CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF CHITAYEV AND CHITAYEV v. RUSSIA

(Application no. 59334/00)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

18/04/2007

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

In the case of Chitayev and Chitayev v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 59334/00) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Russian nationals, Mr Arbi Salaudiyevich Chitayev and Mr Adam Salaudiyevich Chitayev ("the applicants"), on 19 July 2000.

2. The applicants, who had been granted legal aid, were represented by lawyers of the Stichting Russian Justice Initiative ("SRJI"), an NGO based in the Netherlands with a representative office in Russia. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained, in particular, of their unlawful arrest and detention, as well as torture and inhuman and degrading treatment, by the domestic authorities, and of the absence of an effective investigation into these events. They also complained of unlawful searches in their private house, the unlawful seizure of their property and the lack of effective remedies in respect of those violations. They relied on Articles 3, 5, 8 and 13 of the Convention and on Article 1 of Protocol No. 1 to the Convention.

4. On 29 August 2004 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. By a decision of 30 June 2005, the Court declared the application partly admissible.

6. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting

the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are brothers, born in 1964 and 1967 respectively. It appears that the first applicant currently resides in Germany, and the second applicant lives in the Irkutsk Region, Russia.

A. Introduction

8. The facts of the case, particularly those surrounding the period of the applicants' detention in custody, are partially in dispute between the parties.

9. The facts as presented by the applicants are set out in Section B below (paragraphs 10 - 62). The Government's submissions concerning the facts are summarised in Section C below (paragraphs 63 - 76). The documentary evidence submitted by the parties is summarised in Section D below (paragraphs 77 - 95).

B. The applicants' submissions on the facts

1. Background to the case

10. Prior to the events described below, the first applicant, an engineer by profession, lived with his wife and two children in Staraya Sunzha, a suburb of Grozny. The second applicant, a school teacher by profession, lived in Kazakhstan and moved to Chechnya in 1999 with his wife and two children.

11. In early October 1999 hostilities started in Chechnya between the Russian armed forces and Chechen rebel fighters. The city of Grozny and its suburbs formed the target of wide-scale attacks by the Russian military. In October 2000 a housing agency in Grozny certified the destruction of the first applicant's flat as a result of the hostilities.

12. Fearing the attacks, the applicants moved their families and valuables to their parent's house (hereinafter “the house of the Chitayev family”) at 28 Matrosov Street in the town of Achkhoy-Martan. According to the applicants, the items of their property stored in the house had included the first applicant's tape-recorder, a hi-fi system, a video camera and the second applicant's TV set and a video player. Other items of

electronics and clothing were also stored in the house. The documents and purchase receipts in respect of the valuables were kept separately in a suitcase. Most items were stored in one of the rooms of the house and in the cellar.

2. Events of January and April 2000

13. On 15 January 2000 officers from the Temporary Office of the Interior of the Achkhoy-Martan District (*временный районный отдел внутренних дел Ачхой-Мартановского района* – "the Achknoy-Martan VOVD") searched the house at 28 Matrosov Street for firearms. According to the applicants, the search was not officially authorised or documented. The officers took with them a new packaged cordless telephone set with batteries and an antenna.

14. On 18 January 2000 the second applicant complained to the head of the Achkhoy-Martan VOVD that the search had been unlawful and asked for the telephone set to be returned. It appears that at the beginning of March 2000, after the applicants' father had submitted a request to the district military prosecutor, the telephone set was returned.

15. On 12 April 2000 at about 8 or 9 a.m. several officers of the Achkhoy-Martan VOVD again arrived at the house at 28 Matrosova Street. The applicants and their families were at home at that moment. The officers searched the house, without producing any warrants or official justification for their action. They seized several items of electronic equipment belonging to the applicants, documents for equipment and personal documents of some of the family members. The officers then asked the applicants to come with them to the Achkhoy-Martan VOVD for a few hours to help them to deal with paperwork.

16. According to the applicants, once they got into the car, the officers told them that they were under arrest and started to beat them. The applicants were taken to the Achkhoy-Martan VOVD and put into separate cells.

17. On the same day, at about 12 noon, the applicants' house was again searched. About 30 servicemen in two cars had arrived at the house and taken away all the electronic equipment found in the house, including a printer, TV sets and video equipment. No official justification for the search and seizure had been presented. The applicants submitted a list of items seized at their house (see paragraph 77 below).

3. The applicants' detention at the Achkhoy-Martan VOVD

18. Between 12 and 28 April 2000 the applicants were detained in the Achkhoy-Martan VOVD. While in custody they were questioned about the activities of the Chechen rebel fighters and about kidnappings for ransom, but denied their involvement in any crimes.

(a) Ill-treatment of the applicants

19. During the detention and interrogations, which took place in a cell situated on the third floor of the Achkhoy-Martan VOVD premises, the applicants were subjected to various forms of torture and ill-treatment. In particular, they were fettered to a chair and beaten; electric shocks were applied to various parts of their bodies, including their fingertips and ears; they were forced to stand for a long time in a stretched position, with their feet and hands spread wide apart; their arms were twisted; they were beaten with rubber truncheons and with plastic bottles filled with water; they were strangled with adhesive tape, with a cellophane bag and a gas mask; dogs were set on them; parts of their skin were torn away with pliers.

20. The first applicant was interrogated on the first day of detention and told to sign a confession. When he refused, the interrogators fettered him to a chair and kicked him. They put a gas mask on his face and released cigarette smoke into it. The first applicant lost consciousness and was brought back to his cell. The following day he was again taken for questioning to the same room. Wires were applied to his fingertips and the interrogators turned the handle of a device, which they called a "lie detector", and which gave the first applicant electric shocks.

21. The second applicant was also interrogated on the first day of detention. He was brought to a room in which there were two officers, who told him to confess that he had been a rebel fighter and that he had been involved in kidnappings. When the second applicant refused to sign a confession, he was placed against the wall, handcuffed, and his mouth was covered with adhesive tape. One of the interrogators started beating him on his back and genitals, while the other held a machine-gun and threatened to shoot him if he moved. The second applicant was beaten for an hour and then taken back to his cell.

22. On several occasions during the detention the personnel of the Achkhoy-Martan VOVD came into the cells and beat all inmates, including the applicants.

(b) Conditions of detention

23. There were no toilets in the cells, and the detainees were taken out to the toilets one by one. They were forced to run all the way to the toilets and if they were slow, they were beaten with rifle butts and chased with dogs. In the toilets they were not allowed enough time. Sometimes they were not allowed to go to the toilets and had to urinate and defecate in the corridor in full view of the guards.

24. The cells were unheated and damp and the applicants were constantly suffering from cold.

4. The applicants' detention at the Chernokozovo SIZO

25. According to the applicants, on 28 April 2000 they and some other detainees were taken out of the Achkhoy-Martan VOVD, blindfolded and put into a vehicle. The guards told them that they were going to execute them. Instead, the detainees, including the applicants, were transferred to another detention centre. Later they found out that the place was the Chernokozovo detention centre (*следственный изолятор с. Чернокозово* – "the Chernokozovo SIZO"). The detainees, including the applicants, were forced out of the vehicle, ordered to prostrate themselves and beaten. They were then taken to cells.

26. The applicants were not subjected to a medical examination upon their admission to the Chernokozovo SIZO, as prescribed by the relevant legislation.

(a) Ill-treatment of the applicants

27. At the beginning of their detention in the Chernokozovo SIZO, the applicants were questioned every two days and later about once a week. They were forced to run to the interrogation room with their heads lowered and their hands across their heads, while the guards beat them on their backs. There was an iron table, a chair and a hook on the wall in the interrogation room. The interrogators, who never drew up any transcripts of interrogations, put pressure on the applicants to force them to confess or simply beat them. The interrogators also kicked the applicants with boots, rifle butts and mallets on different parts of their bodies, in particular their knee caps, threatened the applicants with a knife pressed against their fingers, put tarpaulin gauntlets on the applicants and then tied their hands to the hook and beat them, squashed the applicants' fingers and toes with mallets or a door of a safe, tied the applicants' hands and feet together behind their backs ("swallow" position), strangled the applicants with adhesive tape or a cellophane bag, and applied electric shocks to the applicants' fingers.

28. The applicants were also beaten by the guards when they were taken out of their cells for a few minutes' "exercise".

29. The applicants' lawyer, Mr Sharip Tepsayev, was only given access to them once during the entire period of their detention in the Chernokozovo SIZO, namely at some point in May 2000. The applicants were allowed to meet with him one by one, in the presence of a police officer. They were required to speak Russian during the meeting and the lawyer could only ask them how they were doing.

(b) Conditions of detention

30. During their detention in the Chernokozovo SIZO the applicants were kept in separate cells, except for several days in late July 2000, which they spent in the same cell.

31. The second applicant spent a month and a half in cell no. 5 and another month and a half in cell no. 20. For the remainder of his detention the second applicant was in cell no. 27. That latter cell was designated for three people, whilst no less than six inmates were detained in it. The second applicant had to sleep on the floor on a mattress which was given to him.

32. According to the applicants, the conditions of their detention improved in June 2000 after the guards had been replaced by a new shift and after the representatives of the International Committee of the Red Cross ("the ICRC") had visited the Chernokozovo SIZO on 14 June 2000. The second applicant managed to talk to the representatives of the ICRC personally, in a confidential meeting, because he spoke English.

33. There were two more visits by the representatives of the ICRC in August 2000. Those visits enabled the applicants to exchange messages with their families. In January 2001 the ICRC office in Nalchik, Kabardino-Balkaria, issued the applicants with certificates confirming that they had been visited by the ICRC in Chernokozovo on 14 June, 11 August and 23 August 2000.

5. The applicants' release

34. On 19 September 2000 the applicants were brought back to the Achkhoy-Martan VOVD and informed that they had been charged with kidnapping and participation in an unlawful armed group under Articles 126 (2) and 208 (2) of the Russian Criminal Code. According to the applicants, it was the first time that they had been officially informed of the charges against them.

35. On 5 October 2000 the applicants were released from detention subject to a written undertaking not to leave their place of residence.

36. On 6 October 2000 the applicants were brought by their relatives to the Achkhoy-Martan hospital. They were examined by a general practitioner, a neuropathologist and a surgeon. The first applicant was diagnosed with repeated craniocerebral traumas, resulting in intracranial hypertension and post-traumatic stress disorder, chronic bronchitis, chronic two-sided pyelonephritis, asthenoneurotic syndrome, hypochromic anaemia, numerous blunt injuries to the head, body and extremities, and chronic pneumonia in the left lung. The second applicant was diagnosed with repeated craniocerebral traumas, resulting in intracranial hypertension and posttraumatic stress disorder, numerous blunt injuries to the head, body and extremities and a trauma of the left knee-cap, chronic pneumonia in the left lung and chronic left-sided pyelonephritis. The doctors noted down that the

traumas and other medical conditions had apparently been sustained in the Chernokozovo SIZO between April and October 2000.

37. In letters of 9 October 2000 the prosecutor's office of the Achkhoy-Martan District (*Ачхой-Мартановская районная прокуратура* – "the district prosecutor's office") informed the applicants that criminal proceedings in case no. 59212 opened against them under Articles 126 (2) and 208 (2) of the Criminal Code had been discontinued on 9 October 2000, as their involvement in the imputed offences had not been proven. The letters stated that the applicants had been relieved of their obligation not to leave their place of residence and that they could appeal against the decision of 9 October 2000 to a superior prosecutor or to a court within five days.

