



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

FIRST SECTION

CASE OF MEDOV v. RUSSIA

(Application no. 1573/02)

JUDGMENT

STRASBOURG

8 November 2007

FINAL

08/02/2008

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 Medov v. Russia,

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

Mr L. LOUCAIDES, *President*,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 1573/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Suleyman Akberdovich Medov (“the applicant”), on 20 December 2001.

2. The applicant, who had been granted legal aid, was represented by Mr M. Ferschtman, a lawyer practising in Amsterdam. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mrs V. Milinchuk.

3. The applicant alleged, in particular, that between January and May 2000, while in detention on criminal charges, he had been subjected to ill-treatment in breach of Article 3 of the Convention. He also claimed an absence of effective domestic remedies and referred to Article 13 of the Convention.

4. By a decision of 7 September 2006 the Court declared the application partly admissible.

5. 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

6. The applicant was born in 1958. Formerly a resident of Grozny, Chechnya, he is currently living in Ingushetia.

7. The facts of the case are partially in dispute between the parties. Their submissions are summarised below in Part A. A summary of the documents submitted by the parties is set out in Part B and a summary of other relevant documents in Part C below.

A. Submissions of the parties

1. The applicant's arrest

8. The applicant is married and has three children. He and his family lived in the Staropromyslovskiy district of Grozny, in a settlement referred to by the local residents as Karpinka. The applicant submitted the following account of the events.

9. On 23 January 2000 the applicant and his extended family were in the basement of a neighbours' house at Krasnovodskaya Street, because their house at 21 Volodarskaya Street had been burnt down. At approximately 2 p.m. a group of servicemen of the troops of the Ministry of the Interior came to the basement to carry out an identity check. The applicant and seven other men from the same basement and from a nearby building were rounded up by the soldiers and taken to the garages in the neighbourhood. The applicant's wife and sisters went there and unsuccessfully sought his release.

10. Later that day the applicant and other detainees were taken to the encampment of a tank division near a place called Solyonaya Balka, situated 2-3 kilometres from Karpinka. The applicant and other detainees were made to sit on the ground near the tanks. The soldiers threatened to kill them in retribution for the death of General Mikhail Malofeyev, who had been killed in Grozny several days earlier. The applicant and others were briefly spoken to by General Troshev, the military commander of the Russian forces in Chechnya, who was at the encampment to collect the General's body. He told them that after the identity check, and on condition that their documents were in order, they would be released.

11. However, later that day the applicant and other detainees were placed together in an anti-tank pit in the ground in the open field and left there overnight. The soldiers beat and kicked the applicant and other detainees, and while they were in the pit, threw rocks and poured cold water

over them. The temperature that night was about minus 3 degrees Celcius. Around midnight the applicant and other detainees were allowed to sit near a campfire and were given some food.

12. On 24 January 2000 the detainees were driven to the Khankala military base, the headquarters of the United Group Alignment (UGA) in Chechnya. They were ordered into a small lorry used for transporting prisoners (“*avtozak*”). The applicant was hit by a rifle butt by a soldier when boarding the lorry. Upon arrival at Khankala, they were moved into another lorry where the applicant spent approximately twenty-four hours.

13. According to the Government, the applicant was apprehended on 23 January 2000 under suspicion of having participated in an attack on federal servicemen which had occurred on 4 October 1999 in the village of Chervlenaya, in the Shelkovskoy District of Chechnya. As a result of the attack, fifteen servicemen were killed and twenty-eight were wounded. The attack was investigated under criminal case file no. 14/03/0547-99/49064.

14. The Government submitted that the applicant's allegations of ill-treatment between 23 and 25 January 2000 could not be verified, because all records had been destroyed and because it was impossible to identify and question the military servicemen who had participated in the operations in question.

2. The applicant's detention in Chernokozovo

15. On 25 January 2000 the applicant was taken to the Chernokozovo detention centre, where he was kept in cells nos. 8 and 17. The applicant submitted that in cell no. 8, which was meant for five persons, he had been kept with about twenty other detainees. In cell no. 17 the applicant had been kept with about forty persons.

16. The applicant stated that during his stay in Chernokozovo he had been subjected to regular and particularly severe ill-treatment by the guards. The applicant identified them as the special police forces (OMON) from the Rostov-on-Don region. The guards who ill-treated him were often drunk.

17. In particular, the applicant submitted that upon arrival he and other detainees had been forced to run through a corridor of soldiers who beat them with great force using rubber truncheons, rifle butts and wooden hammers. While standing naked in the shower room the applicant was also severely beaten. Some time later while in Chernokozovo the applicant was hit with a rifle butt on the head so hard that it left a deep wound on the left side of his head. The scar was still clearly visible about three months later when the applicant was questioned by an interviewer from the NGO Human Rights Watch (hereafter “HRW”) in Ingushetia. As a result of the beatings the applicant sustained a broken nose and fractured ribs, as well as bruises. The guards also played humiliating “games”, such as riding on the applicant who had been forced onto his hands and knees .

18. The applicant was formally interrogated four times. During the interrogations he was beaten. The interrogators tried to force him to sign a confession of participation in an illegal armed group, a crime under Article 208 of the Criminal Code. The applicant denied having committed any crimes and refused to sign the document. He was shown an electric chair and threatened with the application of electric shock.

19. In addition, the applicant was on several occasions “informally” questioned by the guards, who beat him and tried to obtain a confession.

20. The applicant later recounted the conditions of his detention and ill-treatment at Chernokozovo to an HRW interviewer, and his testimony under the name of “Aslanbek Digayev” was included in their report “Welcome to Hell: Arbitrary Detention, Torture and Extortion in Chechnya” of October 2000.

