Prosecutor's Office arrived. In the evening the officers of the federal units arrived back at the Organised Crime Unit and took away the other detainee. As officer M. learned later, the detainee was the first applicant. Officer M. stated that he did not know who the officers were or to which particular unit they belonged. According to him, the officers of the federal units deployed in the Organised Crime Unit changed constantly and he was not personally acquainted with any of them. He did not know which officers had taken part in the detention of the first applicant and Mr Bashir Velkhiyev either. He had not witnessed any beating or other forms of ill-treatment. He did not know where exactly the first applicant had been held, but assumed that it was somewhere on the first floor.

54. Officer G. of the Organised Crime Unit, questioned on the same date, made a statement similar to that of officer M. as regards the events of 20 July 2004, except that he had seen neither the detainees nor those who had brought them to the Organised Crime Unit. He had learned from officer M. that there had been a dead body on the Unit premises.

55. Officer T. of the Organised Crime Unit, questioned on the same date, made a statement similar to that of officer G. as regards the events of 20 July 2004.

56. On the same date investigator A. questioned medical assistant Kh. She submitted that she had been working as a medical assistant at the Organised Crime Unit since 2003 and was responsible for providing police officers with first aid. On 20 July 2004 at around 4 p.m. Deputy Head B. called her and asked her to examine a man in office no. 17. As she learned later, the man was Mr Bashir Velkhiyev. Having entered the office, she spoke to Mr Bashir Velkhiyev, who was sitting on a chair. He was dressed and had no visible injuries. He said that he was feeling weakness and pain in his chest. Medical assistant Kh. left to fetch a blood pressure monitor. Then

she took Mr Bashir Velkhiyev's blood pressure, which was 100/80. She gave him an injection of No-spa, but the weakness remained. After ten minutes she again took his blood pressure, which was 70/50. She gave the patient an injection of caffeine and recommended Deputy Head B. to call an ambulance, which he did immediately. Then they put Mr Bashir Velkhiyev on the floor and medical assistant Kh. and another officer started to perform indirect massage and artificial respiration. However, despite their efforts Mr Bashir Velkhiyev died. The ambulance arrived approximately ten minutes later. Medical assistant Kh. submitted that she did not know why Mr Bashir Velkhiyev had been brought to the Organised Crime Unit. He had not told her that he had been ill-treated. She did not know whether his brother had been detained as well. She also stated that, since the events of 21-22 June 2004, officers of the federal units were regularly stationed at the Organised Crime Unit. However, she had no contacts with them.

57. Officer Tut. of the Organised Crime Unit, questioned on 26 August 2004, made a statement similar to that of officer G. as regards the events of 20 July 2004.

58. On 30 August 2004 investigator A. questioned officer B., the Deputy Head of the Organised Crime Unit. The latter submitted that he occupied office no. 20 on the second floor. Across from him was office no. 17, which belonged to the Second Department of the Organised Crime Unit, headed by officer A. On 20 July 2004 at approximately 5 a.m. he left with other officers to conduct operations aimed at the detention of those responsible for the events of 21-22 June 2004. First they went to Troitskaya village, then to Karabulak and then to Barsuki. There, he and some other officers entered the yard of the Velkhiyevs' house. They cordoned off the yard while officers of the federal units entered the house. The latter apprehended Mr Bashir Velkhiyev and the first applicant, put them into a UAZ vehicle and took them away. He and other officers went on to other villages to continue the operations. At around 3 p.m. Deputy Head B. returned to the Organised Crime Unit in order to draft a report on the operations conducted. At approximately 3.10 p.m. officers told him that in office no. 17 there was a man with a black bag on his head and that officers of the federal units who had "worked with him" had left to search for his accomplice. Then Deputy Head B. entered office no. 17 and saw a man with a black bag on his head lying on the floor. As he learned later, the man was Mr Bashir Velkhiyev. He removed the bag from his head and asked him who he was. The man replied that he had slipped and fallen on the stairs, and asked for water. He had no visible injuries. Deputy Head B. made him some tea and called for medical assistant Kh. Having taken his blood pressure and given an injection, she gave instructions to call an ambulance, which was done. When the ambulance arrived at approximately 3.40 p.m., Mr Bashir Velkhiyev was already dead. Immediately afterwards, Deputy Head B. called the investigative group of the Nazran Prosecutor's Office. He did not

know which officers of the federal units had detained Mr Bashir Velkhiyev. He did not know them personally since they had been stationed at the Organised Crime Unit after the events of 21-22 June 2004. Deputy Head B. did not know either where the first applicant had been held or whether Mr Bashir Velkhiyev or the first applicant had been subjected to ill-treatment by officers of the federal units. Neither he nor any officers of the Organised Crime Unit had subjected them to ill-treatment.

59. On 3 September 2004 investigator A. questioned officer A., the head of the Second Department of the Organised Crime Unit. Officer A. stated that on 20 July 2004 he had arrived at the Organised Crime Unit at 8.45 a.m. He had neither left for any operation that morning nor sent his officers out. Around lunchtime he received information about a landmine at a market in Nazran and left for there with his officers. After returning to the Organised Crime Unit at around 4 p.m., he learned that a man had died in office no. 17 after being brought there by officers of the federal units in order to provide explanations. However, officer A. did not know by whom and when exactly the man had been brought there or whether his brother had been apprehended with him. Office no. 17 had been damaged as a result of the events of 21-22 June 2004. Since then it had been mainly used by officers of the federal units; however, officer A. did not know by whom exactly.

60. Between 10 September and 18 October 2004 investigator A. questioned seven officers of the Organised Crime Unit: officer Ar., officer Ch., officer Das., officer Dol., officer Dz., officer Mach. and officer O. They stated that on 20 July 2004 they had heard that a man brought in for questioning by officers of the federal units had died in office no. 17. However, they did not know who the man was or the names of the officers who had brought him to the Organised Crime Unit.

61. On 27 December 2004 the investigation was suspended for failure to identify those responsible.

62. On 14 January 2005 the Ministry of the Interior of Ingushetia drafted a report on the internal inquiry concerning the death of Mr Bashir Velkhiyev. The report incorporated the above statements of the officers of the Organised Crime Unit and concluded that Mr Bashir Velkhiyev had died of natural causes.