6. Applications to public bodies

38. From 12 April 2000 onwards the applicants' relatives, both orally and in writing, applied repeatedly to various official bodies concerning the searches in their house and seizure of their property, as well as the applicants' arrest on 12 April 2000 and their subsequent detention. After the applicants had been released, they joined their relatives in these efforts. They were supported by human rights NGOs. These attempts yielded little result. On several occasions, the applicants' family members received copies of letters from various authorities directing their complaints to the district prosecutor's office, the Achkhoy-Martan VOVD or the prosecutor's office of the Chechen Republic (*прокуратура Чеченской Республики* – "the republican prosecutor's office").

39. On the evening of 12 April 2000 the applicants' relatives went to the Achkhoy-Martan VOVD and enquired about the applicants' whereabouts. They were informed that the Chitayev brothers had been asked to help with paperwork and would soon return home. The applicants did not return that day.

40. On 14 April 2000 the applicants' father went to the Achkhoy-Martan VOVD to find out where his sons were. The officials informed him that the brothers had been detained on suspicion of having kidnapped Russian soldiers for ransom. The suspicion was allegedly based on military uniformed overcoats found in the house. The applicants' father replied that these were old-style Soviet military overcoats, no longer used in the army, that his sons had brought them home after their service in the Soviet army and that he had used them for various household needs.

41. On 22 April 2000 the Memorial Human Rights Centre, acting on behalf of the Chitayev family, requested the Special Representative of the Russian President for Rights and Freedoms in the Chechen Republic (*Специальный представитель Президента Российской Федерации по соблюдению прав и свобод человека в Чеченской Республике*) to clarify the reasons for the applicants' arrest on 12 April 2000 and complained that the searches, seizures and arrests had been unlawful.

42. By letter of 18 May 2000 the Ministry of the Interior replied to an enquiry of a deputy of the State Duma sent on the applicants' behalf. The letter stated that criminal proceedings against the applicants had been instituted by the district prosecutor's office on suspicion of the applicants' involvement in criminal offences under Articles 126 (2) and 208 (2) of the Russian Criminal Code. It continued that on 21 April 2000 the case file had been forwarded to the Chief Department of the Prosecutor General's Office for the Northern Caucasus *(Главное управление Генеральной прокуратуры РФ на Северном Кавказе* – "the Prosecutor General's Office for the Northern Caucasus") to be joined with other cases related to the military actions in Chechnya and indicated that further information could be obtained from that Office.

43. On 20 May 2000 the republican prosecutor's office informed the applicants' brother that the criminal investigation against the applicants was being conducted by the Prosecutor General's Office for the Northern Caucasus, and that therefore further enquiries should be addressed there.

44. On 22 May 2000 the applicants' father submitted a complaint about the seizure of property to the head of the Achkhoy-Martan VOVD. The latter replied in an undated letter that the items allegedly seized at the house of the Chitayev family were not registered as being kept in the Achkhoy-Martan VOVD. The letter further stated that the prosecutor's office of the Achkhoy-Martan District had instituted criminal proceedings against the applicants, but did not indicate the date on which the proceedings had been commenced. It continued that in the context of those proceedings "an inspection of the scene of the incident" had been carried out in the house of the Chitayev family, in accordance with the relevant provision of the national legislation. Furthermore, a report on the results of that "inspection" was kept in the file of the criminal case against the applicants and the items seized during the "inspection" in the house of the Chitayev family were listed in that report. The letter concluded that the seized property should be kept in the case file and invited the applicants' father to apply to the republican prosecutor's office for any information regarding the proceedings against the applicants.

45. On 4 July 2000 the applicants' brother complained to the Special Representative of the Russian President for Rights and Freedoms in the Chechen Republic about the applicants' unlawful detention on 12 April 2000 as well as the searches and seizures in the house of the Chitayev family.

46. On 26 July 2000 the deputy head of the Achkhoy-Martan VOVD informed the applicants' father that the applicants had been detained on 17 April [rather than on 12 April] 2000, pursuant to Article 122 of the Russian Code of Criminal Procedure.

47. On 28 July 2000 the same officer of the Achkhoy-Martan VOVD informed the applicants' father that the items seized in his house had been

attached to the case file of the criminal investigation, and that the decision regarding the release of those items could only be taken by an official in charge of the investigation, or a competent court.

48. On 1 September 2000 the applicants' father sent a request concerning the lawfulness of the searches and seizures in his house and the applicants' detention on 12 April 2000 to the republican prosecutor's office.

49. On 7 September 2000 the republican prosecutor's office replied to the applicants' father that the applicants had been arrested in connection with the criminal charges brought against them under Articles 126 (2) and 208 (2) of the Russian Criminal Code, namely kidnapping and participation in an illegal armed group, and that the period of their remand in custody had been extended until 9 October 2000 by the republican prosecutor, but did not specify the date of the extension order. The applicants' father was invited to apply to the district prosecutor's office for information on the results of the investigation in the applicants' criminal case.

50. On 18 October 2000 the republican prosecutor's office informed the applicants' brother that, following his complaint concerning the unlawfulness of the searches and seizures in the house of the Chitayev family, as well as the applicants' detention, the division of internal security of the Achkhoy-Martan VOVD had commenced an internal inquiry (*служебная проверка*) into the seizure and destruction of "radio equipment and transmitting devices and personal property" belonging to his brothers. The letter further stated that the applicants had been released from detention on 4 October 2000 subject to an undertaking not to leave their permanent place of residence.

51. On 1 June 2001 the applicants' brother applied to the district prosecutor's office for information concerning the items seized in their family house in April 2000.

52. On 5 October 2001 the SRJI, acting on the applicants' behalf, complained to the republican prosecutor's office, giving a detailed description of severe ill-treatment of the applicants and the alleged procedural violations during the applicants' detention in the Achkhoy-Martan VOVD and the Chernokozovo SIZO from 12 April until 5 October 2000. The letter referred to the medical documents in support of the complaints regarding ill-treatment and requested that criminal proceedings in connection with the applicants' allegations be instituted. A copy of the letter was forwarded to the Prosecutor General's Office. The latter replied on 25 October 2001 that the complaint had been forwarded to the republican prosecutor's office.

53. On 29 October 2001 the applicants' brother requested the Achkhoy-Martan VOVD to provide him with an update concerning the internal inquiry into the seizure of the property in April 2000. On 3 January 2002 he filed another request concerning the update on the complaints concerning

the property and the arrest and detention of his relatives. No reply was received to any of these requests.

54. On 22 November 2001 and on 24 January 2002 the SRJI again wrote to the republican prosecutor's office, referring to their letter of 5 October 2001. On 29 January 2002 they requested the same information from the district prosecutor's office.

55. In early 2002 all male members of the Chitayev family received a summons to appear at the district prosecutor's office on 7 January 2002. The first applicant was outside Chechnya at that time, but the second applicant and the applicants' father and brother appeared. They were invited to talk to an investigator of the prosecutor's office one by one.

56. According to the second applicant, the prosecutor of the Achkhoy-Martan District and an investigator of the same office proposed that he should write a statement withdrawing all claims against the Achkhoy-Martan VOVD concerning the lawfulness and conditions of detention. In case of refusal, they threatened to re-open the criminal proceedings against both applicants. The second applicant was allowed to consult his relatives, whereupon he decided to sign the requested statement.

57. By letter of 7 January 2002 the investigator of the district prosecutor's office replied to the SRJI that following the examination of their complaint, the prosecutor's office had decided to dispense with criminal proceedings. The letter did not state the reasons for that decision, but informed the SRJI of the possibility of appealing against it to superior prosecutors or to a court. A copy of the decision of 7 January 2002 was not enclosed.

58. On 14 March 2002 the SRJI challenged the decision of 7 January 2002 before the republican prosecutor. They enclosed a copy of their complaint of 5 October 2001, referred to the pressure put on the second applicant to repudiate his statements concerning the ill-treatment and reiterated their request that a criminal investigation into the applicants' allegations of ill-treatment in the Achkhoy-Martan VOVD and the Chernokozovo SIZO be opened.

59. In a letter of 18 March 2002 the acting prosecutor of the Achkhoy-Martan District informed the SRJI that the district prosecutor's office had studied the complaint concerning “illicit methods of investigation” applied to the applicants and decided not to open criminal proceedings in the absence of evidence of a crime in the actions of the personnel of the Achkhoy-Martan VOVD. The letter further stated that the second applicant had been invited to the district prosecutor's office where he had confirmed the fact of his detention at the Achkhoy-Martan VOVD and the Chernokozovo SIZO, but had denied that “illicit methods of investigation” had ever been applied to him, whilst the first applicant could not be questioned because he had left the Chechen Republic. The letter went on to say that no objective information proving the allegations of ill-treatment had

been obtained, and that the SRJI had already been informed of the results of the examination of their complaint by letter no. 105 dated 7 January 2002.

60. On 24 April 2002 the applicants' brother applied to the republican prosecutor's office for information on the developments in the internal inquiry commenced in connection with his complaints about the searches and seizures in their house. It does not appear that any reply from the authorities followed.

61. On 6 May 2002 [erroneously dated 2001] the republican prosecutor's office replied to the SRJI's complaint of 14 March 2002, informing them that an internal inquiry had been carried out in connection with their request that the decision of 7 January 2002 be quashed. The letter stated that "the decision of the district prosecutor's office to dispense with criminal proceedings in respect of the applicants' complaint concerning ill-treatment by the personnel of the Achkhoy-Martan VOVD and Chernokozovo SIZO [during their detention between 12 April and 5 October 2000] was well-founded and lawful and that [the applicants'] complaints were found to be unsubstantiated".

62. At some point the SRJI requested the district prosecutor's office to send them a copy of the decision of 7 January 2002 concerning the refusal to institute criminal proceedings in connection with the applicants' allegations of ill-treatment during their detention from 12 April until 5 October 2000. On 24 March 2003 the district prosecutor's office replied that the SRJI had been notified of the results of the examination of their complaint and of their right to appeal and that, according to the Russian Code of Criminal Procedure then in force, the investigator was not obliged to forward a copy of such decision to a person who had sought the institution of proceedings. The reply also stated that the second applicant had been apprised of the document in question.

C. The Government's submissions on the facts

63. On 15 January 2000 officers of the Achkhoy-Martan VOVD carried out a passport check in the town of Achkhoy-Martan. During the check in the house at 32 [rather than 28] Matrosova Street, the applicants' father voluntarily surrendered an FT-26 radio station and accessory equipment, technical documentation in foreign languages for that radio station, a personal military card of serviceman B., who had previously been kidnapped by unidentified persons, a camouflage cloak, a bullet-proof vest and 11 registration plates for cars and tractors. Following the voluntary surrender of the items, a formal note (*акт*) was drawn up on the same date, and on 4 February 2000 an investigator of the Achkhoy-Martan VOVD decided not to open a criminal investigation in this connection.