21. The Government in their submissions confirmed that between 25 January and 18 February 2000 the applicant had been detained at pre-trial detention centre IZ 4/2 in Chernokozovo. His detention had been ordered on 28 January 2000 by an investigator of the General Prosecutor's Office Department for the Northern Caucasus and authorised by the acting Prosecutor for the Republic of Chechnya (the Chechnya Prosecutor). On the same day the applicant had been formally charged with committing a crime under Article 208 part 2 of the Criminal Code – participation in an illegal armed group. On 28 January 2000 the decree authorising his arrest had been read out to him and he had been advised of his procedural rights, including the right to appeal. On the same day the applicant was questioned about the charges and opted to remain silent, in accordance with Article 51 of the Constitution. He refused to sign any procedural documents or to give testimony. The applicant filed no appeals or motions related to the charges brought against him or the arrest warrant.

22. The Government submitted that upon admission to the pre-trial detention centre the applicant had undergone a medical examination, which revealed a bruise on his left shoulder. The Government submitted a copy of the register of new arrivals kept by the detention centre, which did not indicate any other injuries or health problems in respect of the applicant. The page contained eight entries, some of them with details of wounds, burns and diseases for other prisoners. While detained in detention centre IZ 4/2 the applicant had not applied for medical assistance and no separate medical record had been opened for him.

23. The Government submitted documents issued in October 2004 by the pre-trial detention centre IZ 20/2, located in Chernokozovo, which stated that it had become operational in August 2000 (presumably replacing pre-trial detention centre IZ 4/2) and that it therefore had no information concerning the conditions of detention of the applicant or whether physical force had been used on him.

24. Another letter issued by pre-trial detention centre IZ 20/2 stated that the applicant had been detained in IZ 4/2 between 25 January 2000 and 29 April 2000 (sic) and that no personal file had been opened for him. Instead, an “informal record card” (*карточка неустановленного образца*) had been kept, a copy of which was submitted by the Government (see Part B below).

3. The applicant's subsequent detention in Mozdok, Pyatigorsk and Stavropol

25. The applicant submitted that on 18 February 2000, along with twelve men and three women, he had been taken to Mozdok in North Ossetia. The detainees spent the night in a railway carriage. The applicant was taken to a shower room outside the carriage, made to undress and beaten and kicked by the guards.

26. On 20 February 2000 the applicant was taken to the pre-trial detention centre “SIZO no.2” in Pyatigorsk in the Stavropol Region. He submitted that upon admission he had been superficially examined by a doctor who had asked whether he had any complaints. The applicant, who felt intimidated by the presence of the guards, did not make any complaints, even though he submitted that his bruises and an unhealed wound on his head should have been evident.

27. The Government stated that the applicant's allegations of ill-treatment during transportation from Chernokozovo to Pyatigorsk were impossible to verify in the absence of the relevant records.

28. The applicant stated that while in SIZO no. 2 he had been severely beaten by the guards on his way to the shower room, when he and other detainees had been forced to run naked. He had also been beaten in the bathroom.

29. On 22 February 2000 the applicant was taken to Stavropol to the pre-trial detention centre IZ 26/1 (“SIZO no.1”). Upon arrival the applicant was again briefly examined by a doctor in the presence of the guards. Subsequently, the applicant was subjected to the same treatment as in Chernokozovo and in Pyatigorsk – he was forced to run through a corridor of soldiers who beat him. He was then forced to get into an ice-cold bath.

30. While in Stavropol, the applicant was interrogated only once by officials who did not introduce themselves. They wore uniforms with badges of the Ministry of Justice. The interrogators beat him and tried to force him to confess to having committed crimes under Article 208 of the Criminal Code. The applicant refused to sign a confession.

31. The Government confirmed that between 22 February and 3 May 2000 the applicant had been detained at the pre-trial detention facility IZ 26/1 in Stavropol. Upon arrival he had undergone a medical examination which had revealed no injuries or particular health problems. He did not submit any complaints about his medical conditions either. He did not seek

any medical assistance, did not submit any complaints about ill-treatment or conditions of detention and was not subjected to any disciplinary measures while in SIZO no. 1.

32. In support of their position the Government submitted a number of documents, which showed that the applicant had been subjected to a medical examination upon arrival and that no injuries or diseases had been recorded. On the same day he underwent a fluorography of the chest and blood tests, which did not reveal any health problems. He submitted no complaints about his health or injuries while in detention. The Government submitted a copy of the detention centre's register of new arrivals and a copy of the applicant's medical record (see Part B below).

33. During his stay in SIZO no. 1 the applicant stayed in cell no. 79. The Government submitted a detailed description of the cell and gave details of the applicant's conditions of detention in that facility, supported by relevant records and testimonies of the supervising officers, produced in 2001 during a prosecutor's investigation into the applicant's complaints. They stated that the cell was intended to hold ten persons, but had not held more than nine. The applicant and other detainees were supplied with bedding, food and items of personal hygiene in accordance with the relevant standards. They were taken to the shower room once a week. The detention facility stated that no disciplinary measures or physical force had been applied to the applicant during his stay there. He had received no visits from relatives, lawyers or investigators while in the SIZO.

4. The applicant's release and domestic investigation

34. On 3 May 2000 the applicant was released from custody in Stavropol. Upon release he was provided with a document issued by the Ministry of the Interior which stated that he had been detained from 23 January to 3 May 2000 and that the criminal proceedings against him had been dropped under State Duma Decree no. 4785-11 of 13 December 1999 "on amnesty for persons who had committed dangerous acts against public order during the anti-terrorist operation in the Northern Caucasus". The measure of restraint was lifted. The applicant stated that his passport had not been returned to him.

35. The following day the applicant joined his family in Ingushetia. According to affidavits produced by his wife, sister-in-law and an interviewer from HRW, upon release the applicant showed signs of severe physical abuse and mental trauma and it took him about six months to recover from the injuries he had sustained while in detention.