63. On 14 March 2005 the Nazran Prosecutor's Office resumed the investigation.

64. On 18 March 2005 officer Dar. and on 29 March 2005 officer Bek., both of the Organised Crime Unit, were questioned. They stated that they had learned from internal reports that a man had died on 20 July 2004. However, they had not known that Mr Bashir Velkhiyev and the first applicant had been brought to the Organised Crime Unit or exactly which officers of the federal units had been stationed at the Unit at the relevant time.

65. On 24 March 2005 the second applicant was granted victim status in criminal case no. 04560079. She was questioned on the same date and confirmed her earlier statement.

66. On 1 April 2005 the Nazran Prosecutor's Office ordered a forensic medical examination aimed at establishing the character and gravity of the injuries sustained by Mr Bashir Velkhiyev and whether his death had been a result of the said injuries. The order stated that on 20 July 2004 unidentified officials of the Ministry of the Interior had unlawfully apprehended Mr Bashir Velkhiyev and the first applicant and taken them to the Organised Crime Unit where, acting in abuse of their official authority, they had subjected the detainees to violence. As a result, Mr Bashir Velkhiyev had died in office no. 17 of the Organised Crime Unit. It was further noted in the order that, according to forensic expert report no. 91 of 20 July 2004, Mr Bashir Velkhiyev's death had been caused by traumatic shock as a result of the injuries he had sustained.

67. According to forensic report no. 37 of 21 April 2005, Mr Bashir Velkhiyev had the following injuries:

- (1) multiple extensive bruises to the chest and the back at chest height;
- (2) multiple bruises to the head and upper extremities;
- (3) multiple extensive bruises to the knee joints extending to the shin, followed by oedema of the soft tissues and considerable swelling of the right knee joint and the lower right leg; extensive bruising to the right hip extending to the buttock; bruises to the tops of the feet;
- (4) circular bruises with abrasions of the wrists;
- (5) puncture wounds to the right buttock (from injections);
- (6) oedema of the brain;
- (7) loss of blood from the surface of the lung tissue and decrease in lung volume;
- (8) uneven blood flow to the cardiac muscle.

The injuries described at (1), (2) and (3) had been caused by multiple blows with a hard blunt object or objects which had a long cylindrical shape, possibly a truncheon. The injuries described in (4) had most likely been caused by handcuffs. The pathological changes to the internal organs described in (6), (7) and (8) were the result of the traumatic shock caused by the injuries described. Taking into account the location of the bruises and the depth of the lesions which had led to the traumatic shock, confirmed by the oedema of the brain, the decrease in lung volume and the uneven blood flow to the internal organs, all the injuries described in (1), (2), (3), (6), (7) and (8) were to be characterised as serious and life-threatening. All the injuries could have been caused at the time and in the circumstances described in the order. The cause of Mr Bashir Velkhiyev's death was traumatic shock as a result of the injuries sustained. There was a direct causal link between the injuries and his death.

68. On 2 April 2005 officer E. of the Criminal Investigation Department of the Nazran Department of the Interior was questioned. He stated that on 20 July 2004 he had been on duty with officer T-v. At approximately 8 p.m. they received a call about a suspicious white car. They left and found a white VAZ 2107 at the described location. They called out but nobody answered. Then they approached the car and saw a man lying on the floor by the back seat. The man had either a mask or a bag on his head. They then opened the door, put him on the seat and removed the bag or the mask. They asked his identity and what he was doing there. He answered that he had been brought there several hours earlier by policemen who had told him not to move. He said that his name was Belkhan Velkhiyev and that he and his brother, Bashir Velkhiyev, had been apprehended and detained at the Organised Crime Unit by officers wearing camouflage uniforms and masks who spoke unaccented Russian. Then officers E. and T-v. put the man in the UAZ vehicle and took him to the Nazran Department of the Interior.

69. Officers Mer. and Gor. of the Nazran Department of the Interior, questioned on 5 and 7 April 2005 respectively, stated that on 20 July 2004 they had received information about a suspicious white car and had reported the information.

70. On 11 April 2005 officer A-v., Head of Department of the Ingushetia Ministry of the Interior, was questioned. He stated that on 20 July 2004, following a call concerning a suspicious white car, he and other officers had gone to inspect the car. The first applicant had been found in the car.

71. Officer Kh., Head of the Investigations Department of the Ingushetia Ministry of the Interior, questioned on 13 April 2005, provided no relevant information.

72. On 18 April 2005 the first applicant was again questioned. He confirmed his earlier statement and provided some additional information.

73. On 24 April 2005 the Nazran Prosecutor's Office adjourned the criminal proceedings in case no. 04560079 for failure to identify the culprits.

74. On 30 May 2005 the investigation was resumed.

75. On 9 June 2005 the first applicant wrote to the Public Prosecutor of Ingushetia asking him to provide information on the course of the investigation and to assist in speeding it up.

76. On 1 July 2005 the Nazran Prosecutor's Office instituted investigation no. 05560068 (in some documents referred to as no. 05560079) into the alleged unlawful detention and ill-treatment of the first applicant.

77. On the same date criminal case no. 05560068 was joined with criminal case no. 04560079 under the latter number. The first applicant was informed of the joinder on 7 July 2005.

78. On 6 July 2005 the Nazran Prosecutor's Office severed from the proceedings criminal case no. 05560072 against officer M. of the Organised

Crime Unit, who had been on duty on 20 July 2004 and had allegedly held the first applicant in detention unlawfully.

79. On 10 July 2005 the Nazran Prosecutor's Office suspended the proceedings in criminal case no. 04560079 on the ground that it appeared impossible to identify the persons who had caused the injuries leading to Mr Bashir Velkhiyev's death in the office of the Organised Crime Unit.

80. On 6 October 2005 the Nazran Prosecutor's Office suspended the proceedings in criminal case no. 05560072 on the ground that officer M. was outside the Republic of Ingushetia and was therefore precluded from participating in the criminal proceedings.

81. On 6 February 2006 the first applicant complained to the Nazran District Court about the Nazran Prosecutor's Office's decisions of 10 July and 6 October 2005.