64. On the basis of the information obtained during the check of 15 January 2000, on 12 April 2000 the applicants' house was "inspected"

(*осмотр*) by a police officer of the Achkhoy-Martan VOVD, Mr S. Vlasenko, in the presence of attesting witnesses. During that "inspection" police officer Vlasenko found eight military overcoats and four military jackets, all bearing numbers and personal details of federal servicemen, details from a radio transmitting device, tapes with recordings of Shamil Basayev's interview, a video recording of a documentary called 'Nokhcho Chechnya – the Day of Freedom', photographs of exhumations, photographs of the first applicant armed, a computer and diskettes with information concerning tapping of radio and telephone conversations of the members of the Government of Chechnya in 1998, lists of mobile telephone numbers of the top-ranking officials of Chechnya and leaders of the illegal armed groups, outlines of eavesdropping transmitters, and other materials that, in the Government's submission, "could be indicative of the applicants' participation in illegal armed groups."

65. On 17 April 2000 the prosecutor's office of the Achkhoy-Martan District instituted criminal proceedings against the applicants under Articles 126 (2) (aggravated kidnapping) and 208 (2) (participation in an illegal armed group) of the Russian Criminal Code on the basis of the results of the check of 15 January 2000 and the inspection of 12 April 2000. The case file was assigned the number 26009 and then 59212.

66. On the same date the applicants were apprehended pursuant to Article 122 of the Russian Code of Criminal Procedure, then in force, and placed in detention in the Achkhoy-Martan VOVD.

67. On 18 April 2000 the district prosecutor's office quashed the decision of 4 February 2000 on the ground that the investigation into the circumstances of the disclosure of the items during the check on 15 January 2000 had been incomplete and the materials of that check were included in the file of the criminal proceedings opened against the applicants.

68. On 19 April 2000 the district prosecutor's office ordered that a preventive measure in the form of custody be taken against the applicants for their suspected involvement in kidnapping and participation in illegal armed groups. These orders were then forwarded for execution to the Chernokozovo SIZO.

69. On 20 April 2000 both applicants were formally charged with criminal offences under Articles 126 (2) and 208 (2) of the Criminal Code.

70. Since 25 April 2000 Mr Tepsayev, a member of the Nazran (Ingushetia) Bar Association, had been admitted to the criminal proceedings against the applicants as their defence counsel.

71. On 26 April 2000 the applicants were transferred to the Chernokozovo SIZO and underwent a medical examination, as required by relevant legal acts. The first applicant was diagnosed with a head trauma and subsequently received medical assistance in this connection. The examination revealed no other injuries on the applicants. While in detention,

the second applicant received medical treatment in respect of chronic gastritis.

72. On 4 October 2000 the applicants were released subject to an undertaking not to leave their place of residence.

73. On 9 October 2000 the district prosecutor's office discontinued the criminal proceedings against the applicants with reference to the absence of sufficient evidence proving their involvement in the imputed offences.

74. On 23 November 2000 the decision of 9 October 2000 was set aside by the republican prosecutor's office and the criminal proceedings against the applicants were resumed.

75. On 20 January 2001 the district prosecutor's office again discontinued the criminal proceedings against the applicants in view of the fact that the applicants' involvement in the imputed offences had not been proven.

76. On 29 October 2003 the decision of 20 January 2001 was quashed by the republican prosecutor's office and the case forwarded for additional investigation. It appears that the proceedings are pending at present and that in the context of these proceedings some investigative steps were taken in respect of the second applicant in 2005.

D. Documents submitted by the parties

1. Documents submitted by the applicants

77. Among a considerable number of other documents, the applicants submitted an undated list of items seized from their house, countersigned by their mother, two attesting witnesses and police officer S. Vlasenko from the Achkhoy-Martan VOVD. The document listed a Sony TV set, a Panasonic TV set, a Toshiba TV set, a Funai TV set, a Funai video recorder, a Panasonic video recorder, a Sony tape recorder, a Lexmark printer, a "Rus" film projector, a power adapter, a heater with two sets of exchangeable details, video and audio tapes, two briefcases of documents, and an "Elektronik" charging device.

78. They also submitted written eye-witness statements from their father, sister and three neighbours confirming the search and seizure of the Chitayevs' property as well as the applicants' apprehension on 12 April 2000.

2. Documents submitted by the Government

79. In order to be able to assess the merits of the applicants' complaints, at the admissibility stage the Court invited the Government to submit documents from the file of the criminal investigation opened against the applicants as well as documents from the inquiry into the applicants'

complaints concerning their ill-treatment and lawfulness of their detention, as well as those relating to the searches in the house of the Chitayev family and the seizure of their property. The documents submitted by the Government, both before and after the case was declared partly admissible, may be summarised as follows.

(a) Documents relating to the searches and seizures

80. A handwritten document with an illegible title, drawn up on 15 January 2000 by a police officer of the Achkhoy-Martan VOVD, recorded the seizure of an FT-26 radio station and accessory equipment, technical documentation for that radio station, a camouflage cloak, a bullet-proof vest, eight registration plates for cars and tractors and a personal military card of serviceman B. It was indicated in the document that a copy of it had been given to the applicants' father. The document was signed by the police officer who had drawn it up and the applicants' father. In a report of 15 January 2001 the same police officer informed his superiors of the seizure of the aforementioned items at the house at 28 Matrosov Street in Achkhoy-Martan and indicated that they had been surrendered by the applicants' father.

81. The Government did not furnish the Court with any documents concerning the search of 12 April 2000.

(b) Documents relating to the applicants' detention

82. By a decision of 17 April 2000 an investigator of the prosecutor's office of the Achkhoy-Martan District ordered that criminal proceedings against the applicants be instituted under Articles 126 (2) and 208 of the Criminal Code on the basis of the results of the "operative measures" taken in the house of the Chitayev family at 32 [rather than 28] Matrosov Street in the town of Achkhoy-Martan on 12 April 2000.

83. Two reports issued by an investigator of the district prosecutor's office in April 2000 [the date of issue is illegible] stated that the applicants had been apprehended on 17 April 2000 pursuant to Article 122 of the Code of Criminal Procedure. The reports indicated that clear traces of a criminal offence had been found in the applicants' house, constituting a ground for their apprehension, and stated that it had been necessary to prevent them from absconding or obstructing the establishment of the truth. The reports also indicated that the applicants were suspected of having been involved in kidnappings and of participation in illegal armed groups in 1996-2000, that they had been informed of their rights as suspects and that the prosecutor of the Achkhoy-Martan District had been notified of the applicants' apprehension on the same date. The reports were signed by the investigator and the applicants.

84. By two decisions of 19 April 2000 the investigator of the district prosecutor's office ordered that a measure of restraint in the form of custody

be taken against the applicants. The orders referred to the objects seized in the house of the Chitayev family on 12 April 2000 and stated that the applicants were suspected of involvement in kidnappings of Russian servicemen in the period 1996-2000 and that in view of the gravity of the charges and the danger of the applicants' obstructing the establishment of the truth if at large, the applicants should be detained on remand. The orders also stated that the applicants had been informed about their right to challenge this measure of restraint in a court. They were signed by the investigator and applicants and countersigned by the district prosecutor and sent for execution to the head of the Chernokozovo SIZO.

85. Two decisions of 20 April 2000 issued by the investigator of the district prosecutor's office ordered that the applicants be formally charged with the kidnappings of Russian servicemen for ransom, and participation in illegal armed groups, in the period 1996-2000. The decisions stated that the applicants had been notified of the charges against them and that the substance of the charges as well as the procedural rights of the accused had been explained to them. The decisions were signed by the investigator and the applicants, but the signature of the applicants' defence counsel was missing.

86. A decision of the district prosecutor's office dated 20 January 2001 ordered that the criminal proceedings against the applicants be discontinued. This document outlined in detail the main procedural steps taken in the course of the criminal proceedings against the applicants. It stated, *inter alia*, that the applicants had been apprehended on 17 April 2000, that on 19 April 2000 their remand in custody had been authorised, that on 20 April 2000 they had been charged with criminal offences under Article 126 (2) and 208 (2) and that on 7 August 2000 the period of the applicants' detention on remand had been extended for 5 months and 22 days until 9 October 2000.

87. A decision of the republican prosecutor's office dated 29 October 2003 set aside the decision of 20 January 2001 and ordered that the criminal proceedings against the applicants be resumed and an additional investigation be carried out.

(c) Documents relating to the applicants' allegations of ill-treatment and conditions of their detention

88. The Government produced a number of certificates (*справка*) issued by the head of the Chernokozovo SIZO on 21 October 2003.

89. The certificates stated that upon the applicants' arrival at the Chernokozovo SIZO no injuries had been found on them. The first applicant had been diagnosed with a craniocerebral injury and, while in detention, he had sought medical assistance on seven occasions in this connection and had been prescribed certain medication, whilst the second applicant had applied for medical assistance on five occasions in connection with

influenza and chronic gastritis and had also been prescribed medical treatment.

90. Another document listed the cells in which the applicants had been detained. The document stated that the first applicant had been kept in cells nos. 10 (measuring 18 square metres), 2 (14 square metres), 23 (18.8 square metres), 3 (12.8 square metres) and 10 (18 square metres) and the second applicant had been detained in cells nos. 5 (measuring 13.2 square metres), 20 (12.2 square metres), 3 and 27 (7 square metres each). The document continued that the sanitary conditions in the cells had been in conformity with the relevant requirements, that all cells had been equipped with running water and toilets. The document also stated that the applicants had always been provided with individual sleeping berths and that the number of persons detained together with the applicants had been in accordance with the relevant regulations.

91. The remaining certificates stated that no physical force or special devices had been used against the applicants between 26 April and 25 September 2000, that the applicants had not sent any letters or complaints during the said period, that the administration of the Chernokozovo SIZO had provided them with relevant legal information and advice, including access to legal documents, and that on 2 June 2000 they had been attended by their lawyer, Mr Tepsayev.

92. A number of letters from various higher courts in Russia stated that during the period 1999-2003 no criminal proceedings against the applicants had been pending in the courts of the respective regions of Russia and that the applicants had not complained about unlawful detention or about the actions of the personnel of the Achkhoy-Martan VOVD or the Chernokozovo SIZO.

93. In a handwritten explanation, given at the prosecutor's office of the Achkhoy-Martan District on 29 December 2001, the second applicant stated that he and the first applicant had been detained and taken into custody in the context of criminal proceedings against them instituted on suspicion of their involvement in kidnappings and participation in illegal armed groups and then released on an undertaking not to leave a specified place of residence and that the criminal proceedings against them had subsequently been discontinued. The second applicant also stated that there had been grounds for their detention, as military overcoats had, indeed, been found in their house, and that there had been no procedural or any other violations of their rights during the detention. He further stated that he had not signed any untrue statements and had no complaints to make against the officers of the Achkhoy-Martan VOVD or Chernokozovo SIZO or investigators of the district prosecutor's office.

94. On 7 January 2002 an investigator of the prosecutor's office of the Achkhoy-Martan District, based on the results of the investigation in connection with a complaint lodged by the SRJI on the applicants' behalf,

decided to dispense with criminal proceedings. The decision stated that on 17 April 2000 the prosecutor's office of the Achkhoy-Martan District had opened criminal case no. 59212 against the applicants on suspicion of their having committed criminal offences under Article 126 (2) and 208 of the Criminal Code. It further stated that:

> "The criminal proceedings were instituted as a result of the discovery, during the planned operative measures on 12 April 2000, of eight military overcoats of servicemen of the Russian armed forces ..., a personal military card of serviceman B., documents and tape records with information on [the applicants'] involvement in kidnappings of servicemen and participation in illegal armed groups.
>
> On 12 April 2000 a police officer of the Achkhoy-Martan VOVD, Vlasenko S.M., carried out an inspection of the scene of the incident ... which was reflected in a report. The inspection was carried out in the presence of two attesting witnesses, the owner of the house and two officers of the VOVD."