36. The applicant's wife submitted that the applicant had lost weight significantly, that he had numerous bruises and scars on his body and head, that he had difficulty breathing, and for several months had difficulty in performing the simplest of exercises. She and the applicant's sister-in-law, who had some basic knowledge of first aid and who treated the applicant

upon his release, submitted in addition that the applicant was nervous and depressed, had trouble sleeping, and could not stand noise. They both stated that the deterioration of the applicant's health was due to the ill-treatment received while in detention, and that before that the applicant had been healthy.

37. On 7 December 2000 the applicant lodged a complaint with the Grozny Town Prosecutor's Office. He stated the circumstances of his arrest and detention, and stated that he had been beaten and ill-treated while in detention in Grozny, Khankala, Chernokozovo, Mozdok, Pyatigorsk and Stavropol. As a result of the beatings he had suffered a broken nose, two broken ribs and a wound to his head. The applicant requested that the prosecutor carry out an investigation into his complaints and award him compensation for the damage sustained.

38. On 21 December 2000 HRW wrote a letter to the Prosecutor General on the applicant's behalf. They briefly reiterated the circumstances of the applicant's arrest and detention and requested that criminal proceedings in respect of the credible allegations of severe ill-treatment and torture be instituted. A copy of the letter was sent to Mr Kalamenov, the Special Envoy of the Russian President in the Chechen Republic for rights and freedoms, who forwarded the letter to the Stavropol Regional Prosecutor's Office.

39. On 21 February 2001 the Pyatigorsk Town Prosecutor's Office informed the applicant of its decision not to open criminal proceedings in relation to his complaint of ill-treatment and of the possibility to appeal against that decision to the Town Court.

40. On 12 March 2001 the applicant underwent an informal medical examination in Ingushetia. The doctor, who remained anonymous, noted a scar of about 10 centimetres long on the left side of the applicant's head, signs of a healed fracture of three ribs on the left side, apathy and anxiety. He concluded that the applicant was suffering from the consequences of a head trauma, broken ribs, astheno-neurotic syndrome and phobias. The applicant later explained that he could not register with a doctor in Ingushetia, because he had no passport, and that he had eventually found a doctor from Chechnya who was staying in Ingushetia and who agreed to give a consultation on informal terms.

41. On 26 March 2001 HRW again wrote to the Prosecutor General, reminding him of their earlier letter to which no reply had been received.

42. On 20 April 2001 the Chechnya Prosecutor's Office replied to HRW that no criminal prosecution would be initiated upon the applicant's complaints since the investigation had showed that they lacked grounds. The letter stated that on 20 February 2000 the applicant had been examined by a doctor in SIZO no. 2 in Pyatigorsk and that no injuries had been reported. Similarly, no relevant records had been made on 22 February 2000 upon examination by a doctor in SIZO no. 1 in Stavropol. While in SIZO

no. 1 the applicant had not sought medical assistance or been subjected to disciplinary measures or physical coercion.

43. On 27 April 2001 the Stavropol Regional Prosecutor's Office replied to the letter forwarded to them by Mr Kalamanov. The letter referred to the absence of recorded complaints or injuries in the medical files made upon admission of the applicant to the detention centres and the absence of any medical complaints during his detention. It also cited the absence of records of disciplinary measures or physical coercion applied in respect of the applicant. It was no longer possible to interview his former cell-mates as cell population records were not kept. The applicant's passport was not in his personal file. The letter concluded that no violation of the applicant's rights had been committed by the staff of the detention centres in Pyatigorsk and Stavropol and thus it was decided not to initiate criminal proceedings. On 15 May 2001 this information was sent to the HRW office in Moscow.

44. On 21 May 2001 the applicant was summoned as a witness by an investigator of the Zavodskoy District Temporary Department of the Interior (VOVD) in Grozny. No further information about the nature of the proceedings was contained in the summons. The summons mentioned that the applicant was obliged to present himself and to bring his passport.

45. On 22 May 2001 the applicant was examined by a doctor from *Médecins Sans Frontières* in Nazran, Ingushetia. The doctor noted, in French, a scar on the left side of his head and healed fractures of the ribs and nose.

46. On 23 May 2001 HRW wrote to the Prosecutor General and challenged the outcome of the prosecutorial inquiries conducted upon their earlier requests. They stated that the decision of the Stavropol Prosecutor's Office not to initiate a criminal investigation was unfounded and failed to answer most of the well-founded allegations brought by the applicant, in particular, concerning torture and ill-treatment, the legal grounds of his detention and confiscation of his passport.

47. On 25 May 2001 HRW wrote to the Deputy Minister of Justice in an attempt to clarify the situation of the cell population records. In particular, it asked what kind of records were kept and for how long. No reply to that letter has been received.

48. On 14 June 2001 the Prosecutor General's Office forwarded HRW's letter of 23 May 2001 to the Chechnya Prosecutor's Office.

49. On 2 July 2001 the applicant wrote letters to the Grozny Prosecutor's Office and the Zavodskoy District VOVD of Grozny in reply to their summons. He explained that he resided in Ingushetia and that his passport had been confiscated upon arrest in January 2000. He therefore asked to be questioned in Ingushetia and gave his temporary address there. Those letters were delivered in person by the applicant's sister-in-law. Neither the Grozny Prosecutor's Office nor the Zavodskoy VOVD replied to those letters or took any follow-up action of which the applicant would be aware.

50. On 10 July 2001 HRW again contacted the Prosecutor General. They requested that the case-file from the Stavropol and Chechnya Prosecutor's offices be retrieved, the decision of the Stavropol Prosecutor's Office not to open criminal proceedings be reviewed and a proper investigation be conducted. No reply to that letter was received.

51. On 16 July 2001 HRW wrote to the Minister of the Interior, asking him which unit of the Ministry had conducted the passport check in the settlement of Karpinka in Grozny on 23 January 2000. No reply to that letter has been received.