82. On 25 April 2006 the Nazran District Court quashed the Nazran Prosecutor's Office's decision of 6 October 2005. However, it dismissed the complaint in the part relating to the decision of 10 July 2005.

83. According to the applicants, they were not duly notified of the hearing and were therefore precluded from participating in it. Furthermore, they only received the decision of 25 April 2006 on 31 May 2006.

84. On 6 June 2006 the first applicant appealed against the Nazran District Court's decision of 25 April 2006 to the Supreme Court of the Republic of Ingushetia. It is not clear whether the complaint was examined.

85. On an unspecified date the investigation in case no. 05560072 was completed and the case was transmitted to the court.

86. On 28 March 2007 the Nazran District Court acquitted officer M. The court found, in particular:

“[According to the indictment,] on 20 July 2004 [officer M.], acting in abuse of his official authority, ... in breach of [the law] and in collaboration with unidentified officers of the law-enforcement agencies of the Ministry of the Interior of the Russian Federation and the Ministry of the Interior of Ingushetia, including the former head of the Organised Crime Unit..., [officer B-v.], brought [the first applicant and Mr Bashir Velkhiyev] into the premises of the Unit without due registration. There they were subjected to physical violence by unidentified persons. In particular, [Mr Bashir Velkhiyev] sustained injuries which led to his death in office no. 17 of the Unit, while [the first applicant] sustained [slight] injuries. On 20 July 2004 from 9 a.m. to 7 p.m. [officer M.] unlawfully, and thus in abuse of his official authority, held [the first applicant] in a cell for detainees located in the basement of the Unit to which he had the key and held [Mr Bashir Velkhiyev] in office no. 17 of the Unit. After the death of [Mr Bashir Velkhiyev], [the first applicant] was released from the cell and taken by unidentified persons outside the Unit to the “Kavkaz” road..., where he was found by officers of the Nazran Department of the Interior.

[Officer M.], questioned at the hearing, submitted that ... following the attacks [by rebel fighters] in Ingushetia on the night of 21 to 22 June 2004 many commissioned officers of the mobile detachment of the Russian Federation were stationed on the premises of [the Organised Crime Unit]. Those officers often brought persons to the Unit in order to check whether they had been involved in the crimes. However, they

refused to provide him with information about those persons. When he reported that to the head of the Unit, [officer B-v.], the latter always replied that he was aware of it and [ordered officer M.] not to impede [the officers]. On 20 July 2004 at 8.30 a.m. [officer M.] took up duty. On that day at approximately 9 a.m. officers of the mobile detachment who were wearing masks brought two men with black plastic bags on their heads to the Unit. In reply to his question they said that the Head of the Unit ... was informed. [Officer M.] telephoned the Head of the Unit, [officer B-v.], and reported that officers of the Ministry of the Interior of the Russian Federation had brought those men in and refused to provide him with the relevant information. In reply, [officer B-v.] ordered him not to interfere since operative work was under way. While on duty, [officer M.] always remained in the duty unit and did not know what was going on on the second floor. In the basement ... there was a cell and a cage opposite it... The keys to the cell and the cage were kept in the duty unit. Some time after the two persons had been brought in [to the Unit], officers of the federal detachments took the key to the cage from [officer M.] and took one of the persons to the basement and placed him in the cage. At approximately 2.50 p.m. officers of the federal detachments left for [certain operative measures]. Ten to twenty minutes later the officers of the Unit who had left [to participate in those measures] returned. At approximately 3 p.m. the Deputy Head of the Unit, [officer B.] called the duty unit and asked for an ambulance to be called since the person brought to the Unit did not feel well. The ambulance arrived after approximately twenty minutes and [officer M.] accompanied the doctors to the second floor. In office no. 17 he saw a man who showed no signs of life lying on the floor. Doctors ... put him into their car and ... said that he was already dead. After that [officer M.] learned that the name of the deceased person was [Mr Bashir Velkhiyev], who had been brought to the Unit by officers of the federal detachments, and that the other person, who was being held in the cage at that point, was his brother. [Officer M.] could not and had no right to hinder the work of the officers of the federal agencies, who acted together and with the knowledge of the head of the [Unit]. The same evening ... at approximately 7 p.m. officers of the federal detachments arrived at the Unit and then took [the first applicant] away with them.

[The first applicant] stated that ... [officer M.] did not take part in his beating...

[Officer B.] stated that at the relevant time he held the office of Deputy Head of the Organised Crime Unit at the Ministry of the Interior of Ingushetia. On 20 July 2004 at approximately 5 a.m. he left for operative measures aimed at the detention of persons involved in crimes committed in [Ingushetia] on the night of 21 to 22 June 2004. He left together with officers of the Unit, the special police unit [*OMOH*] of the Ministry of the Interior of Ingushetia and the federal detachments of the Ministry of the Interior of the Russian Federation. ... [T]hey went to ... Zapadnaya Street, where officers of the federal detachments arrested [the first applicant and Mr Bashir Velkhiyev] on suspicion of the murder of some policemen on 22 June 2004, and put them in their UAZ car. Then [officer B.] and some other officers went [to other villages] to continue operative measures. At approximately 3 p.m. he returned to the Organised Crime Unit together with other officers of the Unit. In a while officers of the Ministry of the Interior of the Russian Federation came to his office and said that a person apprehended by their fellow officers was being held in office no. 17 and that the officers who had apprehended him had left to find his accomplice. When [officer B.] entered office no. 17, he saw a man with a black plastic bag on his head lying on the floor. He recognised [Mr Bashir Velkhiyev] ... Then he ordered [officer M.], who was on duty that day, to call the ambulance. However, when doctors arrived [Mr Bashir Velkhiyev] was already dead. [Officer B.] did not know that at that time [the first

applicant] was being held in the basement of the Unit. The events took place shortly after Ingushetia had been attacked by illegal armed groups, resulting in the killing of over a hundred persons, the majority of whom were law-enforcement officers. Many officers of the federal agencies had then been commissioned to the region. They were not subordinate [to the Ministry of the Interior of Ingushetia]. Those officers were provided with offices in the Unit, to which they themselves brought detainees and worked with them. [Officer M.] could not have done anything even if he had wished to. As the officer on duty he had nothing to do with operative measures, nor had anybody provided him with information about the detained persons. He did not know whether it was [the first applicant and Mr Bashir Velkhiyev] who had been brought in or other persons. The Head of the Organised Crime Unit was aware of the work carried out. [Officer M.] did not work with detainees ... His task was to ensure the security of the weapons and the Unit building.