The decision further indicated that the applicants had been apprehended pursuant to Article 122 of the Code of Criminal Proceedings on 17 April 2000, that on 19 April 2000 their detention on remand had been authorised and that on 20 April 2000 they had been formally charged with the aforementioned offences and notified of their procedural rights. The decision pointed out that the applicants had waived their right to legal assistance, but they had nevertheless been provided with a lawyer, Mr Tepsayev. The decision went on to say that on 4 October 2000 the applicants had been released subject to a written undertaking not to leave a specified place and that on 20 February [rather than January] 2001 the criminal proceedings against them had been discontinued for lack of evidence of their involvement in the imputed offences. It further stated:

> "During the preliminary investigation into the said case no searches were carried out.
>
> There were no procedural violations during the preliminary investigation, which is confirmed by the materials of case no. 59121.
>
> [The applicants] did not sign any confessions ..., this fact being confirmed by the absence of any such documents in the file of case no. 59212 and [the second applicant's] explanations.
>
> ...
>
> There were no procedural or any other violations in respect of [the applicants] during the investigation or their detention in the Achkhoy-Martan VOVD or Chernokozovo SIZO, which is confirmed by the materials of case no. 59212 and [the second applicant's] explanations.
>
> In the light of the above, no evidence of any of the offences prohibited by the Russian Criminal Code can be established in the actions of the investigators of the district prosecutor's office who had been in charge of the investigation in criminal

case no. 59212, or in those of the officers of the Achkhoy-Martan VOVD or Chernokozovo SIZO."

The decision thus concluded that the SRJI's request concerning the institution of criminal proceedings upon the applicants' complaints should be rejected and ordered that the persons concerned be informed of that decision and notified of their right to challenge it before the prosecutor's office of the Achkhoy-Martan District or in a court. The decision made no comments as regards the SRJI's reference to medical documents certifying the applicants' injuries.

95. On 2 May 2002 a prosecutor at the prosecutor's office of the Chechen Republic drew up a report "on the results of the internal inquiry into the actions of the officials of the prosecutor's office of the Achkhoy-Martan District during the examination of the applicants' complaint about inhuman treatment in the Achkhoy-Martan VOVD and the Chernokozovo SIZO between 12 April and 5 October 2000". The report stated that the internal inquiry had been carried out in connection with the complaint by the SRJI lodged on the applicants' behalf against the decision of the district prosecutor's office dated 7 January 2002 to dispense with criminal proceedings as regards the applicants' allegations that they had been ill-treated while in detention. The report stated that the internal inquiry had established the following:

"In January 2002 [the second applicant] and his father were invited to the prosecutor's office of the Achkhoy-Martan District in connection with information about the use of illicit methods of investigation in respect of [the applicants]. [The second applicant] personally did not complain that any pressure had been put on him to extract any statements. Therefore he voluntarily gave explanations to investigator Ch. to the effect that no illicit methods of investigation had been applied to him and that he had no claims against law-enforcement bodies.

Neither the investigator nor the prosecutor put any pressure on him to extract this explanation. No threats were made in his respect.... Moreover, he talked to prosecutor A.-K. after he had given his explanations to investigator Ch.

His father refused to give any explanations. Presently he is undergoing medical treatment outside the territory of the republic. He refused to give any explanations, as he is fed up with all this.

[The second applicant] does not know whether [the first applicant] has applied to any human rights organisations. At present [the first applicant] lives in Poland and [the second applicant] has no contact with him.

Apparently, it was his younger brother ... who had met a representative [of the SRJI] in Moscow and provided the information in question. Thereafter he spoke to [his younger] brother and forbad him further from applying to human rights organisations with unverified information.

The investigator of the prosecutor's office of the Achkhoy-Martan District, Ch., who was questioned during the internal inquiry, stated that in January he had carried out an

investigation into the allegations by the [representative of the SRJI] to the effect that the illicit methods of investigation had been applied to [the applicants] during their detention in the Achkhoy-Martan VOVD and Chernokozovo SIZO. During that investigation he had questioned [the second applicant] without putting any psychological or physical pressure on him. ... He had not forced [the second applicant] to make any statements, but merely questioned him, and thereafter the latter had read his explanations and signed them. [The applicants' father] had appeared at the prosecutor's office, along with [the second applicant], given oral explanations and then left the prosecutor's office and had not replied to further summonses. That investigation had resulted in the refusal to institute criminal proceedings against police officers who had allegedly applied illicit methods of investigation to [the applicants] during the latter's detention [in the absence of evidence of a crime in their actions].

The prosecutor of the Achkhoy-Martan District, A-K., who was questioned during the internal inquiry, had stated that the district prosecutor's office had investigated the allegations about illicit methods of investigation being used [against the applicants] in early January 2002, with the result that investigator Ch. had decided to dispense with criminal proceedings [in the absence of evidence of a crime]. Officials of the prosecutor's office had not put any pressure on [the second applicant] or his father. [The second applicant] had requested a meeting with the prosecutor after he had given explanations to the investigator. [The second applicant], at the request of a supervising official from the republican prosecutor's office, had confirmed the defamatory nature of the allegations represented in the letter of [the SRJI]. The republican prosecutor's office approved the decision taken by the district prosecutor's office."

The report thus concluded that investigator Ch.'s decision of 7 January 2002 to dispense with criminal proceedings in connection with the allegations of ill-treatment of the applicants during their detention between 12 April and 5 October 2000 in the Achkhoy-Martan VOVD and Chernokozovo SIZO was lawful and well-founded, that the SRJI's allegations concerning the pressure on the second applicant and his father during the investigation in connection with the SRJI's complaint were groundless and that the SRJI's request to have the decision of 7 January 2002 set aside should be dismissed.

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW

A. The Council of Europe reports

96. The Chernokozovo SIZO, where the applicants had been detained, received extensive attention from various human rights institutions, including the European Committee for the Prevention of Torture ("the CPT"), for allegations of severe ill-treatment of detainees. On 4 March 2000 the Head of the CPT delegation, Mr Hajek, issued a statement to the Russian officials at the end of the CPT visit to the North Caucasus region of

the Russian Federation. The statement said, *inter alia*, in relation to the visit to Chernokozovo:

> The delegation is satisfied that, at present, persons detained in this establishment are not being physically ill-treated. Further, although conditions of detention in the SIZO leave much to be desired, the delegation has noted that genuine efforts have been made in recent times - and continue to be made - to improve those conditions.
>
> However, the information gathered by the delegation strongly indicates that many persons detained at Chernokozovo were physically ill-treated in the establishment during the period December 1999 to early February 2000. In different locations, the delegation has interviewed individually and in private a considerable number of persons who were held at Chernokozovo during that period. A clear pattern of physical ill-treatment of prisoners by custodial staff emerged. The ill-treatment alleged consisted essentially of kicks, punches and truncheon blows to various parts of the body (excluding the face). The ill-treatment was said to have been inflicted principally in the central corridor of the detention facility, usually when prisoners were taken to an investigator's room for questioning or when they were returned to their cells after such questioning; apparently, prisoners were also on occasion physically ill-treated in the investigators' rooms. Investigators were said to have been fully aware of the ill treatment being inflicted, and some prisoners affirmed that it was inflicted at their instigation. In certain cases, the delegation has gathered medical evidence which is consistent with the allegations of ill-treatment made by the prisoners concerned.
>
> It is also noteworthy that practically all the prisoners interviewed who had been held at the establishment in Chernokozovo during the period January to February 2000 stressed that there had been a distinct change for the better in early February, at the same time as a changeover of staff began to occur. The beatings stopped; further, other improvements had been made, in particular as regards food. Moreover, no allegations of physical ill-treatment were made by prisoners interviewed who had arrived in the establishment after the first week of February 2000.

97. On 10 July 2001 the CPT issued a public statement concerning the Chechen Republic, under Article 10 § 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This step was prompted by the Russian authorities' failure to cooperate with the CPT in relation to two issues: (i) the carrying out of a thorough and independent inquiry into the events in a detention facility at Chernokozovo during the period December 1999 to early February 2000; (ii) action taken to uncover and prosecute cases of ill-treatment of persons deprived of their liberty in the Chechen Republic in the course of the current conflict. The statement read, in particular, as follows:

> ...the information gathered by the CPT's delegation in the course of its February/March and April 2000 visits indicated that a considerable number of persons deprived of their liberty in the Chechen Republic since the outset of the conflict had been physically ill-treated by members of the Russian armed forces or law enforcement agencies. In the report on those two visits, the CPT recommended that the Russian authorities redouble their efforts to uncover and prosecute all cases of ill-treatment of persons deprived of their liberty in the Chechen Republic in the course of the conflict. The Committee made a number of remarks of a practical nature intended

> to clarify the precise form those efforts might take. More generally, the CPT stressed that it was essential for the Russian authorities to adopt a proactive approach in this area.
>
> The response of the Russian authorities to this key recommendation was very unsatisfactory...
>
> As was stressed in a letter sent to the Russian authorities on 10 May 2001, the CPT's concerns in this regard are all the greater given that in the course of the Committee's most recent visit to the Chechen Republic, in March 2001, numerous credible and consistent allegations were once again received of severe ill-treatment by Federal forces; in a number of cases, those allegations were supported by medical evidence. The CPT's delegation found a palpable climate of fear; many people who had been ill-treated and others who knew about such offences were reluctant to file complaints to the authorities. There was the fear of reprisals at local level and a general sentiment that, in any event, justice would not be done. It was emphasised to the Russian authorities that they must spare no effort to overcome this deeply disturbing state of affairs.

98. On 10 July 2003 the CPT issued a second public statement in relation to Chechnya. It was prompted by allegations of continued recourse to torture and other forms of ill-treatment by members of the law-enforcement agencies and federal forces operating in the Chechen Republic. It also referred to the action taken to bring to justice those responsible as slow and ultimately ineffective. In particular, the report stated:

> In the course of the CPT's visits to the Chechen Republic in 2002 and, most recently, from 23 to 29 May 2003, a considerable number of persons interviewed independently at different places alleged that they had been severely ill-treated whilst detained by law enforcement agencies. The allegations were detailed and consistent, and concerned methods such as very severe beating, the infliction of electric shocks, and asphyxiation using a plastic bag or gas mask. In many cases, these allegations were supported by medical evidence. Some persons examined by the delegation's doctors displayed physical marks or conditions which were fully consistent with their allegations. Documentation containing medical evidence consistent with allegations of ill-treatment during periods of detention in law enforcement agencies was also gathered.

B. Domestic law

1. The Code of Criminal Procedure of 1960, in force until July 2002

(a) Provisions relating to the opening of criminal investigations

99. Article 108 provided that criminal proceedings could be instituted on the basis of letters and complaints from citizens, public or private bodies, articles in the press or discovery by an investigating body, prosecutor or court, of evidence that a crime had been committed.

100. Article 109 provided that the investigating body had to take one of the following decisions within a maximum period of ten days after being notified of a crime: to open or refuse to open a criminal investigation, or transmit the information to an appropriate body. The informers were to be informed about any decision.

101. Under Article 113, if the investigating body refused to open a criminal investigation, a reasoned decision had to be given. The informer was to be notified of the decision and was entitled to appeal against it to a superior prosecutor or to a court.