52. On 20 May 2003 the Stavropol Regional Prosecutor's Office sent to lawyers at "Stichting Russia Justice Initiative", a human rights NGO office in Moscow, copies of orders of 21 February 2001 by the Pyatigorsk Town Prosecutor's Office and of 20 March 2001 by the Stavropol Town Prosecutor's Office.

53. In support of his submissions concerning ill-treatment and lack of an effective investigation the applicant referred to a number of public reports in relation to the situation in Chechnya (see Part C below).

54. The Government confirmed that on 3 May 2000 the criminal proceedings against the applicant had been dropped in application of the Amnesty Act of 13 December 1999 and that he had been released on the same day.

55. The Government submitted that the medical report of March 2001 obtained by the applicant had not been drawn up in conformity with the rules applicable to these kind of documents and that the applicant had failed to apply to a medical institution upon his release to obtain a proper report. They also stressed the passage of a significant amount of time – almost ten months after his release – before the applicant had sought any medical help.

56. Concerning the investigation into the alleged ill-treatment, the Government referred to the information received from the Prosecutor General's Office. According to them, following the complaints brought on the applicant's behalf by HRW, on 21 February 2001 the Pyatigorsk Town Prosecutor's Office and on 20 March 2001 the Stavropol Town Prosecutor's Office refused to initiate criminal proceedings upon the applicant's complaints for absence of a criminal offence. Those decisions had been taken following an inquiry conducted in accordance with Article 109 of the Criminal Procedural Code then in force. The applicant was advised of those decisions immediately, and again in May 2003, upon an application by the NGO "Stichting Russian Justice Initiative" brought on his behalf. The Government submitted a number of relevant documents (see Part B below).

57. The Government also informed the Court that "in connection with the dissolution of the Grozny Prosecutor's Office in 2003, no data concerning the examination of this application has been kept. According to the information provided by the Prosecutor's Office of the Chechen Republic, no pre-investigative inquiries upon [the applicant's] application

have been carried out by the territorial bodies of prosecutor's office from February 2000 up to the present time”.

58. As to the applicant's passport, the Government stated that upon release he had been issued with a standard reference form concerning his detention and release. On the basis of that notice, on 31 July 2002 the Zavodskoy District Court of Grozny issued him with a passport. The materials of the criminal case against the applicant contained no reference to the alleged seizure of his passport.

B. Documents submitted by the parties

59. Upon the Court's requests, both parties submitted a number of documents related to the applicant's arrest and the investigation into his complaint of ill-treatment.

1. Documents related to the criminal case against the applicant

60. On 9 October 1999 military prosecutor of the Northern Caucasus Military Prosecutor's Office opened a criminal investigation into the attack by unidentified persons on a military unit near the village of Chervlennaya in Chechnya, as a result of which fifteen servicemen had been killed and twenty-eight wounded. The investigation was opened with regard to Articles 208 part 2 of the Criminal Code (organisation of an illegal armed group) and 105 part 2 (murder in aggravating circumstances).

61. On 23 January 2000 an officer of the rapid reaction police force (SOBR) reported to the head of the police mobile unit that on that day the applicant had been arrested in Grozny in Volodarskiy Street upon suspicion of being involved in illegal armed groups.

62. On 28 January 2000 the acting Chechnya Prosecutor authorised the applicant's placement in detention upon suspicion of involvement in illegal armed groups, a crime under Article 208 part 2 of the Criminal Code.

63. On 28 January 2000 in Chernokozovo the applicant was charged with participation in an illegal armed group and, as noted on the copy of the document, refused to accept the charges or sign the document. On the same day he was questioned about the charges, but refused to testify or to sign the transcript.

64. On 3 May 2000 the acting Chechnya Prosecutor authorised application of the Amnesty Act of 13 December 1999 to the applicant, as a member of the illegal armed group who had not committed grave crimes. On the same day the decision was announced to the applicant in Mozdok, North Ossetia, and he signed a copy of it.

2. Documents related to the applicant's detention in Chernokozovo

65. The Government submitted a copy of the “informal” registration entry dated 28 January 2000. It stated that the applicant had arrived at the detention facility on 25 January 2000, that he had been arrested on 25 January 2000 by the Naurskiy (District) Prosecutor (sic) and that on 19 February 2000 he had been sent to the (pre-trial detention centre) SI-2 in Pyatigorsk. The document further stated that the applicant had been released on 29 April 2000 under the Amnesty Act of 13 December 1999.

66. They also submitted a copy of the medical register of new arrivals kept by the detention centre and covering the period between 8 November 1999 and 12 February 2000. The entry for the applicant referred to a bruise on the right shoulder and did not indicate any other injuries or health problems. The page contained eight entries, some of them with details of wounds, burns and diseases in respect of other prisoners.

67. In addition, the Government produced several documents issued in October 2004 by the pre-trial detention centre IZ 20/2 in Chernokozovo which stated that it had become operational in August 2000 (presumably replacing pre-trial detention centre IZ 4/2) and that it therefore had no information concerning the conditions of detention of the applicant or whether physical force had been used on him.

68. Another letter issued by pre-trial detention centre IZ 20/2 stated that the applicant had been detained in IZ 4/2 between 25 January 2000 and 29 April 2000 (sic) and that no personal file had been opened for him. Instead, an “informal record card” (*карточка неустановленного образца*) had been kept (see paragraph 65 above). While in detention in IZ 4/2 the applicant had not applied for medical assistance and no separate medical record had been kept for him.

3. Documents related to the applicant's detention in Pyatigorsk

69. On 20 February 2000 at 9.30 p.m. a medical worker and two officers of the IZ 21/2 detention centre in Pyatigorsk signed a medical form in respect of the applicant, drawn up on his arrival. They noted no injuries or traumas and found him fit for detention at the pre-trial detention centre.