[Officer T.] stated that on 20 July 2004 from 8.30 a.m. he was on duty at the security desk situated at the entrance gates of the Unit yard... At the time many officers of the federal detachments commissioned to Ingushetia were in the Unit. He did not know whether the officers had brought any detainees into the Unit that day since the officers entered the yard in cars with tinted windows and from the security desk he could not see who was brought in to the unit.

According to the forensic report ... [the first applicant] had numerous haematomas, bruises and abrasions which constituted slight injuries.

From [another] forensic report it is clear that the death of [Mr Bashir Velkhiyev] was caused by traumatic shock as a result of the injuries sustained. [It is also clear that] there is a direct link between the injuries caused to [Mr Bashir Velkhiyev] and his death.

[The court has established that the first applicant and Mr Bashir Velkhiyev] were held in the Unit with the knowledge of its head, who explained to [officer M.] that their presence on the premises of the Unit was necessary [for operative measures]... In such circumstances [officer M.] had no way of preventing [their unlawful detention and ill-treatment] since he had no authority to do so. Furthermore, during the relevant period federal agencies were conducting operative measures in the region... Representatives of the federal agencies were not subordinate to the local authorities and conducted operative measures independently...”

87. On an unspecified date the first applicant sought leave to study the file of criminal case no. 14560079.

88. On 17 April 2007 the Prosecutor's Office of the Republic of Ingushetia notified the first applicant that his request had been refused on the ground that the investigation was not completed but stayed. The Prosecutor's Office also informed him that the prosecution of officer B-v., former head of the Organised Crime Unit, had been discontinued owing to his death and that the investigation was consequently stayed. However, the criminal case against officer M. had been transmitted to a court.

89. On 21 June 2007 the first applicant lodged a complaint under Article 125 of the Code of Criminal Procedure concerning the refusal to grant him access to the investigation file before the Nazran District Court. It is not clear whether this complaint was examined.

90. On 12 May 2009 the Investigative Committee of the Russian Federation Prosecutor's Office in Ingushetia set aside the decision of 10 July 2005 of the Nazran Prosecutor's Office to suspend the investigation, and resumed the proceedings.

II. RELEVANT DOMESTIC LAW

91. The Code of Criminal Procedure of the Russian Federation (in force since 1 July 2002, "the CCrP") establishes that a criminal investigation may be initiated by an investigator or a prosecutor on a complaint by an individual or on the investigating authorities' own initiative, where there are reasons to believe that a crime has been committed (Articles 146 and 147). A prosecutor is responsible for overall supervision of the investigation (Article 37). He or she may order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. If there are no grounds for initiating a criminal investigation, the prosecutor or investigator issues a reasoned decision to that effect, which has to be served on the interested party. The decision is amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction under the procedure established by Article 125 of the CCrP (Article 148). Article 125 of the CCrP provides for judicial review of decisions taken by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

92. The applicants complained under Article 2 of the Convention that Mr Bashir Velkhiyev had been killed after being tortured by State agents and that there had been no adequate investigation into his death. Article 2 of the Convention provides, in so far as relevant:

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

93. The Government conceded that there had been a violation of Mr Bashir Velkhiyev's right to life, as confirmed by the evidence in criminal case no. 04560079. At the same time they argued that the investigation conducted into his death had been effective and satisfied the requirements of Article 2 of the Convention, as demonstrated by the number of steps taken to establish who had been responsible for the crime.

94. The applicants contested the Government's argument concerning the investigation conducted into Mr Bashir Velkhiyev's death. According to them, the investigation had been flawed on account of its inability to resolve the contradictions in some witness statements and forensic reports, the failure to question officers of the federal units located in Ingushetia, the repeated suspensions and resumptions and the total lack of activity between 10 July 2005 and 12 May 2009. The applicant also argued that the inadequacy of the investigation was further confirmed by the prosecution and subsequent acquittal of officer M. of the Organised Crime Unit. In their view, officer M. had clearly had no authority over the detention of the first applicant and Mr Bashir Velkhiyev and could not have prevented it. At the same time, the acquittal judgment had referred a number of times to "unidentified officers of the law-enforcement agencies", which demonstrated the deficiencies of the investigation.

A. Admissibility

95. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The alleged violation of the right to life of Mr Bashir Velkhiyev

(a) General principles

96. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93,

§ 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

(b) The State's compliance with Article 2

97. The Court notes that the Government conceded that there had been a violation of Mr Bashir Velkhiyev's right to life in the present case. Having regard to the materials in its possession and to the parties' submissions, the Court cannot conclude otherwise.

98. Accordingly, there has been a violation of Article 2 of the Convention in respect of Mr Bashir Velkhiyev.

2. The alleged inadequacy of the investigation into Mr Bashir Velkhiyev's death

(a) General principles

99. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324, and *Kaya v. Turkey*, 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures (see *İlhan v. Turkey* [GC] no. 22277/93, § 63, ECHR 2000-VII).

100. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports* 1998-IV). The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (see, for example, *Kaya*, cited above, § 87) and to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93,

§ 88, ECHR 1999III). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony (see, for example, *Tanrikulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling below this standard.

101. In this context, there must also be an implicit requirement of promptness and reasonable expedition. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Tanrikulu*, cited above, § 109).

102. Furthermore, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *McKerr v. the United Kingdom*, no. 28883/95, § 148, ECHR 2000-III).

(b) Application to the present case

103. Turning to the present case, the Court observes that on 20 July 2004 the Nazran Prosecutor's Office registered information to the effect that, according to a telephone call, the body of Mr Bashir Velkhiyev had been found in office no. 17 of the Organised Crime Unit, and instituted an inquiry into the events. On the same date a forensic examination of his body was ordered. According to the forensic report of 20 July 2004 there were numerous bruises on the body, and death had been caused by traumatic shock as a result of the injuries. On 21 July 2004 the Nazran Prosecutor's Office instituted an investigation into Mr Bashir Velkhiyev's death. The Court is thus satisfied that the authorities' reaction was sufficiently prompt.