(b) Provisions relating to arrest and detention

102. Article 11 (1) guaranteed the principle of personal inviolability and established that no one could be arrested other than on the basis of a judicial decision or a prosecutor's order.

103. Under Article 122, an investigating authority could apprehend a person suspected of having committed a criminal offence punishable by imprisonment on one of the following grounds:

(i) if the person was caught in the act or immediately after committing the offence;

(ii) if eye-witnesses, including victims, directly implicated the person as the one who had committed the offence;

(iii) if clear traces of the offence were found on the person's body or clothes, or with him or in his dwelling.

An investigating authority was required to draw up a report on any apprehension of a person suspected of having committed a criminal offence, indicating the grounds, motives, day and time, year and month of the apprehension, the explanations of the apprehended person and the time the report was drawn up, and to notify a prosecutor in writing within 24 hours. Within 48 hours after being notified of the apprehension, the prosecutor had either to remand the apprehended person in custody or to release that person.

104. Article 89 (1) authorised imposition of preventive measures where there were sufficient grounds to believe that an accused could abscond from enquiries, preliminary investigation or trial, or obstruct the establishment of the truth in a criminal case or engage in criminal activity, as well as in order to secure the execution of a sentence. The investigator, prosecutor or the court could impose one of the following preventive measures on the accused: a written undertaking not to leave a specified place, a personal guarantee or a guarantee by a public organisation, or remand in custody.

105. Article 90 permitted, on an exceptional basis, a measure of restraint to be taken against a suspect who had not been charged. In such a case, charges had to be brought against the suspect within ten days after the imposition of the measure. If no charges were brought within the period specified, the measure of restraint was to be revoked.

106. Article 91 required the following circumstances to be taken into account in imposing a measure of restraint: the gravity of the charges and the suspect's or defendant's personality, occupation, age, health, family status and other circumstances.

107. Article 92 authorised an investigator, prosecutor, or a court to issue a ruling or finding as to a measure of restraint, provided it specified the offence of which the person was suspected or accused and the grounds for imposing such a measure. The person concerned had to be informed of the ruling or finding and at the same time provided with explanations concerning the appeal procedure. A copy of the ruling or finding had to be served immediately on the person against whom a measure of restraint had been taken.

108. Article 96 set out the grounds for arrest, and authorised public prosecutors, from the level of a district or town prosecutor to the Prosecutor General, to authorise detention on remand.

109. Article 97 provided that detention on remand during the investigation of criminal cases could not exceed two months. That term could be extended by a prosecutor for up to three months, and further detention could be authorised by a regional prosecutor (or a prosecutor of equal rank) up to a maximum of six months. Extension of detention beyond six months was allowed in exceptional cases only with regard to persons charged with serious criminal offences, and could be authorised by a deputy Prosecutor General for a period of up to one year, and by the Prosecutor General for a period of up to one and a half years. Further extension of detention was not allowed and the person then had to be released immediately.

110. An appeal against an order extending periods of detention could be lodged with a court in the area of a detention centre in which a detainee was held (Articles 220-1 and 220-2).

(c) Provision relating to compensation for unlawful detention

111. Article 58-1 established that if criminal proceedings were discontinued on account of the absence of a crime, of evidence of a crime in the relevant actions, or of evidence of a person's involvement in the imputed offence, competent public officials were under an obligation to take measures to compensate that person for the damage caused by, *inter alia*, his or her unlawful detention.

(d) Provisions relating to search and seizure

112. Article 87 prescribed that all investigative measures, including inspection, search and seizure, should be documented by a formal record.

113. Chapter 14 regulated questions relating to searches, seizures and attachment of property. Article 168 provided that a search had to be conducted on the basis of an investigator's reasoned decision and subject to

the authorisation of a prosecutor. A search could be conducted without a prosecutor's authorisation for a reason that admitted of no delay, but a prosecutor had to be notified of that search within 24 hours. Article 171 restricted seizures to items and documents that could be relevant to the criminal investigation.

114. Chapter 15 related to on-site inspections. Article 178 permitted an inspection of the scene of the incident prior to institution of the criminal investigation for a reason that admitted of no delay. In that case, the investigation then had to be opened immediately after the inspection. Article 182 required that a record be made for the inspection. That record had to describe the investigator's actions and all items seized during the inspection.

2. Law on Complaints to Courts against Actions and Decisions Violating the Rights and Freedoms of Citizens (as revised by the Federal Law of 14 December 1995)

115. This law provides that any citizen has the right to file a complaint with a court when he or she considers that his or her rights have been infringed by unlawful actions or decisions of State agencies, bodies of local self-government as well as institutions, enterprises or their associations, non-governmental organisations or officials and State employees.

116. Complaints may be filed either directly with a court or a higher State agency which has the obligation to review the complaint within a month. If the complaint is rejected by the latter or there has been no response on its part, the person concerned has the right to bring the matter before a court.

THE LAW

I. COMPLIANCE WITH THE SIX-MONTH RULE

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

calculated from the time when the applicant becomes aware, or should have become aware, of those circumstances (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002).

118. The Court further points out that it is not open to it to set aside the application of the six-month rule solely because a respondent Government have not made a preliminary objection based on that rule, since the said criterion, reflecting as it does the wish of the Contracting Parties to prevent past events being called into question after an indefinite lapse of time, serves the interests not only of respondent Governments but also of legal certainty as a value in itself. It marks out the temporal limits of the supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

119. Turning to the present case, the Court observes that in their original application lodged on 19 July 2000 the applicants complained under Articles 5, 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, whereas the complaints under Article 3 of the Convention were not raised until 6 November 2002, the date on which the applicants submitted an additional application. The Court further notes that those latter complaints concerned the ill-treatment and poor conditions of the applicants' detention in the period between 12 April and 5 October 2000, and therefore the question of the applicants' compliance with the six-month rule arises.

120. As regards the applicants' allegations of ill-treatment, the Court observes that they brought this complaint before the domestic authorities on 5 October 2001, and the latest reply from the authorities to that complaint is dated 6 May 2002. The Court is therefore satisfied that the applicants have complied with the six-month rule in respect of their complaint of ill-treatment.

121. In so far as the conditions of the applicants' detention are concerned, the Court notes that from the materials in its possession it does not appear that the applicants attempted to bring this complaint to the attention of the domestic authorities either in their complaint of 5 October 2001, which was confined to their allegations of ill-treatment, or on any other occasion. The Court further finds it unnecessary to determine whether the applicants had effective remedies in respect of the violation alleged, as even assuming that in the circumstances of the present case no such remedies were available to them, they were released from custody on 5 October 2000, as they explained, whereas their application was lodged more than six months later on 6 November 2002.

122. It follows that the applicants' complaint concerning the conditions of their detention was lodged out of time, and therefore the Court is unable to take cognisance of its merits.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

1. The Government

123. The Government requested the Court to declare the case inadmissible as the applicants had failed to exhaust the domestic remedies.

124. They pointed out that the applicants could have challenged the lawfulness of their arrest or detention before a prosecutor or in a court. In this connection the Government stressed that the relevant legislation established an effective system of protection for detainees who wished to complain. In particular, their letters addressed to prosecutors were to be submitted in sealed envelopes and were not subject to censorship. Furthermore, such letters as well as complaints to other authorities or letters to lawyers were to be transmitted by the administration of the detention facility without delay, and the officials were accountable for interference with such correspondence. In the Government's submission, the applicants were furnished with legal information during their detention, but they did not submit any letters or complaints while in custody.

125. The Government further argued that once released the applicants had had an opportunity to seek compensation for their detention in civil proceedings, either in Chechnya, given that the courts there had resumed functioning in November 2000, or in the neighbouring regions. It had also been open to the applicants to challenge before the Prosecutor General or in court the prosecutor's decisions to dispense with criminal proceedings in connection with the applicants' complaint of ill-treatment. The Government claimed that the applicants had used neither of those remedies.

126. Finally, in the Government's view, the applicants could have appealed in a court against all the actions of the law-enforcement officials taken in the context of the criminal proceedings against the applicants, in accordance with the Law on Complaints to Courts against Actions and Decisions Violating the Rights and Freedoms of Citizens, but had failed to do so.

2. The applicants

127. The applicants contested the Government's objection.

128. They first stated that in 2000 they had not been able to make effective use of any remedy within the territory of the Chechen Republic, as the legal system, including the courts, had not been functioning properly there.

129. The applicants further argued that an administrative practice consisting in the authorities' continuing failure to conduct adequate investigations into offences committed by representatives of the federal forces in Chechnya rendered any potentially effective remedies inadequate and illusory in their case. In this connection they relied on applications submitted to the Court by other individuals claiming to be victims of similar violations, documents of the Council of Europe, and NGO and media reports.

130. The applicants also invoked the existence of special circumstances absolving them of an obligation to exhaust domestic remedies, stating that as a result of brutal ill-treatment in detention they had been unable to apply to law-enforcement bodies immediately after their release in view of the poor state of their health and the necessity to undergo serious medical treatment. They also insisted that they had felt vulnerable, powerless and apprehensive of the State representatives. The applicants further claimed that after they had been compelled under duress to retract their statements on 7 January 2002, they had lost faith in the effectiveness of the domestic remedies.

131. They contended that, in any event, upon their release they had requested the prosecutor's office to institute criminal proceedings and carry out an investigation into their allegations of ill-treatment, such criminal investigation being, in their opinion, a proper remedy in view of the nature of their complaints and the relevant practice of the Court. This avenue, however, had proved futile, as despite their very serious and detailed allegations, corroborated with medical documents, the authorities had remained passive and failed to act with sufficient dispatch and diligence in response to their complaints. No investigation had taken place and their complaints had been rejected without proper examination. Moreover, the authorities had refused to grant them access to the documents in the file or even to provide them with a copy of the decision of 7 January 2002, referring to the provisions of the old procedural legislation, even though at the moment of their request new legislation had been in force which granted them the possibility of receiving a copy of that decision. They had thus been deprived of any meaningful possibility of appealing against it in a court. Moreover, when the applicants had been in detention, their relatives had lodged numerous requests that criminal proceedings in connection with the applicants' unlawful detention, as well as the searches and seizure of their property, be instituted. However, all of those requests had been denied. In such circumstances, any civil proceedings against law-enforcement officers or representatives of federal forces had been bound to fail, as there had never been an official investigation into the facts on which civil actions might be based.

132. The applicants thus argued, relying on the Court's judgment in the case of *Akdivar and Others v. Turkey* (judgment of 16 September 1996,

Reports 1996-IV), that the respondent Government had failed to demonstrate that the remedies invoked by them had been effective ones, available in theory and in practice at the relevant time, that they had been accessible and capable of providing redress in respect of the applicants' complaints and that they offered reasonable prospects of success.

B. The Court's assessment

133. The Court notes that, in its decision of 30 June 2005, it considered that the question of exhaustion of domestic remedies was closely linked to the substance of the applicants' complaints and that it should be joined to the merits. It will now proceed to assess the parties' arguments in the light of the Convention provisions and its relevant practice.

1. General considerations

134. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52; *Akdivar and Others*, cited above, p. 1210, §§ 65-67; and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

135. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicants' complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above, p. 1211, § 68, or *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

136. Furthermore, the application of the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. The Court has further recognised that the rule of

exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others*, cited above, p. 1211, § 69, and *Aksoy*, cited above, p. 2276, §§ 53-54).