70. In February 2001 four officers of the detention centre and the medical worker produced written statements. They stated that on 20 February 2000 the arrival, reception and allocation to the cells of the detainees arriving from Vladikavkaz (eighty persons) had been carried out in accordance with the internal regulations and that no incidents had occurred. No injuries or health problems had been noted or recorded in respect of the applicant. The medical worker noted, in particular, that he was obliged by law to record any injuries for new arrivals.

71. On 21 February 2001 the deputy Prosecutor of Pyatigorsk, in the Stavropol Region, issued a decision not to open criminal proceedings into

the applicant's complaints concerning ill-treatment. The order referred to the letter from HRW which had alleged that in February 2000 the applicant had been placed in the IZ 21/2 detention centre in Pyatigorsk and had been beaten there. The order stated that the Town Prosecutor's Office had carried out an inquiry into that allegation and found no factual grounds to support it. It read:

“Assistant to the officer in charge of the pre-trial detention facility M. explained that on 20 February 2000 a regular group of detainees had arrived from the town of Vladikavkaz [North Ossetia]. Among the detainees there was a group of persons from the pre-trial detention centre in Chernokozovo, Chechnya. Medov S.A. was in that group.

After sanitary treatment all the detainees were placed in transit cells at the pre-trial detention centre. The new arrivals did not commit any offences, so no physical coercion or special measures were applied to them, as provided by the Federal Law on the Detention on Remand of Suspects and Persons Accused of Offences.

The medical worker of the detention centre V., who had examined the detainees arriving from Vladikavkaz on 20 February 2000, explained that a medical report had been drawn up for each detainee. No physical coercion or special measures were used by the staff of IZ 21/2.

A copy of the medical record of Medov S.A. dated 20 February 2000 was attached to the results of the examination. The medical examination took place on 20 February 2000 at 21 hours 30 minutes. No bodily injuries were noted. Medov S.A. remained in the Pyatigorsk pre-trial detention centre for two days. On 22 February 2000 he was sent on to the pre-trial detention centre in Stavropol. No complaints from Medov S.A. about the actions of the staff at the detention centre have been submitted so far to the Pyatigorsk prosecutor's office.

Thus, no evidence has been obtained to support the allegations of beatings of Medov S.A. by the staff at the pre-trial detention centre in Pyatigorsk.”

72. The information about the decision was sent to the Chechnya Prosecutor's Office. On 21 February 2001 the Pyatigorsk Town Prosecutor's Office informed the applicant about the decision and about the possibility to appeal against it to the Town Court.

4. Documents related to the applicant's detention in Stavropol

73. On 22 February 2000 the applicant was examined on arrival at SIZO no. 1. It was noted in the medical record that he did not have any injuries or complaints, that his blood pressure and body temperature were normal and that a psychiatric examination had found him healthy. A number of examinations, including blood tests, showed an absence of skin diseases, TB, AIDS and syphilis. In February 2001 the staff at SIZO no. 1 forwarded the applicant's medical record to the Town Prosecutor's Office.

74. On 18 April 2001 the head of the medical unit of SIZO no.2 in Stavropol issued a document to confirm that during his stay there the applicant had not sought medical assistance.

75. In February 2001 deputy head of SIZO no.1 informed the Stavropol Town Prosecutor's Office that the applicant had been detained there between 22 February and 3 May 2000. At the initial check-up no complaints or injuries were noted and the applicant was found healthy. During his stay he did not seek medical assistance, did not submit any complaints about ill-treatment and was not subjected to punishment or to physical coercion. The letter further stated that it was impossible to identify the applicant's former cell-mates, because no such lists had been kept, in accordance with the relevant legislation. It further listed the officers of the SIZO who had at the relevant time supervised cell no. 79, where the applicant had been kept.

76. In March 2001 three officers of the detention centre testified to the Town Prosecutor that they had received no complaints or questions from the applicant between February and May 2000, while he had been kept in cell no. 79, over which they had responsibility.

77. On 20 March 2001 the Stavropol Town Prosecutor's Office issued a decision not to open criminal proceedings into the applicant's complaints concerning ill-treatment, in response to a letter from HRW. The decision stated:

“Between 22 February and 3 May 2000 Medov S.A. was detained in SIZO no. 1 of the Department of the Execution of Sentences of the Ministry of Justice of the Stavropol Region. On 3 May 2000 he was released pursuant to the decision of the Department of the Prosecutor General's Office in the Northern Caucasus on application of the Amnesty Act of 13 December 1999. On arrival at SIZO no.1 no passport was contained in Medov's personal file.

During his stay in SIZO no. 1 he did not complain about being beaten by the staff at the SIZO, and was not subjected to any punishment, physical coercion or special measures. According to the notes in the medical record, upon admittance to the SIZO no bodily injuries or illnesses were noted. During his detention he did not submit any medical complaints or seek medical assistance.

In SIZO no. 1 Medov was detained in cell number 79. According to the explanations of the staff who had supervised the cell, Medov had not broken any internal rules or submitted any complaints or requests. As no records of cell population are kept, it is deemed impossible to question his former cellmates.

Thus, as a result of the investigation, no grounds were found to support the allegations of use of physical force on Medov by the staff at SIZO no. 1 and there is no evidence of any criminal act on the part of the staff”

78. The information about the decision was forwarded to the “interested parties” and the Stavropol Regional Prosecutor's Office.

C. Relevant Council of Europe reports

79. The Chernokozovo SIZO, where the applicant had been detained, has received extensive attention from various human rights institutions, including the European Committee for the Prevention of Torture (CPT), on account of allegations of severe ill-treatment of detainees. On 4 March 2000 the Head of the CPT delegation Mr Hajek issued a statement to Russian officials at the end of the visit of the CPT to the North Caucasian region of the Russian Federation. The statement read, *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.”