104. The Court further notes that during the first two months after the institution of the investigation the prosecuting authorities ordered a medical examination of the first applicant and granted him victim status, examined the Organised Crime Unit's register and questioned numerous witnesses. The latter included the first and second applicants, two neighbours of Mr Bashir Velkhiyev, a medical assistant and officers of the Organised Crime Unit. The latter included officer B., the Deputy Head of the Organised Crime Unit, and officer A., the head of the Second Department of the Organised Crime Unit, to which office no. 17 belonged.

105. After the investigation was suspended on 27 December 2004 for failure to identify those responsible and subsequently resumed on 14 March 2005, the investigating authorities, in March and April 2005, granted victim status to the second applicant, again questioned the first applicant and questioned other officers of the Organised Crime Unit as well as the officers of the Criminal Investigation Department of the Nazran Department of the Interior who had dealt with the discovery of the car in which the first applicant had been abandoned. The investigation was again suspended on 10 July 2005 and resumed on 12 May 2009.

106. The Court observes that in the first year after the institution of the investigation the Nazran Prosecutor's Office took a large number of investigative steps such as forensic examinations and questioning of numerous witnesses. It further notes that the statements of the officers of the Organised Crime Unit make unequivocally clear that the first applicant and Mr Bashir Velkhiyev were detained and ill-treated by officers of the federal units of the Ministry of the Interior stationed in Nazran following the attack by rebel fighters on 21-22 June 2004, although none of the witnesses was able to identify those officers or even to provide information on the exact unit they belonged to.

107. Having regard to the statements made by members of the Organised Crime Unit, the Court finds it inconceivable that the Unit could host officers of other federal units, and even conduct joint operations with them, without having information on who they were and which units they belonged to (see paragraphs 58 and 86 above). However, it is not the Court's task to establish the veracity of such statements but to assess the efforts that the investigating authorities undertook to identify the officers responsible.

108. In this regard the Court notes that, according to the documents available to it, no inspection of the crime scene ever took place. In fact, it appears that in the course of the investigation the competent authorities never visited the premises of the Organised Crime Unit even though, as the investigation was instituted on the day following the events, it was highly probable that the officers involved in the ill-treatment of the first applicant and Mr Bashir Velkhiyev were still there. It is obvious that the failure to take such crucial investigative steps could not but have adversely affected the effectiveness of the entire investigation and also constituted a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

109. As for other possible steps aimed at identifying the culprits, although it was at least known to the investigation that they were officers of the federal units of the Ministry of the Interior, the Court has no information to indicate that any requests were addressed to the Ministry concerning the deployment of its federal units or of particular officers in Nazran at the

material time. The Court was offered no explanation for such a serious failing.

110. The Court also notes that the investigation was suspended and resumed a number of times and, in particular, that there was a very lengthy period of inactivity between 10 July 2005 and 12 May 2009, for which no explanation has been provided.

111. It further takes note of the fact that the Government conceded that there had been a violation of Bashir Velkhiyev's right to life as confirmed by the domestic investigation, which, in their view, had been effective and satisfied the requirements of Article 2. The Court reiterates in this regard that, whereas the domestic investigation indeed established that Bashir Velkhiyev's death was a result of the ill-treatment to which he and the first applicant had been subjected by State agents, it fell short of the requirement of being capable of leading to the identification and punishment of those responsible (see paragraph 100 above).

112. As regards the prosecution and subsequent acquittal of officer M. of the Organised Crime Unit on charges of abuse of official authority, the Court finds it irrelevant for the purposes of identifying those responsible for the ill-treatment of the first applicant and Mr Bashir Velkhiyev and the latter's death. Although the failure to log their detention is a serious omission which the Court will address below under Article 5 of the Convention, in the circumstances of the present case the charges pressed against M. have no bearing on the effectiveness of the investigation into the ill-treatment and death.

113. At the same time the Court notes that in the decision on officer M.'s acquittal of 28 March 2007 the Nazran District Court found that the first applicant and Mr Bashir Velkhiyev had been held in the Unit with the knowledge of its head, who had explained to officer M. that this was necessary for the purposes of operative measures. It also found that during the relevant period federal agencies had been conducting independent operative measures in the region without being subordinate to the local authorities.

114. The Court considers that where both the domestic investigating authorities and the courts have established the responsibility of federal agencies, a failure to identify the individuals responsible may only be attributed to the reluctance of the prosecuting authorities to pursue the investigation.

115. As regards the accessibility of the investigation, the Court notes that, whereas the first applicant was granted victim status on 18 August 2004, the second applicant was granted victim status with several months' delay, on 24 March 2005. Furthermore, the applicants were not duly informed of the progress of the investigation as no documents from the case file were ever made available to them despite the first applicant's requests. Accordingly, the investigating authorities failed to ensure that the

investigation received the required level of scrutiny and to safeguard the interests of the next of kin in the proceedings.

116. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the ill-treatment and death of Mr Bashir Velkhiyev, in breach of Article 2 in its procedural aspect.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT AND MR BASHIR VELKHIYEV

117. The applicants complained under Article 3 of the Convention that the first applicant and Mr Bashir Velkhiyev had been tortured by State agents and that there had been no adequate investigation into these allegations either. Article 3 reads as follows:

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

118. The Government conceded that the first applicant and Mr Bashir Velkhiyev had been subjected to inhuman treatment in breach of Article 3 of the Convention, as confirmed by the evidence in criminal case no. 04560079. At the same time they argued that the investigation conducted had satisfied the requirements of the aforementioned provision.

119. The applicants argued that the treatment to which the first applicant and Mr Bashir Velkhiyev had been subjected should be characterised as torture. To support their argument they referred to the severity of the injuries both of them had sustained and which in Mr Bashir Velkhiyev’s case had resulted in death. The applicants also contested the Government’s assertion that the investigation had been effective, on the same grounds as set out in paragraph 94 above in relation to Article 2 of the Convention.

A. Admissibility

120. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The ill-treatment of the first applicant and Mr Bashir Velkhiyev*

(a) General principles

121. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has adopted the standard of proof “beyond reasonable doubt”, but has added that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). Article 3, taken together with Article 1 of the Convention, implies a positive obligation on the States to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI). Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

(b) The State’s compliance with Article 3

122. The Court notes that the Government conceded that the first applicant and Mr Bashir Velkhiyev had been subjected to treatment in violation of Article 3 of the Convention.