2. Application in the present case

(a) As regards the applicants' complaint under Article 3 of the Convention

137. The Court observes at the outset that on 5 October 2001 the applicants' representatives complained about the applicants' ill-treatment in detention to the district prosecutor's office and that the latter decided to dispense with criminal proceedings on 7 January 2002. A copy of the said decision has never been served on the applicants despite their specific request to that effect. Their attempt to challenge the decision before the republican prosecutor's office proved unsuccessful, and they did not apply to a court.

138. The Court notes the Government's argument that the applicants could have complained to the Prosecutor General. However, it is not persuaded that such an appeal could have constituted an effective remedy for the applicants' complaint about the absence of an adequate investigation into their allegations of ill-treatment. The powers conferred on the superior prosecutors constitute extraordinary remedies, the use of which depends upon the prosecutors' discretion. The Court does not accept that the applicants were required to exhaust this remedy in order to comply with the requirements of Article 35 § 1 of the Convention (see *Trubnikov v. Russia* (dec.), no. 9790/99, 14 October 2003).

139. As to the possibility of appealing to a court against the investigating authorities' refusal to open criminal proceedings, the Court accepts that, in principle, this remedy may offer a substantial safeguard against the arbitrary exercise of power by the investigating authority, given a court's power to annul a refusal to institute criminal proceedings and indicate the defects to be addressed (see *Trubnikov* (dec.), cited above). The Court, however, has strong doubts as to whether this remedy would have been effective in the circumstances of the present case. The materials in its possession reveal that the authorities only notified the applicants of the decision of 7 January 2002 to dispense with the criminal proceedings, but did not furnish the applicants with a copy of it. Moreover, the applicants'

request to that effect was explicitly refused by the authorities. The applicants' attempt to challenge the said decision, without having a copy of it, before a republican prosecutor, proved to be unsuccessful, having only produced a standard short reply of 6 May 2002 (see paragraph 61 above).

140. In the Court's view, against this background the applicants could hardly have been expected to go any further and apply to a court. Indeed, it is highly questionable whether in the absence of a copy of the decision of 7 January 2002, the applicants would have been able to detect possible defects in the investigation and bring them to the attention of a domestic court, or to present, in a comprehensive appeal, any other arguments that they might have considered relevant. In other words, in the circumstances of the present case, the applicants would have had no realistic opportunity effectively to challenge the decision of 7 January 2002 before a court.

141. In the light of the foregoing, the Court considers that it has not been established with sufficient certainty that the remedy advanced by the Government had a reasonable prospect of success. The Court therefore dismisses the preliminary objection in so far as it relates to this part of the application.

(b) As regards the applicants' complaints under Article 5 of the Convention

142. Regard being had to the parties' submissions on this question, the Court considers it appropriate to address this issue in its examination of the substance of the applicants' complaints under Article 5 of the Convention.

(c) As regards the applicants' complaints under Article 8 of the Convention and Article 1 of Protocol No. 1

143. To the extent the applicants complained about the unlawful searches and seizure of their property, the Court observes that the domestic law provided the applicants with an opportunity to appeal against the alleged violations of their respective rights in a court (see paragraphs 115 and 116 above). The Court is ready to accept that the applicants were unable to seek protection of their rights by a court between January and November 2000 on account of the general disruption in the functioning of the judicial system in Chechnya, or even for a certain period thereafter in view of the necessity for the applicants to undergo medical treatment after their release from detention. However, the Court cannot see any particular circumstances preventing the applicants from applying, either personally, or through their relatives or the SRJI, to courts once they became operational, given in particular that the complaints concerning the searches and seizure were mostly brought on behalf of the Chitayev family by the applicants' father and brother. The latter, for instance, applied repeatedly to law-enforcement agencies in connection with the searches and seizure not only in 2000 but in 2001-2002 as well (see paragraphs 51, 53 and 60). Those attempts appear to have proved futile, but it has not been shown to the

Court's satisfaction why the searches and seizure, as well as the law-enforcement bodies' failure to react to the requests, were not appealed against in a court, in accordance with the Federal Law of 14 December 1995 (see *Popov and Vorobyev v. Russia* (partial decision), no. 1606/02, 2 March 2006).

144. Having regard to the above considerations and to the particular circumstances of this case the Court concludes that the applicants must be considered to have failed to exhaust domestic remedies in respect of their aforementioned complaints. The Government's preliminary objection is accordingly upheld in so far as this part of the application is concerned.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

145. The applicants complained that they had been subjected to torture and inhuman and degrading treatment while in detention and that the State had failed to conduct a proper investigation in connection with their allegations of ill-treatment. The applicants relied on Article 3 of the Convention which provides as follows:

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

A. Alleged ill-treatment at the hands of the authorities

1. Submissions by the parties

146. The applicants maintained that they had been severely ill-treated while in detention and referred to the medical documents produced immediately after their release in support of their submissions. They argued that the certificates submitted by the Government could not be regarded as conclusive evidence rebutting their allegations of ill-treatment, as those documents had been issued in October 2003 and gave no details of the medical examination that had allegedly been carried out in respect of the applicants following their transfer from the Achkhoy-Martan VOVD to the Chernokozovo SIZO, as alleged by the Government. In this latter respect the applicants also relied on the Government's failure to submit any documents issued immediately after their admission to the Chernokozovo SIZO in April 2000 that would reflect the results of the applicants' medical examination. The applicants also pointed out that even the documents of 2003 submitted by the Government certified that the first applicant had sustained a head trauma, but the Government did not account for that injury. They also relied on NGO and media reports, Council of Europe documents and other complaints brought to the Court that denounced wide-spread ill-

treatment of detainees in Chechnya, and particularly at the Chernokozovo detention centre.

147. With reference to the certificates from the head of the Chernokozovo SIZO dated 21 October 2003, the Government denied that the applicants had been subjected to any form of unlawful violence while in detention. They also insisted that the applicants had been examined by a doctor upon their admission to the Chernokozovo SIZO and that no injuries had been found except for a head trauma that had previously been sustained by the first applicant. The Government also claimed that the applicants regularly received medical assistance while in detention in respect of the first applicant's head trauma and the second applicant's chronic gastritis. The Government made no submissions concerning the medical documents drawn up in respect of the applicants after their release.

2. The Court's assessment

148. The Court reiterates that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual, when taken into police custody, is 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. Otherwise, torture or ill-treatment may be presumed in favour of the claimant and an issue may arise under Article 3 of the Convention (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-111, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

149. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. 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 custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as lying with the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

150. The Court notes that the medical documents drawn up by the doctors of the Achkhoy-Martan hospital on the day after the applicants' release confirmed the presence of various injuries to the applicants' heads, bodies and extremities (see paragraph 36 above). The Government did not at any time contest the authenticity of those documents or argue that the injuries had been sustained before or after the applicants' detention. They did no more than patently deny the applicants' allegations with reference to

the certificates issued by the head of the Chernokozovo SIZO on 21 October 2003 to the effect that no injuries had been found on the applicants during a medical examination upon their admission to the Chernokozovo SIZO and that no illicit methods had been used against them during their detention there. The Government also referred to the results of the domestic investigation, stating that the applicants' allegations had proved to be unfounded.

151. On the basis of the materials before it, the Court does not find the Government's arguments convincing, since neither the authorities at domestic level, nor the Government in the proceedings before the Court, made any comments as regards the medical documents attesting to the applicant's injuries or advanced any plausible explanation as to the origin of those injuries (see, by contrast, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, §§ 29-31).

152. Having regard to the applicants' consistent and detailed allegations, corroborated by the medical documents, the Court concludes that the Government have not satisfactorily established that the applicants' injuries were caused otherwise than – entirely, mainly, or partly – by the treatment they underwent while in detention (see *Ribitsch*, cited above, § 34).

153. 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 characterised 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 *Aksoy*, cited above, p. 2279, § 64; *Aydın*, cited above, pp. 1891-92, §§ 83-84 and 86; *Selmouni*, cited above, § 105; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; and, among recent authorities, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-IV (extracts)).

154. Furthermore , the Court reiterates its well-established case-law that in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right enshrined in Article 3 of the Convention. It observes that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (see *Tomasi*, cited above, p. 42, § 115, and *Ribitsch*, cited above, §§ 38-40).

155. The Court finds that in the instant case the existence of physical pain or suffering is attested by the medical documents of 6 October 2000 and the applicants' statements regarding their ill-treatment in custody, from

which it follows that the pain and suffering were inflicted on them intentionally, in particular with a view to obtaining from them confessions to the imputed offences (see paragraphs 20, 21 and 27 above).

156. The acts complained of were such as to arouse in the applicants feelings of fear, anguish and inferiority, capable of humiliating and debasing them and possibly breaking their physical and moral resistance.

157. It remains to be determined whether the "pain or suffering" inflicted on the applicants can be defined as "severe". The Court recalls that the term "severe" is, like the "minimum severity" required for the application of Article 3, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Batı*, cited above, § 120).

158. In the instant case, the applicants were indisputably kept in a permanent state of physical pain and anxiety owing to their uncertainty about their fate and to the level of violence to which they were subjected throughout the period of their detention. The Court considers that such treatment was intentionally inflicted on the applicants by agents of the State acting in the course of their duties, with the aim of extracting from them a confession or information about the offences of which they were suspected.

159. In these circumstances, the Court concludes that, taken as a whole and having regard to its purpose and severity, the ill-treatment at issue was particularly serious and cruel and capable of causing "severe" pain and suffering and amounted to torture, within the meaning of Article 3 of the Convention.

160. Accordingly, there has been a breach of Article 3 of the Convention in this regard.

B. Alleged inadequacy of the investigation

1. Submissions by the parties

161. The applicants alleged that the State had failed in its obligation to carry out an effective investigation into their credible allegations of ill-treatment. They contended, in particular, that the authorities had disregarded their reference to the medical documents certifying their injuries and had failed to take a number of essential actions, and particularly to proceed with the applicants' medical examination, to organise confrontations with personnel of the Achkhoy-Martan VOVD and Chernokozovo SIZO, or to inspect the places where the applicants had been detained. The applicants claimed therefore that the investigation carried out by the authorities had been superficial and inadequate.

162. The Government argued that an investigation carried out by the prosecutor's offices in Chechnya, in connection with the SRJI's complaint

lodged on the applicants' behalf concerning their allegations of ill-treatment in detention, had proved that their allegations were unfounded. In the Government's submission, the investigation had not obtained any information confirming that law-enforcement officers had taken illicit measures against the applicants. Accordingly, on 7 January 2002 the district prosecutor's office had refused to institute criminal proceedings in connection with the aforementioned complaint in the absence of evidence of a crime in the actions of the law-enforcement officers.

2. The Court's assessment

163. Where an individual raises an arguable claim that he or she has been seriously ill-treated by the police 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. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3290, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, for example, *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-213, 24 February 2005).

164. Turning to the present case, the Court notes, first of all, that the documents submitted by the Government (see paragraphs 93-95 above) reveal that, when questioned during the investigation opened in connection with the complaint of 5 October 2001 lodged by the SRJI on the applicants' behalf, the second applicant for some reason retracted his allegations of ill-treatment, following which the district prosecutor's office terminated the investigation by a decision of 7 January 2002. However, in a complaint of 14 March 2002 the applicants, acting through their representatives, challenged the said decision, referred to their original complaints and pointed out that the second applicant had been compelled to withdraw his allegations concerning ill-treatment (see paragraph 58 above). Against this background, the Court considers that the medical evidence and the applicants' complaints together raised a reasonable suspicion that their injuries could have been caused by representatives of the State and that the matter was duly brought before the competent authorities. The latter were therefore under an obligation to conduct an effective investigation satisfying the above requirements of Article 3 of the Convention.