80. 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 the 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 said, in particular:

“... 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.”

II. RELEVANT DOMESTIC LAW

81. The Code of Criminal Procedure (CCP) of 1960, which was in force until July 2002, contained the following provisions relating to the opening of a criminal investigation.

82. 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 the discovery by an investigating body, prosecutor or court of evidence that a crime had been committed.

83. 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. Those making the allegations were to be informed about any decision made.

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

THE LAW

I. COMPLIANCE WITH THE SIX-MONTH RULE

85. 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).

86. 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).

87. Turning to the present case, in so far as the conditions of the applicant's detention are concerned, the Court notes that from the materials in its possession it does not appear that he attempted to raise this issue before the domestic authorities either in his complaint of 7 December 2000, which was confined to his allegations of ill-treatment, or on any other occasion. The Court further finds it unnecessary to determine whether the applicant 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 him, he was released from custody on 3 May 2000, whereas his application to this Court was lodged more than six months later on 20 December 2001.

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

II. THE GOVERNMENT'S PRELIMINARY OBJECTION AS TO EXHAUSTION OF DOMESTIC REMEDIES

A. Arguments of the parties

89. The Government requested that the Court declare the complaint inadmissible as the applicant had failed to exhaust domestic remedies. The Government outlined several possible available legal remedies.

90. They submitted that the applicant could have complained to a military prosecutor concerning the actions of the servicemen who had guarded him prior to his arrival at the pre-trial detention centre. He could have complained of the conditions of detention to a prosecutor, but he did not submit any complaints while in detention. It was also open to the applicant to appeal to a court against the decisions of the Pyatigorsk Town Prosecutor's Office of 21 February 2001 and of the Stavropol Town Prosecutor's Office of 20 March 2001, which he failed to do. Finally, it was open to the applicant to pursue civil proceedings once he was released, either in Chechnya or in the neighbouring regions.

91. The applicant disagreed with the Government's objection. Firstly, he argued that there was an administrative practice of non-compliance with the requirement to investigate effectively abuses committed by Russian servicemen and members of the police in Chechnya. He referred to complaints submitted to the Court by other persons claiming to be victims of such abuses, who also complained about lack of effective investigation. The applicant cited reports by human rights groups, international organisations and the media on violations of civilians' rights committed by federal forces and the subsequent lack of effective domestic investigation.

92. Secondly, he invoked the existence of special circumstances as a result of detention incommunicado. He explained that he had felt vulnerable, powerless and apprehensive of the State representatives and therefore had been unable to submit any complaints while in detention.

93. He maintained that in any event he had exhausted domestic remedies, because upon release he had applied to the prosecutor with a request to conduct an investigation into the allegations of ill-treatment. In his opinion, a criminal investigation should have been regarded as a proper remedy in view of the nature of his complaints and the relevant case-law of the Court. Despite his efforts, no proper investigation took place. His complaints were rejected without proper examination, and his appeal to a higher ranking prosecutor remained unanswered.

94. Application to the courts with a request for compensation could not, in his opinion, be a proper remedy for the type of violations alleged, and in any event would be futile in the absence of conclusions from the criminal investigation.

B. The Court's assessment

95. In the present case the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will now proceed to examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that the 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 laid down in domestic law, but not that recourse should be had 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, and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

96. In the present case the applicant complained of several episodes of ill-treatment, which were the subjects of separate domestic investigations.

1. As regards the applicant's arrest and detention between 23 January and 18 February 2000

97. The applicant complained of ill-treatment upon arrest on 23 January 2000 and detention in Chernokozovo between 25 January and 18 February 2000. His complaint of 7 December 2000 to the Grozny Town Prosecutor's Office primarily referred to that period. However, it appears that no separate investigation has been carried out by the prosecutor's office and no procedural decision has been rendered. The letter of 20 April 2001 sent to HRW by the Chechnya Prosecutor's Office referred only to the investigation into the complaints in relation to the applicant's detention in the pre-trial detention centres in Pyatigorsk and in Stavropol. The Government in their observations confirmed that there was no information about a separate investigation into the applicant's complaints of ill-treatment in Chechnya (see paragraph 57 above).

98. In such circumstances, the Court finds that the applicant could not effectively challenge the outcome of proceedings in relation to his complaints of ill-treatment upon arrest and during his detention in Chernokozovo. The Government's argument that the applicant could have appealed to a court or to a senior prosecutor is not applicable to the present situation, where there was no investigation, no procedural decisions and where the applicant was not made aware of any results of any inquiries made.

99. In the light of the foregoing, the remedy advanced by the Government cannot be considered as effective and having reasonable prospects of success. The Court accordingly dismisses the preliminary objection in so far as it relates to that part of the applicant's detention.

2. As regards the applicant's detention between 18 February and 3 May 2000

100. As regards the applicant's complaints about ill-treatment in the pre-trial detention centres in Pyatigorsk and Stavropol, they were examined by the local prosecutors. Following an investigation, on 21 February 2001 the Pyatigorsk Town Prosecutor decided not to institute criminal proceedings. On 20 March 2001, also following an investigation, the Stavropol Town Prosecutor took a similar decision. Under Article 113 of the Code of Criminal Procedure, which was in force at the material time, that decision was amenable to an appeal to a higher prosecutor or a court of general jurisdiction (see paragraph 84 above). While HRW on at least two occasions wrote to the Prosecutor General (see paragraphs 46 and 50 above), the Government pointed out that the applicant had not used the second avenue of appeal.

101. As regards appeal to a higher prosecutor, the Court has already held on several occasions that an appeal to a higher prosecutor does not give the person employing it a personal right to the exercise by the State of its supervisory powers, and that such an appeal does not therefore constitute an effective remedy within the meaning of Article 35 of the Convention (see *Slyusarev v. Russia* (dec.), no. 60333/00, 9 November 2006).