123. As to the seriousness of the acts of ill-treatment, the Court reiterates that in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The Court has previously had before it cases in which it has found that there has been treatment which could only be described as torture (see, among other cases, *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports* 1996-VI, and *Mikheyev v. Russia*, no. 77617/01, § 135, 26 January 2006). The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. In any event, the Court reiterates that, in respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and

is in principle an infringement of the right set forth in Article 3 (see *Selmouni v. France* [GC], no. 25803/94, § 99, ECHR 1999-V).

124. The Court finds that in the instant case the first applicant and Mr Bashir Velkhiyev were indisputably kept in a permanent state of physical pain and anxiety owing to their uncertainty about their fate. Furthermore, throughout the period of their detention they were subjected to particularly cruel forms of violence which led to very serious injuries, as attested by the medical reports and the first applicant's statements and, tragically, by Mr Bashir Velkhiyev's death as a result of the ill-treatment to which he was subjected. The sequence of events and the first applicant's submissions also demonstrate that the pain and suffering were inflicted on them intentionally, in particular with a view to extracting from them a confession that they had been connected with the attack by rebel fighters on the night of 21 to 22 June 2004.

125. In these circumstances the Court concludes that, taken as a whole and having regard to its purpose and severity, the ill-treatment at issue amounted to torture within the meaning of Article 3 of the Convention.

126. Accordingly, there has been a violation of the above provision in respect of the first applicant and Mr Bashir Velkhiyev.

2. The alleged inadequacy of the investigation into the ill-treatment of the first applicant and Mr Bashir Velkhiyev

(a) General principles

127. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards*, cited above, § 71, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

128. Thus, the investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports* 1998-VIII). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*,

eyewitness testimony, forensic evidence, etc. (see, *mutatis mutandis*, *Salman*, cited above, § 106; *Tanrıkulu*, cited above, §§ 104 *et seq.*; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. Furthermore, the investigation must be conducted expeditiously (see *Labita*, cited above, §§ 133 *et seq.*, and *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI).

(b) Application to the present case

129. The Court finds that the domestic investigation fell short of the requirement of effectiveness for the reasons stated in relation to the complaint under Article 2 in paragraphs 103-16 above.

130. Accordingly, there has been a breach of Article 3 in its procedural aspect also.

**III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION
IN RESPECT OF THE SECOND TO SEVENTH APPLICANTS**

131. The second to seventh applicants also relied on Article 3 of the Convention, alleging that the circumstances of Mr Bashir Velkhiyev's death had caused them profound mental suffering which had been aggravated by the fact that the media had presented him as a rebel fighter killed in an exchange of fire.

132. The Government conceded that the applicants' suffering as a result of the death of their close relative had led to a violation of Article 3 of the Convention. They maintained, however, that the domestic investigation had been in compliance with that provision.

133. The applicants reiterated the complaint and contested the Government's contention that the investigation had been adequate. They argued that it had been ineffective and that the authorities' failure to duly react had aggravated the applicants' moral suffering. In particular, when the second applicant had repeatedly tried in person to find out the whereabouts of the first applicant and Mr Bashir Velkhiyev, she had been brusquely rebuffed at every attempt.

A. Admissibility

134. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

135. The Court notes that in a number of cases it has found that relatives of a disappeared person were themselves victims of a violation of Article 3 of the Convention. Such findings were based on the state of uncertainty the relatives had had to endure owing to their inability to find out the fate of their next of kin and on the authorities' reluctance to take due measures so as to respond to their enquiries (see, among other cases, *Orhan*, cited above, §§ 359-60, 18 June 2002, and *Khamila Isayeva v. Russia*, no. 6846/02, §§ 143-46, 15 November 2007).

136. The Court observes that the question whether a member of the family of a "disappeared person" is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan*, cited above, § 358).

137. In the present case the Court notes that the second to seventh applicants are the wife and children of Mr Bashir Velkhiyev, who was taken from his home by men in camouflage uniform on the morning of 20 July 2004 and of whose death later that day they learned on 21 July 2004. It observes that this case is distinct from the majority of other cases concerning disappearances that have come before the Court, in that Mr Bashir Velkhiyev's relatives did not have news of him for no more than twenty-four hours. Thus, within the meaning of the Court's jurisprudence he could not be considered a "disappeared person" for the purposes of the present analysis. In view of the above, the Court considers that in the present case no separate issues arise under this Convention provision beyond those already examined under Article 2 of the Convention above (see *Tangiyeva v. Russia*, no. 57935/00, § 104, 29 November 2007, and *Sambiyev and Pokayeva v. Russia*, no. 38693/04, §§ 74-75, 22 January 2009).

138. In these circumstances, while the Court does not doubt that the death of their husband and father caused the applicants profound suffering,

it nevertheless finds no basis for finding a separate violation of Article 3 of the Convention in this context.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

139. The applicants complained under Article 5 of the Convention of the unlawful deprivation of liberty of the first applicant and Mr Bashir Velkhiyev. Article 5 of the Convention provides:

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

- (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

140. The Government conceded that the first applicant and Mr Bashir Velkhiyev had been unlawfully deprived of their liberty in violation of Article 5 of the Convention.

141. The applicants emphasised that the deprivation of liberty of the first applicant and Mr Bashir Velkhiyev constituted a complete negation of the guarantees provided by Article 5 of the Convention.

A. Admissibility

142. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

143. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII (extracts)).

144. The first applicant and Mr Bashir Velkhiyev were detained by State agents on 20 July 2004 and brought to the Organised Crime Unit at the Ministry of the Interior of Ingushetia in Nazran. Later that day Mr Bashir Velkhiyev died on the premises of the Organised Crime Unit, while the first applicant was released. Their detention was not logged in any custody records. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

145. Having regard to the foregoing and to the parties' submissions, the Court finds that the first applicant and Mr Bashir Velkhiyev were held in unacknowledged detention without any of the safeguards contained in Article 5.