165. The Court further observes that some investigation was carried out following the applicants' complaint of 5 October 2001 (see paragraphs 55-

59 and 61). However, it is not persuaded that this investigation was conducted diligently, or, in other words, that it was "effective". The Court notes in this connection that even though the applicants' complaints were dealt with by prosecutor's offices at two levels, the authorities never addressed the medical documents referred to by the applicants in support of their allegations. Moreover, the authorities failed to take a number of steps that appear essential for a proper conduct of the investigation. In particular, no attempts were made to order and carry out a forensic medical examination of the applicants, to inspect the scene of the incident or to identify and question officials who, at the material time, worked in the Achkhoy-Martan VOVD and Chernokozovo SIZO. It further does not appear that either the applicants or their representatives were granted access to the materials of the investigation, or even provided with a copy of the decision of 7 January 2002.

166. In such circumstances the Court is bound to conclude that the authorities failed to carry out a thorough and effective investigation into the applicants' arguable allegations of ill-treatment while in detention. Accordingly, there has been a violation of Article 3 of the Convention on that account.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

167. The applicants complained under Article 5 § 1 (c) of the Convention that there had been no grounds for their arrest, that it had been unlawful and effected in breach of a procedure prescribed by law. They also relied on Article 5 § 2 of the Convention stating that they had not been promptly informed of the reasons for their arrest and detention. The applicants further complained under Article 5 § 3 of the Convention that there had been no grounds for their continued detention and that they had been denied a right to be released pending trial. They also complained that they had been unable to have the lawfulness of their detention reviewed by a court, as they had been held *incommunicado* and had had no contacts with their lawyer, in breach of Article 5 § 4 of the Convention. Moreover, they had been under constant threat of facing severe ill-treatment if they had complained. Lastly, the applicants complained under Article 5 § 5 of the Convention that they had been deprived of an opportunity to seek compensation for their detention. That Article, in so far as relevant, provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

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

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

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

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

A. Submissions by the parties

168. The applicants stressed that they had been kept in detention from 12 April until 5 October 2000, whilst the Government submitted that they had been apprehended on 17 April 2000. In this connection the applicants pointed out that the Government had failed to account for the period from 12 to 16 April 2000. They further argued that there had been no reasons for their remand in custody, as they had not tried to abscond or obstruct the establishment of the truth and had not been involved in any criminal activity. The applicants also claimed that they had remained in custody beyond statutory time-limits without proper authorisation of their further detention. The applicants complained that they had not been furnished with a copy of their arrest orders and had not been informed of their right to challenge their arrest or of their other procedural rights. The applicants insisted that they had been held *incommunicado*, had had no access to legal advice and therefore had been unable effectively to appeal against their detention. They also stated that they had only been allowed to meet their lawyer once in the presence of the guards, when they had been ordered to speak Russian and only to talk about their physical condition. In this latter respect the applicants stressed that their allegations had been confirmed by a certificate of 21 October 2003 submitted by the Government which indicated that the meeting between the applicants and their lawyer had taken place on 2 June 2000.

169. The Government argued that the applicants had been detained on a lawful basis and in accordance with a procedure prescribed by law. In particular, they insisted that the applicants had first been apprehended,

pursuant to Article 122 of the Code of Criminal Procedure, on 17 April 2000 and that their arrest had then been authorised by a decision of a competent prosecutor on 19 April 2000. The Government stated that the applicants had been duly notified of all the procedural decisions concerning their arrest and detention as well as of their procedural rights, this fact being confirmed by the applicants' signatures on the respective documents submitted by the Government. The Government further contended that the applicants had been promptly notified of the reasons for their arrest: on 20 April 2000 formal charges had been brought against them and their rights had been explained to them, and they had signed a relevant document to that effect. The Government also argued that the decisions ordering the extension of the applicants' detention had been taken by competent officials in accordance with procedural legislation, and that the applicants had had an opportunity to appeal against their arrest and extension orders in court. In this latter respect the Government stressed that since 25 April 2000 the applicants had been assisted by a lawyer and had been provided with legal information. The Government also contended that following the applicants' release it had been open to them to seek compensation for their detention if they had considered it unlawful.

B. The Court's assessment

1. The applicants' detention from 12 to 16 April 2000

170. The Court notes that while, in the Government's submission, the applicants' arrest had not been effected before 17 April 2000, the applicants insisted that they had been taken into custody on 12 April 2000.

171. Having regard to the evidence in its possession, the Court observes that in support of their allegations the applicants submitted eye-witness statements from their sister and three neighbours, all of whom had given consistent accounts of the events of 12 April 2000, having confirmed that the applicants had been detained on that day by the officers who had searched the house of the Chitayev family (see paragraph 78 above). Furthermore, in their numerous applications to public bodies the applicants' relatives and later the applicants themselves had insistently indicated that the latter had been detained on 12 April 2000, but this fact does not appear to have attracted the authorities' attention. Against this background, the Court finds it established that the applicants were detained by the State agents on 12 April 2000.

172. The Court has frequently emphasised the fundamental importance of the guarantees contained in Article 5 for securing the rights of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. In that context, it has repeatedly stressed that any deprivation of liberty must not only have been effected in conformity with the substantive

and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrary detention. To minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure. The unacknowledged detention of an individual is a complete negation of these guarantees and discloses a most grave violation of Article 5 (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 104, ECHR 1999-IV).

173. Having regard to its above finding that the applicants were detained by the authorities on 12 April 2000 and the fact that the Government presented no explanation about the applicants' detention between 12 and 16 April 2000, or any documents by way of justification, the Court thus concludes that during that period the applicants were held in unacknowledged detention in compete disregard of the safeguards enshrined in Article 5, and that this constitutes a particularly grave violation of their right to liberty and security secured by Article 5 of the Convention.

2. The remaining period of the applicants' detention

(a) Scope of the Court's review

174. The Court observes at the outset that the date of the applicants' release from custody is in dispute between the parties. According to the applicants, their detention lasted until 5 October 2000, whilst the Government stated that the applicants had been released on 4 October 2000.

175. The Court notes in this connection that, in contrast to their complaints concerning their unacknowledged detention from 12 until 16 April 2000, the applicants have not produced convincing evidence, such as witness statements, to corroborate their allegation that they had remained in detention until 5 October 2000, whilst the documents submitted by the parties (see paragraphs 50 and 94) consistently indicated that the applicants had been released on 4 October 2000. Accordingly, the Court accepts the date indicated by the Government as that of the applicants' release and will therefore confine its examination to the period between 17 April and 4 October 2000.

176. The Court also considers it appropriate first to address the complaint under Article 5 § 4 with a view to establishing whether the applicants exhausted the domestic remedies invoked by the Government.

(b) Article 5 § 4 of the Convention

177. According to the Court's established case-law, arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in the sense of the

Convention, of their deprivation of liberty (see *Lietzow v. Germany*, no. 24479/94, § 44, ECHR 2001-I). An entitlement to a review arises both at the time of the initial deprivation of liberty and, where new issues of lawfulness are capable of arising, periodically thereafter (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 66, ECHR 2003-IV). The Court further recalls that Article 5 § 4 deals only with those remedies which must be made available during a person's detention with a view to that person obtaining speedy judicial review of the lawfulness of that detention and which are capable of leading, where appropriate, to his or her release. The provision does not deal with other remedies which may serve to review the lawfulness of a period of detention which has already ended (see *Slivenko v. Latvia* [GC], no. 48321/99, § 158, ECHR 2003-X).

178. Turning to the present case, the Court does not find it necessary to examine the entirety of the parties' arguments on this part of the application, as, in any event, it was acknowledged by the respondent Government that the courts in the Chechen Republic had been inoperative until November 2000, while the applicants had remained in custody between 17 April and 4 October 2000. It follows that the applicants were unable to take proceedings to challenge the lawfulness of their detention during the relevant period.

179. The Court therefore dismissed the Government's preliminary objection in its relevant part and finds that there has been a violation of Article 5 § 4 on that account.

(c) Article 5 § 1 (c) of the Convention

i. General principles

180. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and enshrine the obligation to conform to the substantive and procedural rules thereof.

181. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see, among other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 124, 8 November 2005).

ii. The applicants' detention between 17 April and 18 June 2000

182. Having regard to the documents submitted to it in the present case, the Court observes that on 17 April 2000 the investigator in charge ordered the applicants' apprehension for a period no longer than 48 hours, pursuant to Article 122 of the Code of Criminal Procedure, with reference to the clear traces of a crime found at their home. On 19 April 2000 the district

prosecutor authorised the applicants' detention in view of the gravity of the charges and the risk of the applicants' absconding and obstructing the establishment of the truth. Although this latter decision did not specify the period during which the applicants should have remained in custody, under national law it was valid for two months until 18 June 2000 (see paragraph 109 above). The Court is therefore satisfied that between 17 April and 18 June 2000 the applicants' detention was lawful under Russian law.

183. Moreover, the Court does not consider that the applicants' detention during the relevant periods was arbitrary, given that the apprehension reports of 17 April 2000 and decisions of 19 April 2000 gave clear grounds to justify it. Accordingly, the Court finds no violation of Article 5 § 1 of the Convention in respect of the applicants' detention from 17 April until 18 June 2000.

iii. The applicants' detention between 19 June and 4 October 2000

184. The Court further observes that the decision of 20 January 2001 to discontinue the criminal proceedings against the applicants gave a detailed account of the main procedural steps taken in the context of those proceedings. As far as can be ascertained from that account, the applicants' remand in custody was only extended once by a decision of 7 August 2000, which ordered that the applicants should have remained in detention until 9 October 2000.

185. It appears in this connection that the period of the applicants' detention between 19 June and 6 August 2000 was not covered by any formal domestic order, and was therefore unlawful.

186. Furthermore, it is unclear from the decision of 20 January 2001 which body took the decision of 7 August 2000, and on what grounds, or whether it was served on the applicants. Moreover, despite a specific request from the Court to submit all the documents relating to the lawfulness of the applicants' detention, the Government did not furnish it with a copy of the decision of 7 August 2000, or any other evidence justifying the applicants' continued detention. Against this background, even assuming that the applicants' detention from 7 August until 4 October 2000 had a legal basis in national law, the Court concludes that it was arbitrary, contrary to Article 5 § 1 (c) of the Convention.

187. In the light of the foregoing, the Court finds that there has been a violation of Article 5 § 1 (c) of the Convention as regards the applicants' detention between 19 June and 4 October 2000.

(d) Article 5 § 2 of the Convention

188. The Court observes that it has been established that the applicants were detained on 12 April 2000 (see paragraph 171 above). It further notes that the materials before it reveal that the applicants were not duly notified

of the reasons for their arrest at least until 17 April 2000, when the reports on their apprehension were drawn up and served on them. However, in view of its above finding of a violation of the guarantees of Article 5 on account of the applicants' unacknowledged detention between 12 and 16 April 2000 (see paragraph 173 above), the Court does not find it necessary to examine the Russian authorities' compliance with the requirements of Article 5 § 2 of the Convention during the period under review.