102. The position is, however, different with regard to the possibility of challenging before a court of general jurisdiction a prosecutor's decision not to investigate complaints of ill-treatment. In such cases contentious proceedings are instituted, to which the applicant and the prosecutor are parties. In public and adversarial proceedings an independent tribunal is called upon to assess whether the applicant has a *prima facie* case of ill-treatment and, if he has, to reverse the prosecutor's decision and order a criminal investigation. The Court has already found that in the Russian legal system, the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003).

103. In the present case the applicant did not make use of the judicial appeal option. He invoked in this respect the existence of an administrative practice of non-investigation of complaints against the actions of the "power structures" in Chechnya and special circumstances resulting from his detention incommunicado. The Court notes in this respect that the detention and the ill-treatment in question occurred outside of Chechnya, and the applicant did not allege that this administrative practice extended to other

regions. As regards the second argument, the Court notes that the applicant was informed of the decisions of the relevant prosecutors' offices more than a year after his release from detention.

104. The Court also notes that the applicant was assisted by a number of human rights organisations, who intervened on his behalf before the prosecutor's offices. No explanation has been offered for their failure to lodge, or to advise the first applicant to lodge, a judicial appeal against the prosecutors' decision not to investigate his allegations of ill-treatment.

105. In the light of the above considerations, the Court finds that the applicant's complaints concerning his alleged ill-treatment in detention between 18 February and 3 May 2000 must be dismissed for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

106. The applicant alleged a violation of Article 3, which reads:

“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. Arguments of the parties

107. The applicant maintained that he had been subjected to torture while in detention. He referred to his detailed submissions about the ill-treatment, to the medical documents produced after his release and to the witness statements which corroborated his account. He alleged that the documents submitted by the Government could not be regarded as conclusive evidence of the contrary, because some had been issued in 2004 and the records kept in 2000 were not accurate. Even these documents acknowledged that he had had a bruise on his shoulder (his medical record made upon admission to Chernokozovo, see paragraph 66 above). He also referred to reports by NGOs, Council of Europe documents and other complaints brought to the Court that denounced the widespread ill-treatment of detainees in Chechnya, and particularly at the Chernokozovo detention centre.

108. The Government denied that the applicant had been subjected to unlawful violence while in detention. They stated that he had been examined by medical staff upon admission to the pre-trial detention centres in Chernokozovo, Pyatigorsk and Stavropol and that no injuries had been recorded apart from a bruise on his shoulder on 25 January 2000. They stressed that the records showed that other detainees had had more serious injuries recorded, which proved their accuracy (see paragraph 66 above).

The applicant had not sought medical assistance while in detention and had not submitted any complaints of ill-treatment. As to the examinations carried out after his release, the Government remarked that the applicant had only obtained a medical opinion in March 2001, which was over ten months after his release from custody. They pointed out that even that document was not a proper medical expert's report but an anonymous "consultative opinion". The document drawn up on 22 May 2001 by a doctor from *Médecins Sans Frontières* was in French only and in any case that medical examination could not be considered official.

2. The Court's assessment

109. 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).

110. 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).

111. In the present case the applicant alleged that as a result of ill-treatment in Chernokozovo he had suffered a broken nose, a head trauma, broken ribs and mental distress. In support of his allegations the applicant referred to his own submissions, to the witness statements of his relatives and to two unofficial medical documents obtained ten and twelve months after his release. He also referred to the publicly available information about the situation in Chernokozovo at the relevant time, which spoke of the widespread physical abuse of detainees and the absence of investigation into credible allegations of ill-treatment. The Government questioned the validity and relevance of the medical documents. They also referred to the results of prosecutorial inquiries which revealed an absence of recorded

complaints or injuries in the three separate detention facilities during the applicant's admission and detention.

112. The Court notes that the applicant did not seek medical assistance while in detention, nor immediately upon release in Ingushetia, where he resided at that time. This is at variance with the alleged seriousness of his condition. The absence of a passport which, as he claimed, had prevented him from having access to a doctor, could not be an obstacle to seeking urgent medical assistance for such a protracted period of time. In any event, the medical documents obtained by him in March and May 2001 do not refer to the time or circumstances when the noted scars and traumas could have been caused. To the contrary, three medical reports drawn up while the applicant was in detention, in the pre-trial detention centres in Chernokozovo, Pyatigorsk and Stavropol, did not refer to any injuries or complaints (see, *a contrario*, *Chitayev and Chitayev v. Russia*, no. 59334/00, §§ 150-151, 18 January 2007).

113. As to the applicant's reference to public reports about the situation in Chernokozovo at the relevant time, it is true that the Court can, in certain circumstances, take into account reliable reports about the situation in a particular prison when evaluating the conditions of detention (see, for an example of the Court's taking into account of the reports of the CPT, *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005). However, it would be to seriously over-stretch such practice to apply it to allegations of ill-treatment, in particular those as serious as in the present case. The findings of the CPT or of any other relevant body do not in themselves, and in the absence of evidence of individual suffering of the intensity required for a finding of a breach of Article 3, provide a basis for a conclusion that there has been a breach of Article 3 of the Convention in the applicant's case.

114. In such circumstances, the principle evidence in support of the applicant's allegations of ill-treatment remains his own statements and the statements of his wife and sister-in-law. While they cannot be considered entirely objective, the Court notes that the applicant first complained to the prosecutors in December 2000, by which time his former cell-mates could no longer be identified. The staff of the detention centres in Pyatigorsk and Stavropol, including medical workers, submitted to the prosecutors that they did not recall any injuries to or complaints from the applicant, while the records for other detainees contained more detailed entries.

115. The Court finds that on the basis of the evidence submitted by the parties it cannot establish to the required standard of proof that the applicant's injuries were sustained while he was in detention, in the situation as described by him. It is also unable to conclude that the applicant was subjected to ill-treatment at the hands of the authorities while in detention between 23 January and 18 February 2000.