146. Accordingly, there has been a violation of the right to liberty and security enshrined in Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

147. The applicants complained that the unlawful deprivation of liberty and subsequent death of Mr Bashir Velkhiyev constituted a violation of their right to respect for their private and family life guaranteed by Article 8 of the Convention, which provides:

“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. ”

148. The Government argued that the unlawful deprivation of liberty and killing of Mr Bashir Velkhiyev constituted violations of Articles 5 and 2 of the Convention respectively and did not raise a separate issue under Article 8.

149. The applicants made no further submissions.

150. The Court observes that this complaint concerns the same facts as those examined under Articles 2 and 5 above. Therefore, the complaint should be declared admissible. However, having regard to its conclusions under Articles 2 and 5, the Court considers that no separate issue arises under Article 8 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

151. The applicants also relied on Article 8 of the Convention and Article 1 of Protocol No. 1, complaining about the search conducted at their home on 20 July 2004. They claimed that it had been unlawful, that some of their belongings had been damaged and that the State agents who conducted the search had stolen their money and some of their belongings. Article 1 of Protocol No. 1 provides:

“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.”

152. The Government contested this argument. They submitted that the applicants' allegations were fully unsubstantiated and uncorroborated either by the findings of the domestic investigation or by any other evidence.

153. The applicants maintained that the search conducted at their home had not been "in accordance with the law" and could not be regarded as being necessary in a democratic society and had therefore been in breach of Article 8 of the Convention. They also contended that the first applicant could claim to be a victim of the alleged violation because he had been staying overnight at the other applicants' house. The applicants further maintained that in the course of the search USD 12,000 and RUB 40,000 had been stolen from their house, and claimed that the failure to investigate these allegations amounted to a breach of Article 1 of Protocol No. 1.

154. The Court retains doubts as to whether the first applicant can claim to be a victim of the alleged violation of Article 8 in this regard, bearing in mind that he did not reside at the house in question but had gone there to visit his brother's family. However, it does not find it necessary to decide on this issue since this part of the application is in any event inadmissible for the following reasons.

155. The Court reiterates that while in accordance with Article 35 § 1 of the Convention those seeking to bring their case against the State before the Court are required to use first the remedies provided by the national legal system, there is no obligation under the said provision to have recourse to remedies which are inadequate or ineffective. 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.), no. 62566/000 et seq., 10 January 2002).

156. In the instant case, it does not appear that the applicants properly raised the present complaint before the domestic authorities. The Court notes that on being questioned by the investigator the first and second applicants mentioned the intrusion into the house, the search and the alleged theft when describing the circumstances of the first applicant's and Mr Bashir Velkhiyev's detention. However, the Court considers that the applicants did not, as such, challenge the intrusion or search, nor did they lodge a complaint with regard to the theft, but rather referred to them as a background to their complaints about Mr Bashir Velkhiyev's death and his and the first applicant's detention and ill-treatment. The Court is thus not convinced that this could be regarded as an attempt by the applicants to bring the present complaint, as raised before the Court, to the attention of the national authorities. But even assuming that in the circumstances of the present case no remedies were available to the applicants, the events complained of took place on 20 July 2004, whereas the present application was lodged on 15 August 2006, more than six months later (see *Ruslan Umarov v. Russia* (dec.), no. 12712/02, 8 February 2007).

157. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

158. The applicants complained under Article 13 of the Convention that they had had no effective domestic remedies in respect of the above alleged violations. Article 13 provides:

“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.”

159. The Government made no submissions in this regard.

160. The applicants pointed to the Government’s failure to make any submissions and inferred that the Government did not dispute that there had been a violation of Article 13 of the Convention.

161. The Court observes that this complaint concerns the same issues as those examined in paragraphs 103-116 and 129-130 above under the procedural limb of Articles 2 and 3 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusions above under Articles 2 and 3 of the Convention, the Court considers it unnecessary to examine these issues separately under Article 13 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

162. 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. Pecuniary damage

163. The second to seventh applicants claimed a total of 205,245 euros (EUR) in respect of pecuniary damage caused by the loss of earning of their deceased husband and father.

164. They submitted that Mr Bashir Velkhiyev had worked on private construction sites and earned RUB 50,000-60,000 per month. They enclosed a statement by the first applicant to this effect. The second to seventh applicants submitted that they would have benefited from Mr Bashir Velkhiyev’s financial support in the amount indicated above. Their calculations were based on the retirement age and life expectancy in Russia

and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("the Ogden tables").

165. The applicants also claimed pecuniary damage on account of the arbitrary deprivation of their possessions which allegedly took place during the search conducted on 20 July 2004.

166. The Government argued that the applicants had not proved that Mr Bashir Velkhiyev had been in employment, let alone substantiated the amount of his earnings. They had failed to submit any official documents in this regard, and the first applicant's statement could not be accepted as reliable evidence for those purposes. The Government also noted that the applicants had omitted to provide any explanation for their failure to produce any documents on Mr Bashir Velkhiyev's professional occupation and earnings. Furthermore, the Ogden tables did not apply in the Russian Federation, and the applicants had failed to seek compensation before the domestic courts in respect of damage caused by the death of the breadwinner under the Russian Civil Code. Likewise, they had failed to substantiate their assertion that they had relied on the financial support of Mr Bashir Velkhiyev.

167. As regards the applicants' claim for compensation in respect of the pecuniary damage allegedly caused by the arbitrary deprivation of their possessions, the Government pointed out that they had failed to substantiate their assertion that such an incident had ever taken place. Accordingly, the claim should be dismissed.

168. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

169. The Court finds that there is a direct causal link between the violation of Article 2 in respect of Mr Bashir Velkhiyev and the loss by the second to seventh applicants of the financial support which he could have provided. The Court notes, however, that the applicants failed to substantiate their claim that Mr Bashir Velkhiyev had been in employment at the time of his death and to provide proof of the amount of his earnings. The statement by the first applicant cannot be considered as due evidence in this regard. However, the Court finds it reasonable to assume that Mr Bashir Velkhiyev would eventually have had some earnings from which the second to seventh applicants would have benefited (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 213, ECHR 2006-XIII (extracts)).

170. The Court further notes that the applicants' complaint concerning the alleged arbitrary deprivation of their possessions was declared

inadmissible at paragraph 157 above. Accordingly, the Court dismisses the claim in this part.