(e) Article 5 § 3 of the Convention

189. the Court recalls that the authorities must provide "relevant" and "sufficient" reasons for an individual's continued detention to be found justified and compatible with the requirements of Article 5 § 3 of the Convention (see *Khudoyorov*, cited above, § 174).

190. Having regard to its above findings that during the relevant period of their remand in custody the applicants were unable to apply for their release (see paragraphs 178-179) and that no evidence justifying the applicants' continued detention has been submitted (see paragraph 186), the Court cannot but conclude that the applicants were denied the right to trial within a reasonable time or release pending trial.

191. Accordingly, there has been a violation of Article 5 § 3 of the Convention on that account.

(f) Article 5 § 5 of the Convention

192. The Court reiterates that Article 5 § 5 of the Convention guarantees an enforceable right to compensation for those whose detention is found, either by the domestic authorities or by the Convention organs, to have been in breach of one of the paragraphs of Article 5 of the Convention (see *Cumber v. the United Kingdom*, no. 28779/95, Commission decision of 27 November 1996) and that this right is, in principle, complied with where it is possible to apply for such compensation (see *Wassink v. the Netherlands*, no. 12535/86, § 38, 27 September 1990).

193. In the instant case, the Court recalls first of all its above finding of violations of Article 5 §§ 1(c), 3 and 4 and notes that Article 5 § 5 is therefore applicable.

194. It further observes that under national law a person who has been remanded in custody may seek compensation after the discontinuance of the criminal proceedings for a lack of evidence of that person's involvement in the imputed offences (see paragraph 111). In the applicants' case the criminal proceedings against them were discontinued and re-opened on two occasions, namely on 9 October and 23 November 2000, as well as on 20 January 2001 and 29 October 2003, respectively. Moreover, after the latest re-opening, these proceedings appear still to be pending.

195. The Court considers in this connection that the fact that the judicial system in Chechnya was not functioning until at least November 2000, as

acknowledged by the Government, and the fact that, in any event, neither of the decisions ordering the discontinuance of the criminal proceedings against the applicants was final, as well as the fact that the criminal proceedings are still pending, have effectively prevented the applicants from seeking compensation for their detention in the circumstances of the present case.

196. The Court therefore dismisses the Governments' preliminary objection in its relevant part and finds that there has been a violation of Article 5 § 5 of the Convention as regards the period of the applicants' detention under review.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

197. The applicants complained that there had been no effective remedies in respect of the violations of their rights secured by Articles 3 and 5 of the Convention, contrary to Article 13 of the Convention, which provides as follows:

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

A. Submissions by the parties

198. The applicants argued that despite their complaints and those of their relatives regarding the applicants' detention and ill-treatment as well as the searches and seizures, the authorities had not taken any meaningful steps, and that this proved that the applicants had been deprived of effective domestic remedies.

199. The Government submitted that the applicants had had effective remedies at their disposal and notably that they could have challenged the alleged violations of their rights before prosecutors or in a court, in accordance with relevant domestic law.

B. The Court's assessment

1. General principles

200. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief,

although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions by the authorities of the respondent State (see *Aydin*, cited above, § 103).

2. Application in the present case

(a) As regards the applicants' complaints under Article 3 of the Convention

201. Where an individual has an arguable claim that he has been ill-treated in breach of Article 3 of the Convention, the notion of an effective remedy entails, in addition to a thorough and effective investigation of the kind also required by Article 3, effective access for the complainant to the investigation procedure and the payment of compensation where appropriate (see *Aksoy*, cited above, pp. 2286-87, §§ 95 and 98; and *Assenov and Others*, cited above, § 117).

202. The Court recalls its above findings that the applicants had an arguable claim that they had been ill-treated by the representatives of the authorities and that the domestic inquiry into that matter was inadequate (see paragraphs 153 and 167). Consequently, any other remedy available to the applicants, including the claim for damages, had limited chances of success. While the civil courts have the capacity to make an independent assessment of fact, in practice the weight attached to preliminary criminal enquiries is so important that even the most convincing evidence to the contrary furnished by a plaintiff would often be dismissed as "irrelevant" (see *Menesheva v. Russia*, no. 59261/00, § 76, 9 March 2006).

203. The Court therefore finds that the applicants have been denied an effective domestic remedy in respect of the ill-treatment by the police. Consequently, there has been a violation of Article 13 in connection with Article 3 of the Convention.

(b) As regards the applicants' complaints under Article 5 of the Convention

204. In the light of the Court's established case-law stating that the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements (see *Dimitrov v. Bulgaria* (dec.), no. 55861/00, 9 May 2006) and in view of its above findings of a violation of Article 5 of the Convention on account of the applicants' detention between 12 and 16 April 2000, and of Article 5 §§ 4 and 5 as regards the applicants' detention between 17 April and 4 October 2000, the Court

considers that no separate issue arises in respect of Article 13 in connection with Article 5 of the Convention in the circumstances of the present case.

V. COMPLIANCE WITH ARTICLE 38 § 1 (a) OF THE CONVENTION

205. In their observations on the merits of the case, the applicants argued that the State had breached its obligations under Article 38 § 1 of the Convention, as it had not submitted the entire file of the criminal case against the applicants. This Article, in its relevant part, reads as follows:

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

206. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. Failure on a Government's part to submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 3531/94, § 66, ECHR 2000-VI).

207. The Court observes that following the decision on admissibility, it invited the Government to submit copies of documents relevant to the applicants' complaints that had been declared admissible rather than a copy of the entire file of the criminal proceedings against the applicants. In reply, the Government submitted a number of documents, including apprehension reports of 17 April 2000, arrest warrants of 19 April 2000, the decision of 20 January 2001 to discontinue the criminal proceedings against the applicants as well as the decision of 29 October 2003 which set aside that of 20 January 2001 and resumed the proceedings against the applicants. The submission of the documents in question considerably facilitated the examination of the present case by the Court. While it is true that some of the documents, in particular, those relating to the extension of the applicants' detention or authorities' actions in the applicants' house on 15 January and 12 April 2000, were not submitted by the Government, the Court has already drawn inferences in this connection and found violations

of the respective Convention provisions. Overall, the Court does not consider that the Government's conduct was contrary to Article 38 § 1 (a) in the present case.

208. The Court thus finds that there has been no failure on the part of the respondent Government to comply with Article 38 § 1 (a) of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

209. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

210. The applicants claimed EUR 35,000 and EUR 40,000, respectively, for non-pecuniary damage in respect of the injuries as well as the anguish and distress they had suffered as a result of their ill-treatment and unlawful detention by the authorities, and owing to the authorities' failure to investigate their complaints about the violations of their rights.

211. The Government submitted that the applicants' claims were excessive and argued that, should the Court find a violation of the applicants' rights, a token amount would suffice.

212. The Court observes that it has found above that the authorities tortured the applicants and failed to provide a prompt and public investigation meeting the requirements of Article 3 of the Convention. It has also been established that the applicants were deprived of liberty in violation of Article 5 of the Convention. In addition, the applicants had no effective domestic remedies to secure domestic redress for the aforementioned violations of their rights, contrary to Article 13 of the Convention. The applicants must have suffered anguish and distress from all these circumstances. Having regard to all these considerations, the Court awards each of the applicants, on an equitable basis, EUR 35,000 for non-pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

213. The applicants were represented by lawyers from the SRJI. They submitted a schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic

authorities, at a rate of EUR 50 per hour for the SRJI lawyers and EUR 150 per hour for the SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 8,344.90, which comprised:

- EUR 350 for the preparation of the initial application;
- EUR 2,150 for the preparation of the full application and additional submissions;
- EUR 2,750 for the preparation and translation of the applicants' reply to the Government's memorandum;
- EUR 375 for the preparation of additional correspondence with the Court;
- EUR 750 in connection with the preparation of the applicants' response to the Court's decision on admissibility;
- EUR 1,250 in connection with the preparation of legal documents submitted to the domestic law-enforcement agencies;
- EUR 582.75 for administrative costs (7 % of legal fees);
- EUR 137.15 for international courier post to the Court.

214. The Government did not dispute the details of the calculations submitted by the applicants, but contended that the sum claimed was excessive for a non-profit organisation such as the applicants' representative, the SRJI.

215. The Court has to establish, firstly, whether the costs and expenses indicated by the applicants were actually incurred and, secondly, whether they were necessary (see *Isayeva and Others*, cited above, § 256).

216. The Court observes that in July 2000 both applicants issued powers of attorney authorising the SRJI to represent their interests in the proceedings before the European Court of Human Rights. The SRJI acted as the applicants' representative throughout the procedure. Having regard to the rates for the work of the SRJI lawyers and senior staff, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

217. Further, it has to be established whether the costs and expenses incurred by the applicants for legal representation were necessary. The Court notes that this case was rather complex, especially in view of the large amount of documentary evidence involved, and required the research and preparation in the amount stipulated by the representative.

218. In these circumstances and having regard to the details of the claims submitted by the applicants, the Court awards them the full amount of EUR 8,344.90 as claimed, less EUR 715 received by way of legal aid from the Council of Europe, plus any tax, including value-added tax, that may be chargeable. The amount awarded in respect of costs and expenses shall be payable to the representative directly.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Holds* that it is unable to consider the merits of the applicants' complaint under Article 3 of the Convention concerning the conditions of their detention, as it has been lodged out of time;

2. *Dismisses* the Government's preliminary objection as to the non-exhaustion of domestic remedies in so far as it relates to the applicants' complaints under Articles 3 and 5 of the Convention;

3. *Upholds* the Government's preliminary objection as to the non-exhaustion of domestic remedies in so far as it relates to the applicants' complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention and *holds* that it is unable to consider the merits of these complaints as the domestic remedies have not been exhausted in this respect;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the treatment suffered by the applicants;

5. *Holds* that there has been a violation of Article 3 of the Convention as regards the absence of an effective investigation into the applicants' allegations of ill-treatment;

6. *Holds* that there has been a violation of Article 5 of the Convention on account of the applicants' unacknowledged detention from 12 to 16 April 2000;

7. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the absence of judicial review of the applicants' detention on remand between 17 April and 4 October 2000;

8. *Holds* that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicants' detention on remand between 17 April and 18 June 2000;

9. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicants' detention on remand between 19 June and 4 October 2000;

10. *Holds* that it is not necessary to make a separate finding under Article 5 § 2 of the Convention as regards the applicants' detention on remand between 17 April and 4 October 2000;

11. *Holds* that there has been a violation of Article 5 § 3 of the Convention as regards the applicants' right to release pending trial during their detention on remand between 17 April and 4 October 2000;

12. *Holds* that there has been a violation of Article 5 § 5 of the Convention as regards the applicants' right to compensation for their detention on remand between 17 April and 4 October 2000;

13. *Holds* that there has been a violation of Article 13 in respect of the alleged violations of Article 3 of the Convention;

14. *Holds* that no separate issue arises under Article 13 in respect of the alleged violations of Article 5 of the Convention;

15. *Holds* that there has been no failure to comply with Article 38 § 1 (a) of the Convention;

16. *Holds*

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

(i) EUR 35,000 (thirty-five thousand euros) to each of the applicants in respect of non-pecuniary damage;

(ii) EUR 7,629.90 (seven thousand six hundred and twenty-nine euros and ninety cents) in respect of costs and expenses, to be paid to the applicants' representatives' bank account in the Netherlands;

(iii) any tax that may be chargeable on the above amounts;

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

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

Done in English, and notified in writing on 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President