116. Accordingly, there has been no violation of Article 3 in this connection.

B. Alleged inadequacy of the investigation

117. The applicant argued that the investigation into his complaints of ill-treatment did not attain the level of effectiveness required by the Convention standards and the domestic legal provisions.

118. The Government retorted that the applicant's allegations of ill-treatment were dismissed by the prosecutor's office as unfounded after a proper verification.

119. 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).

120. Turning to the present case, the Court notes that in December 2000 the applicant complained of ill-treatment to the Grozny Town Prosecutor's Office. He referred to the injuries sustained by him and requested that an investigation be carried out. The Court considers that the applicant's complaints should have raised a reasonable suspicion that his injuries could have been caused by representatives of the State and that the matter should have been duly brought before the competent authorities. The Court also considers that the publicly available information about the widespread abuse in the Chernokozovo detention centre at the relevant time put the relevant authorities under a special obligation to conduct an effective investigation satisfying the above-mentioned requirements of Article 3 of the Convention.

121. However, the Court reiterates that it has already found that no investigation has been carried out into the applicant's allegations of ill-treatment upon arrest and during his detention in Chernokozovo (see paragraph 97 above). The authorities submitted a number of documents referring to the applicant's situation in Chernokozovo, produced in 2004, in relation to the communication of the present complaint by the Court;

however, no investigation by a prosecutor has been carried out in respect of that period of detention and no procedural decision has been taken.

122. In such circumstances the Court is bound to conclude that the authorities failed to carry out a thorough and effective investigation into the applicant's arguable complaints of ill-treatment while in detention. Accordingly, there has been a violation of Article 3 of the Convention in this connection.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

123. The applicant submitted that he had had no recourse to effective remedies against the violations, contrary to Article 13, which provides:

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

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

125. 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 *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103).

126. 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).

127. The Court recalls its above findings that the applicant had an arguable claim that he had been ill-treated by the representatives of the

authorities and that the domestic inquiry into that matter was inadequate (see paragraphs 119-122). Consequently, any other remedy available to him, 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).

128. The Court therefore finds that the applicant has been denied an effective domestic remedy in respect of his complaint of ill-treatment by State agents. Consequently, there has been a violation of Article 13 in connection with Article 3 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. Article 41 of the Convention provides:

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

A. Damage

1. *Pecuniary damage*

130. The applicant claimed 371,000 roubles (RUB) in respect of pecuniary damage for loss of income during his detention, and the time he spent recovering from the ill-treatment (a total of fifty-three months). He claimed that at the time of his arrest he had been employed as a bricklayer and received a monthly salary of RUB 7,000. The applicant also explained that although the company had stopped working during the hostilities, it had not made its employees redundant. According to a copy of his employment record, on 14 June 2000 the applicant had left his job on his own initiative. In July 2004 the applicant found new employment as a driver for a communications company.

131. The Government dismissed the claims as unsubstantiated and excessive.

132. The Court reiterates that it did not find a violation of the substantive aspect of Article 3 of the Convention, but only of the obligation to investigate arguable allegations of ill-treatment. In such circumstances the Court sees no clear causal connection between the damage claimed by the applicant and the violation of the Convention found by the Court. It therefore dismisses this part of the claim.

2. *Non-pecuniary damage*

133. The applicant claimed 100,000 euros (EUR) for the anguish and distress he had suffered during detention, as well as the feelings of helplessness and humiliation arising out of the authorities' failure to investigate his complaints.

134. The Government considered this sum to be excessive.

135. The Court reiterates that it has found a violation of the procedural aspect of Article 3 and or Article 13 on the account of the authorities' failure to investigate effectively the applicant's arguable complaints of ill-treatment. The Court accepts that the applicant suffered non-pecuniary damage as a consequence of the violations found, which could not be compensated merely by a finding of a violation. In such circumstances, and acting on an equitable basis, it awards the applicant EUR 5,000.

B. Costs and expenses

136. The applicant was represented by Mr. Ferschtman, a lawyer practising in the Netherlands. The lawyer was found with the assistance of the Stichting Russian Justice Initiative ("SRJI"), an NGO based in the Netherlands with a representative office in Russia. According to the agreement between the applicant and the SRJI, the SRJI paid the fees to the lawyers, while the applicant would reimburse the costs to the SRJI should the case be won and the costs be awarded.

137. The applicant claimed a total of EUR 15,281 under this head, that is, EUR 14,726 for legal work and EUR 555 for translation costs.

138. The Government considered that the amount claimed for costs and expenses had not been sufficiently justified.

139. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII, and *Boicenco v. Moldova*, no. 41088/05, § 176, 11 July 2006). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

140. The Court notes that in support of his claims under this head the applicant submitted time-sheets completed by the lawyer and an invoice for translation services, amounting to a total of EUR 3,926. The rest of the claim is not supported by any documents.

141. Having regard to the documents submitted by the applicant, the Court awards him the amount of EUR 3,926, less EUR 715 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable.

C. Default interest

142. 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 applicant's complaint concerning the conditions of 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 applicant's detention between 23 January and 18 February 2000;
3. *Upholds* the Government's preliminary objection as to the non-exhaustion of domestic remedies in so far as it relates to the applicant's detention between 18 February and 3 May 2000;
4. *Holds* that there has been no violation of Article 3 of the Convention as regards the ill-treatment of the applicant during detention between 23 January and 18 February 2000;
5. *Holds* that there has been a violation of Article 3 of the Convention as regards the obligation to investigate arguable allegations of ill-treatment;
6. *Holds* that there has been a violation of Article 13 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 3,211 (three thousand two hundred and eleven euros) in respect of costs and expenses, to be paid to the SRJI 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President