171. Having regard to the applicants' submissions and their failure to substantiate the assertion that Mr Bashir Velkhiyev had been in employment and had earnings at the relevant time, the Court awards EUR 15,000 to the second to seventh applicants in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

172. The first applicant claimed EUR 60,000 in respect of non-pecuniary damage for his unlawful detention, the torture inflicted on him by State agents and the suffering and distress caused by the torture and death of his brother, Mr Bashir Velkhiyev. The second to seventh applicants claimed EUR 100,000 in respect of non-pecuniary damage caused by the illegal detention, torture and eventual killing of Mr Bashir Velkhiyev, their husband and father, and the authorities' failure to conduct an effective investigation in that regard. They also stated that they had witnessed Mr Bashir Velkhiyevs being apprehended on 20 July 2004 and had seen his body with multiple traces of torture the next day, and had been profoundly affected as a result. The third to seventh applicants, who were minors at the time, had developed nightmares, and the seventh applicant suffered from developmental delays, as confirmed by a medical certificate.

173. The Government considered the amounts claimed to be excessive.

174. The Court has found a violation of Articles 3 and 5 of the Convention on account of the unacknowledged detention and torture of the first applicant. It has also found a violation of Articles 2, 3 and 5 of the Convention on account of the unacknowledged detention, torture and death of the applicants' close relative. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. Having regard to these considerations and acting on an equitable basis, it awards the first applicant EUR 55,000 and the second to seventh applicants jointly EUR 60,000, plus any tax that may be chargeable thereon.

C. The applicants' request for an investigation

175. The applicants also requested, referring to Article 46 of the Convention, that an independent investigation which complied with the requirements of the Convention be conducted into their relative's death. They relied in this connection on the cases of *Assanidze v. Georgia* ([GC], no. 71503/01, §§ 202-203, ECHR 2004-II) and *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, § 84, ECHR 2003-VI).

176. The Court notes that in numerous cases in comparable circumstances (see, among others, *Kukayev v. Russia*, no. 29361/02, §§ 131-34, 15 November 2007; *Medova v. Russia*, no. 25385/04, §§ 142-43, ECHR 2009-... (extracts); and *Lyanova and Aliyeva v. Russia*, nos. 12713/02 and 28440/03, §§ 159-60, 2 October 2008), it decided that it was most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention. The Court does not discern any exceptional circumstances which would lead it to reach a different conclusion in the present case.

D. Costs and expenses

177. The applicants also claimed 5,248.55 pounds sterling (GBP) for the costs and expenses incurred before the Court. They were represented by lawyers of the Memorial Human Rights Centre and the European Human Rights Advocacy Centre. They submitted an itemised schedule of costs and expenses that included the drafting of legal documents submitted to the Court, at a rate of GBP 100 per hour, in the amount of GBP 750; administrative costs in the amount of GBP 175; and translation costs in the amount of GBP 4,323.55, supported by invoices.

178. The Government did not dispute the details of the calculations submitted by the applicants, but pointed out that they should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had been actually incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005).

179. The Court has to establish first whether the costs and expenses indicated by the applicants were actually incurred and, second, whether they were necessary and reasonable (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

180. Having regard to the details available, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

181. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation.

182. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them the amount claimed, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the United Kingdom as identified by the applicants.

E. Default interest

183. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints under Articles 2, 3, 5, 8, insofar as it is related to unlawful deprivation of liberty, and 13 admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the death of Mr Bashir Velkhiyev;
3. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the failure to conduct an effective investigation into Mr Bashir Velkhiyev's death;
4. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the torture of the first applicant and Mr Bashir Velkhiyev;
5. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the failure to conduct an effective investigation into the torture of the first applicant and Mr Bashir Velkhiyev;
6. *Holds* by six votes to one that there has been no violation of Article 3 of the Convention in respect of the second to seventh applicants;
7. *Holds* unanimously that there has been a violation of Article 5 of the Convention in respect of the first applicant and Mr Bashir Velkhiyev;
8. *Holds* unanimously that there is no separate issue under Article 8 of the Convention as regards the detention and death of Mr Bashir Velkhiyev;
9. *Holds* unanimously that there is no separate issue under Article 13 of the Convention;

10. *Holds* unanimously

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 15,000 (fifteen thousand euros) in respect of pecuniary damage to the second to seventh applicants, plus any tax that may be chargeable to the applicants, to be converted into Russian roubles at the rate applicable at the date of settlement;

(ii) EUR 55,000 (fifty-five thousand euros) in respect of non-pecuniary damage to the first applicant, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(iii) EUR 60,000 (sixty thousand euros) in respect of non-pecuniary damage to the second to seventh applicants jointly, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(iv) GBP 5,248.55 (five thousand two hundred and forty-eight pounds fifty-five pence), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the United Kingdom;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Kovler is annexed to this judgment.

N.A.V.
S.N.

PARTLY DISSSENTING OPINION OF JUDGE KOVLER

I share the conclusions of the Chamber except on one point, concerning the finding that there has been no violation of Article 3 of the Convention in respect of the second to seventh applicants (the wife and children of Bekhan Velkhiyev).

According to the account of the circumstances of the case given in the judgment, “[t]he servicemen forced the children into a corner between two houses in the yard and held them there at gunpoint” (§ 11). The wife was also an eyewitness to the search of the house and the abduction of her husband, and a day later buried him in the family cemetery. I do not agree that the situation of “disappeared persons” can be automatically applied in this case. The scope of the present case differs substantially from cases where the “disappeared person” test was applied (see *Kurt v. Turkey*, 25 May 1998, §§ 130-134, *Reports of Judgments and Decisions* 1998-III; *Gongadze v. Ukraine*, no. 34056/02, § 184-196, ECHR 2005-XI; and *Luluyev and Others v. Russia*, no. 69480/01, §§ 116-118, ECHR 2006-XIII). The finding of a substantive violation of Article 2 of the Convention does not cover, to my mind, the mental suffering of the above-mentioned applicants, close relatives of Bekhan Velkhiyev. It is difficult to imagine that the loss of a close relative in the tragic circumstances of this case cannot form the basis for finding a separate violation of Article 3 of the Convention.